

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

**DATE:** April 11, 1997  
**TIME:** 9:00 a.m.  
**PLACE:** Board Room  
Kalanimoku Building, Room 132  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

**MEMBERS:**

Mr. William Kennison	Mr. Colbert Matsumoto
Ms. Lynn McCrory	Mr. Michael Nekoba
Mr. Christopher Yuen	Mr. Michael D. Wilson

**STAFF:**

Dean Uchida	Aulani Wilhelm
Michelle Bradley	Dave Parsons
Ed Henry	Mason Young
Jim Schoocraft	Jon Bedish
Didi Mamiya	

**OTHERS:**

Juliet Begley	Henry Curtis	Peter Garcia
Amy Esaki and Troy Tanigawa	Bill Tam	Nobu Shinohara
Sidney M. Quintal	Phillip Kelly	Jimmy Wong
Max Graham, Jr.	B. A. Dunn	Ron Darby
Lynn Lee (OHA)	Chris Barta	Gabriel Siu
Gretchen & Bob Gould	John Goody	Darryl Huff
Andrew Yanovick	Dwayne Howland	Gilbert Silva
Joe Pickard	Kalani Miller	Andrew Yanoviak
George Tengan	Francis Shimonoki	Jack Hitchcock
Gordon Chapman	Clayton Hanagami	Ilima Morrison
Carolyn Hayashi, Esq.	Mike Schmidt	Dante Carpenter

**Business:**

**ITEM D-15: CONSERVATION DISTRICT USE APPLICATION FOR A SINGLE FAMILY RESIDENCE AT NIUMALU, KAUAI, TMK: 3-2-01: 001.**

Dean Uchida said the applicant is Okada Trucking and the proposal is for a single story, 3,000 sq. ft. single family residence to be used as a corporate house. The area is adjacent to the Alekoko or Menehune Fish Pond and the proposed dwelling is approximately 175-200 feet from the nearest edge of the pond. Uchida said a public hearing was held on Kauai. Some of the issues identified were the potential visual impacts based on the location of the house, sewage disposal, and potential impact to historic sites. He said the applicant has mitigated the visual impacts to the satisfaction of the staff. Historic Preservation recommended a detailed archaeological reconnaissance of the property and the applicant has agreed to do it if it is to be a condition on the approval of the permit.

Staff's recommendation is that the Board approve the application to construct a vacation residence subject to conditions and that prior to construction of the residence, the applicant shall apply for a Subzone Boundary Amendment to redesignate land from the Limited to the Resource subzone, to allow for the construction of the single family residence at the preferred location subject to conditions.

**Motion to approve the Conservation District Use Application and if the petition to amend the subzone boundary is approved, the applicant may construct the single family residence at the site and no new Conservation District Use Application will be required. (McCrary/Nekoba).**

**Vote: all in favor.**

**ITEM D-11: CONSERVATION DISTRICT USE APPLICATION (TEMPORARY VARIANCE) FOR THE STORAGE AND PROCESSING OF ABANDONED VEHICLES AT WAILUA, KAUAI, TMK: 3-9-05:1 ((POR.)).**

Uchida briefed the Board and said on March 14, 1997, the Board of Land and Natural Resources found the County in violation of Chapter 183C, HRS for unauthorized use of Conservation District Land. The County has been using the site for storage of derelict vehicles since February 1996 and has paid a fine of \$2,000. The Board allowed the continued storage operation on the site to alleviate public health problems. Uchida said the application has been sent to agencies for review and comment. One concern is what impact will the processing have on the wetland area.

The staff's recommendation is that the Board deny the County of Kauai's request to use the subject site for the processing of abandoned vehicles and that the County of Kauai be permitted to store abandoned vehicles at the site subject to conditions.

Amy Esaki and Troy Tanigawa introduced themselves as representing the County of Kauai. Tanigawa addressed the U.S. Fish and Wildlife Service issue and said a biologist was sent out to the site and their verbal conclusion was that there was no significant impact to the site.

Esaki said the County apologizes that they did not recognize that conservation and wetland areas were involved at an earlier date and for not clearly identifying the effects on the small wetland which is 200 yards, not 200 feet as recorded in the staff recommendation. She said the County addressed the emergency situation when the only junk car dealer closed down. The County allows only abandoned vehicles in the lot which are cited by the police department but that it will be at full capacity at 750 cars. Esaki said it is likely that the site will be at capacity within eight months. She said if the County is not allowed to process at the site, it will cost approximately \$50,000 to transport the cars to another site to be processed.

Tanigawa addressed the noise and the visual aspects. He said they are looking at a level of processing that would not be full scale and would be at a permissible sound level. For the visual aspects the vehicles will not be stacked above the height of the existing boulder berms surrounding the project area. The proposed use is not consistent with the purposes and objections of the Conservation District, based on criteria applied under Section 13-5-30 (12-8), HAR.

Chair Wilson suggested this item be deferred for now due to the length of the discussions and to give the applicants the opportunity to discuss it further.

**Motion made and unanimously carried to defer item. (McCrorry/Matsumoto).**

**ITEM D-8: REQUEST BOARD APPROVAL FOR THE ISSUANCE OF REVOCABLE PERMITS TO PACIFIC DAIRY, FEED AND FARM, INC., AMERON HC&D, CODY MARK, FOR A PORTION OF THE FORMER HAWAII MEAT COMPANY FEEDLOT WITHIN THE CAMPBELL INDUSTRIAL PARK, KAPOLEI, OAHU TMK: 9-1-31:01 (POR) 25 (POR.), 37 (POR).**

Uchida briefed the Board. The State acquired 120 acres of land within the Campbell Industrial Park that was the former Hawaii Meat Feedlot. The feedlot operation is no longer in existence and the Hawaii Meat Company leased out portions of this area to Pacific Dairy, Feed and Farm, Inc. and Ameron HC&D. He said the Division is seeking Board approval for issuing interim permits until a long-term disposition can be determined by the Land Division.

Pacific Dairy's current rent is \$2,000/month for approximately 127 sq. ft. The staff appraiser recommends the new rent to be \$5,216/month. Feed & Farm, Inc. are suppliers for farm feed and supply in wholesale retail operations. Their current rent is \$2,500/month and the staff appraiser recommends a new rate of \$6,680/month. The third permit is to Ameron HC&D who uses approximately 72,500 sq. ft. for storage of concrete culvert pipes and other concrete products. Their current rent is \$2,100/month; the staff appraiser recommends \$2,175/month. Uchida said the fourth permit is to Cody Mark who provides management services in the facility in exchange for his services.

The staff's recommendation is that the Board issue a Revocable Permit to Pacific Dairy, Feed and Farm, Ameron HC&D and Cody Mark under the specific terms and conditions. The rent would be the same as what they were paying Hawaii Meat except for Cody Mark who would not pay rent but provide the management services.

There was a discussion about the rental fees and the discrepancies in the amounts paid and what the recommended amounts were. Uchida said the applicants did not reveal to the Land Division what they were paying Hawaii Meat and only after the rates were calculated at market value, did they say what they were paying. He said in discussions with the Department of Agriculture, if the Land Division charged a higher rate, it may put these applicants out of business. Member Matsumoto did not feel that the applicants showed any "good faith" by not revealing what their rents were until after the Division came up with the numbers.

Member Matsumoto questioned the management services of Mark Cody and pointed out that some of the services should be the responsibility of the tenant and not that of the State's. Uchida said the agreement was established when Cody was an employee of Hawaii Meat.

Member Nekoba agreed with Member Matsumoto with regards to the tenants withholding information on their rental fees. Jimmy Nakatani said the Department of Agriculture felt that the livestock industry needed help and did not get into the financial end because they felt it was a temporary operation. He also concurred with members Matsumoto and Nekoba regarding the tenants not revealing their lease rent.

Uchida said a company is interested in doing slaughterhouse operations there and if that happens, the present tenants that are occupying the warehouse areas will have to be relocated. Nakatani added that they have been working on the slaughterhouse for a number of years before the Waihee administration and when the administration changed, they had to go back into litigation. He said the slaughterhouse is a very important piece of the puzzle for the livestock industry for the State of Hawaii and felt it was an urgent matter to get resolved.

There was a discussion about Mark Cody's management services and his value to the State and whether he was engaged in some other revenue generating activity on the property that it would not be appropriate for the State to give him free rent.

Carolyn Hayashi introduced herself as the attorney for Feed & Farm, Inc. She said she understood that her firm did provide rental information and a copy of the lease to Uchida's predecessor in 1994. She requested that the Board approve the interim permit at the current rates and that Feed & Farm is willing to work with the Division towards a long term permit. The company has been in business for approximately 4 years and the president is John Yoshikawa.

**Motion to accept issuance of Revocable Permits to Pacific Dairy, Feed and Farm, Inc., and Ameron HC&D and to defer the Revocable Permit for Mark Cody until more information is provided to the Board regarding the usage of his house and what his specific management services are. (Nekoba/Kennison).**

Uchida assured the Board that the Division will clarify what the State will be paying for and describe the services of Cody Mark and what the tenants will be providing in the infrastructure. Member Matsumoto asked whether the improvements will be owned by the State and whether it is insured. Uchida said the improvements are State owned and that the State has not taken any insurance for those facilities. He said under the Revocable Permits, it is the responsibility of the tenants to obtain insurance for liability and fire. Uchida said there is no water or electricity, that it is just a shell. He pointed out that the Division appraiser looked at the parcel as an industrial zone although the uses are agricultural.

**Vote: all in favor.**

**ITEM D-12: GENERAL LEASE NO. S-3618, LAUPAHOEHOE TRANSPORTATION CO., INC. LOT 34, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-49:09.**

Member Yuen disqualified himself from Items D-12 and 13 because his relative Mr. Lau is the prospective buyer and representation has been discussed on an unrelated issue.

Uchida said the staff's recommendation is to cancel the lease. Laupahoehoe Transportation Company is delinquent on the lease rent and failed to post the required performance bond. The matter came before the Board in December of 1996, and through testimony received, it was discovered that there was a \$1,000,000 mortgage on the property. The property may have been involved through the owner's assets but there was no consent provided, therefore there is no recognized lien on the lease. Laupahoehoe Transportation Company in an effort to liquidate will sell the lease to the Laus, dba Nick's Garage for \$75,000. Uchida said there is an underground fuel tank on the property and as part of the sale, the new buyers are requiring that Laupahoehoe Transportation Company remove the existing storage tanks which they are willing to do.

The staff's recommendation is that the Board Grant General Lease No. S-3518 and give sixty (60) days to remove the underground fuel tank or the lease will be automatically canceled without further Land Board action, cancellation to be done in the manner specified, if the

underground fuel tanks are removed in sixty (60) days or sooner, to the satisfaction of the potential buyer and the State, that the Land Board approve the consent to the assignment and other terms and conditions as prescribed by the Chairperson to best protect the State's interest.

Member Matsumoto noted that the default with respect to the performance bond expired in October, 1995 and the notice was sent in October, 1996. He asked why did it take so long before it came before the Board. Uchida said the Land Division was shuttling land agents from Oahu and that it was probably overlooked.

Nobu Shinohara testified on behalf of the approval of the grant lease to be able to dissolve the lease and remove the fuel tanks within the 60 days.

**Motion to approve Item D-12 to include amendment to remove the underground fuel tank at the end of 60 days, pay all delinquent rent and obligations, and provide current performance bond, otherwise, the lease will be automatically canceled without further Land Board action. (Nekoba/Kennison).**

**Vote: all in favor.**

Chair Wilson brought Item D-11 back to the table.

Amy Esaki requested a deferral of the temporary variance for the processing for a maximum of 60 days to confer with the Kauai County Council.

**Motion to approve the staff's recommendation for the storage and to allow deferral of 60 days to allow the County to explore other options for processing abandoned vehicles and address the various questions and concerns raised by the Board. (McCrorry/Matsumoto).**

Member Yuen said he sent a letter to the Board members outlining certain determinations that the Board has to make in order to grant a temporary variance. He asked that the following be included in the motion (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the Board determines that: 1) There are special and unique circumstances applying to the proposed land use at its particular location; 2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property, 3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and 4) The variance an any conditions imposed on the land use authorize by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land is use is located.

Chair Wilson clarified that Member Yuen's suggestion is to add the criteria to the motion to show that the facts supported the determination made by the Board.

**Vote: all in favor.**

Chair Wilson called for recess at noon and the meeting was resumed at 12:40 p.m.

**ITEM D-13: GENERAL LEASE NO. S-3876, LAUPAHOEHOE TRANSPORTATION CO., INC. LOT 25, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-50:93.**

Uchida said Laupahoehoe Transportation is delinquent in lease rental payments and the prospective buyer is willing to take the lease knowing that there are underground storage tanks.

The staff's recommendation is that the Board: 1) Grant General Lease No. S-3875 , thirty (30) days to make a good faith payment to the State for delinquent rents owed or the lease will be automatically canceled without further Land Board action, 2) cancellation to be done in the manner specified by law, and 3) If payment is made in thirty (30) days or sooner, staff to recommend approval of the consent to the assignment, and 4) such other terms and conditions as may be prescribed by the Chairperson to best protect the State's interest.

There was a lengthy discussion about the storage tanks. Shinohara was not aware that the storage tanks existed when he entered into the lease and subsequently does not have insurance. The question was who is responsible for the clean up of the storage tanks. It was noted that the performance bond was waived by the Land Board on April 28, 1972. Mike Schmidt dba Paradise Auction, Ltd., the potential buyer, said the tanks were inspected and found to have no leaks. He realizes that he has to take care of it eventually but said it is not in his budget to remove it now. Schmidt assumes that there is rain water in the tank now, that it hasn't been used for years and since he has no plans to use it, he plans to cap it off. He said he is willing to enter into a performance bond for the removal of the tanks in a 2 year time period. Uchida explained that the tanks were installed prior to Laupahoehoe gaining the assignment from a previous tenant and that there is no record of the Board approving the installation of the storage tanks.

Uchida said the approval is for curing the delinquent rent within the 30 days and that the bank is willing to pay off the delinquencies because the lease is at value. Presently the property is being used for storage by Schmidt who took early occupancy. He said he has invested \$5,000 into the rusty building and that the insurance is in place.

**Motion made to approve Item D-13 with amendment that the 30 day period in recommendations 1 and 3 be changed to 45 days, that an additional condition be added that requires the Assignee of the lease to post a performance bond in an amount sufficient to cover the cost of removal of the underground tank within 2 years from the date of the assignment of the lease. (Matsumoto/Nekoba).**

**Vote: all in favor.**

**ITEM D-16: REQUEST TO AMEND PRIOR BOARD ACTION OF DECEMBER 20, 1991 (AGENDA ITEM F-6) RELATIVE TO LAND ACQUISITION BY LAND EXCHANGE BETWEEN THE STATE OF HAWAII AND HALEAKALA RANCH COMPANY, FOR THE KULA WATER SYSTEM RESERVOIRS, HAIKU-UKA AND KULA, MAKAWAO, MAUI, TMK: 2ND/2-3-05: PORTION OF 4.**

Uchida said this item is to request amendment to prior Board action of December 20, 1991 for land exchange between the State and Haleakala Ranch Company. Based on advise from the Attorney General's office, the Land Division recommends modifications to submittal and recommendations. The County of Maui will be dealing with Haleakala Ranch to purchase the land directly. He reviewed some of the changes in the considerations and recommendations.

Uchida explained that the agreement is to pay for lease rent for the past use of the ranch land from 1991 to May, 1997 where the reservoir has been constructed. The land exchange will not take place as originally approved by the Board, as the negotiations have fallen through.

There was a discussion about the lease rent for agricultural/pasture lands at \$2,000. Uchida then withdrew the item to address some of the concerns by the Board members.

**Motion to approve withdrawal of Item D-16. (Kennison/Nekoba).**

**Vote: all in favor.**

**ITEM D-1: AMENDMENT TO APPROVAL TO ALLOW DANNY ARRIOLA TO SELL LOTS 77A AND 77C, HANAPEPE TOWN LOTS FIRST SERIES, HANAPEPE, KAUAI, SPECIAL SALE AGREEMENT NO. S-5597.**

Uchida briefed the Board. He said the Board took action on March 14, 1997 to allow Danny Arriola to sell his property in order to allow him to finish off his special sales agreement with the State. There were no discussions at the time to discuss the possible failure of the special sales agreement terms and conditions. Uchida said there have been discussions with the attorney general's office on whether Arriola could sell the property without SSA requirements on it and were advised that the Board could take administrative action on it.

The staff's recommendation is that the Board amend its action by: 1) Ruling that Special Sale Agreement No. S-5597 be canceled at such time as Lots 77A and 77C of the Hanapepe Town Lots, First Series are sold; 2) In lieu of (1) above require that the State of Hawaii exercise its option to repurchase Lots 77A and 77C in the manner specified by Special Sale Agreement; and 3) other conditions as required by the Chairperson.

Max Graham introduced himself representing Arriola. He said the market on Kauai is very difficult to sell at any price and with restrictions, it makes it even more difficult. Graham



said if the State does not want to buy back the property, they would appreciate the waiver of the requirements.

Unanimously approved as submitted. (McCrorry/Nekoba).

**ITEM D-5: DEZMA A. DUNN, ET AL REQUEST TO RESCIND DECISION TO CANCEL GL S-4986, COVERING LOT 29, KOKEE CAMP SITE LOTS, WAIMEA.**

Uchida said the request is to rescind the prior Board action to cancel a general lease made in February of 1997 because there was no liability insurance coverage. The Land Division has since discovered that the lessee has the required insurance and has been in effect since July, 1996.

Unanimously approved as submitted. (McCrorry/Nekoba)

A short break was taken and the meeting was reconvened.

**ITEM D-18: ISSUANCE OF A REVOCABLE PERMIT TO PUUWAAWAA RANCH, INC., PUUWAAWAA, NORTH KONA, HAWAII, TMK: (3) 7-1-1-4.**

Uchida said this area was formerly under revocable permit but was canceled in 1972 when the ranch owner changed hands. The Board did not take action when it came before them in 1972 and 1974. There was no follow up. The tenant has been paying rent and using the property since then, assuming he had a revocable permit.

The staff's recommendation is that the Board: 1) Find that the pasture use is exempt from obtaining a negative declaration pursuant to Section 11-200-8 of the Environmental Impact Statement Rules and 2) Authorize the issuance of a new revocable permit to Puuwaawaa Ranch, Inc., under terms and conditions.

Unanimously approved as submitted. (Yuen/Kennison).

Chair Wilson called for a lunch recess at 12 noon and the meeting was resumed 12:40 p.m. William Kennison was excused.

**ITEM D-2: ASSIGNMENT OF GENERAL LEASE NO. S-5048, LOT 93, KOKEE CAMP SITE LOTS, WAIMEA (KONA) KAUAI.**

Uchida briefed the Board to assign property from Malcolm Smith, Assignor to Walter J. Smith as Assignee due to illness. The staff's recommendation is that the Board consent to the assignment without revision to the basic lease rent.

Unanimously approved as submitted. (McCrorry/Yuen).

**ITEM D-3: REQUEST BY STATE DEPARTMENT OF DEFENSE FOR APPROVAL OF LICENSE AGREEMENT WITH KEKAHA SUGAR CO., LTD. FOR MILITARY TRAINING PURPOSES AT KEKAHA, KAUAI.**

Uchida briefed the Board. He said Kekaha Sugar is using the property but that there is no lease, as it is in the process of negotiating a long term lease.

The staff's recommendation is that the Board consent to the execution of the License Agreement by and between the State Department of Defense and Kekaha Sugar Company, Ltd., subject to prior written concurrence of the Department of Hawaiian Home Lands and the Division of Forestry and Wildlife; 1) terms and conditions of the License Agreement documents and 2) such other terms and conditions as may be prescribed by the Chairperson.

Unanimously approved as submitted. (McCrorry/Nekoba).

**ITEM D-4: TERMINATION OF REVOCABLE PERMIT #S-2625 AND #S-3219 TO RICHARD SMART AND ISSUANCE OF NEW PERMIT TO PARKER RANCH, INC. NORTH KOHALA HAWAII, TMKs: (3) 5-8-1-2, 5, AND 6.**

Uchida said this item is to request termination of the revocable permit and to issue new permits. The existing permits are to the late Richard Smart and the ranch would like to reissue permits to Parker Ranch. The staff's recommendation is that the Board: 1) Find that the pasture use is exempt from obtaining a negative declaration pursuant to Section 11-200-8(1), Exempt Classes of Action, of the Environmental Impact Statement Rules, 2) Authorize the termination of Revocable Permits S-2925 and S-3219, effective on a date to be determined later, and 3) Authorize the reissuance of a new revocable permit to Parker Ranch Inc. covering the subject State lands under terms and conditions.

Motion to approve Item D-4 and for the staff to look at the rent and adjust accordingly if necessary to increase the rent. (Yuen/Nekoba).

Vote: all in favor.

Uchida withdrew agenda Item D-17 which is a duplicate of Item D-4.

**ITEM D-6: REQUEST AN ISSUANCE OF A REVOCABLE PERMIT TO JAMES KUNIHIRO FOR CONSTRUCTION BASEYARD PURPOSES ON GOVERNMENT LAND SITUATE AT KEEHI LAGOON, MOANALUA, OAHU, TMK: 1-1-03:206.**

Uchida said this is in the area of the long term plan for the canoe center. The staff's recommendation is that the Board authorize the issuance of a revocable permit to James Kunihiro for construction baseyard purposes on state owned land under terms and conditions.

Unanimously approved as submitted. (Nekoba/McCrory)

**ITEM D-7: AMENDMENT TO TERMS AND CONDITIONS OF CONSERVATION DISTRICT USE PERMIT KA-10/12/82-1488 AND REVOCABLE PERMIT NO. S-6074 TO KAUI MOUNTAIN TOURS, INC., WAIMEA, KAUI.**

Uchida said Item D-7 is to amend terms and conditions of Conservation District Use Permit KA-10/12/82-1488 and Revocable Permit No. S-6074 to Kauai Mountain Tours, Inc. The Board originally approved a CDUA on March 25, 1983 to allow commercial tour activities within Kokee State Park. Since then, the administrative rules governing Conservation Use Application has changed, subsequently activities such as this are no longer being regulated under the CDUA process.

The staff's recommendation is that the Board amend and add, as appropriate, their terms and conditions of Revocable Permit No. S-6074. The changes will allow them to do three (3) fifteen (15) passenger vans as opposed to two (2) twelve (12) passenger vans but limited to week days only, eliminating weekend or holiday activities and other conditions as specified by State Parks and the DOFAW.

McCrorry explained that the problem was that the public used the facilitates of the park in a much greater degree on the weekends, and there is danger when it rains. She commented on the two permittees and how one was not careful of the resources and did not pay, and the other is more cooperative with DOFAW.

There was discussion about the number of passengers and how much and how they are being charged. Uchida said the Land Division is waiting for the Eco-tourism to be established and once the Eco-tourism system is in place, the permit can be replaced.

**Motion to approve with amendments to include conditions that the Land Division, Division of State Parks, and Division of Forestry and Wildlife report back the carrying capacity of the Kokee State Park, determine how the rent is derived for the existing Revocable Permit and what the economics are of the Kauai Mountain Tours Operation. (McCrorry/Nekoba).**

**Unanimously approved.**

**ITEM D-9: REQUEST TO AMEND THE BOARD'S MAY 24, 1996 AGENDA**

Uchida said Item D-9 is to amend prior Board action on May 24, 1996 of the direct sale of a perpetual non-exclusive easement issued to Anthony and Anna Tam to their daughter, Anne Young. The staff's recommendation is that the Board amend prior Board action and approve to change the document holder's name from Mr. and Mrs. Tam to Anne V. Young.

**Unanimously approved as submitted. (Yuen/Nekoba).**

**ITEM D-10: FORFEITURE OF GENERAL LEASE NO. S-5383:**

Uchida requested the withdrawal of this item as the applicant has attempted to clear his lease payment.

Unanimously approved to withdraw (McCrorry/Nekoba).

**ITEM D-14: RECONSIDERATION OF DIRECT LEASE TO QUALIFIED HAMAKUA/NORTH HILO PERMITTEE OF AGRICULTURAL REVOCABLE PERMITS.**

Uchida requested the withdrawal of this item.

Unanimously approved to withdraw. (Yuen/McCrory).

**ITEM C-1: ASSIGNMENT OF A REVOCABLE PERMIT FOR GRAZING AT KUAOKALA GAME MANAGEMENT AREA, KAENA, OAHU TAX MAP KEY: 6-9-03:2**

Jon Bedish said 300 acres will be affected and the purpose of the grazing is to improve nesting habitat for game birds and reduce the fire risk. He said the game bird population has doubled since restocking and habitat improvement is in place. By increasing the value of this nesting area, he felt it can be doubled again. Chair Wilson clarified that during the hunting season, the cattle will be removed.

Unanimously approved as submitted. (Nekoba/Yuen)

**ITEM D-20: CDUA (OA-2841) FOR A SINGLE FAMILY RESIDENCE, KAILUA, OAHU, TMK: 4-2-11:28).**

Uchida said the agent is Kalani Miller and the applicant is Mr. and Mrs. Joseph Wasco who are purchasing the property from the Texiera Family Trust. He said the property is 8.65 acres in size and the proposed building site is 0.87 acres in a general subzone of conservation district. Uchida showed on a map the Hawaiian Electric corridors and the proposed structure site which is bordered on the north and south sides by the power line easements. The applicant proposes to construct a Victorian-style single family residence, the structure to be approximately 4,500 sq. ft. and involves approximately 244 cubic yards of material to be moved for the driveway and housepad. The applicant has agreed to a 25 foot height limit and is proposing to use composting toilets to reduce the amount of waste water into an approved Department of Health Waste water Treatment system.

Uchida said comments and concerns from agencies included potential visual impacts, type of sewage system, access roads and archaeological reconnaissance. He said the Planning Department is concerned about development in the P-1 Restricted Preservation Zone and drainage. A public hearing was held in February, 1997 in which numerous people testified and the Kaneohe and Kailua Neighborhood Boards provided written testimony to DLNR.

Uchida said the staff found identified use in a general sub zone and issued a finding of no significant impact. One of the specific issues is the view plane impact which the applicant has proposed to mitigate by landscaping and the retention of existing trees and painting the house with earth tone colors to screen the structure from view.

Uchida said since the Board members were going to conduct their own site visit, the Division did not state recommendations but decided to list the pro's and con's based on the staff's assessment and comments received from the neighborhood communities and other government agencies. He noted that a single family residence in a general sub zone is an identified use in the rules and that this particular case involves more issues than normal. Uchida said the staff would like to defer recommendations to the Board.

There was a discussion about the trees in the property regarding cutting them down, the proper landscaping to screen the house and the concern by the homeowner of the tall trees that might fall onto the house.

Gordon Chapman introduced himself as the Environmental Planning Consultant for the Wascos. He reminded the Board that the Conservation District Rule states that the application will be evaluated based on eight (8) factors, two (2) of which have to do with the Conservation District and sub zone. He said the remaining six (6) have to do with potential environmental impacts, effects on botanical characteristics and based on the logic of the finding of no significant impact by the Department, he believes they have met the criteria. Chapman said they intend to comply with all of the single family residents requirements that are listed. Chapman said the Wascos intend to do as little grading as possible, maintain much of the vegetation in tact and to replace whatever is removed.

Chair Wilson questioned Chapman about the development of the environmental assessment on the kind of information that describes what degree of any impact there might be and said one of the criteria in the administrative rules is that the proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding areas, community or agents. He said to determine the visual impact, it would be important to know what the area would look like from a distance after the proposed project took place. Chair Wilson asked whether he had an idea of what the size, height, and number of trees that were involved at this site. Chapman said no, that he only looked at the height of the house.

There was a discussion about the grading on the slope and whether Chapman had an idea of what the impact would be and did he think it might be relevant and important. Chapman said the slope is not an unusual slope to deal with especially in Hawaii and did not know if the building site is at a 15% slope or not. He said the plans may be altered to relocate the house to a less sloped area and said in the EA, an exact site has not been determined, that they had "a bubble area on the parcel".

Mrs. Wasco expressed frustration about producing a landscaping layout and wanted to come to a compromise. Mr. Wasco talked about the location of the house site.

Member Yuen explained to Wasco what the Board looks for in a house site in a conservation district, is different than a house in a residential area. One of the things to look at is the potential visual impact and in order to do that, the Board needs to know what trees are going to be removed, what can be seen if a house is behind an existing row of trees, if the trees are topped, is it going to create a view from the highway to the house. Member Yuen said he was concerned at the site visit that Wasco did not have a "realistic idea" of what had to be taken out to build the house and was obvious to him that Wasco was going to build on the site as planned and that every thing within 50 feet either way would have to go. Wasco said no one told him he had to "count the trees".

Member McCrory stated that the responsibility of the representative to the applicant is to help prepare his EA and to clearly inform him of the sensitivity of the conservation zone and how the view planes need to be protected.

Member Nekoba said an artificial landscape would be negative because to do so, all the trees would be knocked down and that is not what the Board members are looking for. Ed Henry said in asking for a landscape plan, he tried to get the Wascos' to understand and conceptualize their design, and what the action and impact was going to be.

Kalani Miller testified in behalf of the Wascos.

Jack Hitchcock introduced himself as a resident of Kailua and a member of Save Mt. Olomana Association. His testimony was in behalf of the association and said the proposed project is inappropriate because the area is a "major water shed hillside with annual rainfall of 75 to 100 inches". Hitchcock said the trees are holding the soil intact and the removal of the trees would cause an impact on the hillside. He talked about the slope of the building site and how the measurement of the area showed the front slope to be approximately 30 to 40%. He also talked about emergency vehicle access and asked who would pay for the paving and the maintenance of the road.

Donna Wong testified against the project stating some of the concerns with no SHPD studies, addressing the watershed area, moving the gates, public access, no archaeological studies, and the view planes.

Another woman from the neighborhood board testified on behalf of the Wascos.

Ilima Morrison testified against the project and talked about the slope and the erosion of the property. She asked the Board to deny the application.

Andrew Yanoviak, President of Save Mt. Olomana Association testified that the application is incomplete and inaccurate. He stated that, "Any conservation land should be upheld as natural resources and maintained as conservation". He concluded by reading a statement in the April issue of Hawaii Pacific Architecture in Preserving Tahiti by John Henry Felix, "Development of any kind must be approached with the greatest caution because once

developed in accordance with prevailing architectural design and construction engineering practices, slab and grade, pristine land is, make no mistake, gone forever."

Chairman Wilson stated that the EA did not give adequate information with respect to the concepts such as the slope that the house would be built upon and what the visual affects would be not knowing how big, how many and what trees are involved. He said he would have liked to have better information and with that, he would not be in favor of the permit.

Member Nekoba suggested that the applicant work with the Land Board or the Chairman on a landscape plan to insure visual buffer to screen the house from view and provide that there isn't massive grading on the back of the property. He said he would not be in favor of the permit.

Member McCrory felt uncomfortable with the situation and said she was not willing to accept the application.

**Motion to deny the request for the single family residential use.**  
(McCrory/Matsumoto).

**Vote: all in favor. (Member Kennison not present).**

**ITEM D-19: CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS.**

Uchida said staff's recommendation is that the Board certify the elections of Wayne Otani and Paul Otani as directors of their respective Soils and Water Conservation Districts.

**Unanimously approved as submitted. (Nekoba/McCrory).**

After a short recess, the meeting was reconvened.

**ITEM: J-5: IMPLEMENTATION OF KANEOHE BAY MASTER PLAN**  
**RECOMMENDATIONS FOR COMMERCIAL VESSEL OPERATIONS, KANEOHE BAY, ISLAND OF OAHU.**

(Portions of the Board's discussion were omitted because a portion of the tape was inaudible.)

Pickard said a 160 foot vessel cannot safely navigate a pier. His recommendation is to allow the 80 foot for the large full service operation which is the size of the largest catamaran that was in existence prior to the moratorium and a 50 foot vessel for the small full service operators. He felt if scheduled properly, there should be no congestion problems at the pier. Member McCrory asked whether the [Kaneohe Bay Regional] Council made the recommendation or whether it was his recommendation. Pickard said 3 or 4 of them were chatting and reached a consensus. She

also asked how many conferred. Pickard said they were not conferring but that John Goody, former Chairman of the task force, Bob Gould and Peter Nottage and himself agreed and drafted the plan.

Pickard said at the time of the moratorium, he did not believe that anybody had a 150 passenger boat and if there was one, his recommendation would be that it be 80 foot in length. He said the passenger capacity for large service operators is 150, and 70 for the small full service operators. Pickard said when the plan was written, the size and length of the boat was not an issue, that they were concerned about setting the number of passengers. He said they did not envision anyone bringing in a large vessel. His other recommendation was that the Board set limits of the length of the vessel.

Gabriel Siu, President of All Hawaii Cruises, Inc. explained how he operated his low impact operation in Kaneohe Bay since 1982. He has been running two operations before the moratorium. One is glass bottom and snorkel tour, the other introductory scuba diving. Siu said with the proposed 70 passenger a day, he would not be able to operate his business, he needs to make more than one trip to make ends meet. He said since each operation has it's own permit, he considered them to be two separate operations. Siu said with the recommendation, he will be losing half of his operation because the permits will be per company.

Clayton Hanagami, Mid Pacific of Hawaii said when the Coast Guard imposed harsh compliance requirements on wooden vessels, they decided to replace the Hula Kai. He said in response to their request in February, 1996, DOBOR responded in April, 1996 with guidelines for the substitution, stating that, "any commercial vessel substitution for Kaneohe Bay may become a complex issue and should be examined prior to expending money or entering into any binding agreement." Hanagami said after approximately 9 correspondences with DOBOR and no physical size limit with respect to vessel length in the Kaneohe Kay Master Plan, DOBOR conditionally authorized the substitution of the Royal Princess in November, 1996. He said as determined by the attorney general's office based on the Master Plan, they purchased an "illegal" vessel which they would not have purchased if the State did not give them the authority to do so.

Hanagami said the Master Plan is inconsistent in it's application of the 7 criteria. They felt that the recommendation with respect to the Master Plan affects only commercial operators and the intent is to decrease all commercial activity. He requested that the transitional period be extended. A written testimony was submitted.

Francis Shimonoki said the Ale Ale Kai is one of the vessels that may be in violation. He said they too followed the requirements by the Boating Division and purchased the boat in June, 1996. Since the Master Plan does not mention the size, they have been following the Coast Guard's guidelines to determine the capacity and feel that they are acting in good faith



in trying to comply with the law. Shimonoki said the manufacturer's capacity is in excess of 100 passengers but he downgraded to 55 passengers.

Dante Carpenter said he was an advisor to TOS Hawaii. He asked that a site visit be conducted to tour the "successful tourist business", to set up appropriate definitions for proper determinations of vessel sizing, passenger capacity allowances, vessel transition and equipment allowances; and to initiate and develop policy implementation projections and recommendations for the use of small boat harbors and facilities, embayments, and ocean recreations areas carrying capacities to encourage maximum use by both public and commercial activities. A copy of his testimony was submitted.

Jimmy Wong talked about vessel size to improve the quality of the service for the operators; the transitional period, and the attorney general's opinion. He said in Act 317 there is a section on evaluation to be conducted by a task force which was to convene in 1997. The purpose of that task force is to evaluate the work of the regional council and he requested that the Board inform the task force that they comply with the mandate. Wong requested that the Board defer any action. A copy of his testimony was submitted.

Zane owner of Mid Pacific of Hawaii testified against the recommendations. He stated that there are no pollution, congestion or safety problems by the commercial operators.

Phillip Kelly testified and asked the Board to take care of the businessmen at Kaneohe Bay.

Gilbert Silva introduced himself and said he has resided in Kaneohe all his life. He wants the vessels out of the bay area and said the community is "very annoyed" with it and that it is getting worse.

Dwayne Howland: said he was born and raised in Kaneohe. He displayed a buoy that he found in the evening a week ago which is used to anchor the boats when they are conducting their activities. Howland said when the buoy breaks loose and floats around the bay, they are hazardous and does nothing for the appearance of the bay. He presented the Board with photographs showing encroachment of vessels parked too close to the channel. Chair Wilson advised if anything is found that looks like a part of an illegal mooring and is causing public safety problems that DOFAW should be notified.

Member Yuen felt that the size and capacity for the larger boats were ambiguous and that there are some gray areas for some of the other boats. He said the two boats are clearly outside the size limit that was intended in the Master Plan. Member Yuen addressed the amended recommendations from staff. #1 the drafting of the administrative rules should be expedited, #2 that the existing permits may be extended subject to limitation of a Master Plan for seven months or until the Master Plan rules are effective, #3 permits issued by DOBOR prior to February shall be subject to the Master Plan limitations on passengers and equipment. Member Yuen said he was satisfied that in #4 only the Royal Princess and the Ale Ale Kai are not in compliance, and wanted to know what the other Board members thought about #5. He felt the Board could come to a consensus on #6 and 7.

Member Nekoba was in agreement with Member Yuen but felt that the size of the boats should be addressed. On #5 he felt as long as they were commercially active that they should be subject to the Master Plan. He also apologized to the community members that the plan was not adopted and that there are no rules. Member Yuen concurred with the apology. He said it bothers him to be confronted with this situation after they [operators] made inquiry with DLNR and have letters accepting their boats.

Bill Tam said all permits which were extended administratively will expire on April 29th and that a decision with regards to the remainder of the permits can be made at the next Board meeting on the 25th [of April]. Chair Wilson said at that meeting, the Boating Division should respond with the size of the passenger capacity and the size of the vessel now and the size of the vessel at the time the Master Plan is implemented so that a decision can be made.

Chair Wilson felt it was important to make the decision today since the community worked very hard over the years to come up with a solution for an important community issue and there was no follow through by the State. He wants to move on in trying to put together community based management for Kaneohe Bay since there is a community of fishermen, recreational and commercial users.

**Motion to adopt staff's amended recommendation for J-5, with exception to item #4 that the vessels Ale Ale Kai and the Royal Princess are beyond the size limits in the Master Plan and that staff provide the sizes of the other boats as of the adoption of the Master Plan at the next meeting to determine whether to grant the permits or not. All other items on the recommendation to remain. (Nekoba/Yuen).**

**Vote: all in favor.**

Chair Wilson said the motion carries and clarified that the permits for the Royal Princess and Ale Ale Kai would be void [at the end of the month]. He said the permit is void with respect to the present capacity but if there is a vessel that could fit the Master Plan limitations, they will be allowed to operate.

**Motion to move into executive session. (Yuen/Nekoba).**

**Vote: all in favor.**

Member Yuen said upon further discussion with the attorney general, the permits currently were that the extension is April 29 or until the action of the Board whichever occurs first and since the action of the Board is to say that the two boats are not in compliance, then that would be effective immediately. The permits are still valid but only with equipment that is in compliance with respect to those two boats. Chair Wilson clarified as of tomorrow the Master Plan should be in effect with respect to those permits.

**Motion made to adjourn. (Nekoba/Yuen).**

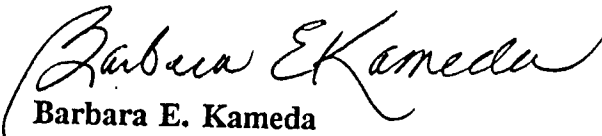
Chair Wilson clarified that the motion includes deferring all items not covered in the meeting today to be on the next agenda. (Nekoba/Yuen).

The meeting was adjourned.

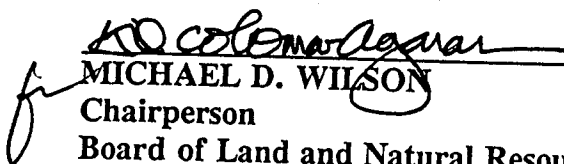
Portions of tapes were inaudible.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Transcribed by,

  
Barbara E. Kameda

Approved for submittal:

  
MICHAEL D. WILSON  
Chairperson  
Board of Land and Natural Resources

