

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

DATE: APRIL 25, 1997  
TIME: 9:12 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII

Member Christopher Yuen, who chaired the meeting in the Chairman's absence, called the meeting of the Board of Land and Natural Resources to order at 9:12 A.M. The following people were in attendance:

Members:

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

Staff:

Mike Buck  
Carl Masaki  
Ralston Nagata  
Dave Parsons  
Cecil Santos  
Steve Thompson  
Dean Uchida  
Mason Young

Others:

Juliet Begley		Yoshi Muraoka	J4
Isabelle De Groote	E2	James Nakatani	D27
Rory Frampton	D6	Roy Nakamura	J4
Peter Garcia		Joe Pickard	J4
Lupe Griffin	D5	Sidney Quintel	J4
J. D. Hamilton	D14	Dr. Rarenberg	J4
Clayton Harrigan	J6	John Reppun	J4
Myron Isherwood	D27	Sig Schuster	J4
Rex Johnson	C1-3	Bill Tam	
Phil Kelly	J4	Nick Teves	D5
Rodney Kim	D5	Greg Wongham	D5
Mr. Koki	J4		
Paul Matsuo	D15		
John Morgan	J4		
Bruce Morita	J4		

D-4 GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR PAIR GAIN AND CROSS CONNECT CABINET PURPOSES, KEALAKEHE, NORTH KONA, HAWAII, TMK: 7-4-20: POR. 16

Staff presented a request for the use of 750 square feet of state land for a switching station.

There was no discussion or public testimony.

Unanimously approved as submitted. (Kennison/Matsumoto).

D-6 CDUA (MA-2837) FOR THE BRENNAN RESIDENCE AND RELATED IMPROVEMENTS AT HONOLUA, LAHAINA, MAUI, TMK: 4-2-04: 31 AND POR 32

Dean Uchida said this is a request for a CDUA for a single family dwelling, in which the report emphasized visual mitigation measures to buffer the home from being seen from the road. He said Historic Preservation expressed concern and believed that there were no public comment.

Rory Frampton of Chris Hart & Partners representing the applicant, said that the County's concerns were the preservation of open space and wilderness. He stated that this construction was within the boundaries of the Kapalua Resort.

The staff submittal listed 22 conditions for construction to be permitted.

There was no public testimony.

By a unanimous vote of the Board, the item was approved.  
(Kennison/Nekoba)

D-15 APPROVAL IN PRINCIPAL TO A LAND EXCHANGE BY AND BETWEEN THE DEPT. OF AGRICULTURE AND THE DEPT. OF LAND AND NATURAL RESOURCES AT HAMAKUA, HAWAII

Staff presented the submittal regarding the Department Of Agriculture's (DOA) acquisition of property from DLNR to consolidate a land mass (10 acres) that was acquired through Hamakua Sugar Company's bankruptcy. The acquired 509 acres that includes a quarry feedlot and slaughterhouse will be converted to the Hamakua Agricultural Park.

Paul Matsuo of DOA testified in support of the staff submittal. He said presently 60 acres is in use for cattle, 15 acres by the slaughterhouse (Hawaii Dispatchers), 160 acres is in diversified agriculture and the remainder is vacant lots.

Member Chris Yuen asked how much land is available for diversified agriculture in Hamakua. Matsuo said between DOA and DLNR, it has a calculated area of approximately 1,700 acres that can be served by the Hamakua Ditch. He said 509 acre belongs to DOA.

There was no public testimony.

By the unanimous vote of the Board, the item was approved.  
(Kennison/Matsumoto).

*D-27 REQUEST BY THE DEPARTMENT OF AGRICULTURE THAT THE STATE OF HAWAII, THROUGH ITS BOARD OF LAND AND NATURAL RESOURCES ENTER INTO A LEASE AGREEMENT ON ITS BEHALF, WITH THE TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP FOR THE DEMONSTRATION PAPAYA QUARANTINE PROJECT, KAHUWAI, PUNA, HAWAII TMKS: 1-4-03: 11, 12, 25, 26, 28, 30, 31, 32, 33, 34, 35, AND 36*

The staff submittal is a proposal to lease land from the Bishop Estate to conduct a demonstration papaya quarantine project. Member Yuen requested more geographical information regarding the location of the property to be leased. Myron Isherwood of the Department of Agriculture testified in support of the project. He said the area was abandoned because the lease expired. Isherwood said the Estate wants to demonstrate through this project, that the (ring spot) virus can be managed through removal of diseased plants, that the disease can be managed and the farmer will have an economic return. He said they also intend to put in cropping of transgenic papaya so that any aphids that come in will feed and hopefully lose the virus.

Member Yuen asked whether the DOA is convinced that the State lands in the area are unsuitable for this. He said the situation is that the State lands are not leasable because of ring spot, but they are going out and guaranteeing Bishop Estate lease rent for this parcel and doing the program on their property.

Isherwood said the major tract of State land which could be suitable is on the Kalapana side and thinks that it is a forest reserve. He said an Environmental Assessment (EA) was previously done.

Member Yuen asked about the individual farmers who have been wiped out in Kapoho by the ring spot situation. Isherwood said a number of the farmers moved out of Kapoho to Hamakua-North Hilo. He said some of the farmers have been moving back and that there are approximately 600 acres of new plantings that have gone back in within the last 10 months.

James Nakatani, Chairman of the Department of Agriculture (DOA) testified that the issue at hand was not predicated on who owned the land, but that the project be on a large parcel of land and that the land was idle. The large parcel was so the project could accommodate a large "buffer" zone around the papaya crop. Nakatani explained that the project was designed to educate the farmers and grow solo papayas that did well in Puna under those weather conditions. Nakatani said there is a partnership between the public and private interests which is designed to return the region to papaya.

Member Yuen asked if DOA had the legal authority to force people to eradicate diseased fruit. Nakatani said yes, but on private property they can ask for compensation. The State will be leasing 600-800 acres with this proposal at \$100 per acre.

There was no public testimony.

By the unanimous vote of the Board, the item was approved.  
(Nekoba/Matsumoto)

*D-13 REQUEST TO AMEND THE BOARD'S APRIL 12, 1996 AGENDA ITEM D-7 APPROVAL REGARDING THE DIRECT ISSUANCE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR UTILITY PURPOSES AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES, OVER, UNDER, ACROSS AND ON GOVERNMENT LANDS, IDENTIFIED BY TMK: 4-6-01: PORTION 09 AND 4-6-07: PORTION 02, LAHAINA, MAUI*

There was no discussion or public testimony.

By a unanimous vote of the Board, the item was approved.  
(Kennison/Matsumoto)

*C-1 KANEPU'U PRESERVE/NATURAL AREA PARTNERSHIP*

*C-2 KAPUNAKEA PRESERVE/NATURAL AREA PARTNERSHIP*

*C-3 PELEKUNU PRESERVE/NATURAL AREA PARTNERSHIP*

Michael Buck presented the program of the natural area reserves, which is a 2 for 1 cost sharing program with the State and private landowners which began in 1991. The three reserve partnerships were taken together. These staff submittals were part of the review process occurring every six years with the re-examination of their management plans. The program is funded with a portion of the conveyance tax and the private lands are managed through the non-profit Nature Conservancy.

Member Michael Nekoba asked if this contract would have any impact with the recent privatization law. Member Yuen didn't

think so because the programs were authorized by the Legislature. Member Nekoba suggested that an opinion from the Department of the Attorney General (AG) might be necessary in future regarding the impacts of privatization on contracts such as these.

Rex Johnson, Executive Director of the Nature Conservancy, presented testimony in support of these submittals of Natural Area Partnerships.

There was no public testimony.

By a unanimous vote of the Board, the three Partnerships were approved. (Kennison/Nekoba)

*E-2 REQUEST TO CONSTRUCT A TEMPORARY INLINE ROLLER HOCKEY RINK AT THE OLD KONA AIRPORT STATE RECREATION AREA, HAWAII*

Ralston Nagata, Administrator of State Parks submitted to the Board that an inline roller hockey rink could be constructed on other County property and not in the Old Kona Airport State Recreation Area.

Isabelle DeGroote testified before the Board in support of the County's request. She also read a letter of support from Representative Virginia Isbell and from Henry Cho, Manager of the County of Hawaii in support of the request.

Member Yuen expressed disappointment over the County not being present at the meeting to aide them in their decision making.

By a unanimous vote of the Board, the item was approved with amendment to let the County pick a site to be located on the tarmac and if feasible for safety reasons to go into the sandy area off of the edge of the runway on a temporary basis. (Nekoba/Kennison)

*E-1 RESUBMITTAL-REQUEST TO CHANGE PARK NAME FROM KONA COAST STATE PARK TO KEKAHA KAI STATE PARK, NORTH KONA, ISLAND OF HAWAII*

Nagata presented the staff submittal to the Board for the name change.

There was no public testimony.

By the unanimous vote of the Board, the item was approved. (Nekoba/Kennison)

D-5 REQUEST BOARD APPROVAL, EXTENSION OF TIME, COMPLETION,  
TENANT IMPROVEMENTS, GENERAL LEASE NO. S-5261, SAND ISLAND  
BUSINESS ASSOCIATION, SAND ISLAND INDUSTRIAL PARK, HONOLULU,  
OAHU, TMK: 1-5-41

Uchida presented the staff submittal and distributed a sheet stating the amendment to the staff recommendation.

Member Nekoba asked about the termination of the leases and whether it would come before the Board. Uchida said the staff is only looking at new disposition. He said the concern was that there is a process that clearly defines how the leases are issued in the Master Lease and that the process is followed. Member Nekoba felt it was not necessary for them to come before the Board for the consent, that the Chairperson could do it.

Member Colbert Matsumoto clarified with respect to the collateral security deposit, that this is not a rent, it's an amount that if they default, they will have to pay in addition to whatever rent they owe. Uchida said SIBA requires a three month security deposit for the rent and the division is saying, post an additional six months of rent plus the assessment.

Member Matsumoto referred to Item 3. He asked if there is a new sublessee who assumes the leasehold, would they be allowed to have a 3 year extension from the date in which to satisfy the improvement requirements. He also referred to the breakdown of tenants that SIBA had submitted to the Board and asked if this provision is contemplating that there may be some people from Category One who has no intention of satisfying the improvement requirement to assign the lease to someone else. Uchida said the division is looking at three years maximum if the lot is vacant, that might be reasonable but if there is some improvement, maybe three years is too much. Member Matsumoto found this questionable because the tenant would have experienced favorable rent and in selling their leasehold without complying with the condition of improvements, they would have been subsidized. He asked where the State recoups the subsidy of the first tenant. Uchida said there is nothing that can be done but to default. Member Matsumoto objected to giving these tenants a residual value on the property that would come with the automatic three years extension. Members Nekoba and Yuen were in agreement with Member Matsumoto's concerns. Uchida acknowledged that the staff had not considered the issue of residual value that the three year extension would give to the sale of the lease. Member Nekoba noted that there was an antispeculation clause in the lease. Member Matsumoto stated that a sublessee who fails to comply with the terms of the lease is in default, and therefore should surrender the sublease and allow the next person on the waiting list to take over. Member Willie Kennison concurred. Members Matsumoto and Nekoba agreed with Uchida to make an assignment not automatically apply in their case.

Member Matsumoto was also concerned with regards to the improvement bond monies going to SIBA. He said if something is going to be put up that ensures performance, why shouldn't that come back to the State, since it is a State condition that is not being satisfied.

Rodney Kim, Executive Director of SIBA said they agree that these tenants would be in default if they don't perform within the five year period and should not get a residual value and an extension which would seriously diminish the value of that sublease.

Member Matsumoto stated that the tenant should not be able to control its sublease interest once they are in default of their lease. He said default tenants should have no rights with respect to the lease since they have failed to comply with the contract, it should be reverted back to the landlord, who should be able to decide what to do with the lot.

Member Matsumoto said if the tenants who have no intention of satisfying their improvement requirements, should be on notice that the Board is giving them an opportunity through this extension, and if they don't comply, they should find someone to take over the lease now. If they can't [find someone], they should be prepared to surrender the lease in two years to others on the waiting list that would be able to take over.

Kim said real estate is down and as an example he said, they have processed since 1992, 9 assignments out of 110 (subleases), sent out notices to 140 people on the waiting list, and averaged about 4 returns to buy the sublease. Kim said it was not because the price of the sublease was too high, the leases were taken back because of the default by the tenant and that they are allowed only to recover their rent, assessments and costs.

Kim said presuming they are allowed the time extension between now and the next few months, they would advise the tenants who are in the non-compliance status that they seriously need to think about getting out right now. Member Yuen was concerned with what happens if many of the tenants vacate the industrial park. Kim pointed out that the tenants have all been pressed economically, but that very few have spoken about "walking", they speak about needing an extension. He did not envision a mass exodus from the industrial park.

Kim said there is a legitimate complaint against SIBA where they assigned a sublease to an unauthorized party and that within the Master Lease are several provisions that cover tenant leases, Section 9.6 regarding misrepresentation, "shall be cause for immediate and automatic termination from such lease". He said if SIBA is in violation or if the tenant is in violation, the Land Board does have the right to terminate but that there is another provision, Section 10, if the Land Board has to take any action

against SIBA or a tenant for violations of the terms or conditions, SIBA or the tenant are liable for all expenses, Section 14, SIBA must observe all laws and the rules of government agencies. Kim said the procedure for subleasing is very specific. As far as he knows there has never been any violations within the last 5 years and for these reasons they agree with the staff recommendations, but not the issue of consent.

Kim said they have never received any complaints with regards to their transfer process. Member Matsumoto clarified that what he [Kim] is saying is that the Land Board doesn't need to review assignments or the issuance of leases that SIBA issued because the procedures were followed. Kim said yes, that they keep their staff fully informed each time one is initiated and through its conclusion.

Member Matsumoto asked if someone on the waiting list feels that they weren't given proper notice or that the bids weren't handled correctly is there a process where they can make an inquiry to obtain information or appeal the determination of SIBA? Kim said SIBA do not have anything in place and have not had any inquiries along those lines and if they did, they would stop the whole process and investigate. Kim said SIBA produces a fact sheet of the property.

Member Matsumoto asked whether there was a standard established if extreme economic hardship by the tenant is demonstrated. Kim said their rule is that they must either submit a CPA prepared statement or submit their tax returns for the last 2 years to show the losses or if they are terminating their business, financial reports are required.

Member Nekoba pointed out that the consent clause is normal in a lease provision with the Land Board. Kim said that it runs contrary to the original Master Lease agreement. He said SIBA works with the sublessees who wants to sell. He discloses the past sales of lots to determine a price for their lot and SIBA sets a price. This information is sent out to the people on the waiting list. If one person matches that price or exceeds it, the sublessee must accept it. If the bid is below the offered price, the tenant/sublessee has the ability to put it out to the general public for sale. Kim said this policy is set on the schedule of the Master Lease between SIBA and the DLNR.

Greg Wingham gave a lengthy testimony. He was in opposition of the extension and asked the Board members to "make the SIBA Board step down".

Kim recounted through his written summary answers to various allegations against SIBA made by Wingham. He stated that at the bankruptcy hearing for Wingham the court found no credible



evidence to support conspiracy by SIBA or individuals in DLNR.

Kim addressed the Griffin's situation which occurred before he came aboard. He explained that Judge King, in the Federal court ruled that there was no discrimination against Griffin by SIBA and the suit was dismissed. Kim said the Department of the Attorney General (AG) conducted an investigation, in which SIBA supplied them with their records. He understands that the AG concluded their investigation about 4-5 months ago, and are non-committal as to what has happened.

Member Nekoba referred to the staff recommendation with regards to the performance bond and said that the money should go to the State if the tenant doesn't comply with the construction, then the 3 year extension should only go to new sublessees issued and not assignments (of leases). If the Board is going to consent to any new subleases then he felt, that the consent should not be unreasonably withheld and there should be some time frame of 30 days.

There was discussion regarding the consent. Member Yuen felt that consent issues were a staff oversight issue and should problems arise the tenant would have the option of coming before the Board. Member Kennison concurred. Member Matsumoto's perception was that Sand Island Industrial Park was a State experiment in privatization issues, therefore, the Board may be required to more "closely monitor" its success and the manner within which privatized administration of the Park is operating. A periodic review may force the Board to examine what's going on. Member Matsumoto felt that it would be premature to reduce staff consent and said his preference is to retain the ability to review and give consent to SIBA lease activities.

Member Matsumoto stated that SIBA should provide a compliance report by July 1998, with regard to the sublessee's satisfaction of some of the deadlines that are being proposed.

Motion made to approve Item D-5 and allow a modification of the Master Lease with respect to the improvement completion deadline as follows:

That the lessees will be given letters notifying them that they will be given the opportunity to request an extension of the improvement completion deadline and that if the tenant chooses to obtain an extension, it will be under the following conditions:

- a. By June 30, 1998, the building plans must be completed and all building permits acquired
- b. By June 30, 1999, construction must be initiated
- c. By June 30, 2000, all construction must be completed

If any of these conditions are not met then the sublease will be deemed to be in default.

In conjunction with any request for an extension, the sublessee will be required to put up an improvement completion deposit with SIBA in an amount that is equal to six (6) months lease rent and any assessments that would be payable during that period. The maximum deposit amount is \$20,000. In the event that the sublessee should default with respect to the foregoing condition, the improvement completion deposit shall go to the State's Industrial Park Special Fund.

The new sublessee entering into the Industrial Park will be allowed a three (3) year deadline in which to complete construction of the improvements. However, this extension will not be made available to any assignees of recent sublessees, this foregoing provision will only be allowed on the condition that section six (6) of the Master Lease is amended to require that all tenant leases be consented to by the Board and that such consent will not be unreasonably withheld, and that further SIBA will be required to supply a compliance report to the Board in July of 1998, July of 1999 and July of 2000, with respect to the compliance of the tenants to meet (their deadlines of construction and completion) foregoing deadlines, providing the amending of the subject document meets the approval of the Attorney General. The time frame subject to the Board's consent which shall be granted within 45 days. (Matsumoto/Nekoba).

Vote: All in favor.

*D-14 DIRECT SALE OF FORMER HAWAII CONSOLIDATED RAILWAY LTD.  
RIGHT-OF-WAY AT NORTH HILO, HAWAII*

Staff presented the submittal.

There was no public testimony.

By a unanimous vote of the Board, the item was approved.  
(Kennison/Nekoba)

Acting-Chairman Chris Yuen called a recess for lunch at 1:30 p.m. The Board meeting reconvened at 2:25 p.m. with Chairman Wilson presiding.

*C-4 APPROVAL FOR THE PROPOSED FENCE CONSTRUCTION, PU'U O UMI  
NATURAL AREA RESERVE (NARS)*

Carl Masaki presented the staff submittal to build fencing to protect about 120 acres at Natural Area Reserve (NARS). The project is designed to limit access of feral pigs to an area populated with endangered native plants. Masaki said they met

with approximately 10 different government agencies and a dozen community organizations. One of the main community organizations was the Kohala Forest Management Group, which consists of community associations, hunters and various other interest groups. He said the Kohala Forest Management Group approved the project at their meeting.

There was no further discussion or public testimony.

By a unanimous vote of the Board, the item was approved.  
(Yuen/Kennison)

*J-6 AMENDMENT OF PRIOR BOARD ACTION ON APRIL 11, 1997 (ITEM J-5); IMPLEMENTATION OF KANEOHE BAY MASTER PLAN RECOMMENDATIONS FOR COMMERCIAL VESSEL OPERATIONS, KANEOHE BAY, ISLAND OF OAHU*

Dave Parsons presented the staff's submittal with amendments. This is a follow-up to the April 11th Board meeting where DOBOR had been instructed to prepare information regarding the size of several existing vessels that were substituted since the acceptance of the Kaneohe Bay Master Plan on March 19, 1992. Parsons stated that operators will only be able to replace vessels with new vessels of similar capacity or size, they may not exceed the otherwise agreed upon passenger count of the Kaneohe Bay Master Plan (KBMP). He said with regards to the new owner permits, the Board issues new ocean recreation management area permits for the commercial operators in Kaneohe Bay, subject to the limitations established by Act 317, which restricts the permits for commercial operation of ocean use activities to the number by permit type and vessel. He said each permit shall be for 7 months, May 1, 1997 to November 30, 1997, or until the adoption of the DLNR Administrative Rules implementing the KBMP, whichever occurs first.

Staff distributed inventory sheets on:

1. Existing Vessel Inventory for Full Service Operators, which reflected the names of the 4 full service operators:
  - Mid Pacific of Hawaii
  - Morning Star Cruises
  - Club Kona
  - Dina Morita/Windward Sea Yacht Charters
  - (Kualoa Ranch operates in non AA waters)
2. Existing Vessel Inventory for Large Snorkel Tours, 3 large operators.
3. Existing Vessel Inventory for Small Sail Snorkel Tours, 3 small operators.
4. Existing Vessel Inventory for Tours and Glassbottom Boats, 1 permittee.

5. Existing Vessel Inventory for Ramp Permits. Ramp permits were limited to 10, and these are associated with the 4 full service operators

Staff stated that commercial jet skis and high speed activities were incompatible with the Class AA waters, however, since there are existing businesses now on the Bay, their use will be grandfathered, until sale of termination of the business. The intent of KBMP is to phase out jet skis and high speed towing from the Bay.

There are 13 conditions at the end of the submittal.

Deputy Attorney General Bill Tam clarified Condition 10. He said the seven (7) month duration could also have after that the phrase, "to be consistent with the recommendations on page 1, or until the adoption of DLNR Administrative Rules implementing KBMP whichever comes first".

Clayton Harrigan of Mid-Pacific expressed shock at the revised staff submittal and said that his written testimony doesn't cover what he just heard. He said that there was never any reference to vessel size in the Master Plan. Harrigan was concerned with the substitution issue. He believed that the Kalai at 16 feet should be able to be substituted for the MIKS II at 30 feet, within his interpretation of the Master Plan.

Tam said for the Board's information all of the permits will expire at the end of this month and the action of the Board today is to issue new permits. He said the question is what can be in those new permits and this is an outline of what the Master Plan authorized the Board to issue. Chairperson Wilson said there are six different boats to issue permits to with respect to whether those operators will be changed as a result of the compliance of the Master Plan. He asked Harrigan of Mid-Pacific Inc. whether his testimony is that the Board should allow him to continue with MIKS II, which is a substituted vessel and that it is not in violation of the Master Plan. Harrigan agreed.

Joe Pickard read the testimony of Gretchen Gould, Chair of the Kaneohe Bay Regional Council. The testimony stated that John Goody, Chairman of the Kaneohe Bay Regional Task Force briefed the Council on the intent of the Master Plan that the original length of boats were not a concern because the boat size would be linked to the number of daily passengers allowed. It was not anticipated by the Task Force that passenger limits would be ignored and large unmanageable vessels would be brought to operate in the Bay.

To address these concerns the Regional Council decided on the following:

1. Eliminate boating divisions first recommendation re: boat

- length
2. Recommendation #2 (of staff submittal) be amended to read that the BLNR establish a maximum size limit for each of the various boat categories.
  3. Recommendation #3 (of staff submittal), BLNR restate that the permits of Royal Princess and the Ale Ale Kai not be reissued.
  4. Reissue permits to the following boats, providing that they operate from their original location as they did as of Oct. 1, 1991..
    - a. Happy as a Clam
    - b. Serenity
    - c. Miss Malia
    - d. Bay Discoverer II

The Council does not support reissuing permits to:

- a. MIKS II - vessel changed its use
- b. Samsola - no records were presented to show that it was a proper replacement

Joe Pickard testified that the records at Harbors Division were incorrect in showing Miss Malia as an additional vessel, she is a replacement vessel. He said they replaced their original vessel, Leilani in March 1994, which was 30 feet. Pickard said they do not have two host vessels.

John Morgan of Kualoa Ranch testified in support of the Regional Council's recommendation regarding the limits of vessel size. It will fit into plans that they have to replace a vessel of 36 feet.

John Reppun spoke in support of the Kaneohe Bay Regional Council's recommendations. He is concerned with the operation locations and the congestion of the Heeia pier. Reppun said the replacement of a 16 foot hobi cat with the MIKS II, a 30 foot sloop, is inappropriate and breaks the intent of the Master Plan. He stressed the make-up of community based management decision making and that DLNR is one of the levels of jurisdiction, that are to operate within the community and not just to make decisions independent of the people affected, i.e. boaters, community, Task Force etc. He noted that the Regional Council is the proper forum for these issues, but only when properly noticed as in a public notice which, he said, has been a continuing problem. Chairperson Wilson asked Dave Parsons regarding the lack of notice of the special meeting of the Kaneohe Bay Regional Council. It was determined that the Boating Division was unaware that publication was necessary.

Reppun addressed the issue of Morning Star Cruises and the transfer of ownership to Paul Yip. He stated that the transfer was not done in the spirit of the intent of the Master Plan and does not address Section 4.10 Water Use Recommendations that

specifically call for reduction in certain types of use. The time period of the change of ownership did not fall in the allowed time framework of the Master Plan. Reppun asked that the Morning Star be reduced to a snorkel tour operation to be in compliance with the Master Plan, thereby eliminating one of the fixed base commercial operations that have been latched onto reefs, the fishing areas, the areas of great importance to the public. He believes if a permit is issued, it will be in violation of the law.

There was discussion about the interpretation of the Master Plan and the rules that they were operating under for a year, between July 1993 to July 1994. Member Yuen said issues of operations should be placed on the agenda.

Bruce Morita owner of Windward Sea and Yacht Charters and also representing Dina Morita & Associates testified that they had a problem with the recommendations. He was concerned that the two companies have been lumped together with a set passenger count and explained that they are two separate companies, one a jet ski company, the other a charter yacht and taxi service company. Morita felt they should have two separate capacity limits. Member Yuen said this matter should be taken up in rule making. Steve Thompson explained that Morita has a second boat, the "Kualoa Kai" which will provide diving services under 30', for 16 passengers to the Kualoa Ranch and should have been on the DOBOR submittal. He said since the time of the Master Plan, Kualoa Ranch has had two boats.

Member Yuen asked whether the Board is being advised to yank the Samsola because it is an additional vessel. Parsons said the records were reviewed and found that it actually replaced a vessel that was larger than it was. It was left off the list as one of the controversial vessels. Pickard voiced concern about the accuracy of DOBOR's records.

Member Nekoba asked about restriction on type of change to accessory equipment. Tam said the language in the transition rule which applies to all equipment, says that the moratorium on equipment and vessel changes used in commercial operations shall remain in effect until the adoption of rules pursuant to this plan other than replacement of existing equipment at equal or smaller capacity, so the test is equal or smaller capacity. He said the issue of size is a factor in determining capacity. Tam said a 30 foot boat is not like a kayak. He didn't think a vessel this size comes under a small sailing vessel category.

Member Nekoba said the problem is the original intent of the KBMP was to limit the number of people (impacting) the Bay, an economic, common sense approach would have limited those numbers and size of boats. He felt that the host boats are being limited and now the equipment has to be dealt with, which he felt should

be handled by staff. Member Nekoba said the Board is not prepared to go into this as there are many things that are not covered in the Master Plan and that it should come up in the rules.

By a unanimous vote of the Board, the Board approved the motion to go into executive session.  
(Matsumoto/Nekoba)

The Board moved into executive session at 4:15 p.m. and returned at 4:45 p.m.

There was no further discussion.

By a unanimous vote of the Board, the item was approved.  
(Nekoba/Kennison)

Member Yuen left the BLNR meeting.

*K-1 RESUBMITTAL - RIGHT OF ENTRY, KEAHOLE-KONA INTERNATIONAL AIRPORT, ISLAND OF HAWAII (HAWAIIAN AIRVENTURES, INC.)*

There was no discussion or public testimony.

By a unanimous vote of the Board, the item was approved.  
(Matsumoto/Nekoba)

*K-2 RESUBMITTAL - ISSUANCE OF REVOCABLE PERMIT, KEAHOLE-KONA INTERNATIONAL AIRPORT, ISLAND OF HAWAII (WESTERN PCS II CORPORATION)*

There was no discussion or public testimony.

By a unanimous vote of the Board, the item was approved.  
(Matsumoto/Nekoba)

*K-3 RENEWAL OF REVOCABLE PERMITS FOR INCONSISTENT USES, HONOLULU INTERNATIONAL AIRPORT, OAHU AND KAHULUI AIRPORT, MAUI*

There was no discussion or public testimony.

By a unanimous vote of the Board, the item was approved.  
(Kennison/Nekoba)

*K-4 REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES*

This item required no action from the Board.

J-4 RESOLUTION TO REMEDY RENTS IN AREAS PROPOSED BY KEEHI MARINE INC., KEEHI SMALL BOAT HARBOR, MOKAHEA, KALIHI, ISLAND OF OAHU

Dave Parsons presented staff submittal and a written history of the arrearage of the lease rent and payments made. He said the total owed as of April 1st is \$367,482.40.

Staff was questioned by the Board regarding the way the monthly rental for the RP was calculated. Member Nekoba noted that the RP monthly rate has gone down from the last rate. Staff said this had to do with the new appraised value of the property, which is less. There was discussion about refunding tenant money when the monthly rate had gone down from the last rate. Member Matsumoto said RP's are renewed annually and if the tenant is unhappy with the rent, they could have come in and asked for a reduction. He said the opportunity to ask for a lower rent is at the time of the annual renewal.

Parsons said the submitted letter from Keehi Marine Inc. was the first time staff was aware of the specific amounts that Keehi Marine was disputing regarding money owed the State. Keehi Marine proposes to pay \$110,000 instead of \$367,482.40.

Member Nekoba questioned why the staff continues to work with KMI when their offer of the settlement amount is so little and unacceptable and why was the RP not terminated. Parsons said KMI wanted an opportunity to come before the Board and the prior recommendation was that the lease be cancelled unless they could come up with an appropriate resolution of payments. When asked by Chairperson Wilson whether their rationale is for the waiver of interest on the delinquent amount back to the summer of 1994, Parsons said they presented it as the date they first contested the amount of the proposed rental increase and therefore all interest be waived. Discussion ensued on the nature of the account and whether the rent was current as they entered into arbitration. There was also discussion regarding interest and charges.

Yoshi Muraoka Administrator of Keehi Marine Inc., passed out a letter pointing out 7 errors regarding DOBOR calculations. Member Nekoba asked whether they had intentions of paying the outstanding amount. Muraoka stated that they have an outside investor and if the bank can't pay, they are prepared to pay the correct amount. He said as soon as the arbitration was completed, they sent their financials to First Hawaiian for a loan. Muraoka said he banks with Bank of America. Member Matsumoto determined from further questioning of Muraoka that the cash flow from Keehi Marine Inc.'s rental income was sufficient to pay their expenses. He also had difficulty in understanding why Keehi Marine Inc. had not at least secured a loan based on the amount that they believed to be correct. Muraoka said his



timetable for paying off the delinquent amount is a month.

Member Matsumoto asked Muraoka why the concern of the RP was not brought up at the time of renewal? Muraoka said they did not decide to review the RP rent until the issue of the lease came up to see if it was fair and he said it was not the Board's fault. Member Matsumoto could not understand why Muraoka expected the Board to retroactively reduce the delinquent amount. Muraoka claimed that they found out about the RP rent being too high in their arbitration. Member Matsumoto confronted Muraoka by saying that he did not find out about it in arbitration, that he had an appraisal that showed the value of the lands to be \$210,000 before the arbitration occurred. Muraoka had the necessary information to challenge the RP rent.

Sid Quintel spoke in opposition for any financial break to Keehi Marine Inc. He testified that their RP should be revoked, their lease cancelled and the State should commence proceedings against them for the collection of revenues owed to the State.

Dr. Rarenberg (spelling may be incorrect) testified that he was a boat owner that used the services of Keehi Marine Center for boat repair and Keehi Marine proceeded to double the rent in a short time. He was denied access to his boat when he refused to pay the increased rent and was then taken to federal court.

Phil Kelly testified that his rates were tripled at Keehi Marine Center. He asked that the Board cancel the RP and lease with Keehi Marine Inc.

Roy Nakamura distributed written testimony in opposition of the continuance of the RP to Keehi Marine Inc.

Motion made for the Board to authorize the staff to initiate steps to cancel the lease H-70-14 and RP B-93-19 for failure on the part of the tenant to cure the amount in arrearage and other defaults under the lease and revocable permit. Matsumoto/Nekoba)

Mr. Koki, a banker and a representative of the holding company of Keehi Marine Inc. spoke about how the company had retired the debt that had been inherited with this operation. He stated that the State is the last creditor that they have to deal with and stressed that the company does want to pay the State. Member Matsumoto addressed Koki and said the State could have cancelled the lease years ago. Extensions were given time and time again and the time has run out, this delinquency is the biggest one on the State's books and it is an embarrassment.

Vote: All in favor.

It was unanimously approved to defer remaining Agenda Items D-1 through D-3, Items D-7 through D-12, Items D-16 through D-26, Items J-1 through J-3 and Item J-5. (Nekoba/Kennison)

The Chairman adjourned the Board Meeting of the department of Land and Natural Resources at 6:30 p.m.

APPROVED FOR SUBMITTAL:

*for* *Michael D. Wilson*  
MICHAEL D. WILSON