

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

DATE: July 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:

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| Ms. Kathryn Inouye | Mr. William Kennison |
| Mr. Colbert Matsumoto | Ms. Lynn McCrory |
| Mr. Christopher Yuen | Mr. Michael D. Wilson |

STAFF:

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|---------------------------------|-----------------------------|
| Mr. Michael Buck, DOFAW | Mr. Dean Uchida, Land |
| Mr. Ralston Nagata, State Parks | Mr. James Schoocraft, DOBOR |

OTHERS:

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| Mr. Ed Watson, Esq. Deputy Attorney General | Mr. Peter Garcia, State Department of Transportation |
| Mr. Bill Tam, Esq. Deputy Attorney General | Ms. Nancy Pisticchio, Plan to Protect, C-3 |
| Ms. Clare Wilson, E Mau Na Ala Hele, C-3 | Mr. Jack Dwyer, Esq., C-3 |
| Ms. Rosemary Rowan, Belt Collins, E-1 | Mr. Gordon Leslie, C-3 |
| Mr. Dave Giaconi(?), PrimeCo, D-15 | Mr. Les Young, PrimeCo, D-15 |
| Mr. Mark Willey, CH2M Hill, D-12 | Mr. Calvert Chun, PrimeCo, D-15 |
| Mr. Henry Curtis, Life of the Land, D-12 | Mr. Rodney Tamamoto, Aala Produce, K-3 |
| Ms. Laura Andrews, D-16 | Mr. Kursten Wong, HECO, D-12 |
| | Mr. Tom Jernicky (?), HECO, D-12 |
| | Ms. Pat Devlin, Esq, K-1 |
| | Mr. Jim Bartels, E-2 |

Business:

Approval of the minutes of June 13, 1997 and June 24, 1997:

The minutes of June 13, 1997, Item D-41 (p. 6, Condition 4a.) were amended to read:

- ...a. Using an 8% appreciation applied to the costs of the investments for each year starting from the actual date of the investment...

The minutes of June 13, 1997 were unanimously approved as amended (Yuen/Matsumoto).

The minutes of June 24, 1997, Item D-12 (p. 8, para. 2) were amended to read:

...A monthly rental of \$1.50 per paying customer or a \$30,000 per month minimum retroactive to December, 1996, and...

The minutes of June 24, 1997 were unanimously approved as amended (Matsumoto/Yuen).

ITEM C-3 APPROVAL OF NA ALA HELE PROGRAM DESIGNATION OF GOVERNMENT TRAIL (ALA LOA) - 1250 OCEANSIDE PARTNERS, NORTH AND SOUTH KONA, HAWAII, TMK'S 7-9-12:03 POR., AND 8-1-04:03 POR.

Mr. Michael Buck provided the background and history of the subject submittal.

Member Yuen inquired about the access to the trail portion over undesignated lands; he noted that a jeep road currently runs from the end of Alii Drive to the Oceanside property. Mr. Buck responded that there is no formal ingress to the trail at this time.

In response to the question posed by Member Yuen to Mr. Buck, Ms. Nancy Pisticchio (Plan to Protect) stated that while there was no formal ingress/egress to the trail portion at the present time, all affected landowners of the approximately 2-mile sections on either side of the trail portion recognized the trail and the right of the public to use the trail. She affirmed that, although vehicular access is restricted, pedestrian public access is allowed. Ms. Pisticchio testified in support of the staff recommendation. She further testified that Plan to Protect, the Kona Hawaiian Civic Club and E Mau Na Ala Hele were interested in jointly adopting the 6-mile trail. (Written testimony submitted).

ITEM C-3 (cont.)

Ms. Clare Wilson, representing E Mau Na Ala Hele, testified in support of the staff recommendation. Ms. Wilson reiterated Ms. Pisticchio's testimony that a group has been formed to formally adopt the trail -- providing restoration and maintenance help. (Written testimony submitted).

Mr. Jack Dwyer, representing Oceanside 1250, testified that there are approximately twenty separate TMKs between the Oceanside property and the end of Alii Drive. He informed members that, in certain areas, evidence of the trail runs right along the jeep/ranch road, while in other places, evidence shows the trail to be up to 50-foot mauka or makai of the road. He stated that the State must be prepared to negotiate with other landowners. Mr. Dwyer also testified that although Oceanside had agreed to a uniform, 10-foot wide right-of-way, he has been contacted by other groups concerned that they would also have to give up 10-feet of land. Mr. Dwyer also noted that the trail will come into contact with many archaeologically historic sites which will have to be dealt with individually.

Member Yuen and Mr. Dwyer then discussed a historically significant Hawaiian village site makai of the trail and the possibility of a trail spur to the village site.

Mr. Gordon Leslie, representing some of the Big Island Hawaiian community, testified in support of the staff recommendations. He stated, however, that, while his group felt comfortable with the alignment of the trail, there was some concern over the precedent set with the 10-foot width. He noted that many of the properties were small, simple kuleanas and, in many cases, the trail was clearly defined to be no more than 4-feet in width. Mr. Leslie also stressed the importance of correctly identifying the trails since historic maps identify trails by their make-up and the term "ala loa" did not correctly describe all segments of the proposed alignment. Mr. Leslie also testified about the need for a mitigation/protection plan once the trail is open to the public and that, formal "adoption," or the signing over of a Hawaiian cultural site was not palatable to some native Hawaiians.

Item C-3 was approved as submitted (Yuen/Matsumoto).

ITEM E-1 ACCEPTANCE OF A CONCEPTUAL PLAN FOR KEALAKEKUA BAY STATE HISTORICAL PARK AND AUTHORIZATION TO PROCEED WITH PHASE I DEVELOPMENT PLAN AND ASSOCIATED ENVIRONMENTAL IMPACT STATEMENT

Mr. Ralston Nagata introduced Ms. Rosemary Rowan, a representative of Belt Collins Hawaii, the firm contracted to produce the conceptual plan.

Ms. Rowan testified that Belt Collins had been working with the local community on the conceptual park plan. She stated that the plan hoped to achieve the missions of the park: 1) to tell the story of the Bay's role in the development of Hawaii and its people; 2) to preserve its historical sites and natural features for future generations; and 3) to accommodate recreational opportunities. She noted, for the Board, a relationship between Item C-3 and the subject submittal in that the trail identified in Item C-3 ended at Cook Monument, part of the Kealakekua Bay Historical Park.

Ms. Rowan informed the Board that the conceptual plan, after adoption, would be followed by individual development plans for three separate areas of the park, each with its own environmental assessment or environmental impact statement, whichever was required. She testified that the first phase included a developmental plan for the Napo'opo'o area. She provided members with the background of the planning process, emphasizing the public input which had gone into the production of the conceptual plan. She provided examples of community input in the placement of the proposed visitor's center and proposed accessibility to cultural areas of the park (She identified areas on a map). Various aspects of the plan were highlighted (a copy of the conceptual plan was provided to each member). Ms. Rowan informed members that response to the plan has been generally positive.

In response to Member Inouye's question, Ms. Rowan stated that additional lands would need to be purchased for the site of the visitor's center and the proposed access to the center. She responded that she was unsure as to whether the affected landowners had been contacted regarding the subject submittal, but that they had been sent correspondence regarding the park plan.

In response to Member Yuen's question regarding boating concessions, Ms. Rowan responded that, currently, there existed no legal boating/kayak concession. Member Yuen questioned why the plan proposed boating/kayak concessions; Ms. Rowan responded that kayaks/boats were one of the few means which allowed the public access to Ka'awaloa area. She further stated that a "managed" concession would allow for more control and, possibly, resolve the problems currently caused by kayakers.

ITEM E-1 (cont.)

Member Matsumoto inquired as to what kind of access control would be utilized. Ms. Rowan responded that controls which would allow for pedestrian access and still block vehicular access would need to be determined. She clarified for Member Matsumoto that private kayakers would not be prohibited from entering or landing at the bay.

With regards to other recreational restrictions within the bay, Ms. Rowan stated that anchoring is currently limited to two commercial mooring areas (for snorkeling enterprises). She stated that one or two additional areas for private boats are being proposed in the plan. Questioning further clarified that the commercial operators have exclusive mooring rights (permitted by DOBOR), and that traffic studies have indicated that, although there is a slight increase in traffic on the weekends, the increase was minimal and did not warrant weekend restrictions.

Because of the bay's classification as a Marine Life Conservation District, Chairperson Wilson emphasized the need to consult with the Aquatic Resources Division regarding any proposed recreational activities within the bay. He expressed his reservations regarding any proposed increase in recreational activities within the bay without some oversight by the Aquatics Division.

Discussion between Ms. Rowan and the Chairperson offered that visitor traffic to the park is expected to rise slightly to approximately 800 to 1000 persons per day (at the visitor center). Chairperson Wilson expressed his concern regarding the State's ability to manage the increased visitor traffic should proposed concessions and moorings be allowed.

Member Yuen echoed Chairperson Wilson's concern regarding managing increased commercial snorkeling and kayaking activities within the bay. Mr. Nagata noted that, because the bay is considered open ocean, it may be difficult to regulate certain activities. Member Yuen stated that means to restrict unpermitted activities should be investigated.

Member McCrory related similar situations and proposals for the Wailua River State Park area on Kauai. She noted that knowledge of the carry capacity of the subject area is essential.

Member Yuen requested that approval of the submittal be conditioned as follows:

ITEM E-1 (CONT.)

- 1) That it be emphasized that the visitor's center is not to be seen from below;
- 2) That it be made clear that the decision on the boating concession must be brought back to the Board at a later date;
- 3) That the boat landing be reviewed by the Aquatic Division before any decision is made; and
- 4) That the day-use mooring sites proposal be brought back to the Board at a later date.

Member Matsumoto voiced his concern that the Board not place too many restrictions so as to make development costs too high in relation to the number of people serviced. Member Yuen stated that Phase I improvements were relatively modest and should not be too costly.

Mr. Nagata clarified for the members that the current action only involved the conceptual plan and allowed the Division to proceed to Phase I.

Chairperson Wilson voiced his concern that the plan, while considering the historical aspects of the area, did not look closely enough into the natural resource impacts. He again emphasized the need to consult with the Aquatic Resources and Boating Divisions.

Item E-1 was approved as amended (Yuen/Matsumoto).

A short recess was taken at 11:10 a.m. Chairperson Wilson reconvened the meeting at 11:23 a.m.

ITEM D-13 ASSIGNMENT OF PARTNERSHIP INTEREST IN GENERAL LEASE #S-5284-A, "PULEHUNUI QUARRY SITE" SITUATE AT PULEHUNUI, WAILUKU, MAUI, HAWAII, TMK: 2ND/3-8-08:31

** Tapes from the meeting did not record the Board's discussion on Item D-13. Motion on Item D-13 was taken with Item K-1.

ITEM K-1 CONSENT OF ASSIGNMENT OF LEASE #H-92-24, HILO HARBOR, HAWAII, AND HARBOR LEASE #H-91-7, NAWILIWILI HARBOR, KAUAI (ADELAIDE BRIGHTON CEMENT (HAWAII), INC./KNIFE RIVER DAKOTA, INC.) (HAWAIIAN CEMENT, A HAWAII GENERAL PARTNERSHIP)

Mr. Peter Garcia presented the submittal recommending approval of the consent to assignment.

ITEM K-1 (cont.)

Member Matsumoto disclosed to the Board that he represented a party currently involved in litigation with Hawaiian Cement. He noted that the lawsuit was unrelated to the current transaction, and requested assurance from the applicant's counsel that his participation with regards to the current submittal would not be a problem. Ms. Pat Devlin, legal counsel for Hawaiian Cement, affirmed that Member Matsumoto's participation would not be a problem.

Member Matsumoto questioned the difference in the lease premium amounts between the subject submittal and a prior, similar assignment. Mr. Uchida stated that, proportionately, the two amounts were in conformance, but that differing sale prices and differing amortization periods for depreciation led to the difference in the lease premiums. Regarding the differing formulas used to compute assignment premiums for straight assignments versus stock transfers (which often led to substantial differences in the amount required), Messrs. Uchida and Garcia stated that both DOT and DLNR were working on standardizing the assignment premium formula.

Items D-13 and K-1 were approved as submitted (Kennison/Yuen).

ITEM D-15 CONSERVATION DISTRICT USE APPLICATION (OA-2856) TO ESTABLISH A PERSONAL COMMUNICATIONS SERVICES (PCS) ANTENNA FACILITY AT KAILUA, OAHU, TMK: 4-5-35:POR. 05

Mr. Uchida presented the staff recommendation to approve the CDUA for an antenna facility in Kailua.

Board members requested that future submittals include a notation, if applicable, stating that no one other than the applicant was present at the public hearing.

Mr. Les Young, representing PrimeCo, introduced Calvert Chun, PrimeCo's site development manager and Dave Giaconi(?). Mr. Young provided background information on the proposed site and the company's reasons for selecting the site. Mr. Young informed the Board that PrimeCo had tested five other sites for antenna location. He noted that, 1) at two sites, the landowners expressed no interest; 2) at two sites, coverage was insufficient; and 3) the terrain of the remaining site made the site undesirable. He testified that the subject site was chosen because 1) its location would not impact residential areas, Castle Hospital operations, or traffic site plains; 2) electrical and telephone service existed close by; and 3) the site provided good coverage. (Written testimony and photographs were submitted).

ITEM D-15 (cont.)

Ms. Kathy Yonamine, property manager for Sprint, USA, testified in support of the submittal. She stated that Sprint was currently negotiating with PrimeCo to co-locate at the site. In response to Member Matsumoto's question regarding the lease rental value, Ms. Yonamine stated that the ground lease would be approximately \$1,000 per month, plus an additional charge for the pole. Mr. Chun testified that PrimeCo supports and encourages co-location.

Item D-15 was approved as submitted (Matsumoto/Kennison).

ITEM K-3 LEASE BY DIRECT NEGOTIATION, NEAR PIER 32, HONOLULU HARBOR, OAHU (AALA PRODUCE, INC. DBA AALA SHIP SERVICE)

Mr. Garcia presented the submittal recommending the issuance of a directly negotiated lease. Mr. Garcia testified that the subject submittal was a follow-up to Item K-1 (May 23, 1997) which authorized the DOT to negotiate the acquisition of the parcel.

Mr. Rodney Tamamoto, representing Aala Produce, testified that the purchase price would be approximately 7.15 million dollars, or \$54 per square foot. He noted that a slight discrepancy existed between Aala Produce's and DOT's numbers.

Item K-3 was approved as submitted (Matsumoto/Yuen).

ITEM D-12 REQUEST TO EXTEND THE PROCESSING PERIOD FOR AN ADDITIONAL 180 DAYS FOR CONSERVATION DISTRICT USE APPLICATION OA-2801 FOR A 138KV TRANSMISSION LINE AT WAAHILA RIDGE, HONOLULU, HAWAII

Mr. Uchida informed the Board that the subject submittal was HECO's third request for an extension.

Mr. Mark Willey, CH2M Hill, was present to answer board members' questions. He testified that, at the present time Hawaiian Electric had not made a decision on whether the lines would be placed overhead or underground, and would not make a decision until receiving all public comments on the draft EIS.

In response to Member Matsumoto's question regarding the permit process, Mr. Willey stated that, BLNR approval would be the first needed should the route chosen go through conservation land. He further stated that, if the route did not go through conservation lands, the first approvals would come from the Public Utilities Commission. He stated that County approval would be needed for some construction and work on the right-of-ways of county roads, in addition to the placement of routes (for 138KV lines) on Development Plan maps.

ITEM D-12 (cont.)

Member Inouye questioned whether the 180-day extension would be sufficient. Mr. Willey responded that another extension would probably be needed to complete the EIS process.

Mr. Kursten Wong, project manager for HECO, testified that current facilities would be able to accommodate service until 1999, but that the proposed line would be needed to insure service beyond 1999. He informed members that the project would service 55% of HECO's customers, and that construction time would depend on the route alternative chosen.

Member McCrory inquired as to whether the extension granted could be for a period greater than 180-days. (It was requested that staff check to with the Attorney General's office).

Mr. Henry Curtis, Life of the Land, Save Power Action Network, requested the Board's consent to hold an informational briefing for the Board.

Mr. Tom Jernicky (?), V.P. for HECO also requested the Board's consent to hold an informational briefing for the Board.

Item D-12 was approved as submitted (Inouye/Matsumoto).

ITEM D-16 CONSENT TO THE ASSIGNMENT OF GENERAL LEASE OF NON-EXCLUSIVE EASEMENT NO. S-5389, KANEOHE, KOOLAUPOKO, OAHU, TMK: 1ST/4-4-14:04 (SEAWARD OF)

Ms. Laura Andrews was present to answer questions. No public testimony was presented.

Item D-16 was approved as submitted (Inouye/Matsumoto).

ITEM D-1 CANCEL EXECUTIVE ORDER NOS. 1201 AND 1221, RESET ASIDE TO THE DEPARTMENT OF EDUCATION, HAWAII STATE PUBLIC LIBRARY SYSTEM, AND GRANT OF EASEMENT TO CITIZENS UTILITIES COMPANY, FOR AN UNDERGROUND ELECTRICAL LINE, HANAPEPE, KAUAI, TMKS: 1-9-06:14 AND 29

No public testimony was presented.

Item D-1 was approved as submitted (McCrory/Kennison).

ITEM K-2 AUTHORIZATION TO NEGOTIATE FOR ACQUISITION FOR PRIVATELY-OWNED LANDS SITUATE NEAR PIER 37, KAPALAMA, OAHU, FOR EXPANSION OF HONOLULU HARBOR, AND SUBSEQUENT SET ASIDE TO THE DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION, BY GOVERNOR'S EXECUTIVE ORDER

Member Inouye questioned whether a hazardous material study will be conducted; Mr. Garcia answered in the affirmative. No public testimony was presented.

Item K-2 was approved as submitted (Inouye/Kennison).

ITEM K-4 ISSUANCE OF REVOCABLE PERMIT, KAWAIHAE HARBOR, HAWAII (JULIO RESURECCION DBA J.R. BULLDOZING)

No public testimony was presented.

Item K-4 was approved as submitted (Yuen/Kennison).

ITEM K-5 ISSUANCE OF REVOCABLE PERMIT, HILO HARBOR, HAWAII (CHEVRON PRODUCTS COMPANY)

No public testimony was presented.

Item K-5 was approved as submitted (Yuen/Kennison).

ITEM K-6 REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

Mr. Garcia stated the no action was needed on Item K-6.

ITEM C-1 APPLICATION FOR FISCAL YEAR 1998, RURAL COMMUNITY FIRE PROTECTION (RCFP) AND RURAL FIRE PROTECTION AND CONTROL (RFPC) GRANTS, (COUNTY OF HAWAII FIRE DEPARTMENT)

No public testimony was presented.

Item C-1 was approved as submitted (Matsumoto/Inouye).

ITEM C-2 APPROVAL FOR PROPOSED FENCE CONSTRUCTION, KILAUEA FOREST AND KULANI CORRECTIONAL FACILITY

In response to Member Inouye's questioned regarding the make-up of the fence, Mr. Buck stated that the fencing consisted of 5 strands of wire -- four above ground and one below ground level -- reaching a total height of 39 inches.

Member Yuen inquired as to whether the Board's approval was necessary for the Division of Forestry and Wildlife to construct fencing in forest reserves. Mr. Buck responded in the negative, however, he informed board members that the

ITEM C-2 (cont.)

Board's approval would recognize the fence construction as a permitted use within the conservation district. He noted that the approach being used would abbreviate the length of time needed to get approval for the fence construction. (Without such approval, the division would need to go through both the EA process and the CDDA process before construction could begin).

No public testimony was presented.

Item C-2 was approved as submitted (Yuen/Kennison).

ITEM E-2 SPECIAL USE PERMIT REQUEST TO CONDUCT A COMMEMORATIVE PROGRAM AND COORDINATE CENTENNIAL ANNIVERSARY OF THE ANNEXATION OF HAWAII TO THE UNITED STATES ON THE IOLANI PALACE GROUNDS

Mr. Jim Bartels stated that the Friends of Iolani Palace (FOIP) appreciated the Board's consideration of it's request. He noted that the approval would give the FOIP an extra year for planning and coordination.

Item E-2 was approved as submitted (Inouye/McCrory).

ITEM D-2 SALE OF LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES, KAU, HAWAII, TMK: 9-8-01:12

Chairperson Wilson questioned whether the Land Division had consulted with the Division of Forestry and Wildlife about the possibility of using the subject lands for the forestry industry; Mr. Uchida stated that staff had not conferred with each other. Chair Wilson suggested that the Land Division work with the Forestry Division to determine whether the subject lands could be put to a "higher" use. No public testimony was presented.

Item D-2 was deferred (Yuen/Kennison).

ITEM D-3 CONSENT TO ASSIGNMENT OF GENERAL LEASE #S-4459, WAIAKEA, SOUTH HILO, HAWAII, TMK: (3) 2-2-56-18

No public testimony was presented.

Item D-3 was approved as submitted (Yuen/Kennison).

ITEM D-4 RESTRUCTURE RENTAL REOPENING FOR GENERAL LEASE #S-5131, MILOLII, HAWAII, TMK: (3) 8-9-14-17

No public testimony was presented.

Item D-4 was approved as submitted (Yuen/McCrory).

ITEM D-5 FORFEITURE OF GENERAL LEASE #S-4636 AND CANCELLATION OF SPECIAL INSTALLMENT AGREEMENT #S-4636, LOT 8, PANAWEA FARM LOTS, 2ND SERIES, WAIAKEA, SOUTH HILO, HAWAII - TMK 3RD/ 2-4-49:22

Because the applicant had paid off his delinquency, Mr. Uchida requested that Item D-5 be withdrawn.
No public testimony was presented.

Item D-5 was withdrawn (Yuen/Kennison).

ITEM D-6 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 40-HB-7, REPAIRS TO ELECTRICAL SERVICE/ LIGHTING, WAILOA BOAT RAMP, HILO, HAWAII

No public testimony was presented.

Item D-6 was approved as submitted (Inouye/Yuen). Chairperson Wilson requested that a press release be prepared to inform boaters about the proposed work.

ITEM D-7 AMEND PRIOR BOARD ACTION FOR ISSUANCE OF REVOCABLE PERMIT, HANAPEPE (WAIMEA), KAUAI, HAWAII

No public testimony was presented.

Item D-7 was approved as submitted (McCrorry/Kennison).

ITEM D-8 CONSENT OF THE ASSIGNMENT OF GENERAL LEASE #S-4099, WAIKOLOA, WAIMEA, SOUTH KOHALA, HAWAII, TMK: (3) 6-7-1-POR. 25

No public testimony was presented.

Item D-8 was approved as submitted (Yuen/Kennison).

ITEM D-9 TERMINATION OF REVOCABLE PERMIT #S-1546 TO RICHARD SMART AND ISSUANCE OF A NEW PERMIT TO PARKER RANCH INC., SOUTH KOHALA, HAWAII, TMK: (3) 6-3-1

Member Yuen inquired as to how the rental rate was derived. He noted that it was unclear by the submittal whether the Board was, by approving the recommendations, issuing a license for the water or establishing rent for the use of the land.

Discussion with the Deputy Attorney General apprised the Board of the fact that, although a water license is a separate entity, permits for local water leases are can be granted under a separate section of the HRS. Member Yuen recommended

ITEM D-9 (cont.)

that the item be deferred until the issue over the water was clarified. Member Matsumoto further recommended that the rental amount be re-analyzed. No public testimony was presented.

Item D-9 was deferred (Yuen/McCrory).

ITEM D-10 TERMINATION OF REVOCABLE PERMIT #S-7006 TO IRVING K. KAWASHIMA AND ISSUANCE OF A NEW PERMIT TO KAWASHIMA FARMS, HAMAKUA, HAWAII, TMK: (3) 4-3-15-10

Member McCrory questioned why the lands are under a revocable permit and not a long-term lease. Mr. Uchida responded that staff would look into the question, however, the most probable reason was that the revocable permit was issued on an interim basis while staff prepared for a public auction. Member McCrory also questioned the rental amount of \$13/month. Mr. Uchida responded that the fee was nominal because the permit was for pasture lands for a small three acres.

Chairperson Wilson noted that one of the problems with designating state lands for forestry use was the public concern over lands available for diversified agriculture. He requested that the Land Division look at all lands under its control, which will be up for disposition, and determine the "highest" possible use that the lands could be use for. No public testimony was presented.

Item D-10 was approved as submitted (Yuen/Kennison).

ITEM D-11 AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 13, 1995 (AGENDA ITEM F-7), DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS) ON BEHALF OF PARKER RANCH REQUESTS ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY FOR STATE LAND SET ASIDE UNDER GOVERNOR'S EXECUTIVE ORDER NO. 2632 TO DAGS FOR THE WAIMEA CIVIC CENTER, TO PERFORM CONSTRUCTION OF A DRAINAGE DIVERSION CHANNEL, ASSOCIATED GRADING AND MAINTENANCE ACTIVITY, SITUATE AT WAIKOLOA AND PUUKAPU, WAIMEA, SOUTH KOHALA, HAWAII - TMK: 3RD/6-7-02:11

No public testimony was presented.

Item D-11 was approved as submitted (Yuen/Matsumoto).

**ITEM J-1 APPROVAL OF REQUEST TO SUBSTITUTE VESSEL, LARGE SNORKEL
TOUR COMMERCIAL OPERATING AREA USE PERMIT NO. O-KB-3**

Mr. Jim Schoocraft presented the staff submittal. Mr. Schoocraft recommended that the Board approve the staff recommendations with the stated condition that, should the rules for the bay restrict boat size to less than 45-feet, the boat be withdrawn from use.

In response to Member Matsumoto's question regarding the effect of the submittal on the litigation, Mr. Schoocraft stated that the subject submittal had no effect on the lawsuit.

Member McCrory voiced her concern about approving the submittal, having the applicant incur the costs of purchasing a larger vessel, then requiring the applicant to withdraw the boat from use should the rules restrict the size. Mr. Schoocraft stated that the applicant was aware of the possibility and accepted the risks. Mr. Bill Tam, Deputy Attorney General, recommended that an express condition be included in the permit in which the applicant will acknowledge the requirement to withdraw his vessel from use should the rules restrict the vessel size to less than 45-feet. No public testimony was presented.

Item J-1 was approved as submitted (Kennison/Matsumoto).

**ITEM J-2 DENIAL OF REQUEST TO OPERATE VESSEL "MIKS II", HA 5894 B,
EX HA 1168 CP, LARGE FULL SERVICE COMMERCIAL OPERATING
AREA USE PERMIT NO. O-KB-X**

Mr. Schoocraft informed the Board that the issue had been resolved and requested that the Item be withdrawn. No public testimony was presented.

Item J-2 was withdrawn (Matsumoto/Kennison).

**ITEM D-14 ESTABLISHMENT OF MUTUAL CANCELLATION OF POLICY FOR
GENERAL LEASES**

Mr. Uchida presented the submittal and the background leading to the staff's recommendation.

Mr. Uchida stated that, to date, three requests for mutual cancellations have come before the Board. He noted that the Board had acted on the prior requests on the basis of its discretionary authority without any kind of policy or rules to guide it. Mr. Uchida stated that the Attorney General's Office has advised the division that a policy be developed with regards to mutual cancellation. He stated that the

ITEM D-14 (cont.)

subject submittal was the result of discussion between staff members to address the AG's recommendation. He noted that staff was attempting to balance their wish to try and help lessees with the best interests of the State.

Discussion with members clarified that, among others things:

- 1) the State retained the right to withdraw lands from the lease
- 2) that Land Division staff has, internally, chosen not to bring some requests for mutual cancellations before the Board
- 3) that, should the lessee agree to pay the difference between their lease amount and the subsequent lease amount (should the subsequent lease be less) for the life of the lease, the State should agree to cancel

Members then discussed property law, commercial leases and the ability of the landlord to collect payment for the life of the lease term should a lessee default.

Member Matsumoto stated that the State should possibly address agricultural leases differently from industrial and commercial leases. He noted that the State had an obligation to support agriculture that it did not have in regards to commercial uses. He also noted his discomfort with labelling mutual cancellation a "policy."

Mr. Uchida stated that staff needed direction from the Board and did not necessarily need to write "policy." He noted that staff was primarily trying to address an economic situation in which lessees could prove true economic hardship.

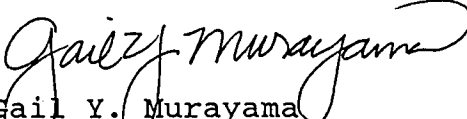
Mr. Uchida stated that staff would digest members comments and bring the matter back at a later date.

Item D-14 was deferred (Kennison/Matsumoto).


There being no further business, Chairperson Wilson adjourned the meeting at 1:25 p.m.

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

Respectfully submitted,


Gail Y. Murayama
Secretary

Approved for submittal:


MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources