

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

DATE: October 10, 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 9:11 a.m. The following were in attendance:

MEMBERS:

Ms. Kathryn Inouye	Mr. William Kennison
Mr. Colbert Matsumoto (from 10:45 am)	Ms. Lynn McCrory
Mr. Michael D. Wilson	Mr. Christopher Yuen

STAFF:

Mr. Dean Uchida, Land	Mr. Michael Buck, DOFAW
Mr. Bill Devick, DAR	Mr. Ralston Nagata, State Parks
Mr. Howard Gehring, DOBOR	Mr. Steve Thompson, DOBOR

OTHERS:

Mr. Randy Young, Esq. Deputy Attorney General	Mr. Peter Garcia, State Department of Transportation
Ms. Pamela Matsukawa, Esq. Deputy Attorney General	Mr. Alec Sou, Aloun Farms, D-11
Mr. James Nakatani, Chairperson Department of Agriculture	Ms. Hulali Covington, D-14
Col. Michael Rawlins, DOD, D-1 D-3	Mr. Richard Chun, Hawaii Conf. of U.C.C., D-2
Mr. David Frankel, Sierra Club, C-1, C-2, C-3	Mr. Bill Horneman, Hawaiian Cement, D-9
Ms. Verla Moore, Friends of Malaekahana	Ms. Ipolani Tano, Friends of Malaekahana
Mr. Joe Pichard, Kaneohe Bay Regional Council, J-2	Ms. Annette Kaohelaulii, Eco- Tourism Association, C-2, C-3
Mr. Nick Lohr, Windward Water- sport Center, J-2	Mr. James Dale, J-2
Mr. Ron Darby, KBRC, J-2	Mr. Dennis McCann, J-2
Mr. John Reppun, J-2	Mr. Henry Czajkowski, J-2
Mr. Joe McCann, Windward Water- sport Center, J-2	Mr. Randy Clarke, J-2
	Ms. Jewell Tuitele, J-2
	Mr. Reb Bellinger, Makai Engineering, D-8

Business:

ITEM A-1 Approval of the minutes of June 23, 1995

Because she had not been present at the subject meeting, Member McCrory recused herself from voting on the matter. Board members noted that the minutes were one of the Board's "catch-up" items which would need action by members who had not been at the June 23, 1995 meeting (Of the five members present, only Member Kennison had been present at the June 23rd meeting).

The minutes of June 23, 1995 were approved as submitted (Kennison/Yuen).

ITEM A-2 Approval of the minutes of September 12, 1997

Member Yuen stated that the second sentence of Item J-1 (p. 16) was incomplete and should read:

"Member Yuen noted that the standard conditions should cover construction impacts."

The minutes of September 12, 1997 were approved as amended (McCrory/Inouye).

ITEM D-11 REQUEST BOARD APPROVAL FOR REVOCABLE PERMIT TO ALOUN FARMS, KAPOLEI, HONOULIULI, OAHU, TMKS: 9-1-17: 71 (POR.); 9-1-18:01 (POR.)

Mr. Uchida presented the staff submittal recommending the Board's approval for interim agricultural use for certain "landbanked" lands in Kapolei. He informed members that staff has been in contact with the Housing and Finance Development Corporation (HFDC), the state entity developing the city of Kapolei, and that HFDC was agreeable to the arrangement provided a Condition (7) be added:

7. Upon start of construction in the subject area by HFDC, there shall be no compensation by the state for crop damages nor crop loss due to normal and reasonable construction activities in the subject area or on adjacent state lands.

Member Inouye noted that the submittal included an agreement to waive some of the initial monthly rental to defray costs incurred by the permittee for infrastructure (water pipes). She requested that the language be clarified to insure that the state is not, and will not subsidize the permittee's operations through waiver or credits. Mr. Uchida stated that, at present, no estimate of costs (or the amount of associated rental waivers) was available.

ITEM D-11 (cont.)

In response to Member McCrory question regarding the type of crops to be planted, Mr. Alec Sou, manager of Aloun Farms, stated that sweet corn, seed corn and melons would be rotated with vegetables. He informed the Board that the "longest" crop term would be 3-4 months.

Mr. James Nakatani, Chairperson of the Department of Agriculture testified in support of staff's recommendation.

Item D-11 was approved as amended (Inouye/Kennison).

ITEM D-14 TERMINATION OF GENERAL LEASE #S-5207 AND ISSUANCE OF A NEW REVOCABLE PERMIT AT NORTH KOHALA, HAWAII, TMK: (3) 5-5-3-4, 5 AND 6

Mr. Uchida provided background on the submittal. He informed the Board that the Attorney General's Office had turned down staff's requests to amend the character of use for the subject lease four separate times, and the current recommendation was the only solution that staff could fashion.

Member Yuen commented that staff should ensure that the recommended termination would not be viewed as a default, and that the lessee would be allowed to bid on the lease should the use be changed and the lease be put to public auction. Mr. Uchida noted that, although the lessee was technically in default under the current lease (for pasturing cattle), it was not staff's intent to cancel the lease because of a default. He stressed that, because of the Attorney General's opinion that no cattle is allowed under the current lease, the termination of the current lease, and the issuance of a revocable permit (RP) was the only solution possible at this time. He stated that if, and when, the use is changed, the current lessee (Mr. Randolph Solomon) would be able to bid on the lease.

Ms. Hulali Covington, daughter of the lessee, testified regarding the family's position. She stated that the lessee had always acted in good faith, seeking the Board's approval before placing cattle on the land. Ms. Covington stated that, although Mr. Solomon disagreed with the Attorney General's opinion, he would accept staff's recommendation for the RP. (Written testimony submitted).

Members discussed various alternatives to staff's recommendation (withdrawal of a portion of the land, subdivision) before determining that issuing the RP was the only workable solution currently available. Members also discussed the time frame needed to put the lease out to auction. It was generally agreed that, approximately, a year was needed before the auction.

ITEM D-14 (cont.)

Because of the money, time, and materials that the lessee had already invested in the property, members inquired the RP could be issued for longer than a month; Deputy Attorney General Randall Young responded that the Board had the discretion to issue an RP with a minimum of one year.

Member Yuen moved to approve staff's recommendation with an amendment that clarified that the Board was issuing the permit for no less than one year (a guaranteed one year minimum).

Member Kennison noted that the Board needs to be more careful before approving items before the Attorney General's Office has given its okay.

Item D-14 was approved as amended (Yuen/Kennison).

ITEM D-2 GRANT OF PERPETUAL NON-EXCLUSIVE UTILITY EASEMENT AFFECTING A PORTION OF STATE OWNED KOKEE PARK LANDS TO SERVICE LOT 56, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-1: POR. 13.

Mr. Uchida requested that the staff recommendation be amended from granting a perpetual easement to a term easement. Mr. Uchida stated that, because the state leases for the Kokee cabins would be expiring within the next ten years, staff felt that a term easement would be more appropriate than a perpetual easement.

Member Yuen stated that, because the easement should revert back to the owner of the lease -- in this case, the State -- when the lease expires, it should not matter whether the easement was perpetual or term. Mr. Uchida noted that, the particular circumstance was unusual in that the original lease did not include an easement; staff therefore felt that ownership of the easement might be in question at the expiration of the lease.

Chairperson Wilson inquired as to whether other cabins in the vicinity had or wanted electricity; Mr. Uchida responded that he was not sure of the circumstances of other nearby cabins.

Mr. Richard Chun, Hawaii Conference of the United Church of Christ, testified that Kauai Electric required the Church to obtain the easement and turn it over to the electric company. He informed the Board that the cabin is used by many children, creating a situation that could proved dangerous is kerosene or gas is used for lighting, etc.

ITEM D-2 (cont.)

Member Yuen requested that the condition be phrased in such a way as to allow staff to work with Kauai Electric to determine what type of easement (perpetual or term) should be granted.

Item D-2 was approved as amended (McCrory/Kennison).

ITEM D-3 RESUBMITTAL: CONSENT TO A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, REPRESENTED BY THE COMMANDER, PACIFIC DIVISION, NAVAL FACILITIES ENGINEERING COMMAND, PEARL HARBOR, HAWAII, AND THE STATE OF HAWAII, REPRESENTED BY THE CHAIRPERSON, DEPARTMENT OF LAND AND NATURAL RESOURCES, AT HALAWA AND AIEA, EWA, OAHU, TMK: 1ST/9-9-03: 29 (PORTION), 35; 9-9-12: 05, 46, 47

Mr. Uchida noted that board members had deferred the subject item at its August 8, 1997 meeting and requested that staff provide clearer maps identifying the particular parcels slated for exchange. Mr. Uchida identified specific areas on maps provided by staff.

In response to Member Inouye's question regarding who (Navy or the state) would maintain the proposed joint parking lot, Colonel Michael Rawlins, State Department of Defense, stated that maintenance had not yet been discussed with the Navy.

Members Inouye and McCrory questioned the "one-sidedness" of the cost pick-up, and asked whether the State would be recouping some of the costs from the Veteran's groups. Colonel Rawlins responded that the entire cost for planning and constructing the Veteran's Center would be covered by a one time grant-in-aid by the State.

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

ITEM D-1 REQUEST TO RESCIND THE BOARD'S MAY 11, 1990, AGENDA ITEM F-7 ACTION AND TO WITHDRAW LAND FROM GENERAL LEASE NO. S-4197 AND SET ASIDE OF WITHDRAWN LAND BY EXECUTIVE ORDER FOR ARMORY AND OTHER RELATED PURPOSES AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES TO THE DEPARTMENT OF DEFENSE, ON GOVERNMENT LAND, IDENTIFIED BY TMK : 3-8-08: PORTION 01, PORTION OF PULEHUNUI AND WAIKAPU, WAILUKU, MAUI

Mr. Uchida provided background to the subject submittal. No public testimony was presented.

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

ITEM D-9 HAWAIIAN CEMENT'S REQUEST FOR PARTIAL WITHDRAWAL FROM GENERAL LEASE NO. S-4197 TO ALEXANDER & BALDWIN, LESSEE, AND REQUEST FOR ISSUANCE OF LAND LICENSE BY NEGOTIATION FOR ROCK MINING PURPOSES ON GOVERNMENT LANDS, IDENTIFIED BY TMK: 3-8-08: POR. 01, SITUATE ADJACENT TO THE PULEHUNUI QUARRY SITE, PULEHUNUI, WAILUKU, MAUI

Mr. Uchida informed the Board that, because the subject site was essentially landlocked -- with legal access only through Hawaiian Cement lands, direct negotiations was appropriate. He requested, however, that all references to Chapter 171-16(d) be amended to 171-16(c).

In response to Member McCrory's question regarding the minimum annual license fee, Mr. Uchida stated that the fee would be determined by appraisal. Member McCrory further requested that the term of the subject license be run co-terminus with the existing license.

Member Inouye requested that staff make certain that the prior environmental assessment incorporated that subject site. Mr. Bill Horneman, representing Hawaiian Cement, verified that the EA did, in fact, cover the subject site.

Item D-9 was approved as amended (Kennison/Inouye).

ITEM C-1 REQUEST APPROVAL OF BEST MANAGEMENT PRACTICES (BMP'S) FOR FORESTRY ACTIVITIES

Mr. Michael Buck presented the staff submittal.

In response to Member Inouye's question regarding conformance between the Best Management Practices (BMPs) and existing regulations, Mr. Buck stated that the BMPs were in conformance, however, the BMPs were meant only as a guideline at the present time.

Member McCrory inquired as to whether the BMPs had been discussed with the public/community and whether the community has had any input into the BMPs; Mr. Buck responded in the negative. Member McCrory noted that, perhaps, community input should be gathered before the Board adopts the BMPs as guidelines. She noted that private industries who may already be using some of the same guidelines could provide valuable information/input into the state's guidelines.

Mr. Buck stated that BMPs generally evolve as more information is gathered and knowledge gained, and thus, the adoption would not preclude community/public input. Chairperson Wilson stated that the BMPs have been provided to all forest industry people in Hawaii, and that community groups concerned that the forest industry might harm the environment have also been provided with copies of the BMPs.

ITEM C-1 (cont.)

Member Yuen voiced several concerns regarding the BMPs:

Member Yuen stated that some mechanism for enforcement of the guidelines is needed in case companies refused to follow practices that the state knows will better protect the environment. Member Yuen requested that intermittent streams be included in the definition of streams and that the BMPs should be coordinated with the Conservation District Use Permits.

Mr. Buck stressed that the BMPs will have to be refined in the long run and that staff was reluctant to make any strict regulations at the present time. Mr. Buck noted that forestry is still considered a type of agricultural use and many regulatory factors for agriculture were already in place.

Mr. Buck noted for the Board that the state currently had a "right to harvest" law which required the Board's approval (for private lands). He stated that the Board, at that juncture, would be able to ask "farmers" to follow the BMPs. Mr. Buck further stated that the same request to follow the BMPs would be applicable to forest stewardship and cost-sharing plans.

David Frankel, representing the Sierra Club, testified in opposition to approving the staff submittal. Mr. Frankel stated that the timber industry drafted the BMPs and that the environmental communities' input and concerns were not taken into consideration. He further stated that the guidelines were in no way enforceable and that telling the community that the forest industry will comply with the 'best management practices' of the state is pure rhetoric. Mr. Frankel noted that, should problems arise later, the state would not have any recourse to make timber companies comply with the BMPs. Mr. Frankel stated that the BMPs should be made regulatory and written by the Attorney General's Office. Mr. Frankel stated that the environmental community recognized that each site and situation would be different, however, he noted that under the present guidelines, the management practice used was left to the complete discretion of the timber company.

Some discussion followed between Mr. Frankel and board members regarding the substantive problems with the subject BMPs. Subjects included the protection of streams, the use of roads during heavy rains.

Member Inouye commented that there needs to be some guidelines to test. She stated that many of the recommendations were not specific because they have not been tested in "real-life" situations.

ITEM C-1 (cont.)

In response to Member Matsumoto's question regarding incorporating the requirement to use BMPs as a condition in land leases, Mr. Frankel responded that such a requirement may address the enforcement issue if the language in the BMPs was "tightened."

Chairperson Wilson commented that many of the recommendations in the BMPs are quite specific, and attempted to address all issues. He attested that the BMPs were not meant to "apologize for an industry that is polluting," but, rather, to guide the start of that industry. He stated that the language, should it be included as a condition in land leases, gave the Board the authority to require compliance with BMPs. The Chairperson noted that Mr. Frankel raised good points which, perhaps, should be revisited in six months or so, but should not stop the Board from adopting the guidelines today.

Member Inouye stated that she was in support of staff's recommendation, noting that it would provide a test case to improve upon.

Member McCrory stated that approval would be a step in the right direction. She noted that some provisions could be "tightened," and noted her wish to have more community input into the recommendations, and suggested that staff come back within six months with a report and further recommendations.

Member Yuen voiced his concern with the "guideline" nature of the BMPs. He stated that he would feel more comfortable if the term guidelines was removed, and the Board adopted the recommendations as "the Best Management Practices."

Member Inouye requested two conditions added to the recommendations: 1) that an educational program for the general public which includes large landowners be included, and 2) that an annual status report regarding compliance and staff recommendations for changes which would also incorporate public input.

Member Kennison questioned who would have the final say in what is most prudent; Mr. Buck stated that, although he hoped such differences could be worked out in the field, the Board would ultimately make the final determination.

Item C-1 was amended to include Member Inouye's two conditions and Member Yuen's request to delete the term guidelines. Item C-1 was approved as amended (Inouye/McCrory).

ITEM C-2 FINDINGS AND RECOMMENDATIONS/COMMERCIAL ACTIVITIES ON STATE-OWNED AND MANAGED LANDS AND WATERS

Mr. Buck informed the Board that Items C-2 and C-3 were related items. He stated that Item C-2 dealt with broad, general recommendations, and that Item C-3 related to a specific application of the recommendations set out in Item C-2.

Mr. Buck briefly described the request regarding Item C-3 for the Board. He stated that the Na Ala Hele Advisory Group, based on the hierarchy of use outlined in the Recommendations for Commercial Activities, provided a list of trails that the group felt was appropriate for commercial use. He stated that staff then set out the process outlined in Item C-3 to set up a review panel made up of members of the Hawaii Eco-tourism Association, Na Ala Hele, and various other staff, to go out to the public, informing them about the criteria and accepting project proposals. He stated that prospective groups would then be pre-screened for eligibility, with final proposals put out to bid.

Chairperson Wilson shared, with other board members, his knowledge of the background to the subject commercial use policy. He recounted various problems facing the department with regards to unmanaged commercial activities on state facilities/lands; stressed that the proposed policy is meant to gain some management control over commercial activities; and acknowledged that there were, still, many policy questions which needed to be answered.

Member Yuen stated that non-profits who charge incidental fees to cover expenses should not be considered as conducting a commercial activity. Mr. Buck informed members that the policy could be amended to include a provision that exempted non-profit organizations who charge only incidental fees. Chairperson Wilson and Member Matsumoto commented that the activity itself should not be re-defined -- that is, the Board could consider exempting non-profits from certain provisions proposed in the policy, but recognize that the non-profits are still conducting a commercial activity.

Member discussion focussed on the difficulty in separating legitimate non-profits and questionable non-profits within the context of a single provision. Discussion touched upon how to address exemptions for legitimate non-profits; how to fit non-profits into the hierarchy of users.

Discussion on Items C-2 & C-3 was suspended to allow for Member Kennison's report on a site visit to Malaekahana.

MALAEKAHANA (cont.)

Member Kennison reported that the Friends of Malaekahana ("Friends") is "doing a great job" managing the state lands under its control. He stated that the Friends have improved the cabins and offices, installed many new amenities, created new picnic & parking areas, improved security, and created educational opportunities/facilities for the community. Member Kennison concluded that the Friends' long-range vision and plans depend on a long-term commitment by the state for the management of the area.

Member Matsumoto concurred with Member Kennison's observations, however, reminded members that, because the land was originally condemned for "public purposes," it was the department's responsibility to make long-term plans for the public at large. Member Matsumoto stressed that he was not criticizing the Friends or its plans for the area, but, rather, was emphasizing the need for the department to take the lead in planning the future of a public resource.

Ms. Ipolani Tano informed the Board that the Friends wished to work with the department to plan the future of the park, however, due to the lack in funds and personnel, the department was often unable to do so. She testified that many on the improvements needed were essential to the continued operation of the park and could not wait until the state has the funds and manpower to do them. She stated that the Master Plan that the Friends produced had the input of many individuals.

Ms. Verla Moore testified that Friends have already invested both monies and manpower into the Master Plan. She noted that the Friends would like to move forward but could not do so without a long-term lease.

Following a short break, discussion continued on Items C-2 and C-3.

Ms. Annette Kaohelaulii briefly summarized the comments of Tamar Chotzen of the Hawaii Nature Center. The Nature Center supported the need to regulate commercial activities and supported the limits of acceptable change (LAC) approach, but did want to emphasize that it did not consider its activities to be commercial. Ms. Kaohelaulii stated that the non-profit organizations she knew of charged no more than \$5 per person for an "educational or interpretive" hike.

Ms. Kaohelaulii, president of the Hawaii Eco-Tourism Association (HEA) and an owner of a commercial eco-tourism business. Representing the HEA, Ms. Kaohelaulii testified in general support for the policy for commercial activities. She relayed members concerns regarding the need for some

ITEMS C-2 & C-3 (cont.)

flexibility in some of the provisions, the restriction to weekday use only and the proposed fee scale, and requested that an additional use -- traditional Hawaiian activities -- be placed before commercial activities in the hierarchy of uses. (Written testimony submitted.)

Ms. Kaohelauii also relayed comments of Bobbi Milcat(?). Comments included a suggestion for an eco-tourism manual and certification process. In response to Member McCrory comments, Ms. Kaohelauii stated that, should the certification process be put in place, the HEA would eventually require certification for all members. She also stated that the HEA was currently developing standards and guidelines for members to follow.

David Frankel testified that the Sierra Club supported the intent of the policy by requested that four substantive changes be made to the proposed policy:

- 1) add Hawaiian customs, traditions & practices to hierarchy (before general public);
- 2) require that all commercial users perform work on behalf of the environment;
- 3) refine definition of commercial; and
- 4) distinguish non-profit from commercial, and add non-profit to the hierarchy (between public and commercial users)

Member Yuen moved to defer Item C-2 to allow staff to further refine the policy.

Item C-2 was deferred (Yuen/McCrory).

Member Yuen stated that Item C-3 did not, as currently written, adequately address the issue of non-profits. He noted his wish to exempt existing non-profits that charged incidental fees to cover expenses (not greater than \$5 per person).

Member Matsumoto expressed his concern with an amendment exempting non-profits and requested some guidance from legal counsel. Member Yuen seconded the motion for executive session. The meeting resolved into executive session.

Member Inouye moved to amend Item C-3 to delete the requirement that non-profit organizations execute a memorandum of agreement for its continued activity, and add that the resolution of the situation with non-profits be determined in later discussions with staff.

ITEMS C-2 & C-3 (cont.)

Member Yuen seconded the motion with the clarification that existing non-profits which charge incidental fees will not be considered illegal and will not be required to go through the RFP process.

Item C-3 was approved as amended (Inouye/Yuen).

ITEM C-3 APPROVAL OF PROCESS FOR COMMERCIAL HIKING VENTURES ON SELECT PUBLIC TRAILS, DIVISION OF FORESTRY AND WILDLIFE, NA ALA HALLWAY TRAIL AND ACCESS PROGRAM

See Item C-2. ^{MALE}

ITEM J-1 REQUEST PERMISSION TO CONDUCT PUBLIC HEARINGS TO AMEND TITLE 13, CHAPTER 256, HAWAII ADMINISTRATIVE RULES

Mr. Howard Gehring informed the Board that Item J-1 required further review by the Office of the Attorney General and requested deferral.

Member McCrory informed other members that she had requested an opinion from the Ethics Commission regarding her participation in drawing up the proposed rules and her position as president of a company affiliated with companies doing business at Hanalei; she noted that the commission had given a verbal opinion stating that they saw no conflict of interest, and that a written opinion would be forthcoming. No public testimony was presented. ^{voting}

Item J-1 was deferred (McCrory/Yuen).

ITEM J-2 REQUEST PERMISSION TO CONDUCT PUBLIC HEARINGS TO AMEND TITLE 13, CHAPTERS 231 AND 256, HAWAII ADMINISTRATIVE RULES

Mr. Gehring presented the staff submittal.

Deputy Attorney General Pam Matsukawa informed the Board about problems in generating the proposed rules due to several conflicting laws passed by the legislature. She stated that the Office of the Attorney General is still studying the effects that the laws may have on any rules adopted by the Board (especially with regard to thrillcraft permits).

Member Matsumoto recalled a prior incident where the Board was required to adopt certain provisions of a plan because of state law. He inquired as to whether adoption of any provisions of the proposed rules was discretionary, or, whether the Board was required to adopt certain provisions. He further inquired as to which portions of the proposed rules

ITEM J-2 (cont.)

would be affected by the sunset of the enabling legislation (200-39). He noted that it would be helpful, to both the board members and the public, to know which provisions can be altered by the Board and which provisions are mandated by law.

In response to Chairperson Wilson's question regarding the banning of personal recreational watercraft, Ms. Matsukawa stated that a ban was not mandated by law, although such a ban was included in the Kaneohe Bay Master Plan.

Chairperson Wilson provided some background to the proposed rules: Chair Wilson related that there had been "a strong statement by the community" because the department had not implemented the Kaneohe Bay Master Plan as the 1993 state law had required.

In response to Member Inouye's question regarding public input into the proposed rules, Mr. Gehring stated that the Kaneohe Bay Regional Council has been involved in preparing the rules, and that further public input will be received during the public hearing process.

Members and Boating Division staff discussed the provision regarding the banning of personal recreational watercraft (thrillcrafts):

Mr. Thompson stated that the proposed elimination of the thrillcraft riding areas within the bay was included in the proposed rules because it had been a provision of the Kaneohe Bay Master Plan. He concurred that the proposed elimination was controversial and, perhaps, not relevant 5 years after the fact. Mr. Thompson maintained that staff had been advised to include the proposal part of the implementation of the Kaneohe Bay Master Plan, and that the elimination of the proposed ban could be made during the public hearing process without slowing the rule-making process, whereas adding a ban later would require staff to start over. (Ms. Matsukawa stated that elimination of the proposal may still be viewed as a substantive change, and may still require additional review and public hearings).

Mr. Thompson requested the deletion of B(7) (p. 9). B(7) had required that any business sold would become a snorkel-only operation (no thrillcrafts).

Chairperson Wilson stated his inclination to "keep the process moving," even if changes need to be made at a later time.

ITEM J-2 (cont.)

Mr. Joe Pickard, acting-Chair of the Kaneohe Bay Regional Council, testified that the Council had been waiting a long time for the Kaneohe Bay Master Plan to be implemented. He noted two issues regarding commercial activities especially important: imposing limitations on the number of permits for the bay, and the ultimate transition of the bay from active to passive recreation. Mr. Pickard stated that the Council was requesting deferral of Item J-1 until it is determined whether the rules would still be applicable following the sunset of 200-39. He noted that 200-37, the law that goes into effect following the expiration of 200-39, seems to allow commercial thrillcraft activity for an additional 10 years. He stated that, if it is inevitable that changes (away from the Master Plan) would be made during the public hearing process, then the Board should just let 200-39 sunset and 200-37 take effect instead of spending valuable time and money on the public hearing process. (Written testimony submitted).

Chairperson Wilson inquired as to what the Council's position would be if the rules would continue to be effective following the sunset of 200-39; Mr. Pickard responded that, if the mandated transition from active to passive recreation (ie. the provision which required reversion to a snorkel-only operation following a sale) remained a part of the rules, the Council would support its adoption.

In response to a question by Member Inouye, Mr. Pickard stated that the Council deferred making a recommendation regarding recreational thrillcraft use within the bay.

Ms. Matsukawa stated that the provision which required the reversion to a snorkel-only operation following sale would have been questionable when the change in laws (from 200-39 to 200-37) was effectuated. Discussion revealed that, if the Master Plan had been adopted in 1992, 200-37 would not have had any effect (In essence, there would not have been any "active" commercial recreation remaining in Kaneohe Bay).

Mr. James Dale testified in opposition to the proposed ban on personal recreational watercraft. Mr. Dale stated the bay was large enough to accommodate all users and that personal watercraft should not be singled out for restriction.

Mr. Nick Lohr testified in opposition to the provisions of the proposed rules. Mr. Lohr stated that much of the rules did not reflect the needs or wants of users of the bay today, and that the Kaneohe Bay Regional Council was not representative of the Bay community. He acknowledged the need for the protection of the resources of the bay, but stated that the public should be allowed to enjoy that resource. He further

ITEM J-2 (cont.)

stated that the general personal watercraft users were not alerted earlier to the proposed rules, and therefore, were not given the opportunity for input. He further testified that, in order to improve safety, areas for jet skis should be expanded rather than eliminated. (Written testimony submitted).

Chairperson Wilson noted the difficulty in opening up additional jet ski areas without adequate enforcement personnel.

Mr. Dennis McCann testified that he had been active with the Kaneohe Bay Regional Council. He stated that the Council was receptive to the concerns of the community and had, in fact, voted to address only commercial thrillcraft activity. Mr. McCann testified that it had come as a surprise to most of the community that the Boating Division had included the ban on personal recreational watercraft activity. He stated that the reasons put forth by the Boating Division for including the ban had been addressed and settled at the Council level. (Written testimony submitted).

Chairperson Wilson stated that the Board was not adopting the rules but, rather, sending the rules out for public hearing so that more public input could be gathered. He emphasized that the Department was mandated by laws to try and implement the provisions of the Master Plan within a certain time frame, and put forth the proposed rules in an attempt to do so. He further emphasized that the provisions of the Master Plan (which were part of the proposed rules) that were deemed no longer relevant could be changed during the process.

Mr. Henry Czajkowski testified that if lack of enforcement personnel and safety was the primary concern for banning the personal watercraft, the watercraft users could assist in safety enforcement in much the same manner as volunteer firemen help the fire department and neighborhood watches help the police department. He stated that there was no valid reason to close off areas to personal watercraft users. (Written testimony submitted).

Mr. Ron Darby, Kaneohe Bay Regional Council, testified that the provisions regarding speed limits in the Master Plan had been omitted from the proposed rules and should be included.

Mr. Randy Clarke testified in opposition to the ban on personal watercraft. He stated that the rules for Kaneohe may have state-wide ramifications.

ITEM J-2 (cont.)

Mr. John Reppun concurred with the testimony given by Mr. Joe Pickard. Mr. Reppun stated that every permit sold following the passage of Act 317 (the law which stated that all permits be transferred within one year) should have required the change to snorkel-only. He therefore stated that the department has every right, now, to change those permits which had been transferred to snorkel-only, and should do so. He noted that personal watercraft in the bay is a manageable issue that can be dealt with by the users of the bay.

In response to Member McCrory's question, Mr. Reppun stated that provisions of the Master Plan has been, and could be, written into the permits.

Ms. Jewell Tuitele testified in opposition to the ban on personal watercraft. She stated that, although everyone acknowledges that recreational users are not the "big problem," they are the ones who are on the "chopping block." Ms. Tuitele stated that it was the feeling of recreational users like herself that the public hearing process will not offer a fair opportunity for the users to address the issue.

Mr. Joe McCann, Windward Watersport Center requested that the ban on personal watercraft be deleted.

In response to Chairperson Wilson's question regarding deleting the ban on personal watercraft, Mr. Pickard stated that the Council would be willing to work within the community to find an acceptable solution for all parties.

In response to Chairperson Wilson's question regarding the deletion of B(7) (p. 9), Ms. Matsukawa stated that it was the conclusion of the Attorney General's Office that the provision cannot be included and still comply with 200-39 and 200-37. Members and Messrs. Pickard and Reppun discussed alternate means to deal with the permits and the Master Plan provision to move to snorkel-only commercial operations. Mr. Pickard conceded that, given the fact that 200-37 would prevail if not legislatively amended, would be to delete b(7) and go back to the legislature and amend the law.

Member Matsumoto moved to approve Item J-2 with the following amendments:

- 1) that the provision banning personal recreational watercraft be deleted from the proposed rules; and
- 2) that paragraph B(7) be deleted.

Item J-2 was approved as amended (Matsumoto/McCrory).

ITEM K-1 RIGHT-OF-ENTRY, KAHULUI AIRPORT, MAUI (UNITED STATES POSTAL SERVICE)

Mr. Peter Garcia presented DOT's submittal.
No public testimony was presented.

Item K-1 was approved as submitted (Matsumoto/McCrory).

ITEM K-2 SALE OF LEASE FOR STORAGE AND DISTRIBUTION OF BULK CEMENT BY PUBLIC AUCTION, PIERS 33-34, HONOLULU HARBOR, OAHU

In response to Member Matsumoto's question, Mr. Garcia stated that the use for the area would not change.
No public testimony was presented.

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

ITEM K-3 AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO CONVEY THE REAL PROPERTY INTEREST OF HILO BAYFRONT HIGHWAY BEACH PARK ADDITION, STATE HIGHWAY SYSTEM AGREEMENT SUPPLEMENT NO. 12, HILO, ISLANDS OF HAWAII (COUNTY OF HAWAII)

No public testimony was presented.

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

ITEM D-4 REQUEST TO AMEND BOARD'S ACTION OF SEPTEMBER 13, 1996, APPROVING REQUEST FOR THE ISSUANCE OF A REVOCABLE PERMIT AND AN IMMEDIATE RIGHT OF ENTRY, ISSUED TO BETTY DORRIS AND STEPHEN DORRIS, ON GOVERNMENT LANDS IDENTIFIED AS TMK: 2-9-03: 08, HONOPOU-HOOLAWA, HAMAKUALOA, MAKAWAO, MAUI

No public testimony was presented.

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

ITEM D-5 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 3-9W-I2, KUALAPUU RESERVOIR SECURITY FENCING, KUALAPUU, MOLOKAI, HAWAII

No public testimony was presented.

Item D-5 was approved as submitted (Kennison/Matsumoto).

ITEM D-6 CONSENT TO SUBLEASE BETWEEN MID PACIFIC FLORAL EXCHANGE, INC., AS SUBLESSOR AND PUNA CERTIFIED NURSERY, INCORPORATED, AS SUBLESSEE SITUATE AT WAIAKEA, HAWAII, TMK: 3RD/2-4-49: 32

No public testimony was presented.

Item D-6 was approved as submitted (Matsumoto/Kennison).

ITEM D-7 CONSENT TO MORTGAGES AND ASSIGNMENT OF MORTGAGES, GENERAL LEASE NOS. S-5130, S-5133, S-5134, S-5137, S-5140, S-5147, PHASE II, MILOLII-HOOPULOA HOUSELOTS, HOOPULOA, SOUTH KONA, HAWAII, TMKS: 8-9-14: 16, 19, 20, 23, 26 & 33, RESPECTIVELY

Mr. Uchida requested that Item D-7 be withdrawn.
No public testimony was presented.

Item D-7 was withdrawn (Matsumoto/Kennison).

ITEM D-8 REQUEST BOARD APPROVAL FOR: (1) LEASE SURRENDER HIGH TECHNOLOGY DEVELOPMENT CORP. TO DEPARTMENT OF LAND AND NATURAL RESOURCES, GENERAL LEASE NO. S-4407, (2) PUBLIC AUCTION FOR SALE OF COMMERCIAL LEASE, PIERCO PIER, (3) INTERIM REVOCABLE PERMITS TO THE HAWAII UNDERSEA RESEARCH LABORATORY, MAKAI OCEAN ENGINEERING, INC., AND SEA ENGINEERING, INC., PIERCO PIER, WAIMANALO, OAHU, TMK: 4-1-14: 14

Mr. Reb Bellinger, Makai Ocean Engineering, requested deferral of Item D-8. Mr. Bellinger testified that Makai Ocean Engineering had been unaware that the item was being brought before the Board at this meeting. He further stated that approval would put a "tremendous crimp into a...key marineresearch facility..." Mr. Bellinger stated that the three organizations currently working out of the pier provide some of the best marine research in the country, and that putting the pier out to bid would destroy the marine research potential of the pier.

Member Matsumoto moved to defer Item D-8 for further investigation.

Item D-8 was deferred (Matsumoto/Kennison).

ITEM D-10 CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS (HANA DISTRICT)

No public testimony was presented.

Item D-10 was approved as submitted (Matsumoto/McCrory).

ITEM D-12 RESUBMITTAL - AFTER-THE-FACT REQUEST FOR NON-EXCLUSIVE EASEMENTS FOR GAS AND PETROLEUM PRODUCTS TRANSMISSION PIPELINES, AND AMENDMENT TO PRIOR BOARD ACTION OF SEPTEMBER 14, 1973 (AGENDA ITEM F-20), PUBLIC AUCTION SALE - NON-EXCLUSIVE EASEMENT, AIEA, EWA, OAHU, TMKS: 9-9-03: POR. 35; 9-9-04: POR. 3 AND 24; 9-9-12: POR. 5, 46 AND 47

No public testimony was presented.

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

ITEM D-13 RESUBMITTAL--SET ASIDE TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES, LAND DIVISION FOR INDUSTRIAL PARK AND BUSINESS PURPOSES ON GOVERNMENT LANDS SITUATE AT SAND ISLAND, HONOLULU, OAHU, TMK: 1-5-41: 22


No public testimony was presented.

Item D-13 was approved as submitted (Matsumoto/Kennison).


There being no further business, Chairperson Wilson adjourned the meeting at 5:30 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.

Transcribed and submitted,


Gail Y. Murayama

Approved for submittal:


MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources