

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

DATE: November 20, 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 9:15 a.m. The following were in attendance:

MEMBERS:

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

STAFF:

Mr. Dean Uchida, Land	Mr. Dave Eckert, DAR
Mr. Jim Schoocraft, DOBOR	Mr. Sam Lemmo, Land
Mr. Steve Thompson, DOBOR	

OTHERS:

Ms. Dawn Chang, Esq. Deputy Attorney General	Mr. Peter Garcia, State Department of Transportation
Mr. Gerald DeMello, UH, D-10	Ms. Sheryl Nicholson, Esq., D-40
Ms. Carla Hardinger, D-40	Mr. Dale Hardinger, D-40
Ms. Nickie Hines, D-40	Mr. Patrick Miyahira, DPW, Maui County
Mr. Quirino Antonio, Dep. Manager, DWS, Hawaii County	Mr. George Yokoyama, Exec. Dir., HCEOC, D-35
Ms. Diane Stanley, D-24	Mr. Bob Smolenski Esq., D-33
Mr. George Yoshida, Director, DPR, Hawaii County	Mr. Alfred Galimba, applicant, D-30
Mr. Ken Melrose, Esq., D-22	Mr. Doug Arnott, Mauna Activities Assn., D-18
Mr. Stanley Randolph, applicant,	Mr. Harold Edwards, Molokai Ranch, D-39
Mr. Ron Koehler, Mauna Kea Support System, D-18	Mr. Joe Pickard, J-1
Ms. Hattie Santos, applicant, D-13	Mr. Vince Morita, J-1
Ms. Amy Luerson, J-1	Mr. John Reppun, J-1
Mr. David Frankel, J-1	Mr. Carl _____, D-27
Mr. Peter Nottage, J-1	Mr. Wayne Nasser, D-28
Mr. Joe Ryan, D-27	Ms. Amy Esaki, attorney, Kauai County, D-25
Mr. Joe Correia, D-27	Dr. Chip Fletcher, D-29
Mr. Cesar Portugal, Engineer, Kauai County, D-25	
Mr. _____, Kauai County, D-25	

Business:

Motion was made to add Item B-1 to the agenda; the motion was unanimously approved (Kennison/Yuen).

ITEM A-1 Approval of the minutes of July 12, 1996:

The minutes of July 12, 1996 were unanimously approved as submitted (Yuen/McCrory).

ITEM D-10 SET ASIDE TO THE UNIVERSITY OF HAWAII FOR U.S.-CHINA EDUCATIONAL CENTER AT WAIAKEA, HAWAII, TMK: 2-4-1-5

Mr. Dean Uchida presented the staff submittal.

Mr. Gerald DeMello testified that the University was basically seeking control over the site at Waiakea. He stated that, should the present negotiations for the U.S.-China Educational Center not be realized, the University would still like to use the site for other options.

Member Yuen inquired as to whether the Board could amend the purpose of the set-aside to allow the University the flexibility for options other than the U.S.-China Educational Center. Mr. Uchida noted that, under the State Constitution, a set-aside to the University of Hawaii was essentially a conveyance in fee.

Member Yuen moved to amend the purpose to limit the uses to "general university purposes, student housing and campus-related commercial purposes (exact language to be determined by the Attorney General's Office)."

Item D-10 was approved as amended (Yuen/McCrory).

ITEM D-40 REQUEST AN ISSUANCE OF A REVOCABLE PERMIT TO DALE HARDINGER AND CARLA HARDINGER FOR PASTURE PURPOSES ON GOVERNMENT LAND SITUATE AT WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-018: 49 AND REQUEST FOR WAIVER OF RENT, GENERAL LEASE NO. S-5353, WAIMANALO, OAHU, TMK: 4-1-08: 76

Mr. Uchida informed the Board that the subject submittal was an attempt to resolve a long-standing issue.

Ms. Sheryl Nicholson, attorney representing the Hardingers, relayed the Hardinger's concern regarding the limitation of two years on the revocable permit (RP). She stated that the Hardingers are giving up a long-term lease (35 yrs with 31 yrs remaining) and had expected an even "swap." She stated that the Hardingers were willing to "live with" the RP as the only

ITEM D-40 (cont.)

workable solution available to staff, but requested a year-to-year permit with no term limit. She stated that the Hardingers further requested that the requirement to sell their lease within one year be deleted.

Chairperson Wilson explained that certain provisions of an RP were determined by law and certain actions were not within the Board's discretion. He stated that an RP, by definition, was a short-term arrangement and any action by the Board that gave the indication that an arrangement was not short-term could not be allowed.

Ms. Carla Hardinger testified that she and her husband had always acted "in good faith" regarding their lease. She stated that the State had not afforded them the quiet enjoyment that they had been entitled to under their lease. Ms. Hardinger voiced several concerns, including: 1) that there be no "cap" on the term of the RP; 2) that staff's determination of the credit for the unusable portion of their lease was short by \$660.

Mr. Dale Hardinger informed the Board about the danger posed to his family at the current lease site. He acknowledged that, for their safety, his family needed to be moved from their current site but felt that, because he was giving up a long-term lease, a term limit should not be placed on the RP. He also requested that the Board consider lowering his lease rent (for the current leased land) to a rent comparable to the neighboring lessee.

Members and the Chair noted that the proposed resolution did not seem to provide the Hardingers with what they wanted. Members acknowledged, however, that the Board's hands were "tied" by the law.

Ms. Nickie Hines testified in favor of somehow granting the Hardingers a "swap" in lease lands.

The Board deferred Item D-40 until later in the agenda to allow staff, the Hardingers and their attorney to try and work out an acceptable resolution.

The Board resumed discussion on Item D-40 following Item D-24.

Ms. Nicholson informed the Board that the Hardingers were acceptable to the two-year condition as stated in condition 19 of the staff recommendation. Ms. Nicholson relayed that the Hardingers further requested that the clock begin congruently with the execution of the permit, but that the Board authorize a right-of-entry commencing December 1, 1997.

ITEM D-40 (cont.)

Mr. Uchida noted staff's concern about tying the start of the two-year time period to the execution of the permit; he stated that, if execution does not take place in a timely manner, the two-year countdown may be put off indefinitely. Chairperson Wilson suggested that the two-year time clock begin "three months from the date of this Board meeting." Ms. Nicholson acknowledged that the arrangement is acceptable to the Hardingers.

In response to the Hardinger's request to reconsider the amount waived for the unusable portion of their lease land, the Board directed staff to re-evaluate the calculations and authorized the Chairperson to approve the amount.

The Board therefore amended the staff recommendations by:

1. Deleting condition 18 (requiring the Hardingers to sell their existing lease within a year);
2. Commencing the two year time period for public auction on February 20, 1998 (30 days from the date of the Board meeting); and
3. Authorizing a construction right-of-entry effective December 1, 1997.

Item D-40 was approved as amended (Yuen/Kennison).

ITEM D-17 REQUEST FOR PARTIAL WITHDRAWAL OF LAND UNDER EXECUTIVE ORDER NO. 2823 WITH THE DEPARTMENT OF EDUCATION, CANCELLATION OF EXECUTIVE ORDER NO. 3025 WITH THE COUNTY OF MAUI, AND ISSUANCE OF A QUIT CLAIM DEED FOR SUBJECT LANDS TO THE COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS, TMK: 2-2-02: PORTION 43, PORTION OF KULA, MAKAWAO, MAUI

Mr. Uchida presented the staff submittal.

Mr. Patrick Miyahira, Department of Public Works, County of Maui, requested the addition of a construction right-of-entry.

Member Kennison moved to amend Item D-17 to allow for a construction right-of-entry.

Item D-17 was approved as amended (Kennison/McCrory).

ITEM D-23 REQUEST FOR PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, PIIHONUA, SOUTH HILO, HAWAII, TMK: 3RD/2-5-09: 02, 03 & 04

Mr. Uchida requested the deletion of the one time charge (easement is to another government agency).

Mr. Quirino Antonio, Deputy Manager, Department of Water Supply, County of Hawaii, was present to answer questions.

Item D-23 was approved as amended (Yuen/Kennison).

ITEM D-35 AMEND THE CHARACTER OF USE OF GENERAL LEASE #S-5385, SITUATE AT WAIAKEA, HAWAII, TMK: (3) 2-3-32-4

The Board amended recommendation A to read as follows:

- A. Consent to the change in the Character of use to read as follows: Solely for the construction, maintenance and use of a Human Services Complex for programs to prevent, alleviate and eliminate poverty in the State of Hawaii, and an open market for the sale of products produced through the HCEOC programs.

Mr. George Yokoyama, Executive Director, HCEOC, requested the Board's support of HCEOC's work by approving the subject submittal.

In response to Member McCrory's question regarding what the Council was seeking to sell, Mr. Yokoyama stated that the Council would be selling produce from its agricultural project, miscellaneous furniture from its carpentry project, miscellaneous food items from the kitchen and honey products from its bee-keeping operations.

In response to Member Yuen's question regarding the placement of the open market, Mr. Yokoyama stated that the market would be situated fronting the HCEOC facilities.

Item D-35 was approved as amended (Yuen/McCrory).

ITEM D-24 CONSERVATION DISTRICT USE APPLICATION (HA-2864) FOR ORGANIC AGRICULTURE AT PIIHONUA, SOUTH HILO, HAWAII, TMK: (3) 2-3-20: 7

In response to Member McCrory's question regarding the groups participating in the project, Ms. Diane Stanley stated that the organization included several non-profits and various community groups working with school children.

ITEM D-24 (cont.)

Ms. Stanley further testified that the project was basically an educational endeavor -- none of the produce would be sold.

Item D-24 was approved as amended (Yuen/Kennison).

ITEM D-4 COUNTY OF HAWAII REQUEST FOR SET ASIDE OF STATE LAND FOR ADDITION TO HOOLULU PARK IN WAIAKEA, SOUTH HILO, ISLAND OF HAWAII, TMK: 3RD/2-2-32: 82

Mr. George Yoshida, Director of Parks and Recreation, Hawaii County was present to answer any questions.

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

ITEM D-30 AMEND THE RESIDENTIAL USE AND HUNTING RESTRICTION OF GENERAL LEASE #S-5532, KAU, HAWAII, TMK: (3) 9-5-15

Mr. Uchida highlighted the applicant's (Mr. Alfred Galimba) two major concerns: the prohibition of a residential structure and the prohibition of hunting as a means of pest control.

Mr. Alfred Galimba informed the Board that a dairy is eventually slated to sit at the site. He noted that, within the last month, his company has had fences cut and lost two heads of cattle valued at approximately \$1,200 each. Mr. Galimba informed members that part of the problem lies with the easement granted to the Division of Forestry and Wildlife for public access to the forest reserve. He stated that, because DOFAW has not yet fenced off the access easement, people often trespass on and over his land.

In response to Member Yuen's questions regarding the proposed dairy operation, Mr. Galimba stated that he would eventually like to have 25 employees, 1,800 head of cattle, and an area to grow supplemental feed. He noted that, once operating, he would like to come back to the Board to request additional housing for employees.

Member Yuen noted that, on the Big Island, it is reasonable to allow a single residential unit on the agricultural lot for convenience and security purposes.

Item D-30 was approved as submitted (Yuen/Kennison).

ITEM D-22 REQUEST AUTHORIZATION TO ACCEPT THE DONATION OF 0.0127 ACRE, MORE OF LESS, OF LAND SITUATE AT SOUTH KONA, HAWAII; TMK: 3RD/8-1-04: PORTION OF 36, FROM JAMES E. MITCHELL TRUST, AND SUBSEQUENT SET ASIDE TO DEPARTMENT OF EDUCATION FOR THE NEW KONAWAENA ELEMENTARY SCHOOL AND, REQUEST AUTHORIZATION TO GRANT EASEMENT TO JACK B. GREENWELL TRUST, AT TMK: 3RD/8-1-04: 45, FOR DRIVEWAY USE, AND AUTHORIZATION TO GRANT EASEMENT TO JAMES E. MITCHELL TRUST, AT TMK: 3RD/8-1-04: 36, FOR DRIVEWAY AND UTILITY USE, SOUTH KONA, HAWAII

Mr. Ken Melrose informed the Board that the Mitchell family has requested (from DAGS and DOE), and would like to request (from DLNR), an additional easement bordering the access driveway easement for landscaping purposes. Mr. Uchida stated that, since staff had not been aware of the request earlier, the issue be dealt with at a future Board meeting.

Item D-22 was approved as submitted (Yuen/McCrory).

ITEM D-33 REQUEST TO WAIVE IMPROVEMENT BOND FOR GENERAL LEASE #S-5265, HUMUULA, HAWAII, TMK: (3) 3-8-1-PORION 1

Mr. Bob Smolenski, attorney for King Broadcasting, was present to answer questions.

Item D-33 was approved as submitted (Yuen/Kennison).

ITEM D-2 REQUEST FOR DIRECT ISSUANCE OF LAND LICENSES TO HAWAIIAN CEMENT CO. AND AMERON MAUI HAWAII FOR MINING AND SALE OF CINDER FROM THE OLOWALU CINDER PIT AND STAFF REQUEST TO WITHDRAW PARTIAL LAND FROM EXECUTIVE ORDER NO.2972 WITH THE COUNTY OF MAUI FOR INCLUSION IN THE LAND LICENSE, TMK: 4-8-03: 09 AND PORTION 39, OLOWALU, MAUI

No public testimony was presented.

Mr. Uchida requested that Item D-2 be deferred to allow staff further analysis. He noted that a time constraint exists, and that staff plans to bring the item back to the Board at the next meeting.

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

ITEM D-38 DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO STANLEY RANDOLPH FOR ACCESS AND UTILITY PURPOSES AT WAIAKEA, HAWAII, TMK: (3) 2-4-1-PORION OF 24

Member Yuen noted that the Corporation Counsel for the county of Hawaii was in agreement with the state but unable to get the county's Department of Public Works to adhere to his opinion.

Mr. Stanley Randolph gave a brief background of his predicament, and requested the Board's approval to legalize his access.

Item D-38 was approved as submitted (Yuen/McCrory).

ITEM D-18 RENEWAL OF MAUNA KEA COMMERCIAL PERMITS, KAHOE, HAWAII, TMK: (3) 4-4-15-9 AND -12

Mr. Uchida gave members a brief history of the permits and commercial activities on Mauna Kea. Mr. Uchida informed the Board that the Department currently issues 9 permits for Mauna Kea. He acknowledged that, because only 9 permits are given out, illegal businesses are operating on the mountain and enforcement is difficult. Mr. Uchida also stated that present method of calculating the monthly rent (\$15.00/month + 2% of the monthly gross proceeds) was cumbersome and difficult to monitor.

Staff therefore recommended that the Board 1) authorize the renewal of the 9 current permits; 2) lift the limit of 9 permits; 3) change the monthly rents to reflect a \$50.00/month + \$2.00/customer charge.

In response to Member McCrory's question regarding the number of illegal businesses operating on the mountain, Mr. Uchida stated that, currently, staff had no way of monitoring the illegal operators. Member McCrory also inquired as to whether he knew the number of additional operators were interested in permits and if the Association acquired the necessary performance bond; Mr. Uchida replied that he would need to check with staff.

Mr. Doug Arnott, Secretary of the Mauna Kea Activities Association, distributed a letter from the president of the Association. Mr. Arnott testified that he has witnessed very few illegal operators, if at all. He further stated that snow is not a major "draw" -- that most people visit the mountain for scientific, environmental and cultural reasons. Mr. Arnott requested that the Board consider a "sub-class" of permits for operators who wish to go only as far as the Ellison Onizuka Center/ Hale Pohaku. He further requested that the Board consider a permit longer than one year.

ITEM D-18 (cont.)

In response to Member McCrory's question regarding the performance bond, Mr. Arnott stated that the prior permits had expired before the association was formed, and once the permits were re-issued the association would have no trouble putting up the bond.

In response to Member Yuen's question regarding the number of active permittees, Mr. Ron Koehler, Mauna Kea Support Services, stated that, currently, two permittees are winter/snow based operations, 3 or 4 are regularly active and 3 are inactive. Mr. Koehler further responded that approximately 300 people currently visit the summit; considerably more go as far as Hale Pohaku.

Member Yuen noted that all commercial permits issued by the department were for operations above Hale Pohaku, however, according to the conditions of the original permit, companies bringing people to Hale Pohaku should need permits also. Member Yuen inquired if Mr. Koehler felt these companies were operating illegally; Mr. Koehler responded that, in his opinion, the businesses were operating illegally.

Member McCrory noted her discomfort with the staff provision denying any company not in "good standing" with DOCARE. Mr. Uchida stated that the provision could be amended to include only those businesses with "outstanding or ongoing" violations.

Mr. Uchida stated that he would need to re-examine the management plan to see if DLNR's permit authority extended to the Hale Pohaku area (or only the summit area).

Member Yuen stated that, when the management plan was under consideration, it was the intent of the drafters not to let the mountain be over-commercialized. He noted, however, that the summit was being used far less than envisioned and, therefore, saw no harm in extending the number of permits to twelve.

The Board also required that any non-ski operator who pays only the minimum rent for three consecutive months be automatically terminated.

Member McCrory requested that staff look into requiring some educational component to the conditions of the permit.

Item D-18 was approved as amended (Yuen/McCrory).

ITEM D-39 ENFORCEMENT FOLLOW-UP/CONDITION COMPLIANCE: MOLOKAI RANCH

Mr. Harold Edwards, Molokai Ranch, stated that many of the problems/violations occurred much earlier, and assured the Board that the Ranch would try to avoid any similar situations in the future.

Item D-39 was approved as submitted (Kennison/Yuen).

ITEM D-13 CONSENT TO THE ASSIGNMENT OF GENERAL LEASE #S-5434, KIKALA AND KEOKEA, HAWAII, TMK: (3) 1-2-7-PORITION 2

Ms. Hattie Santos testified that she could not afford to construct a new home and care for the one-acre parcel.

Item D-13 was approved as submitted (Yuen/McCrory).

ITEM D-11 ISSUANCE OF REVOCABLE PERMIT TO ST. THERESA'S CHURCH, PORTION OF KEKAHA HOUSE LOTS, KEKAHA, WAIMEA, KAUAI (TMK: 1-3-4: 54) AND KEKAHA BEACH HOMES SUBDIVISION, BLK. 3, KEKAHA, WAIMEA, KAUAI (TMK: 1-3-11: 1)

Mr. Uchida informed members that the issue had been brought to the Board earlier as a proposed long term lease. He stated that the Board had deferred action to study the appropriateness of issuing a lease to the church; the matter, he said, was turned over to the Attorney General's Office. He stated that, on an interim basis, a revocable permit be issued to the church.

Item D-11 was approved as submitted (McCrory/Kennison).

ITEM B-1 REQUEST FOR APPROVAL TO AMEND AN AGREEMENT BETWEEN THE BOARD OF LAND AND NATURAL RESOURCES (BLNR) AND THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII

Mr. Dave Eckert presented the staff submittal.

In response to Member McCrory's questions, Mr. Eckert stated that the Division would attempt the stocking program at Hanalei Bay on Kauai.

Item B-1 was approved as submitted (Yuen/McCrory).

ITEM J-1 REQUEST PERMISSION TO EXTEND TO COMMERCIAL PERMITS FOR SIX MONTHS FOR THE CURRENT OPERATORS IN KANEOHE BAY

Mr. Jim Schoocraft present the staff submittal.

Mr. David Frankel testified that "there is substantial concern about extending these permits..." He stated that several issues, including Kualoa Ranch's use of lands possibly owned by the state (accreted lands) without an environmental assessment, should be addressed before approval is given. Mr. Frankel further testified that the department should thoroughly investigate all negative impacts to the resources before issuing the permits. Mr. Frankel stated that, if the Board needed to extend the permits today, a one or two month permits should be given.

In response the Chairperson Wilson's question regarding consultation with Aquatic Resources staff, Mr. Frankel stated that he was not as familiar with the situation as [Mr. John Reppun], and had not discussed matters with Aquatics staff.

Chairperson Wilson inquired of Mr. Uchida whether Land Division staff was familiar with the accreted land ownership question. Mr. Uchida replied that staff was currently looking into the ownership question.

Chairperson Wilson stated that, if the Attorney General's Office determines that the lands being used by Kualoa Ranch is accreted lands belonging to the state, the department would check to see if Chapter 343, HRS, was applicable. With regards to the negative environmental impacts, Chairperson Wilson stated that he has not heard from Aquatics staff of any problems with the resources.

Ms. Amy Luerson expressed her concern with the lack of monitoring of the boating activities within Kaneohe Bay and stated that the permits include a condition for monitoring. Ms. Luerson stated that Kualoa Ranch operated off of two separate areas: off the sugar mill and across Miolii Fishpond (referred to as White Sands). She asserted that the abstract indicates the area referred to as White Sands is accreted lands belonging to the state and impacts should be looked at closely before a permit is issued.

Mr. Peter Nottage testified that the permits should not be issued before an assessment of the impacts is done. Photographs showing a landed outrigger canoe and volleyball players on the reef were distributed. Mr. Nottage stated that he has been told that the reef is regularly "raked" to allow volleyball play. Mr. Nottage also read a message from

ITEM J-1 (cont.)

Professor George Losey, U.H. Marine Biology, reporting on an unauthorized mooring anchor installed in a "no commercial activity," and turtle cleaning area.

Chairperson Wilson questioned Aquatic Resources and Boating staff about their knowledge of the "raking" and the unauthorized moorings. Mr. Eckert (DAR) stated that he had no personal knowledge of the rakings but that staff would be investigating. Mr. Thompson (BOR) stated that he had heard of the "rakings" at a Kaneohe Bay Regional Council meeting but had no personal knowledge. Mr. Thompson acknowledged that the mooring anchors were installed without the Boating Division's authorization but that the anchors were within the commercial zone and allowed to be left in place.

Chairperson Wilson stated that the department needs a better system to monitor the bay. He noted that concerns from the scientific community about unauthorized moorings should be responded to in a "significant" manner by the department.

Mr. Joe Pickard testified in support of the staff recommendation.

Mr. Vince Morita, testified regarding the use of the moorings by commercial boaters. He stated that, because of the "soft, mud bottom," it is not safe to drop anchor in many of the areas.

Chairperson Wilson suggested that a condition be added requiring that commercial operators be part of a group -- along with the Kaneohe Bay Regional Council and the DLNR -- participating in a monitoring program for the bay.

Item J-1 was approved as amended (Yuen/McCrory).

Members requested that staff investigate the concern voiced by Professor Losey regarding the turtle cleaning area.

NOTE: Following the vote on Item D-27, Mr. John Reppun requested that the Board accept his late written testimony for the record (The Board accepted the testimony for the record). Mr. Reppun further requested a contested case hearing on the Board's approval of the permit for the Kualoa snorkeling operation.

ITEM D-27 ASSIGNMENT AND MORTGAGE OF GENERAL LEASE NOS. S-4101,
WAIMANALO, OAHU; AND S-4662, WAIAKEA, HAWAII, TMKS: 4-1-
08: 80 AND 2-1-12: 25, RESPECTIVELY

Mr. Uchida stated that the issue of the assignment had come before the Board earlier; the Board had decided to wait for an opinion from the Attorney General's Office regarding the sublease to Unisyn and a determination of any public health violations before consenting to the assignment. Mr. Uchida informed the Board that the Attorney General's Office had determined that the sublease to Unisyn had been automatically extended at the time the Board approved the extension for the master lease.

Chairperson Wilson and Mr. Uchida discussed whether the Board could act on the assignment if a violation has taken place; Mr. Uchida stated that staff does not process if a violation has occurred, however, he noted that the department could not "unreasonably" withhold consent.

Mr. Joe Ryan, Waimanalo resident, testified in opposition to the assignment of general lease S-4101 (the lease which includes the Unisyn sublease). Mr. Ryan commented on his understanding that, at the earlier meeting, the Board deferred action on the assignment until it could determine whether it could "morally, legally, and ethically transfer a nuisance;" he noted that that particular question had not been put forth to the Attorney General's Office.

In response to Chairperson Wilson's question regarding the position of the Waimanalo Neighborhood Board, Mr. Ryan stated that the Neighborhood Board, in January, voted to "work with the State and the City to seek ways to move Unisyn out of Waimanalo."

Mr. Carl _____ (unintelligible), representing Southern Foods Group, was present to answer questions. In response to Chairperson Wilson's question, Mr. _____ stated that Southern Foods was fully aware of the situation with Unisyn and the lawsuit filed by Mr. Ryan, however, noted that the Waimanalo transfer was only a small part of a large transaction between the two companies. Mr. _____ stated that, should the assignment be approved, Southern Foods would take full responsibility, and any liability, carried by Borden.

Mr. Joe Correia, Waimanalo resident, testified to the odors, noise emanating from the Unisyn operation. However, he noted that Unisyn is helping to form a citizen's advisory group to help deal with the problems/impacts on the community. He stated that it would be helpful to the community to know whether Unisyn is in violation of the lease and should be

ITEM D-18 (cont.)

moved out, or whether the community should continue working with the company to address nuisance issues.

Chairperson Wilson noted that the Board would not forfeit any legal rights to address any possible violations by assigning the master lease.

Item D-27 was approved as submitted (Kennison/Yuen).

ITEM D-28 REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES OVER GOVERNMENT LAND SITUATE WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-010: 17

Mr. Wayne Nasser, representing the applicant, stated that the approval would "clean-up" title.

Item D-28 was approved as submitted (Yuen/Kennison).

ITEM D-25 CONSERVATION DISTRICT USE APPLICATION - TEMPORARY VARIANCE (KA-TV-97-2) FOR THE STORAGE AND PROCESSING OF ABANDONED VEHICLES, AT AHUKINI, LIHUE, KAUAI, TMK: 3-7-02: 1 (POR.)

Mr. Uchida informed board members that the County was requesting to "re-activate" a wrecking yard on the airport's property. Mr. Uchida stated that staff has concluded that no natural resource value exists on the site, and noted that a lot of debris -- batteries, auto parts, car frames, etc. -- was strewn across the parcel. Mr. Uchida informed the Board that the county's request qualified for a temporary variance because of the public health and safety reasons. He requested, however, that a one year time limit be placed on the permit, and that DOT is alerted to the fact that the parcel will need to be cleaned up once the county vacates the area.

In response to Member Yuen's question regarding the prior auto salvage/processing uses, Mr. Uchida stated that staff's talks with DOT revealed that DOT had been unaware that the parcel was in the conservation zone, and that no prior permits had been issued. Member Yuen noted, however, that, even if the land had been zoned agriculture at the time of the original salvage operation, some kind of permit would have been required.

Chairperson Wilson stated that DOT should be alerted to the scope of clean-up that would be needed; Mr. Uchida stated that DOT was aware of the situation and would be working up an "occupancy agreement" with the county which would include provision for clean-up.

ITEM D-25 (cont.)

Member Yuen noted that when the temporary variance was approved for the golf course site, he had stated that, according to the rules, a finding by the Board is necessary for all temporary variances. He requested that the recommendations include a section stating, "...the Board finds that the (4) criteria for a temporary variance has been met..."

Members discussed whether the proposed use was consistent with the general conservation subzone. Chair Wilson noted that all of the criteria needs to be met before the Board can grant a temporary variance.

Mr. Cesar Portugal, Kauai County Engineer, and Ms. Amy Esaki, Kauai County Attorney's Office, was present to answer questions. In response to Chair Wilson's question regarding other possible sites for the processing, Ms. Esaki stated that, at present, there were no other sites available.

Member McCrory stated that, because of DOT's future plans for the site, the county's use of the site as an automobile processing site will not be permanent. Member McCrory also stated that allowing the county the use of the site under a temporary variance offers the opportunity to ensure that the site will be "cleaned up" before the state gets the land back.

In response to Member Kennison's question regarding the number of junked cars waiting to be processed, Mr. _____ (name not given), Kauai county, stated that there are approximately 3,000 cars in storage at present.

Chairperson Wilson stated that the Board would like to do everything possible to help the County of Kauai, however, he stressed that the laws cannot be "twisted" to allow for a use in violation of the conservation district.

Member Yuen moved to go into executive session to discuss the matter with legal counsel. Member McCrory seconded the motion and the Board resolved into executive session at 2:15 p.m.

Chairperson Wilson reconvened the meeting at 2:30 p.m.

Member McCrory informed the representatives of the County of Kauai that the Board was "looking at [the action today] as being a remedial action, where part of what [they] are doing is cleaning up [the] site."

ITEM D-25 (cont.)

Mr. _____ acknowledged that the county has been in contact with DOT but has not "set" what will be done by the county to help clean up the site. Mr. Portugal stated that the county has indicated to DOT that it (the county) would be willing to clean the site surface of the portion of the parcel it uses (The county intends to use 3-4 acres of a 5-acre parcel).

Member McCrory contended that the Board would have a difficult time justifying a temporary variance for the automobile processing without the remediation component. She stated that the county could work out a plan with DOT delineating who would be responsible for the different areas. Mr. Portugal therefore agreed that the county would be willing to clean the surface of the entire site, and would work out details with the DOT.

Staff recommendation was therefore amended to include:

- 1) that the county would clean up the surface of the 5-acre parcel.
- 2) that the county would prepare a remediation plan, and a nine month report on what remedial actions has been completed and what actions need to be taken for the Board's approval.

Item D-25 was approved as amended (McCrory/Yuen).

ITEM D-29 ADOPTION OF COASTAL EROSION MANAGEMENT PLAN (COEMAP) POLICIES AND RECOMMENDATIONS FOR HAWAII

Mr. Uchida informed board members that the COEMAP is a strategic plan which allows federal, state and county agencies which are currently working independently in coastal issues to work in a cohesive, more efficient manner. Mr. Uchida stated that the policies would provide staff with priorities and guidance in dealing with other agencies.

Dr. Chip Fletcher testified to the importance of the state's beaches and coastal lands, and the importance of protecting them.

Mr. Sam Lemmo stated that staff would like to produce a brochure and video as public information/education vehicles.

Item D-29 was approved as submitted (Yuen/McCrory).

A short recess was taken at 2:50 p.m. The meeting was reconvened at 3:00 p.m.

ITEM D-31 DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO GTE HAWAIIAN TELEPHONE CO. FOR THEIR PAIR GAIN CROSS CONNECTION EQUIPMENT SITE AND CONSTRUCTION RIGHT-OF-ENTRY AT HONOKOHAU, HAWAII, TMK: (3) 7-4-8-3

No public testimony was presented.

Item D-31 was approved as submitted (Yuen/McCrory).

ITEM C-1 REQUEST FOR APPROVAL OF A CONTRACT WITH HAWAII INTERNATIONAL ENVIRONMENTAL SERVICES, INC. TO CONDUCT A QUANTITATIVE AND QUALITATIVE HYDROLOGICAL AND SOIL SURVEY OF KANAHA POND WILDLIFE SANCTUARY, KAHULUI, MAUI, HAWAII

Chairperson Wilson requested that Forestry staff alert the Maui press to the plans for the survey.

No public testimony was presented.

Item C-1 was approved as submitted (Kennison/Yuen).

ITEM K-1 ISSUANCE OF REVOCABLE PERMIT, KAWAIHAE HARBOR, ISLAND OF HAWAII (BIG ISLE MOVING AND DRAYING, INC.)

Mr. Peter Garcia presented the submittal.

No public testimony was presented.

Item K-1 was approved as submitted (Yuen/Kennison).

ITEM K-2 ISSUANCE OF REVOCABLE PERMIT, PIER 20 YARD, HONOLULU HARBOR, OAHU (NEXUS ENVIRONMENTAL GROUP, INC.)

No public testimony was presented.

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

ITEM K-3 ISSUANCE OF REVOCABLE PERMIT, KAWAIHAE HARBOR, ISLAND OF HAWAII (BIG ISLAND PETROLEUM, INC.)

No public testimony was presented.

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

ITEM K-4 ISSUANCE OF REVOCABLE PERMIT, NEAR PIER 42, HONOLULU HARBOR, OAHU (JOHN HUTTON CORP.)

No public testimony was presented.

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

**ITEM K-5 ISSUANCE OF REVOCABLE PERMIT, KEEHI INDUSTRIAL LOTS,
HONOLULU, OAHU (TECK, INC)**

No public testimony was presented.

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

**ITEM K-6 AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE
OF A HIGHWAY PARCEL, WAIPAHU, OAHU, BY PUBLIC AUCTION**

No public testimony was presented.

Item K-6 was approved as submitted (McCrorry/Kennison).

**ITEM K-7 REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE
DEPARTMENT OF TRANSPORTATION**

Mr. Garcia stated that no action was necessary on Item K-7.

**ITEM K-8 CONSENT TO ASSIGNMENT OF VENDING MACHINE AGREEMENT, LEASE
NO. DOT-A-96-11 (BANK OF AMERICA, FSB/AMERICAN SAVINGS
BANK, FSB)**

Mr. Garcia requested that the submittal be amended to include the name change to three automatic teller machines (instead of one ATM) -- one at the international terminal, Honolulu, one at the inter-island terminal, Honolulu, and one at the Keahole-Kona airport.

No public testimony was presented.

Item K-8 was approved as amended (Kennison/McCrorry).

**ITEM K-9 AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE
OF A HIGHWAY REMNANT PARCEL (ROBINSON FAMILY PARTNERS)**

No public testimony was presented.

Item K-9 was approved as submitted (McCrorry/Yuen).

**ITEM D-1 REQUEST TO AMEND BOARD'S ACTION OF MARCH 22, 1996,
APPROVING REQUEST FOR AUTHORIZATION TO CANCEL REVOCABLE
PERMIT NO. S-6584 AND TO THE REISSUANCE OF A NEW
REVOCABLE PERMIT TO TCI OF HAWAII, INC., FOR CABLE
TELEVISION TRANSMITTER, ON GOVERNMENT LANDS IDENTIFIED AS
TMK: 1-3-03: 33, HANA AIRPORT, HANA, MAUI**

No public testimony was presented.

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

ITEM D-3 REQUEST FOR DIRECT SALE OF GOVERNMENT REMNANT PARCELS 3, 4, AND 5 TO MICHAEL E. KRUPNICK AND BRENDA KRUPNICK, TMK: (2) 4-5-01: POR 52, AKI, LAPAKEA, LAHAINA, MAUI

No public testimony was presented.

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

ITEM D-5 CONSENT TO FACILITIES USE AGREEMENT OF GENERAL LEASE #S-4717 AT KEAHOLE, NORTH KONA, HAWAII, TMK: (3) 7-3-43-3, -42

Member Yuen commented that agreements like the subject agreement should not need Board consent.
No public testimony was presented.

Item D-5 was approved as submitted (Yuen/McCrory).

ITEM D-6 WITHDRAWAL AND SET ASIDE TO THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION FOR ROAD WIDENING AT PUNA, HAWAII, TMK: 1-5-8 AND -10 (VARIOUS)

No public testimony was presented.

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

ITEM D-7 MAUNA ZIONA CONGREGATIONAL CHURCH REQUEST FOR RELEASE OF PERFORMANCE BOND FOR GENERAL LEASE NO. S-4577 FORMER KALAOA SCHOOL LOT AT KALAOA 4TH, NORTH KONA, HAWAII, TMK: 3RD/7-3-04: 5

No public testimony was presented.

Item D-7 was approved as submitted (Yuen/McCrory).

ITEM D-8 SALE OF LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES, REQUEST FOR ISSUANCE OF A REVOCABLE PERMIT AND IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES TO KEITH & BONNIE DOUGLAS AND JEFFREY & JUDI WHITE, ON GOVERNMENT LANDS IDENTIFIED BY TMK: (2) 2-9-11: 08, SITUATE AT POR. OF HANEHOI, HOALUA, HANAWANA, & PUOMAILE, HAMAKUALOA, MAKAWAO, MAUI

No public testimony was presented.

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

ITEM D-9 SET ASIDE TO THE DEPARTMENT OF EDUCATION FOR ADDITION TO THE WAIAKEA EDUCATION COMPLEX AT WAIAKEA, HAWAII, TMK: 2-4-1-5

No public testimony was presented.

Item D-9 was approved as submitted (Yuen/Kennison).

ITEM D-12 ASSIGNMENT OF GENERAL LEASE NO. S-5074, LOT 43, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-2:39

No public testimony was presented.

Item D-12 was approved as submitted (McCrorry/Yuen).

ITEM D-14 SALE OF LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES, SITUATE AT NORTH KOHALA, HAWAII, TMK: (3) 5-5-4-5

No public testimony was presented.

Item D-14 was approved as submitted (Yuen/McCrory).

ITEM D-15 FORFEITURE OF GENERAL LEASE NO. S-4308, HILO SHEETMETAL, INC., LOT 4, HILO INDUSTRIAL DEVELOPMENT, POHAKU STREET SECTION, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-58: 02

Mr. Uchida requested the withdrawal of Item D-15; applicant paid the delinquencies.

No public testimony was presented.

Item D-15 was withdrawn (Yuen/Kennison).

ITEM D-16 RECONSIDERATION OF PRIOR BOARD ACTION FOR CANCELLATION OF GENERAL LEASE NO. S-4364

Member McCrorry requested that the recommendation be amended to add the administrative costs of reinstating the lease.

Members and the deputy attorney general discussed prior administrative fees levied by the Board -- fees ranging from \$1,500.00 to \$2,000.00. Ms. Dawn Chang, Deputy Attorney, stated that the Attorney General's Office has some concern regarding the imposition of administrative fees without rules in place. Mr. Uchida noted that Chapter 171, HRS, includes a provision for the recovery of reasonable costs. Discussion then centered around the definition of "reasonable costs." Member Yuen commented that a fee of, perhaps, \$500.00 was acceptable, but questioned a fee of \$1,500.00 - \$2,000.00. Mr. Uchida informed members that the Kauai District Land Office had calculated the costs involved in processing a

ITEM D-16 (cont.)

permit; the costs calculated added up to \$1,200.00 - \$1,500.00. Members Yuen and Kennison requested some justification for the fees imposed.

Item D-16 was deferred (Yuen/Kennison).

ITEM D-19 REQUEST FOR DIRECT ISSUANCE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO THE DEPARTMENT OF TRANSPORTATION FOR DRAINAGE PURPOSES, OVER, UNDER, ACROSS AND ON GOVERNMENT LAND/S, IDENTIFIED BY TMK: 3-2-07: PORTION 21, SITUATE AT WAIHEE, WAILUKU, MAUI

No public testimony was presented.

Item D-19 was approved as submitted (Kennison/Yuen).

ITEM D-20 PROPOSED DONATION OF LOTS 30 AND 124 OF THE PACIFIC PARADISE OCEAN FRONT LOTS SUBDIVISION, KAPAAHU, PUNA, HAWAII, TMKS: 1-2-29: 45 AND 124, RESPECTIVELY

No public testimony was presented.

Item D-20 was approved as submitted (Yuen/Kennison).

ITEM D-21 REQUEST FOR DIRECT ISSUANCE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO THE COUNTY OF MAUI, BOARD OF WATER SUPPLY, FOR FIRE HYDRANT, PURPOSES, OVER, UNDER, ACROSS AND ON GOVERNMENT LAND/S, IDENTIFIED BY TMK: 3-4-09: PORTION 04 SITUATE AT A PORTION OF WAILUKU TOWN, WAILUKU, MAUI

No public testimony was presented.

Item D-21 was approved as submitted (Kennison/McCrory).

ITEM D-26 UNITED STATES GEOLOGICAL SURVEY, WATER RESOURCES DIVISION REQUEST RIGHT-OF-ENTRY ONTO STATE LAND TO DRILL AND EXPLORATORY WATER WELL, LIHUE BASIN, WAILUA, TMK: 3-9-02: POR. 1 AND 20

No public testimony was presented.

Item D-26 was approved as submitted (McCrory/Yuen).

ITEM D-32 AMEND PRIOR BOARD ACTION FOR SET ASIDE TO THE DIVISION OF FORESTRY AND WILDLIFE FOR INCLUSION WITHIN THE KAU FOREST RESERVE, KAU, HAWAII

No public testimony was presented.

Item D-32 was approved as submitted (Yuen/Kennison).

**ITEM D-34 CONSENT TO SUBLEASE OF GENERAL LEASE #S-4309, WAIAKEA,
SOUTH HILO, HAWAII, TMK: (3) 2-2-58-32**

Mr. Uchida distributed the written testimony of Gary R. Phillips (Western Pacific, lessee). Member Yuen, considering the written testimony, requested that the recommendations be amended to state that the annual sandwich profit may be adjusted based on changes in the lessee's circumstances.

Item D-34 was approved as amended (Yuen/McCrory).

**ITEM D-36 DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO
COUNTY OF HAWAII, WATER COMMISSION FOR WATER METER,
WATERLINE AND FIRE HYDRANT PURPOSES AT PAHOA, HAWAII,
TMK: (3) 1-5-3-38, -39, -45**

Mr. Uchida requested that the recommendations be amended to delete the 20% fee (because sale is to another government agency).

No public testimony was presented.

Item D-36 was approved as submitted (Yuen/McCrory).

**ITEM D-37 DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR
ACCESS AND UTILITY PURPOSES AT NORTH KOHALA, HAWAII, TMK:
(3) 5-5-3-19**

No public testimony was presented.

Item D-37 was approved as submitted (Yuen/McCrory).

**ITEM E-1 APPROVAL OF LEASE RENEWAL TO FRIENDS OF MALAEKAHANA
(FRIENDS) FOR A PORTION OF THE KAHUKU SECTION OF THE
MALAEKAHANA STATE RECREATION AREA, OAHU**

Chairperson Wilson noted that Member Matsumoto (who was not present at the meeting) had requested the deferral of Item E-1.

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

There being no further business, Chairperson Wilson adjourned the meeting at 4:12 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
Gail Y. Murayama

Approved for submittal:

~~*Michael D. Wilson*~~
f MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources

10/10/10

