

**AGENDA  
FOR THE MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

**DATE: FRIDAY, FEBRUARY 27, 1998  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII**

Chairperson Michael Wilson called the meeting of the Board of Land and Natural Resources to order at 9:22 A.M. The following were in attendance.

Members: Christopher Yuen  
Willie Kennison  
Colbert Matsumoto  
Kathryn Inouye  
Michael D. Wilson

Staff: Dean Uchida  
Ralston Nagata  
Mason Young  
Kim Keliioomalu

Others: Randall Young  
John Tolmie  
Steven Lim  
Guy Archer

**BRIEFING MINUTES OF OCTOBER 9, 1997**

The Land Board Briefing Minutes of October 9, 1997 was unanimously approved as submitted. (Yuen/Matsumoto).

**MINUTES OF JANUARY 16, 1998**

The minutes of January 16, 1998 was unanimously approved as submitted. (Kennison/Matsumoto).

Member Christopher Yuen said Item J-2, page 18 and 19, states that there should be an update on the next agenda and that it is not on the agenda as specified. Chairperson Wilson

asked the Board secretary to remind the Division of Boating and Ocean Recreation (DOBOR) to place it on the next Board agenda.

**BRIEFING MINUTES OF JANUARY 30, 1998**

The briefing minutes of January 30, 1998, should read November 20, 1997.

Correct spelling of Kathleen Whang Inouye to read Kathryn Whang Inouye.

The briefing minutes of November 20, 1997 was unanimously approved as corrected. (Inouye/Kennison).

**BRIEFING MINUTES OF FEBRUARY 13, 1998**

The briefing minutes of February 13, 1998 was unanimously approved as submitted. (Inouye/Matsumoto).

**ITEM D-3 REQUEST FOR CONDOMINIUM PROPERTY REGIME OR LIMITED EQUITY HOUSING COOPERATIVE FOR GENERAL LEASE #3029, WAIAKEA, HAWAII, TMK: (3) 2-1-5-22**

Dean Uchida, Acting Administrator for the Land Division requested the withdrawal of Item D-3 due to a bill that was introduced at the Legislature that raised many issues that the Division was not aware of with respect to Chapter 514A, Hawaii Revised Statutes and how it would impact the public land management leases.

**ITEM D-2 AFTER-THE-FACT CONSENT TO AGREEMENT OF SALE AND SUBSEQUENT ASSIGNMENT OF GENERAL LEASE NO. S-3029, WAIAKEA, HAWAII, TMK: 2-1-5:22**

Uchida said the Land Board in 1980 approved the consent to mortgage between the mortgagers, David DeLuz, Ronald Carl Robertson, John and Linda Ann Tolmie and Puna Shores, Inc., and Yorkwood Savings and Loan Association, the mortgagee. Yorkwood Savings and Loan Association has had problems with the Resolution Trust Corporation, acting as the receiver and conservator, and there has been several court actions at the Federal and State levels. Uchida said what is being brought before the Board today is the request for agreement of sale between Tolmie and DeLuz. The staff had concerns with regard to the delinquent rent, which will be addressed under Item D-4 on the agenda. Uchida said the staff recommendation is that the Board consent to the assignment of lease and consent to the agreement of sale subject to terms and conditions.

**ITEM D-4 CONSENT TO SUBLEASES AND ASSIGNMENT OF SUBSEQUENT  
MULTIPLE SUBLEASES OF GENERAL LEASE #S-3029, WAIAKEA,  
HAWAII, TMK: (3) 2-1-5-22**

Uchida said the tenants have entered into arrangements with the sublessees as "front end loaded sublease arrangements". Uchida explained that each of the units were sold and subsequently assigned, and that none of the subleases were consented by the Land Board. He said there are 67 units on the property and there are 179 different sublease assignments that were done from 1984 to current. Uchida said the condominium has not shown any profits. The staff recommendation is that the Board consent to the subleases, consent to the assignments of subsequent multiple subleases and impose a \$500 fine for each of the 67 original subleases to the Lessee.

There was a lengthy discussion about the County ordinance and Land Reform Act with respect to residential use of condominium and the condemnation. Member Yuen said the Land Reform Act at the State level applies to single family dwellings and does not exempt State land from being condemned. He didn't think that a county ordinance could authorize condominium lessees to force a conversion of State land to private land because the County is subordinate to the State. Uchida's understanding of the way the Land Reform Act as written is that it is for residential, single family detached dwellings and that there is no mention or exclusion of condominiums. He said the ordinance that the county passed is a refinement of the Land Reform Act. Member Yuen believes that there was a legal challenge on the grounds that only the State could enact a law of that sort which has been rejected. He didn't think on the County level that the County could pass a law, that would have the effect of forcing the State to turn over its land to private property. Member Yuen felt that if the State had leasehold condominiums, that the State should introduce a bill for consideration, that would seek to have the leasehold converted to fee simple.

Uchida said the Land Division staff should be aware of what the Condominium Association are responsible for and how the law created this responsibility because part of a law that is being proposed at the Legislature is saying that the lessee needs more time and need extension of lease terms in order to borrow funds to create a reserve fund. The Land Division was informed by the Real Estate Commission that the Association cannot borrow money to be deposited in the reserve fund, and that the reserve fund has to be made up of monies from each of the individual condominium members and not the Association.

Member Yuen talked about participation in a sublease. He said it was his contention when the Board did this before with the County Club, that the State, if it was a sublease of the premium, or sublease profit, should participate in that, regardless of whether there is a specific clause allowing participation because he said the Board is not looking at a normal assignment. Member Yuen said they are completely restructuring the ownership of the project by breaking up the ownership into 67 different parcels. He said a breakdown of an analysis showed a net profit of \$6,800 from the whole transaction. Member Yuen said the Association's attorney explained that the purchase of the building, an allocated percentage to

the units sold, and other various related expenses were subtracted from the income of all the subleases and resulted in a minimal net profit.

Steven Lim introduced himself as the attorney for the Association and said the initial consideration paid for the subleases to Tolmie and DeLuz were in the neighborhood of \$11,000 to \$15,000 based on sizes. Subsequent subleases were signed off by Tolmie and DeLuz without any compensation. Lim said Tolmie and DeLuz followed suit of the Country Club Estates. Member Yuen said Tolmie and DeLuz are not the original developers of the building, that the building was originally developed as a hotel and when that failed, it was then converted to short term apartments.

Member Colbert Matsumoto asked if the Board approved the existing subleases and the subsequent assignments of the original subleases that had been entered into, that it is the staff recommendation that the Board continue to approve the previous assignments of the subleases. Uchida said the 3 submittals were put together with the condominium issue and that no future subleases were addressed. He said if the condominium issue is done, the subleases would be moot, if not, the staff will review them again. Member Matsumoto said if the Board approves the subleases, then the issue of the condominium will be open. He asked the next time this issue is taken up, who will be the applicant? He wondered where the partial approval is heading for procedurally. Uchida said the lessee will still be the Reeds Bay Hotel and the subleases would be from Reeds Bay Hotel to the individual sublessees. He said today's submittals are for the Board to approve what has happened on the list in the past up to present.

Member Matsumoto said because people seem to be abandoning the units and the fact that this was entered into initially which was probably inappropriate in terms of the lease, the Board should approve the existing situation but should deflect to any future subleases by notification that the subleases will not be signed, and that the State would like to give it back to the lessor to restore the situation to the original intent between the State and the Lessee.

There was discussion about the value of the assignments and the leases. Due to the high number of residential vacancies in Hilo, the rental fees are low.

There was discussion about the use of the condominium, whether it was being used for personal residential purposes or as rentals. Member Matsumoto was concerned about the State being put in a position to be forced into giving up the land for residential purposes, since the original intent was for a resort development. Member Yuen said it is very clear that the property is not going to make it as a resort and felt this kind of residential use is the best use of an existing building right now.

**Motion made to defer Item D-3 and approve Items D-2 and D-4 with amendments by adding conditions 1) That the delinquent back rent be paid in full or by way of a payment schedule, 2) That a performance bond in an amount equal to two times the annual rental then payable. This bond shall provide that in case of breach or default of**

any of the lease terms, covenants, conditions and agreements, the full amount of the bond shall be paid to the State as liquidated and ascertained damages and not as a penalty. Performance bond to be delivered to the State in sixty (60) days from the date of this action, 3) That none of the consents granted as a part of these actions will be effective unless all fines are paid, and all back rent paid in full or through a finalized installment agreement. (Yuen/Matsumoto).

**Vote: All in favor.**

**ITEM D-5 REQUEST FOR CONSENT TO THE ASSIGNMENT OF GENERAL LEASE NO. S-5499, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 1ST/4-1-08: 45**

Uchida said the lessee, James Ng would like to assign the General Lease, one of the leases that was issued under ACT 2137, Session Laws of Hawaii 1988, and Act 162, Sessions Laws of Hawaii 1994 to his nephew, Clayton Ng. The staff recommendation is that the Board consent to the assignment of General Lease No. S-5499 subject to terms and conditions.

**Unanimously approved as submitted. (Inouye/Matsumoto).**

**ITEM D-6 CANCELLATION OF REVOCABLE PERMIT NO. S-5417 AND ISSUANCE OF A REVOCABLE PERMIT TO ALVIN M.W. LUM, JANE N.V. LUM, WALLACE H.Q. LUM AND SHEILA L.C. LUM FOR A BOAT PIER AT KAHALUU, KOOLAUPOKO, OAHU, TMK: 1ST/4-7-30: SEAWARD OF 20**

Uchida said the existing permittee has passed away and that the staff recommendation is that the Board authorize the cancellation of Revocable Permit No. S-5417, the cancellation date to be determined by the Chairperson, and authorize the issuance of a revocable permit to the applicants covering subject State-owned premises subject to terms and conditions.

**Unanimously approved as submitted. (Inouye/Matsumoto).**

**ITEM D-7 EXTEND DEADLINE TO COMPLY WITH NOTICE OF DEFAULT FOR GENERAL LEASE #S-4478 AND #S-4950 AT HAMAKUA AND NORTH KOHALA, HAWAII, TMKs: (3) 4-3-10-3 AND 5-5-6-2, -3, -4 & -15**

Uchida said after notices were sent to the Lessee, a letter from the Bishop Insurance Company to the Hilo Land Division Office was received, requesting more time to work out the financing [performance bond]. The staff recommendation is that the Board extend the Notice of Default cure period deadline for another sixty (60) days for General Lease #S-4478

and #S-4950 subject to terms and conditions.

Unanimously approved as submitted. (Matsumoto/Inouye).

**ITEM D-13 CONSENT TO LEASE BETWEEN THE STATE OF HAWAII, AS LESSOR, BY THE BOARD OF LAND AND NATURAL RESOURCES, CALLED THE BOARD, AND SQUARE USA, INC. A CALIFORNIA CORPORATION, AS LESSEE, AT THE DIAMOND HEAD FILM FACILITY, KAPAHULU, WAIKIKI, HONOLULU, OAHU, TMK: 1ST/3-1-42: 09 (PORTION)**

Member Matsumoto recused himself.

Uchida said the existing area is under Executive Order with the Department of Business, Economic Development and Tourism (DBEDT) who is requesting the subject lease so that the lessee may utilize the studio and its facilities for the production of a full length computer animated motion picture. The staff recommendation is that the Board consent to the General Lease subject to terms and conditions.

Unanimously approved as submitted. (Inouye/Kennison).

**ITEM D-1 REQUEST TO AMEND PRIOR BOARD ACTION OF AUGUST 8, 1997 (AGENDA ITEM D-9) RELATIVE TO LAND ACQUISITION OF 14.276 ACRES FOR THE KAUAI INTERMEDIATE SCHOOL SITE, LIHUE, KAUAI, TMK: (4) 3-3-3: PORTION OF 001**

Member Kathryn Inouye recused herself.

Uchida said the staff recommendation is that the Board amend the prior Board action of August 8, 1997 to reflect the name change subject to terms and conditions.

Unanimously approved as submitted. (Matsumoto/Kennison).

**ITEM D-8 ASSIGNMENT OF GENERAL LEASE NO. S-5076, LOT 46, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-2: 36**

Uchida said staff recommendation is that the Board approve the assignment without revision to the basic lease rent subject to terms and conditions.

Unanimously approved as submitted. (Kennison/Matsumoto).

**ITEM D-9 ASSIGNMENT OF GENERAL LEASE NO. S-4966, LOT 13, MILOLII-HOOPULOA LOTS, PHASE I, HOOPULOA, SOUTH KONA, HAWAII, TMK: 3RD/8-9-14: 13**

Uchida said the lessee is deceased and that the primary beneficiary is his wife. The staff recommendation is that the Board consent to the assignment of lease without revision to the basic rent subject to terms and conditions.

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

**ITEM D-10 TIME EXTENSION REQUEST - CONSERVATION DISTRICT USE PERMIT MA-2772 FOR DATA COLLECTION IN THE HONOLUA BAY MARINE LIFE CONSERVATION DISTRICT (SUBMERGED LANDS OFFSHORE OF MAUI, SEAWARD OF TMK: 4-2-01)**

Uchida said the permittee, Eric Brown requested additional time to complete his research due to vandalism of his equipment and data. He said the Division of Aquatic Resources (DAR) is agreeable to allowing the time extension requested by the permittee on the condition that an interim report on work done to date be submitted within 30 days of receiving the approval letter, in addition to the submission of the required comprehensive final report acceptable to DAR upon completion of the project. Failure to submit the required reports are subject to fines. The staff recommendation is that the Board approve an extension of two (2) years to complete the approved research on sedimentation and water motion analysis subject to terms and conditions.

**Unanimously approved as submitted. (Kennison/Inouye).**

**ITEM D-11 AUTHORIZATION TO ENTER INTER-GOVERNMENTAL AGREEMENT WITH THE COUNTY OF KAUAI, BOARD OF WATER SUPPLY FOR THE HANAPEPE WELL DEVELOPMENT, TRANSMISSION AND APPURTENANCES**

Uchida said the staff recommendation is that the Board authorize the Chairperson to sign the Inter-Governmental Agreement for the Hanapepe Well Development, Transmission and Appurtenances, subject to the Department of the Attorney General's approval as to form. This also authorizes the Chairperson to sign and execute other necessary documents pertaining to the subject project.

**Unanimously approved as submitted. (Matsumoto/Kennison).**

**ITEM D-12 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 40-OB-28, IMPROVEMENTS TO SAND ISLAND COMFORT STATION, KEEHI SMALL BOAT HARBOR, HONOLULU, OAHU, HAWAII**

Uchida said the staff recommendation is that the Board award the contract for improvements at Sand Island to CC Engineering & Construction and to authorize the Chairperson to sign the necessary documents to implement the project.

**Unanimously approved as submitted. (Matsumoto/Inouye).**

**ITEM E-1 REQUEST FOR PERMISSION TO CONDUCT PUBLIC HEARINGS TO REVISE, CHAPTER 13-146, THE ADMINISTRATIVE RULES FOR THE HAWAII STATE PARKS SYSTEM AND TO ADOPT CHAPTER 13-147, PARK ACQUISITION TRUST FUND RULES**

Ralston Nagata, Administrator for the State Parks Division briefed the Board. He said the Division is working on revising the existing rules to include specific provisions for the charging of user fees for camping permits, parking and entrance to Diamond Head State Monument. The rules will also include the implementation of the "Acquire a Park" program to create a trust fund to deposit contributions to purchase land to be included in the State Park System.

There was discussion regarding the park acquisition trust fund rules. Member Yuen was concerned about discouraging people from donating money by this provision which allows the Chairperson of the Department to apply the funds to a different site other than originally donated, if condemnation cannot be completed within five (5) years. Member Willie Kennison suggested a mechanism to let the donors know ahead of time. Member Matsumoto suggested leaving it the way it is until it becomes a problem, then amend the rules. Member Inouye's suggestion was to leave it as is with a disclosure requirement to all donors that there is no guarantee that the money contributed will be used for a particular project. For the large donor, their contribution would have a condition attached. It was the consensus of the Board that the number of years should be changed from 5 years to 10 years.

After a lengthy discussion about using the words "acquisition" and "condemnation", Member Yuen suggested this issue be dropped.

**Unanimously approved as submitted. (Inouye/Kennison).**

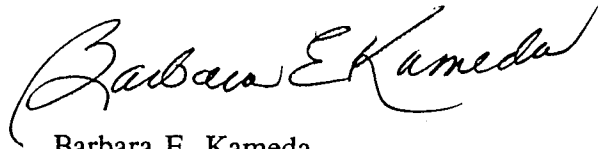
The meeting was adjourned at 10:57 A.M.



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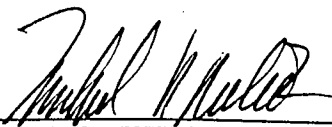
ALL MATERIALS LISTED ON THIS AGENDA ARE AVAILABLE FOR REVIEW IN THE DLNR CHAIRPERSON'S OFFICE, ROOM 131, KALANIMOKU BUILDING, 1151 PUNCHBOWL STREET.

Transcribed by:



Barbara E. Kameda

APPROVED FOR SUBMITTAL:



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MICHAEL D. WILSON

Chairperson

Board of Land & Natural Resources

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