

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

DATE: THURSDAY, APRIL 9, 1998
TIME: 1:00 P.M.
PLACE: MAALAEA BOATING AND FISHING CLUB
(BELOW BUZZ'S RESTAURANT)
MAALAEA HARBOR
WAILUKU, MAUI, HAWAII 96793

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 1:28 p.m. The following were in attendance:

MEMBERS:

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

STAFF:

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| Mr. Dean Uchida, Land Division | Mr. Bill Devick, Division of Aquatic Resources (DAR) |
| Mr. Phil Ohta, Land Division | Ms. Aulani Wilhelm, Public Information Office (PIO) |
| Mr. Howard Gehring, Division of Boating and Ocean Recreation (DOBOR) | |
| Mr. Charles Penque, DOBOR | |

OTHERS:

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| Mr. Edwin Kamauoha, Department of the Attorney General (AG's) | Mr. Eric Brown, J-1 |
| Mr. Kali Watson, Department of Hawaiian Home Lands (DHHL), D-24 | Mr. Jack Mueller, Maalaea Community Association, J-1 |
| Mr. Buddy Nobriga, D-16 | Ms. Lisa Hamilton, Kipahulu Community Association, D-17 |
| Mr. Kalei Luuwai, Maalaea Boat and Fishing Club, J-1 | Mr. Edward Smith, D-17 & D-22 |
| Mr. James Service, Hawaiian Charters, J-1 | Mr. Brendan Balthazar, D-37 |
| Ms. Lucianne deNaie, Sierra Club, J-1 | Mr. Randall Fujiki, Building Department, City and County of Honolulu, D-22 |
| Mr. James Gomes, Maalaea Boat and Fishing Club, J-1 | Dr. Pat Sullivan, Oceanit Laboratories, Inc., D-22 |
| Mr. Skip Price, Silent Lady Charters, J-1 | Mr. Ed Pskowski, Leo A. Daly, D-22 |
| Mr. Douglas MacCluer, Central Maui Soil and Water Conservation Districts, J-1 | Mr. Blake Oshiro, Sierra Club and Kaimana Beach Coalition, D-22 |
| Mr. James Housh, Maalaea Community Association, J-1 | Mr. Ernie Dias, Ceatech, USA, D-32 |
| | Mr. Paul Bienfan, Ceatech USA, D-32 |

HAWAIIAN ISLAND HUMPBACK WHALE NATIONAL MARINE

Before the April 9, 1998 meeting of the Board of Land and Natural Resources was convened a site visit was held on that day at 9:00 a.m. at the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) located at 726 South Kihei Road, Kihei, Hawaii. The nature of this visit to the Sanctuary was for an orientation briefing and to receive the interim report prepared by Mr. Eric Brown, Pacific Whale Foundation, on his data collection at the Honolua Bay Marine Life Conservation District (MLCD).

The Board was briefed about the known biology and behavior of Humpback Whales. The Sanctuary is part of the Federal Government's National Oceanic and Atmospheric Administration (NOAA) and was the latest to receive full designation in the country. Last year, Governor Ben Cayetano officially made the designation as a Sanctuary, balancing concerns between Sanctuary advocates and those who felt the Sanctuary would compromise their livelihood. Recognizing Hawaii as the "Ocean State," the Governor was interested in the State becoming a partner. Chairperson Wilson is looking forward to the Partnerships with the release of funds (appropriations for the Sanctuary will come from the Federal Government - annual budget for FY98 is \$900,000 of which \$200,000 is for capital improvements) in order to make the State Partnership a reality. The Co-managers (two DLNR staff on-site) will provide a beginning to that Partnership, in representing what Hawaii's goals are for the Sanctuary.

Research goals that were guided by the Sanctuary Advisory Council:

- Establish advisory council to advise sanctuary managers;
- Establish baseline parameters for Humpback Whales and their habitat;
- Identify research needs, priorities, data and information;
- Establish a long-term ecological monitoring program to detect Humpback Whale population and their habitat; and
- Facilitate communication and coordination between researchers, educators, resource managers and the general public.

The Board was also briefed on the Honolua Bay MLCD. Established in 1973, this is one of the better developed reefs. Corals that normally do not occur together are present in unusual assemblages within the Bay, making it unique. Because of its characteristics, Honolua has become a popular site for tourist and commercial activities. There are concerns about the siltation/sedimentation that has been increasing due to upland development and the seasonal wave actions which move sediments around in the Bay. Research has shown that in over 10 years, coral has decreased and the fish population has increased, for reasons unknown.

ITEM D-24: REQUEST TO AMEND PRIOR BOARD ACTION OF OCTOBER 28, 1994
(AGENDA ITEM H-6), CONVEYANCE OF LAND FROM THE
DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE

DEPARTMENT OF HAWAIIAN HOME LANDS AT VARIOUS SITES,
STATEWIDE

Mr. Dean Uchida, Acting Administrator of the Land Division stated that on October 28, 1994, the Board approved the conveyance of 16,518 acres to the Department of Hawaiian Home Lands (DHHL). On March 12, 1998, DHHL and the Land Board had a briefing covering the background of the conveyance. As indicated at the briefing, DLNR staff had some philosophical questions about allowing DHHL to revisit the list of properties to be transferred as part of the 16,518 acre conveyance. Staff feels that this transaction should be completed, and any other request from DHHL should be considered outside of this transaction. He said the matter before the Board is to amend the 16,518 acre conveyance and add some additional parcels that were not conveyed in the Waiahole Agricultural Park to DHHL. He stated that this matter was brought before the Board at the request of the Chairperson, to follow-up on the request made by DHHL for the conveyance of 5 parcels covering approximately 29 acres, 3 of these parcels involve lands that are part of a "Planned DHHL Housing Development." He said staff had applied some basic rational/criteria for determining what parcels should be conveyed, and at this point staff is willing to look at conveying additional lands for the Planned DHHL Housing Development. He said parcels 2, 4 and 5 meet that criteria as they are part of the master plan development for DHHL, whereas parcels 1 and 3 do not. Staff's recommendation is that the Board approve the conveyance of parcels 2, 4 and 5, to DHHL under standard terms and conditions.

In response to Member Christopher Yuen's question regarding the difference between a land exchange for the DHHL's planned use and another government agency asking for a set-aside, Mr. Uchida stated that in this case, we are conveying 16,000 acres to complete the 200,000 acre Hawaiian Homes Trust inventory. DHHL is asking for an addition to that to be part of the Hawaiian Homes Trust and DLNR will not be managing the land anymore, as opposed to the land not leaving the Trust and just being set-aside to another government agency for a particular use.

Mr. Kali Watson, Director of the DHHL, testified in opposition to the staff recommendation. He asked for the Board's support in transferring all 5 parcels, instead of 3 as recommended by staff. He explained his rationale for obtaining the 2 parcels that staff is recommending against. He said the Kapalama parcel (parcel 1), is a 1-1/2 acre parcel that was originally transferred to DHHL, with a reservation for a wastewater treatment facility for the City and County of Honolulu (C&C). DHHL has been able to convince the C&C to go elsewhere. He said DHHL was planning to consolidate this parcel with an existing parcel that they have in the area, as well as work with the Bishop Estate to consolidate another larger parcel that would be more

suitable for commercial or industrial development. He explained that besides doing homesteading, DHHL also needs to generate revenues for their programs. He said the Waimanalo parcel (parcel 3), is a 4 acre parcel that adjoins another parcel selected for conveyance in 1994, and the intent is strictly for homesteading and not for anything else. He said DHHL is not interested in a land exchange, and that they are requesting that this be part of the original 16,000+ acre transfer and not in addition to, as this would be a replacement to the 63 acres that was lost in Waiahole and the transfer would be pursuant to Section 171-95 Hawaii Revised Statutes, which allows the Board to make transfers without requiring consideration for land exchange. He said the encumbrances as reflected in the proposed motion would be retained with respect to the administration of the general lease. He mentioned another parcel, the Wong property. He said the Wong's have some concerns that they would like their lawyer to look into, and as soon as this case is resolved, DHHL will be coming back to the Board in the future to consider the complete transfer which would clearly layout that the Department is precluded from early withdrawal, unless there is a mutual agreement.

Member Colbert Matsumoto asked if there will be any further request in the future, or will this be a final resolution. Mr. Watson stated that this will be the final resolution with a few exceptions, the Wong property, and an adjacent parcel at Kapalama that DHHL is trying to get transferred over from the Department of Transportation (DOT). DHHL would like to subtract this from the Lalamilo parcel, if the Board is agreeable.

Member Lynn McCrory said her position is that she would prefer to see our own income or revenue-generated lands kept in DLNR. She stated that DHHL's primary role is for homesteading and getting people back on the land. She said she would like to see what staff is recommending occur. Mr. Watson explained that their program is two faceted in that they do their homesteading but also do revenue producing activities. He stated that DHHL would like to become more self-sufficient by generating their own revenue, rather than going to the Legislature every year with their hands out. He said that is why this 1 acre site in Kapalama (parcel 1) is critical so that DHHL can continue to generate money for their programs.

A motion was made to approve Item D-24 with the following amendments:

That the Board approve the conveyance in fee simple of the following parcels to DHHL:

| | Location | Tax Map Key | Acres |
|----|-----------------|--------------------------------|--------------|
| 1. | <u>Kapalama</u> | <u>1-5-33:2, 9, 16, 19, 20</u> | <u>1.000</u> |

| | | | |
|----|------------------|------------------|--------------|
| 2. | Kalawahine | 2-4-34: Por 8 | 4.500 |
| 3. | <u>Waimanalo</u> | <u>4-1-10:32</u> | <u>4.147</u> |
| 4. | Waianae | 8-5-04:12 | 11.561 |
| 5. | Waianae | 8-5-29:2 | <u>8.264</u> |
| | | | 29.472 |

under the standard terms and conditions used for conveyance to government agencies which are by this reference incorporated herein and in addition to the following conditions:

1. Compliance with the applicable parts of Section 171-95, Hawaii Revised Statutes, as amended, without consideration;
2. All existing encumbrances between the existing lessee and DLNR, on behalf of the State of Hawaii, on the conveyed property shall be honored by DHHL;
3. Review and approval of the conveyance document by the Department of the Attorney General;
4. Other terms and conditions that may be prescribed by the Chairperson.
5. There shall be no further amendments to the 16,518 acre conveyance of property to DHHL, except for the transfer of the Wong lease in Waimanalo, and the transfer of an existing DOT lot along Nimitz Highway next to the Kapalama Property.

Unanimously approved with amendments (Yuen/Inouye).

ITEM D-16: REQUEST FOR RESCINDMENT OF THE BOARD'S MAY 24, 1996, AGENDA ITEM D-6 ACTION, WITHDRAWAL AND SET ASIDE OF LAND UNDER GENERAL LEASE NO. S-4197 BY EXECUTIVE ORDER FOR THE PROPOSED MAUI LIVESTOCK QUARANTINE AND STAGING FACILITY AND OTHER RELATED PURPOSES, AND AN IMMEDIATE RIGHT-OF-ENTRY FOR SITE CONTROL PURPOSES TO THE DEPARTMENT OF AGRICULTURE, TMK: 3-8-08: PORTION 01 OF PULEHUNUI AND WAIKAPU, WAILUKU, MAUI

Mr. Uchida said on May 24, 1996, the Board took action on this request and identified a 6.00 acre parcel that is presently encumbered by general lease to A&B Hawaii, Inc. He said through subsequent discussions, A&B Hawaii, Inc. was not agreeable to relinquishing on this site, causing the Department of Agriculture (DOA) to abandon its efforts to secure the 6.00 acre site and find

a new one. DOA has found a 4.9 acre site that A&B Hawaii, Inc. is amenable to. Staff's recommendation is that the Board rescind its action of May 24, 1996 for the 6.00 acre withdraw and set aside, and instead, authorize the withdrawal of the 4.9 acres from General Lease S-4197, and recommend to the Governor, to authorize the issuance of an Executive Order setting aside the area, and grant a right-of-entry to the DOA for site control purposes, subject to our standard conditions.

Mr. Buddy Nobriga testified on behalf of the Maui Cattle people and the DOA, and in support of staff's recommendation. He said the thought was to get an area as close as possible to the docks and this 4.9 acre site would be the best way to go about it at the least expense. He stated that with the Board's assistance, we could get this Maui livestock quarantine and staging facility built.

Unanimously approved as submitted. (Kennison/Yuen)

ITEM J-1: BRIEFING, MA'ALAEA HARBOR SILTATION

Briefing minutes - see attached.

The following people testified in support of staff's request for the Board's assistance and active participation in holding those responsible - accountable for their part in the Maalaea Harbor siltation problem:

- 1) Mr. Kalei Luuwai representing the Maalaea Boat and Fishing Club
- 2) Mr. James Service representing the Hawaiian Charters
- 3) Ms. Lucianne deNaie representing the Sierra Club, Maui
- 4) Mr. James Gomes representing the Maalaea Boat and Fishing Club
- 5) Mr. Skip Price representing the Silent Lady Charter
- 6) Mr. Douglas MacCluer representing the Central Maui Soil and Water Conservation District
- 7) Mr. James Housh representing the Maalaea Community Association
- 8) Mr. Eric Brown
- 9) Mr. Jack Mueller representing the Maalaea Community Association

ITEM D-17: REQUEST FOR A RIGHT-OF-ENTRY BY THE COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS, FOR DESIGN PURPOSES ON LAND UNDER GENERAL LEASE NO. S-5485, TMK: 1-6-08: PORTION 08, KIPAHULU, HANA, MAUI

Mr. Uchida presented the staff submittal recommending the Board's approval to grant the County of Maui, Department of Public Works, the right-of-entry for design purposes to replace the existing bridge crossing Koukouai Stream on

Hana Highway, subject to standard conditions.

Ms. Lisa Hamilton of the Kipahulu Community Association testified in opposition of staff's recommendation. She said the bridge is noted as being one of the first on the Island of Maui with a unique concrete arch design and feels that the bridge does not need to be replaced. She read a letter from the President of the Kipahulu Community Association requesting that the Board not grant the County of Maui a right-of-entry until these issues have been discussed more thoroughly through a public meeting.

Member Matsumoto asked if there was a representative from the County of Maui. Mr. Uchida stated that there was no representative present. Member William Kennison suggested deferring this item, until such time that the County of Maui could come forward to answer questions.

Mr. Edward Smith testified in opposition of staff's recommendation. He said the County of Maui should give more proper notice to let the community know what their plans are, and to give the community a chance to discuss what they want.

Unanimously approved to defer Item D-17 (Kennison/Matsumoto).

ITEM D-36: CANCELLATION OF GENERAL LEASE NOS. S-3844, S-3918, S-4196, S-4240, S-4579 AND S-4854 ISSUED TO THE UNIVERSITY OF HAWAII ENCUMBERING STATE LANDS ON THE ISLAND OF HAWAII, MAUI, OAHU AND KAUAI, AND THE SUBSEQUENT SET ASIDE OF THOSE LANDS TO THE UNIVERSITY OF HAWAII, TOGETHER WITH THE WAIMEA AGRICULTURE EXPERIMENT STATION SITE AND THE PROPOSED SITE OF THE HAWAII COMMUNITY COLLEGE ON THE ISLAND OF HAWAII

Mr. Uchida said this request is to cancel several General Leases issued to the University of Hawaii (UH) and convey by way of a set-aside these lands back to UH. He gave some background information and went through proposed amendments to the staff submittal. The first amendment was to add 2 additional parcels, TMK: 2-4-1: parcels 10 and 11; the second amendment was a change to Condition 3. from "directly resolved" to "negotiate"; the third amendment was to change Condition 4. to read: "UH shall not rent or sublet the whole or any portion of the premises, for uses that are inconsistent with the purpose and intent of the set aside, without the prior consent of the Board"; and the fourth amendment was to add an additional Condition, reserving 2 road right-of-way parcels to be determined by DOT and UH for their future planning of the Hilo Campus. Staff's recommendation is that the Board proceed and convey these lands to UH for general university and

community college purposes.

There was some discussion about changing "directly resolved" to "negotiate" in Condition 3. Member Matsumoto was concerned that the University should hold DLNR harmless with respect to any claims on activities that they undertake on the property if the ceded lands issue is not resolved. Mr. Uchida suggested adding it to the Condition. Member Matsumoto agreed and said it would be fair since DLNR is not going to be the ones causing the situation with the Office of Hawaiian Affairs (OHA). He said any financial compensation that is going to be owed to OHA should be paid out of the UH's budget and not out of the General Fund budget.

Member Yuen was concerned about the addition of the 2 parcels to the Hawaii Community College sites. He did not think we should include anything that is not in the Board submittal.

A motion was made to approve Item D-36 with the following amendments:

3. With regard, to any commercial activities on the ceded lands, the UH shall negotiate with the OHA, the matter of entitlement as provided for in Chapter 10, Hawaii Revised Statutes, as amended, and UH shall hold the State of Hawaii harmless from liability on any financial compensation paid to OHA based on any ceded lands claims against UH arising from this transaction.
4. UH shall not rent or sublet the whole or any portion of the premises, for uses that are inconsistent with the purpose and intent of the set aside, without the prior consent of the Board;
6. DLNR reserves 2 road right-of-way parcels, the location of which will be determined at a later date, within the properties being conveyed as a part of the UH Hilo Campus, and that once determined, the road right-of-ways will be conveyed to DOT.

Unanimously approved as amended (Yuen/Inouye).

EXECUTIVE MEETING

1. THE BOARD WILL MEET IN EXECUTIVE MEETING UNDER SECTION 92-4, HAWAII REVISED STATUTES (HRS AND PURSUANT TO SECTION 92-5(a) (4), HRS TO CONSULT WITH LEGAL COUNSEL ON QUESTIONS AND ISSUES PERTAINING TO POSSIBLE LITIGATION ARISING FROM THE SILTATION OF MA'ALAEA HARBOR

A motion was made at 3:55 p.m. to go into Executive Session to consult with

legal counsel (Kennison/Matsumoto). The meeting was reconvened at 4:45 p.m.

Chairperson Wilson commended the DOBOR staff on all their effort in trying to work out this situation. He said communications took place during a period of almost a year where there appeared to be illegal grading in violation of the Special Management Area (SMA) permit. He stated that the testimony given today, by the Central Maui Soil and Water Conservation District, was very important, as they did their best to try and deal with this erosion problem and even communicate with the County of Maui, as well as the other parties involved. He commended the boaters of Maalaea for their consideration and understanding in continuing to work with DLNR and the continuing dialogue and encouragement given to try and bring this to some sort of resolution. He stated that conversations with Oahu Construction were not constructive and that at some point, the State has to take action in order to protect the resources of the State of Hawaii. He said the overture that was made in the dredging in the amount of 500 cubic yards to be withdrawn no longer seems to be a reasonable solution and is far and apart too much of a conservative approach at this point, and that the Department of the Attorney General office has been very considerate in taking a look at this issue. He stated that the negotiations should be concluded at this point and it is important to have some communication with the boaters at Maalaea to see the extent for which they might be willing to join the State of Hawaii in a lawsuit. He said there will be a lot of factual issues as we pursue the lawsuit, a lot of the boaters could be witnesses and that the most efficient way to pursue this is to file a variety of lawsuits together.

Member Yuen also commended the DOBOR staff for there diligence in pursuing this topic. He was pleased that they worked so hard on it but was amazed that they were not able to get a more favorable response from the parties that are at fault here.

Member Matsumoto said when this matter previously came before the Board, issues regarding run-off were of great concern to the Board and a number of assurances and representations were made in connection with the approval of this permit. He said based on his review of the situation, it seems that those assurances and representations were not satisfied and as a result appropriate remedies ought to be pursued by the State.

Member McCrory said she is in agreement with filing the lawsuit. She found it difficult to believe that the developers or construction companies that hope to continue work in Hawaii, and who are treated as part of the community, accept permit requirements and recommendations in terms of how they should be dealing with the land, choose not to abide by it, and then choose afterwards

not even to recognize, or try to mitigate it.

Member Kathryn Inouye said she is very concerned about what appears to be a very casual disregard of the conditions of the SMA permit. We need to send some message to the landowners, developers and general contractors.

Member Kennison said he concurred with the Board's decision, not only because of the siltation, the damage to the boats and the misery the boaters had to go through, but the total disregard for any authority. He stated that they have been talked to, they have been given a chance to try and remedy the situation and as I read the letter, it is total disregard. He said they do not want to take responsibility and this is something we cannot and will not accept.

Chairperson Wilson asked Mr. Charles Penque, Maui District Manager for the DOBOR, to set up a meeting so that he can speak to the boaters and their representatives about the nature of the lawsuit that will be filed. He thanked everyone who came to testify.

ITEM D-37: REQUEST FOR CONSIDERATION OF RENT ADJUSTMENT UNDER GENERAL LEASE NO. S-5276 BY MR. BRENDAN BALTHAZAR, TMK: 1-8-01: 03, NAKULA, KAUPU, HANA, MAUI

Mr. Uchida said on February 25, 1993, General Lease No. S-5276, was sold at public auction for pasture purposes for a term of twenty five (25) years to the highest bidder, Mr. Brendan Balthazar. The subject land is approximately 1,500 acres in size and situated at Nakula, Kaupo, Hana, Maui. Mr. Balthazar is requesting that his lease rent be adjusted downward, claiming that he was misinformed by the former District Land Agent of the location of the east boundary and based on this, he would not have bid as high as he did. He is also claiming that after the completion of the soil and water conservation plan for the property, he discovered that 26% of the lease property was unusable. Mr. Uchida informed the Board of the following significant points: 1) Based on the estimated carrying capacity of about 157 animal units and the price of cattle at that time, staff came up with an upset bid price of \$5,099/year. Mr. Balthazar's bid on this lease was \$20,000/year; 2) In 1994, after the lease was signed by Mr. Balthazar, a settlement was offered to him by waiving all the rent and interest charges from the start of the lease (3/27/93 to 12/31/94). The offer was accepted by Mr. Balthazar on 11/18/94 and there was no Board approval for that settlement; 3) On 2/23/96, the Board approved the waiver of the performance bond for the amount of improvements that Mr. Balthazar had invested on the property; 4) There is no mention of the alleged misrepresentation of the eastern boundary by the former District Land Agent in correspondences by Mr. Balthazar; 5) This lease was sold prior to the

current process used to pre-qualify potential lessees that was initiated in the fall of 1996. This would have hopefully prevented this type of occurrence if someone is bidding beyond the price of the property. Mr. Uchida said Mr. Balthazar, the Chairperson and OHA have met to discuss Mr. Balthazar's concerns and upon subsequent discussion with the Chairperson, staff is bringing this matter before the Board. Staff's recommendation is that the decision to consider Mr. Balthazar's request for a rent adjustment under General Lease No. S-5276, be left to the Board's discretion.

In response to Member Matsumoto's question regarding the Departments standpoint in withdrawing some areas adjoining the Kahikinui Forest Reserve for hunting access and the area below Piilani Highway for fishing access, Mr. Phil Ohta, District Land Agent of the Land Division, stated that he was not familiar with the hunting access issue. He said regarding the fishing area below Piilani Highway, Mr. Balthazar's Insurance Company advised him to fence off the area and gate it off, due to liability problems. Mr. Ohta said it became known to us later that this was a popular fishing area for local fishermen, and therefore a meeting was set by Mr. Balthazar, the County of Maui, the Fishermen's Association and myself in which Mr. Balthazar agreed to leave the gate unlocked on the condition that the fishermen would help with the cleaning up and monitoring of the area. Mr. Balthazar did not want to give that area up in the lease. Mr. Ohta said if we do withdraw the land, DLNR would have the sole liability problem and that the Land Division is not prepared to manage it.

Member Yuen said his concern is about the other person who dropped out at the public auction because he did not want to pay \$20,000/year. He said the Board is being asked 4 years later to give a rebate or reduction in rent, but what about the other guy who was bidding on the property who was willing to pay us, maybe \$19,500/year.

Mr. Balthazar said when he first went to look at the property he had asked Mr. Alan Tokunaga, then District Land Agent of the Land Division, approximately where are the boundaries, and that Mr. Tokunaga said it was from the Pahihi Gulch to the Kahalulu Gulch. He said he bid up to \$20,000/year based on the fact that he would be able to raise approximately 250 cattle there. He said after the lease was awarded, the State finally sent someone to survey the property and he found out that the 700 acres on the side of Kahalulu Gulch was not part of the lease. He said he usually keeps 125 cattle on the property and based on good calf crop (80 calves per year at \$200 per calf), that comes out to only \$16,000 that is generated on the property, in order to pay a \$20,000 lease. He said this has been a hardship and would not be the case if he had the additional 700 acres. He stated that he didn't think it was misrepresented or a malicious attempt by the State to confuse him, but

just an honest mistake that everybody thought the boundary was where it was not.

Member Inouye asked when he did his estimate on how many cattle he can raise, was it based on a visual estimate or per acre. Mr. Balthazar said it was based on per acre because he could not visualize where the land was until the land agent told him where it was. He said he did not read any letters from the pre-bidding times that say the property can sustain 157 cattle.

In response to Member Matsumoto's question regarding the extent of reduction that is being sought, Mr. Balthazar said the only fair way to do it is to take the 1,500 acre land and divide it by \$1.00 per acre and then translate that to the 700 acres that he cannot use.

Member Matsumoto inquired as to whether access is being denied to hunters who want to hunt in the forest reserve. Mr. Balthazar said it's too steep for the hunters to go up there. He explained that the forest area where the hunters go for hunting is on the other side towards Polipoli.

Member Kennison asked if there were any others requesting for a rent reduction, his concern was the other bidder who lost out at the public auction. He said if we do approve this we need to address other ramifications. Mr. Uchida said there was a similar situation on Kauai in which one of our tenants bid too high, asked for relief and we ended up defaulting in mutual cancellation. He said everytime somebody bids up too high, either innocently or on purpose, and we allow tenants to come back and revisit the rent after its been done through public auction, the Board will be subject to this constant coming in to ask for a reduction.

Member Inouye said in this particular case it appears that the reason Mr. Balthazar is coming in for relief is based on some misrepresentations that staff made. She asked if they concurred with what Mr. Balthazar is saying. Mr. Ohta said while the surveyors were still on the bottom portion surveying, Mr. Tokunaga and I went up to the more mauka area on the Gulch. He said he took it as an impression that that was where the boundary was but when the survey was done, we found out that it was less than that. Member Inouye asked how much was spent on improvements today for the property. Mr. Balthazar said \$231,000. Member Inouye said her personal feeling is that we should have an exception in this case. She said she has a serious concern about what staff recommended and there should be reason for reconsideration.

Member Kennison said instead of reducing the rent he would be open to mutual cancellation. His concern was that by reducing the rent we will be opening doors that will be hard to shut later on.

A motion was made to deny the request and ask for mutual cancellation.
(Kennison/Yuen).

Member Matsumoto suggested that instead of acting on this request, he would like to have this deferred until some of the issues that were raised by DLNR Deputy Director Gilbert Coloma-Agaran is more thoroughly addressed.

Member Kennison withdrew his previous motion to deny the request.

Unanimously approved to defer Item D-37 (Kennison/Yuen).

ITEM D-22: CONSERVATION DISTRICT USE APPLICATION (OA-2874) TO
CONSTRUCT TWO GROINS EXTENDING FROM THE WAIKIKI
NATATORIUM, TO IMPROVE WATER CIRCULATION AND QUALITY
WITHIN THE POOL TMK: SEAWARD OF 1-3-28: 11

Mr. Uchida said this is a re-submittal of a Conservation District Use Application (CDUA) from the March 27, 1998 Land Board meeting. He briefed the Board on what had happened previously. On Monday, March 30, 1998, staff met with the C&C, Dr. Gerritsen, the Project Consultant and the Project Engineer. They were asked to go through the staff report and pick out all the problem areas and respond to the issues in writing by Wednesday, April 1, 1998, in order to allow staff to prepare the report and get it on the Land Board agenda to be published on Friday, April 3, 1998. As of Wednesday evening, April 1, 1998, no response was received so staff proceeded on writing up the report without any written response from the C&C. He said the C&C subsequently brought in the response on Thursday morning, April 2, 1998, but it was too late for staff to do anything so they just appended it to the staff submittal. The C&C was contacted again on Monday, April 6, 1998, and asked if they wanted to meet to discuss the current recommendation and analysis and no response was received from the C&C until Wednesday, April 8, 1998, at 5:00 pm when they faxed a 20-page letter that we handed out this morning. He said staff has tried to be more objective in the presentation of this submittal, but the C&C's comments that were faxed last night shows that they are still not satisfied with staff recommendation and analysis.

Mr. Uchida said based on issues that emerged from discussions at the March 27, 1998 Land Board meeting, staff's concerns are as follows: 1) Legislative Intent - Copies of resolutions and committee reports from the Legislature state that they support the full restoration of the Natatorium, however, staff was unclear whether that meant, with no groins or to make the pool operable, which would require groins. 2) Impacts on the Surrounding Environment - The first area is the impact on the Waikiki Marine Life Conservation District

(MLCD). Staff is still concerned about the potential impact to the Waikiki MLCD and the Ewa groin, and believes that there has not been enough information provided that would justify construction of the groins in the MLCD. The policy question raised is, "Under what circumstances should the Board allow any activity in the MLCD?". The second area is the potential alteration or destabilization of Sans Souci Beach by the Diamond Head groin that could result from a blockage due to the rate of accretion that was estimated about 75 cubic yards per year or 1.5 cubic yards per week on the average. The flushing may impact or promote erosion on Sans Souci Beach. The third area is the Diamond Head groin, trapping sand migrating along the shore line. 3) Visual and Aesthetic Impacts - Staff's concern is the visual impact based on the construction of the groin. The question raised was "Are these impacts consistent with keeping the spirit of restoring the Natatorium Restoration Fund?". 4) Public Health and Safety Issues - There are 2 areas of concern on the swimming pool itself. The first does not seem to be a problem because the C&C agreed to comply with the Department of Health (DOH), that the bottom of the swimming pool needs to be visible in order for it to be open. The second is the biological water quality which is a big problem because DOH has no standard for salt water swimming pools and there is no biologically approved way in testing for the Staphylococcus virus. The current condition based on the models that were done by the consultants, projected that with the groins and the increase in the pipe, it would be 3.9 to 15 times per day flushing. At the meeting of March 30, 1998, Dr. Gerritsen was asked, "What would the groins provide as far as increasing or enhancing the flushing?" Dr. Gerritsen estimated that the groins will improve the flushing by 20-30%. Staff's computation was that if it was reduced by 20% it would be 3.1 to 12 times per day, and if it was reduced by 30% it would be 2.73 to 10.5 times per day. The question becomes, "Are these flows adequate to achieve ambient conditions outside of the Natatorium?". 5) Modeling and the Design Assumptions - The C&C took over this project from the State, and the State initially started the Environmental Impact Statement (EIS) for this project, under the direction of the State. The Consultant ruled out mechanical flushing for some reason. Whether it was a cost component or a decision in keeping with the full restoration idea of the Natatorium, it was unclear from staff at this time. The 5 models that were used to visualize the flow patterns raised some concern. One of the models is an "as is" by looking at the existing Natatorium with no improvements. The other 4 models looked at all groins with different configurations. There was no modeling done, just increasing the opening sizes on both sides of the pool and no groins. This is one of our major concerns in looking at what was done to identify alternatives for the groins. In conclusion, staff finds that the groins occur in the protective subzone of the Conservation District, one in the MLCD and the other in the Fisheries Management Area (FMA). Staff's position is that it would be irresponsible to commit Conservation District resources of this scale, and that

the success and impacts of the project have not been thoroughly evaluated. Staff feels it is possible to continue restoration without the groins at this time, and if the flushing does not improve to some pre-determined level, alternatives such as groins or mechanical pumping could be considered at that time. Based on staff findings and discussions with the C&C, the proposed project does pay a substantial risk to the existing stabilized beach in the area and does raise a risk of degrading the coastal water quality and there's an unknown public policy implication of allowing this type of construction in a MLC. Staff's position is that C&C proceed with the restoration of the Natatorium without the groins.

Mr. Randall Fujiki, Director of the Building Department, C&C of Honolulu, said he is here to request the Board's approval of the CDUA to construct 2 groins for the restoration of the Waikiki War Memorial. He explained some of the key issues in terms of the staff's analysis. He said regarding the Legislative Intent, in their letter there are a number of findings that clearly says it should be restored. In regards to the Visual and Aesthetic Impacts, he said the C&C has showed pictures and photographs to staff on what the impact of the groin on the wall would be, and also notes that DLNR's Historic Preservation Division has reviewed the proposed restoration including the groins and strongly endorsed the design. He stated that the current condition that the Memorial is in, has a much greater visual impact to the surrounding area. He said there are 3 conclusions in terms of the staff's recommendation. Staff is concerned about the risk and impacts of the following items: 1) The alteration of the littoral currents and sand transport mechanisms that have lead to the establishment of a stable sand beach. He said this clearly states that the staff is basing their conclusion on knowledgeable intuition. Staff is saying that if the flow could be more sufficient to help maintain a open swimming area, it certainly may be strong enough to cause erosion or destabilization of San Souci Beach. Dr. Gerritsen has not contended as indicated in the report that the water flow will be sufficient to carry away any sand and sediment that settles either into the outflow channels or the area of the outflow. He is on record as saying that it is possible that small amounts of sand will accumulate from the Memorial's sand traps. Dr Gerritsen instead indicated that the typical flow which is studied and calculated to being 10-30 centimeters per second would be sufficient to carry suspended sediments by reducing the buildup near the outflow openings. He has further stated that such a slow rate of flow while sufficient to flush the Memorial and carry suspended sediments is not expected to cause any erosion or destabilization of Sans Souci Beach. Furthermore, our statements at the Board meeting clearly indicate that we do not believe that the sand will accumulate in the traps. He said the C&C are more than prepared to ensure that the traps are cleared as appropriate and noted that the decks above of the sand traps were designed to openness and insure easy access, and that regular monitoring and clearing of the sand traps

will be conducted in order to ensure that sand will be removed before large quantities have the opportunity to accumulate. He stated if this issue remains a concern of the Board, they are more than willing to make appropriate maintenance practices a condition of their permit. 2) The likely degradation of the coastal water quality at a widely-used recreation area, and 3) the unknown public policy implications of establishing a precedence of permitting a major construction project within an established MLCD and FMA. Mr. Fujiki stated that the crumbling concrete of the seawall falling into the ocean poses a danger to the public. The restoration activities are necessary and would further enhance the use of the FMA and the MLCD. He said the Division of Aquatic Resources (DAR), in its written response to the EIS, stated that the project is not expected to have long-term adverse impacts on aquatic resources in the area. He pointed out the last sentence of the staff report which states, "Finally, staff believes DOH's strong concerns and their statement about not permitting the operation of the pool, even if the groins are built, sheds light on serious problem with this proposal." He said staff is contradicting that there are serious health hazards and yet they would recommend proceeding without the groins. He stated that the C&C is committed to providing a safe environment for the swimmers to use the Waikiki Memorial pool and the adjacent Sans Souci beach and are continuing to work with DOH towards resolution of this issue. He said they are also proposing to ensure the system of best management practices during the construction, as well as during the operation of the pool and that these procedures are being developed currently with a number of ocean scientists, including Dr. Roger Fujioka. He said if health concerns raised by DOH are deemed relevant to the Board's decision, the C&C believes that appropriate conditions, such as meeting DOH's approvals and standards can be placed upon the approval of this application as a condition. He said the experts feel confident that this will work and it would not be his responsibility to proceed on a project if he did not believe it would work. He mentioned that his consulting team was present to answer any questions and urged the Board to make the common sense decision and allow the C&C to continue this important project.

Chairperson Wilson referred back to the March 27, 1998 Land Board meeting, in which Dr. Gerritsen said it would work without the groins but would not work as well. Mr. Ed Pskowski of Leo A. Daly, said the gist of that conversation was about the flow only, Dr. Gerritsen was also very clear that the groins played an important role in protecting the openings from storms and wave action. He said subsequent to that he had several conversations with Dr. Gerritsen, and that Dr. Gerritsen was very clear that the wave action and storm surf would enter through the openings without the groins, a very good likelihood that it would destroy the inner walls and a phenomenon known as wave uplift would destroy the deck around the pool and the wave resource

would damage the floating docks inside the pool. Chairperson Wilson asked whether or not it would work with just the Diamond Head groin. Mr. Pskowski said both he and Dr. Gerritsen has agreed that it will not work.

Member McCrory asked for an opinion on the groins impact to the MLCD. Dr. Pat Sullivan, President of Oceanit Laboratories, said they are sort of building little mini habitats, and the net value to marine life would increase rather than decreases.

Member Matsumoto asked what happens if you are not able to address the turbidity concerns raised by the DOH. Mr. Fujiki said when we do not meet the standards of DOH in our operation standards, we will close the pool, just like how we close beaches in certain areas because of high surf. He said they will measure the quality of the water and will test to make sure the bottom is visible.

Mr. Blake Oshiro representing the Sierra Club and the Friends of Kaimana Beach Coalition testified in favor of the staff's recommendation. He felt the application should be denied because there is no factual basis for ruling contrary to the staff's recommendation. In response to Member Matsumoto question regarding the group's position if the proposal were to demolish the whole Natatorium structure, Mr. Oshiro said he would have to address this in 2 levels, the Friends of Kaimana Beach Coalition are in favor of getting rid of the pool and putting a beach, or making a volleyball court, or something similar to that, and the Sierra Club is opposed to the groins and any kind of destruction that would effect the War Memorial or any of the marine life.

Mr. Edward Smith representing the Friends of the Waikiki Natatorium testified in opposition to the staff's recommendation. He said the best utilization would be to turn it into a safe swimming pool and the way to do this is to control the sand by putting the groin in and that will be a 30% more guarantee that the pool will be cleaned.

Mr. Bill Devick, Acting Administrator of the Division of Aquatic Resources (DAR), submitted written comments clarifying DAR's position regarding this project. Member McCrory asked if DAR's position was to put the groin in when the EIS was being prepared. Mr. Devick said yes and we have to take our resources much more seriously as has been in the past. He said the MLCD's (1 of 10 in the State) is suppose to be under the highest level of protection that the Division categorizes and divides. He referred back to a prior CDUA on Lanai where construction was allowed in the MLCD. DAR objected to that use rather strenuously, but in that case a higher public purpose was deemed acceptable. He said in this case, certainly the restoration of the Natatorium ranks as a high public purpose. Member Yuen asked (from

a biological point of view), whether or not the habitat is degraded by the addition of the rock walls in that location. Mr. Devick said the location is already in a seriously degraded habitat. Member Matsumoto asked what is DAR's position, for the proposed alternative plan. Mr. Devick said they are opposed to that plan.

Member Inouye asked if staff recommendation #1 and #2 is based on staff's opinion or some experts testimony. Mr. Uchida said staff's opinion.

There was some discussion about construction within a MLCD. Member Yuen said he respects what Mr. Devick has said, and Mr. Devick should take this position at all times. He said he is taking a different perspective and the reason is he wants to see more MLCD, and the main purpose is so that the fishes have a place to hide and grow and reproduce and live. He stated that if we take an absolute position that we are not going to allow construction in an MLCD, then there is going to be more opposition for establishing MLCD's in the future. His concern was that when there is a situation where there is really no harm to the resources and the habitat is not being destroyed, then we should be entertaining these kinds of proposals when there is a public purpose. He said the MLCD in the protective subzone are entitled to the highest degree of protection and respect. Chairperson Wilson said he had some difficulty with the groins being put in the MLCD. He was concerned about being able to maintain a public policy to hold certain areas aside so that they do not have construction in them. He did not feel that there was enough evidence that the groin on the Diamond Head side is going to cause some kind of destabilization of Sans Souci Beach. He said to say that we should allow construction in the MLCD, because we think there is a particular public purpose and that there is not a sensible way to approach this. Member McCrory concurred with Chairperson Wilson regarding the groins being put in the MLCD.

Member Inouye said she respects the amount of time that staff has put in and with that more information has been given to us with consideration. She stated that the applicant has hired probably the worlds best ocean and civil engineers to look at the design and we as lay-people are trying to make changes to the design which is not something that could be done overnight. There are several factors that are considered in coming up with the engineering of the groins and the flushing and the calculations that they make. She suggested a condition that DOH's concerns to assure public health and safety, should be met.

Member Kennison stated that he has been to 2 meetings and listened to all the discussions, pro and con. He said he listened to the experts and felt the Natatorium should be restored and the groins should go in.

Member Matsumoto said the principles that Chairperson Wilson supports with

respect to the MLCD is very important. However, the Board is granted a certain amount of discretion to exercise with respect to the management in those areas, having been entrusted with that discretion, we need to exercise it prudently. He stated that when he looked at the application that has been presented and the extent of the intrusion into that area, he considered it to be minimal and it will not really undermine the concept of the MLCD. He did not agree that the Natatorium should be restored in the manner that is being proposed and his personal preference is to see the beach expanded and the beach alternative implemented. He said he will support the approval of the application with a condition that the C&C is required to maintain the regular maintenance program with respect to sand accumulation and shall coordinate any removal of sand with the Department's Coastal Lands Program.

Member Yuen said among the conditions that should be imposed would be DAR's letter of November 24, 1993 which sets out basic mitigation measures in the construction period.

Chairperson Wilson mentioned that the statement by Dr. Gerritsen about the Natatorium working without the groins and the destabilizing of the Natatorium from heavy wave action, are concerns that are addressed primarily by the Diamond Head groins. He said the lost of wave action seems to be coming in from the Diamond Head direction, and this project could go forward with 1 groin. He stated that the MLCD should not be subjected to the construction even though the habitats in the area are not productive at the moment.

Member Yuen made a motion to approve the request by the C&C for the construction of the 2 groins, subject to the following:

1. All applicable standard conditions for CDUA's in Section 183C, HRS, and Chapter 13-5, Hawaii Administrative Rules;
2. The applicant shall comply with all mitigative conditions mentioned in the Final EIS for the project;
3. The applicant shall comply with the conditions listed in the memorandum from the DAR dated November 24, 1993;
4. The applicant shall comply with all DOH rules and regulations and obtain any necessary permits from the DOH prior to initiating construction on the project;
5. The applicant shall submit a plan for maintenance of the Diamond Head Groin Sand Trap, and shall coordinate any removal of the sand with the Department's Coastal Lands Program;

6. Other such terms and conditions as maybe imposed by the Department.

Vote: 4 in favor (Yuen/Matsumoto/Inouye/Kennison)
2 opposed (Wilson/McCrory)

ITEM D-32: ISSUANCE OF REVOCABLE PERMIT TO CEATECH USA, INC., AND IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY, POR, KEKAHA, WAIMEA, KAUAI, TMK: 1-2-2: POR. 1

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-1: AMEND GENERAL LEASE S-5374 ASSIGNED TO KAPAPALA RANCH GENERAL PARTNERSHIP AT KAU, HAWAII, TMKs: (3) 9-8-1-PORION -3, -9, -10 AND 9-7-1-PORION

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-2: ISSUANCE OF LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD 3310 & 6673 TO MANU, POR. OF WAIMEA VALLEY, WAIMEA, KAUAI, TMK: 1-6-3: 41

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-3: SALE OF FOUR (4) TWENTY (20)-YEAR PASTURE LEASES AT PUBLIC AUCTION, AND ISSUANCE OF REVOCABLE PERMITS UPON EXPIRATION OF LEASE, TMKs: VARIOUS, KAUAI

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-4: DECLARATIONS OF INTENT TO DISPOSE OF LEASES AT PUBLIC AUCTION, TMKs: VARIOUS, KAUAI, HAWAII

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-5: PARTIAL RESCISSION OF PRIOR BOARD ACTION OF AUGUST 23, 1996 (AGENDA ITEM D-12), CONSENT TO SUBLEASES UNDER GENERAL LEASE NO. S-3602, LOT 40, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, ISLAND OF HAWAII - TMK: 3RD/2-2-49:14

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-6: AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 30, 1997 (AGENDA ITEM D-4), ISSUANCE OF A REVOCABLE PERMIT TO CLARK HATCH FITNESS CENTER FOR A PASSIVE PEOPLE AND PET THEME PARK AT FORT RUGER, DIAMOND HEAD, HONOLULU, OAHU, TMK: 1ST/3-1-42: 12

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-7: CONSENT TO SUBLEASE, LOT 2, BLOCK 39 WAIAKEA HOUSE LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-37:56

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-8: ASSIGNMENT OF GENERAL LEASE NO. S-5039, LOT 84, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-4-: 55

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-9: DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES ON BEHALF OF GTE HAWAIIAN TELEPHONE COMPANY, INC. (GTE), HAWAII ELECTRIC LIGHT COMPANY, INC. (HELCO), AND COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY REQUEST FOR AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE UTILITY EASEMENTS SERVING THE UNIVERSITY OF HAWAII-HILO, UNIVERSITY PARK INFRASTRUCTURE IMPROVEMENT, PHASE 1B, SITUATE AT WAIAKEA, SOUTH HILO, HAWAII, TMK: 2-4-01: POR. 7

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-10: REQUEST BY HILO MEDICAL INVESTORS, LTD. FOR AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE WATER METER EASEMENT, IN FAVOR OF COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY, PIIHONUA, SOUTH HILO, HAWAII, TMK: 3RD/2-3-31: POR. 01

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-11: AMENDMENT TO PRIOR BOARD ACTION OF MAY 9, 1997, AGENDA ITEM D-41 CONCERNING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT FOR LANDSCAPING, SIGNAGE AND BEAUTIFICATION PURPOSES TO DUKE'S PARTNERSHIP, NAWILIWILI HARBOR LOTS, LIHUE, KAUAI, TMK: 3-2-4: POR. 47

Unanimously approved as submitted (McCroory/Inouye).

ITEM D-12: AUTHORIZE IMPLEMENTATION OF A FORESTRY APPLICATION AND QUALIFICATION QUESTIONNAIRE PROCESS FOR PROSPECTIVE BIDDERS INTERESTED IN LEASES SOLD AT PUBLIC AUCTION

Member Yuen made a motion to defer Item D-12.

Unanimously approved to defer Item D-12 (Yuen/Kennison).

ITEM D-13: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO. AND GTE HAWAIIAN TELEPHONE AND CONSTRUCTION RIGHT-OF-ENTRY AT WAIAKEA, HAWAII, TMK: (3) 2-4-1-POR. 5

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-14: PERMISSION TO HIRE CONSULTANT TO CONDUCT DAM SAFETY INSPECTIONS

Unanimously approved as submitted (McCroory/Yuen).

ITEM D-15: PERMISSION TO ENTER MEMORANDUM OF UNDERSTANDING TO PROVIDE ENGINEERING SERVICES TO THE DEPARTMENT OF AGRICULTURE'S AGRICULTURAL PARKS AND IRRIGATION SERVICES PROGRAMS

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-18: ISSUANCE OF A REVOCABLE PERMIT TO ROSLINDALE, INC. PARKING PURPOSES SITUATE WAIANAE-UKA, WAHIAWA, OAHU, TMK: 7-3-012: 11 (POR)

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-19: ACCEPTANCE OF LAND FROM THE COUNTY OF HAWAII BY WAY OF A QUITCLAIM DEED BEING A PORTION OF THE OLD PAHOA-KALAPANA ROAD INCLUDED IN THE AREA LEASED TO KALAPANA OHANA ASSOCIATION UNDER STATE GENERAL LEASE NO. S-5531, TMK: 3RD/1-2-06: 081

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-20: DIRECT ISSUANCE OF A PERPETUAL NON-EXCLUSIVE AFTER-THE-FACT EASEMENT TO THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU, FOR WATER PIPELINE PURPOSES AT HONOWAI ELEMENTARY SCHOOL, HOAEAE, WAIKELE, EWA, OAHU, TMK: 1ST/9-4-53: 117 (PORTION)

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-21: ISSUANCE OF A REVOCABLE PERMIT TO PACIFIC AIRLIFT FOR LIVESTOCK HOLDING AND TRANSFER PURPOSES AT THE KAPOLEI FEEDLOT, KAPOLEI, OAHU, TMK: 9-1-31: 01 (POR)

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-23: AMEND PRIOR BOARD ACTION FOR REVOCABLE PERMIT TO MID-PACIFIC HAWAII FISHERY, INC., WAIAKEA, HAWAII, TMK: (3) 2-1-12-41

Mr. Uchida presented the staff submittal recommending that the Board amend a prior Board action of August 21, 1997 to include an area that they are presently using subject to standard conditions.

In response to Member McCrory regarding a change in the monthly rent, Mr. Uchida suggested a condition be added to review the rent for the additional area.

A motion was made to amend the staff recommendation to include Condition No. 3 to read as follows:

3. That the staff appraiser will review the rent in this case with the

additional acreage and adjust the rent if necessary.

Unanimously approved as amended (Yuen/McCrory).

ITEM D-25: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO., AND GTE HAWAIIAN TELEPHONE AND CONSTRUCTION RIGHT OF ENTRY AT KAWAIHAE, HAWAII, TMK: (3) 6-2-2-PORION OF 8

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-26: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO GARY J. HORWITZ AND MARYANN HORWITZ/BROYLES AND CONSTRUCTION RIGHT OF ENTRY AT KAOHE, HAWAII, TMK: (3) 4-1-10-PORION OF 7

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-27: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO. AND GTE HAWAIIAN TELEPHONE CO. AT LALAMILO, HAWAII, TMK: (3) 6-2-2-PORION OF 1

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-28: SET ASIDE TO THE COUNTY OF HAWAII FOR PARK AND RECREATIONAL PURPOSE AT KOHALA, HAWAII, TMK: (3) 5-5-3-PORION OF 19 AND 25

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-29: AMEND PRIOR BOARD ACTION FOR DIRECT LEASE TO QUALIFIED HAMAKUA/NORTH HILO PERMITTEES OF AGRICULTURAL REVOCABLE PERMITS ON THE ISLAND OF HAWAII

Mr. Uchida presented the staff submittal recommending that the Board amend a prior Board action of January 24, 1997 for the direct lease to qualified Hamakua/North Hilo permittees. He said at the January 16, 1998 Land Board meeting, the Board inquired if a requirement was placed on the lessee to comply with DOA requirements to participate in the irrigation system. In

consultation with DOA staff, they want to require the lessee to comply. Staff's recommendation is that the Board amend this authorization and include a requirement that the lessee comply with Chapters 167 and 168, Hawaii Revised Statutes.

Member Yuen stated that the whole area is not serviced by the Hamakua District System.

A motion was made to amend the staff recommendation to include the following condition:

3. That the amended language be included in only those leases that would be serviced by the Hamakua Ditch System.

Unanimously approved as amended (Yuen/Inouye).

ITEM D-30: STAFF REQUEST TO RESCIND THE BOARD'S APPROVAL OF AGENDA ITEM D-12, FEBRUARY 23, 1996, AMENDING THE BOARD'S JANUARY 14, 1994 AGENDA ITEM F-6, AND REQUEST FOR CONSENT OF ASSIGNMENT OF PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT ON GOVERNMENT LAND IDENTIFIED AS TMK: 2-9-11: POR. 08, SITUATE AT HANAWANA, HAMAKUALOA, MAKAWAO, MAUI

Unanimously approved as submitted (Kennison/Yuen).

ITEM D-31: SALE OF LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES AT KOHALA, HAWAII, TMK: (3) 5-5-3-4, -5 AND -6

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-33: ASSIGNMENT OF GENERAL LEASE NO. S-4979, LOT 13, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-3-: 8

Unanimously approved as submitted (McCrary/Yuen).

ITEM D-34: AMENDMENT TO PRIOR LAND BOARD ACTION OF JUNE 13, 1996, AGENDA ITEM F-14 CONCERNING THE SALE OF A PORTION OF KAMEHAMEHA IV ROAD SITUATED BETWEEN PARCELS 37 AND 38 OF TMK: 1ST/1-3-02 AND BETWEEN NORTH KING STREET AND THE

INTERSTATE HIGHWAY AT KALIHI, HONOLULU, OAHU, TMK:
1ST/1-3-02 (PORTION)

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-35: ISSUANCE OF A REVOCABLE PERMIT AND IMMEDIATE RIGHT-OF-ENTRY TO THE HARRY & JEANETTE WEINBERG FOUNDATION, INC. FOR PARKING PURPOSES AT KUWILI, IWILEI, HONOLULU, OAHU, TMK: 1-5-08: 5

Unanimously approved as submitted (Inouye/Yuen).

There being no further business, Chairperson Wilson adjourned the meeting at 7:55 p.m.

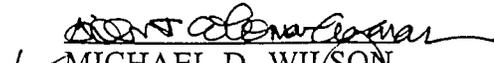
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office of the Department of Land and Natural Resources and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Transcribed and submitted,



Kimberly C. Keliihoomalu

Approved for submittal:


for MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources

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

Date: Thursday, April 9, 1998

Time: 1:00 pm

Place: MAALAEA BOAT AND FISHING CLUB
(BELOW BUZZ'S RESTAURANT)
MAALAEA HARBOR
WAILUKU, MAUI, HAWAII

Chairperson Michael Wilson called the meeting of the Board of Land and Natural Resources to order at 1:28 pm, the following were in attendance:

Members:

| | |
|----------------------|---------------------------|
| Mr. Michael Wilson | Mr. Colbert Matsumoto |
| Ms. Lynn McCroxy | Ms. Kathleen Whang Inouye |
| Mr. Christopher Yuen | Mr. William Kennison |

Staff:

Charles W. Penque, Maui District Manager, Division of Boating and Ocean Recreation

Item: Maalaea Harbor Siltation Briefing

Summary:

The Maalaea Triangle Project site is an area of approximately 18 acres located adjacent to and above the Maalaea Small Boat Harbor. This site is being developed as a mixed use commercial project which includes the Maui Ocean Center, a world class aquarium.

Construction began in late November 1996 with major grading of the site shortly thereafter. It should be noted that the November 1996 through March 1997 time frame experienced a number of storms resulting in significant rainfall.

The first indication that the harbor was being adversely impacted by the runoff from this area occurred on December 15, 1996 when large quantities of mud and debris were observed in the parking lots and harbor. This became the harbinger of an event that was to be repeated, to varying degrees, a number of times during the next few months.

Photographs taken on 12/27/96, 1/18/97, 1/30/97, 3/17/97, and 9/15/97, and presented here today document continued runoff in addition to inadequate silt abatement/runoff prevention.

Efforts by this division in seeking relief included:

1. Numerous discussions with Oahu Construction and a representative from the Maalaea Triangle Partnership to resolve the issues. All of which ended in a stalemate of one form or another.
2. In January 97, contacting the Department of Health, Clean Water Branch who informed the contractor of violations and asked them to report on their responsive actions. We did not receive a copy of the "corrections" letter which was accepted by the Department of Health in March from the project engineer. A subsequent meeting with the project engineer, et al. and continued review of the site failed to reveal any significant changes.
3. Beginning the first part of February 97, a number of meetings and site visits with representatives from Maui County Public Works and Waste Management requesting their assistance and support to stop the runoff. In March a letter from the Division of Boating and Ocean Recreation Administrator, was sent to the Director of Maui County Public Works and Waste Management requesting assistance. Their response provided some clarification and asked Oahu Construction to address our concerns. It is not understood at this point why apparent violations of grading and SMA permits were not investigated further, or if they were what action was taken. In July 97 there was a letter from Public Works and Waste Management to the Maalaea Triangle Partnership encouraging them to resolve the matter as expeditiously as possible. In response to a September inquiry from the Maalaea Community Association, the Public Works and Waste Management Director informed them that while there were violations of the SMA permit, the Planning Department is the responsible agency. They were also informed that the siltation is not under the jurisdiction of Maui County, but rather the Department of Health Clean Water Branch.
4. On December 4, 1997, after an earlier telephone conversation with Oahu Construction, Chairperson Wilson sent a letter to them confirming that 500 cubic yards of silt should be dredged from the harbor. Included in this letter was Mr. Curt Powers' (DLNR Engineer) memorandum supporting the 500 cubic yard figure. Oahu Construction's response was that they would remove only 200 cubic yards and stated "We made it clear that we accept no responsibility for the silt problem." This pretty much sums up their attitude from the very beginning.

5. In response to continued complaints from the Maalaea Community Association and others, by letter dated January 7, 1998, Mr. David Blane, Director, Maui Department of Planning, fined the Maalaea Triangle Partnership a total of \$21,000 for a number of SMA violations. In his letter he went on to note that "the project appeared to be poorly supervised and executed," and while that damage to the harbor from runoff and wind-blown dust is well documented, it is outside county jurisdiction.

They say that a picture is worth a thousand words, in front of you, you have thousands of words. The photographs you see presented here fall far short of providing a comprehensive documentation of the continued adverse impact on Maalaea Harbor from the runoff and dust, these are merely snapshots of the events that in most cases continued for extended periods. Of particular interest is the similarity of the photographs taken on December 27, 1996 and those taken on September 15, 1997 some nine months later. These two sets of photographs alone essentially document the lack of any effective silt abatement and the continued disregard and unresponsiveness by the contractor and/or developer with respect to the damage they were causing. This is a situation which has gone on too long and efforts to negotiate a solution have been fruitless.

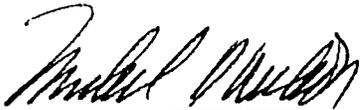
Mr. Chairman, members of the Board of Land and Natural Resources, on behalf of the Division of Boating and Ocean Recreation, your assistance and active participation in holding those responsible accountable for their part in spoiling this harbor is requested.

Respectfully submitted,



Charles W. Penque

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON, CHAIRPERSON

