

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

DATE: FRIDAY, JUNE 5, 1998
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
BOARD ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

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:	Michael D. Wilson Christopher J. Yuen William Kennison	Colbert M. Matsumoto Lynn P. McCrory Kathryn W. Inouye	
Staff:	Bill Devick Dean Uchida Michael Buck Steve Thompson Dave Eckert	Kimberly Lowe Ralston Nagata Howard Gehring John Hino Carol She'	
Others:	Randy Young Randy Vitousek Bahman Sadeghi Walter Ritte Winona Matsuzaki Andrea Alonzo Doug Ing John Reppun Joan Philipp Rick Haviland	Pam Matsukawa Bill White Dave Kugo Dave Martin J. Keolalani Hanoa Carla Hardinger Joe Pickard Gretchen Gould Jenny Philipp Glenn Taguchi	Mike Nelson Jimmy Nakatani Elizabeth Martin James Severson Mr. Shigeoka Fredda Stroup Francis Shimanuki Steven Guttman David Frankel

APPROVAL OF MINUTES OF APRIL 25, 1997 (RESUBMITTAL).

Member Chris Yuen asked that staff check on the statement on page 7, "He did now envision a mass exodus from the industrial park". Tape checked and confirmed that Rodney Kim's statement should have been, "He did not envision a mass exodus....".

Motion made and unanimously approved to correct statement. (Yuen/Inouye).

APPROVAL OF MINUTES OF MAY 9, 1997 (RESUBMITTAL).

Motion made and unanimously approved with amendment to correct page 9, Item D-14, "...the condition of the fine" to be in reference to the Board looking at administrative cost repayment and Mr. Hoe to resolve the reassignment of the lease within the next 6 months. (McCrorry/Yuen).

APPROVAL OF MINUTES OF MARCH 27, 1998.

Motion made and unanimously approved with amendment to correct page 15, Item D-31, to read, "...granting of the variance because the applicants have not proven that the existing deed restrictions are burdensome and impractical and that the applicants were well aware of the building restrictions at the time the property was purchased and have full use and benefit of the property with the restrictions for over 20 years". Correct last sentence to read, "The other concern she had was that all adjacent homeowners purchase their properties with reliance on those deed restrictions." (Inouye/Yuen).

Member Yuen noted as a reminder on page 15, Item D-9 that the action was deferred to allow staff time to get more information on whether there was access to the lot.

B-1 REQUEST FOR APPROVAL TO AMEND AN AGREEMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII FOR "ADMINISTRATIVE SERVICES TO CONDUCT THE HAWAII FISHERMEN'S FESTIVAL"

Bill Devick, Administrator of the Division of Aquatic Resources (DAR) said this request for approval is to repeat the successful fishing festival held last year in Waianae, organized by Dr. Kimberly Lowe. He said the cost is approximately \$30,000 which includes \$11,000 in federal funds and an additional \$5,000 contribution by Sea Grant.

Kimberly Lowe explained that the Waianae festival was held in conjunction with the Waianae Boat Fishing Festival Ahi Fever and the Waianae Cultural Festival. She said there were fishing arts and crafts and the kupuna from the neighbor islands shared in story-telling as well. Fishermen took part in the fishermen's forum which was to focus on their ideas in terms of the fishery future. Students shared their experiences and perspective on what Hawaii could be doing to improve the management and enforcement of the fisheries. Other students from the University of Hawaii were involved in resource management and monitoring. This was an opportunity for the fishermen to know what types of research was being conducted. Participants included Western Pacific Fisheries Management Council, DLNR, National Marine Fishery Service, and University of Hawaii. DLNR Conservation Enforcement officers talked about enforcement issues. Lowe stated that the Ahi Fever Tournament was the biggest fishing tournament in the history of Hawaii with an estimated

4,000 people in attendance.

Mike Nelson explained that service clubs and local organizations were given the opportunity to raise money by providing food and beverage booths.

There was discussion about a task force to look at the problem of off-shore nets and long line nets that are collecting and drifting into the shores.

Motion made and unanimously approved as submitted. (McCrorry/Inouye).

D-1 HAPUNA BEACH STATE RECREATION AREA EXPANSION: REQUEST FOR RESCISSION OF THE BOARD'S 1987 ORDER FOR THE CONDEMNATION OF PRIVATELY-OWNED PROPERTIES AT WAILEA BAY, LALAMILO, SOUTH KOHALA, HAWAII

D-2 HAPUNA BEACH STATE RECREATION AREA EXPANSION: REQUEST FOR ACCEPTANCE OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE EXPANSION OF HAPUNA BEACH STATE RECREATION AREA, LALAMILO, SOUTH KOHALA, HAWAII

Dean Uchida, Acting Administrator for Land Division briefed the Board on Item D-1 which the Board in November 1987, authorized the Division to acquire various parcels fronting Wailea Bay for an addition to Hapuna Beach State Recreation Area. In February 1997, the Division requested that the Board accept the final Environmental Impact Statement (EIS) for the expansion which was withdrawn in response to the Petition for Deletion of Order submitted by Roy Vitousek representing the owners of the privately-owned parcels. Uchida said staff recommendation is that the Board rescind its action of November 20, 1987, authorize an acquisition of the private properties subject to 7 specific conditions.

Uchida said Item D-2 requests that the Board accept the final EIS for the expansion of Hapuna Beach State Park subject to terms and conditions.

Uchida said the acquisition process began in 1987 and the Board action required two parcels. He was unsure when the funds were encumbered but thought that it could have been encumbered when it was issued within the two-year time frame.

There was discussion about the legislature appropriating funds for these parcels. Chairperson Wilson said a million dollars was cut from the State Park's budget about two years ago and that purchasing land for parks on the neighbor islands has not been a focus of the administrative budget. Member Yuen said the two parcels that were purchased are important parcels to develop public use of Wailea Bay. He said there is a white sand beach approximately 1,200 feet long and the territory back in the 20's and 30's conveyed most of the land behind the beach to these private landowners, leaving the State with hundreds of

acres surrounding it but cut off from the beach except for a narrow easement that went through private land. The purchase in the early 1990's bought two lots on the beach that could be opened for development of public facilities and to improve the general access, as well as provide people with an area off the beach to sunbathe or picnic. The acquisition cost approximately \$48 a square foot. Member Yuen said there are approximately 12 acres of remaining public land on the beach and his view is that it's not essential to the development of this park to condemn those private properties. He said it would not be essential, nor a good priority for the State to buy out these few private lots to develop a beach park around the private lots.

Member Yuen further explained that the EIS covers a great deal of park improvement that does not involve the acquisition of the private lots. He felt when the EIS was done, the consultants felt obliged to include the acquisition of the private lots because the Board in 1987 authorized the condemnation of those parcels. Member Yuen thought that the consultants felt the private parcels was not likely in the future, to be part of a park. The condemnation of these lots was not an essential part of the EIS. Member Yuen said that the lack of money and the extreme cost of the purchases that were made had to do with the non-completion of the project and felt that the Board should back off on this order authorizing the condemnation of the laws.

There was discussion on the validity of the EIS and whether State Parks could still move forward with the development. Uchida said the EIS would satisfy to proceed in the acquisition and the development of the park. He said there is no time limitation with respect to the validity of the EIS as long as the development is consistent with what was disclosed in the EIS. Member Yuen said the EIS does not have physical development on the private lots except for development of a picnic area. The actual infrastructure called for the EIS to be done on public land and that it would not be affected by the withdrawal of the condemnations.

There was discussion as to whether or not the lots acquired had been cleared or improved. It was determined that DOCARE uses one house on the lot as a field office. Member Yuen understood that the EIS is in support of the first level of the infrastructure development in the area of private lots purchased and that there is small appropriation to do what really needs to be done urgently because hundreds of people use the area on the weekend.

Randy Vitousek introduced himself as the attorney for the Wailea Property Owners Association and the Lalamilo Property Owners. He testified that the owners do want the easement and support the idea of improving the public access as there are no comfort stations there. Vitousek talked about the Unilateral Agreement which had been circulated among the owners. The owners agree that they would execute the agreement under which they would commit themselves to not upzone their properties to a more intensive use category. Vitousek said the owner's intent is to have these as homes, not to develop it.

There was discussion regarding the Land Board taking action to rescind the order of

condemnation before the landowners filed the Unilateral Agreement with the Land Court. Vitousek said the owners will file and that it was a matter of logistics and that a reasonable timeframe would be 3 to 6 months. He said it would not be a problem with the decision being effective upon execution.

Member Matsumoto asked whether State Parks Division had any plans to attempt to pursue appropriation in the near future for this project. He said once the Board rescinds the order, the landowners will be free to do whatever they want within the current zoning of the property, which means they can improve their property to increase the value of the property. Member Matsumoto said it will affect the cost of the State in terms of acquisition,

Motion made and unanimously approved to accept Item D-1 with amendment to delete condition 4 and replace with: Recordation of the Unilateral Agreement and Declaration shall be completed within one hundred eighty (180) days of the date of the Board's decision to rescind its November 20, 1987 Order or 30 days from the acceptance of the Final EIS, whichever is later. (Yuen/McCrory).

Member Yuen questioned the aspects of the golf course and the development of a new fresh water source of the Master Plan. He said there is an existing park on the makai side of Queen Kaahumanu Highway with a large open space area. He said the park expansion calls for a family camping area and a proposal for a state golf course which would be mauka of the highway. The estimated price for construction of a golf course is in excess of 20 million dollars. Member Yuen felt the economics of golf course construction in Hawaii at this time is not very good and when people were building golf courses, the primary economic benefit of the golf course to some extent to subsidize the construction was the ability to sell private residential lots adjoining and intertwined within the golf course. He did not think that would be possible on State land in this location. Member Yuen's preference would be to amend the EIS that there would be no public funds for the golf course, that if State Parks could find a private developer willing to develop a golf course on this property then he would have no objections to State land being leased out for that purpose.

Member Yuen said the EIS also calls for development of a fresh water well in the Lalamilo Well field to supply the park expansion. Currently, the park has a dual water system. A small waterline for drinking purposes is supplied by the County which runs past the property and is at maximum capacity. The County does not permit more water to be drawn from that line. Member Yuen said the State also has its own brackish system which is used to supply irrigation water. The brackish well has a capacity of supplying lots of water but no adequate storage for that system. Member Yuen said the fresh drinkable water is currently used for almost all purposes in the park including shower, sinks and toilets. He said the brackish water is pretty close to quality and that the State could reduce the development cost by improving the non-potable system by using that for all of the uses that do not require potable water.

There was discussion regarding the deletion of the Lalamilo Well. Member Matsumoto

wondered whether it should be left to administrative discretion since it was included in the proposal and reviewed by the EIS. Member Yuen could not understand why the proposal is to develop a 1.4 million gallon per day well to satisfy a projected demand of 26,000 to 54,000 gallons per day.

Uchida thought that the EIS would allow for a golf course construction whether the State did it or put out to lease. The EIS process did not have to be redone. He did not think that the Board would have to approve it if the Department tried to get money from the legislature. Uchida explained that when wells are developed, it is not developed just for immediate need, that it is always oversized. Counties are requiring the State to provide its own water sources.

Member Yuen's reason for wanting the public funds deleted is if the Board makes a decision to approve a Master Plan that calls for the construction of a public golf course at the expense of over 20 million dollars, he did not feel that to be reasonable use of public funds. He did not feel private parties would come in to develop a golf course but that there is some flexibility by leaving it in as a possibility of being leased out to a private developer.

Member Yuen moved to approve the Master Plan with the condemnation of the private lots, the deletion of any public funding for the golf course that it would be done only if the State could find a private developer to develop it as a public play golf course, delete the Lalamilo Well unless it is infeasible to carry out the park development without it, and to use the non-potable water for uses that don't require potable water. Member Inouye seconded the motion.

Member Inouye said she did not want to see the water well deleted from the EIS and asked the Department to research the feasibility of maximizing use of brackish water because unless that study is done, it is not known whether the development well is necessary. Member Matsumoto concurred with the well issue, as well as to the golf course aspect to remove reference to State funding a golf course development. He felt it should not be restricted to a private operator, that it should also allow the County to be a potential operator of the golf course. Member Yuen concurred with the amendments.

Unanimously approved with amendments to add Condition C that the development of the Lalamilo Well shall not occur unless it is unfeasible to carry out the park development, there is maximized economic use of the brackish water system, and Condition D that no state funds shall be used for the development of the Golf course proposed in the EIS. (Yuen/Inouye).

Vitousek expressed concern about the 180 days time frame running out before they had a chance to review the final EIS.

Motion made and unanimously approved to amend Item D-1 that the recordation of the Unilateral Agreement and Declaration shall be completed within one hundred eighty

(180) days of the date of the Board's decision to rescind its November 20, 1987 Order or 30 days from the acceptance of the final EIS. (Yuen/Matsumoto).

D-20 AMENDMENT TO PRIOR BOARD ACTIONS OF MARCH 23, 1990 (AGENDA ITEM F-2), FEBRUARY 11, 1994 (AGENDA ITEM F-2), OCTOBER 14, 1994 (AGENDA ITEM F-5), AND JULY 12, 1996 (AGENDA ITEM D-24), SITUATE AT LALAMILO, SOUTH KOHALA, ISLAND OF HAWAII - TMK: 3RD/6-6-02: PORTION OF 31

Uchida said Item D-20 is a follow-up action related to Wailea which involves two accesses; the Lalamilo Makai Property Owners and the Wailea Beach Property Association. This action is to sell a long term easement with a condition that after the State Park Master Plan is approved and the alignments are set, the landowners agree to relocate it at their own expense and restore it to its natural condition, giving them a long term interest in the easement. Once the Master Plan is complete, a permanent easement alignment for the access to the Lalamilo Makai Property Owners properties will be constructed. Uchida said the final action is to sell an easement of a 40-foot road easement subject to review by the Attorney General's office pursuant to Chapter 264. He said this is to clean up an existing situation to meet the needs of the landowners. The Board's prior action will soon be completed and the easement alignments can be finalized then. The staff amended recommendation to the water utility easement to go to the Lalamilo Makai Property Owners and to issue the perpetual, non-exclusive access easement to the Wailea Property Owners, an existing revocable permit. The other recommendation is to issue a month-to-month permit to the Lalamilo Makai Property Owners, to issue perpetual, non-exclusive easement once the final design is completed, and to issue a perpetual, non-exclusive access easement over the existing paper road subject to AG's review subject to terms and conditions.

In reference to the pink easement (as shown in the exhibit), Member Matsumoto asked why would the Board issue a perpetual, non-exclusive easement at this time as opposed to an RP that when the final location is established the permanent easement could be issued. Uchida said this is being done at the request of the property owners. They understand and agree to incur all of the relocation and restoration costs if the State decides to relocate the easement at a later date. Uchida said Vitousek has a copy of the amended recommendation and is in agreement with the terms and conditions.

There was discussion regarding the access easement of the paper road. Uchida said the easement connects to properties and there are no access along the mauka side. He said the road is a paper road and would not be for public access since the landowners would take the liability and maintenance responsibility and they would have exclusive use of that road. Vitousek explained that the trail goes through the road reserve down to the beach and two private properties. Since there are no easements over the road, the problem is when an owner applies for a title search, it comes back with no legal access because it's interrupted by the 40-foot wide road. They are trying to give an easement to the association to legalize

access to all the properties that currently cross the road so it would not be an exclusive use to the extent that the trail would continue to go along that alignment as well. Member Yuen did not want to see the easement go onto the beach but to go along the beach and makai of the house lots. His understanding is that they are seeking an easement for the portion of the road reserve that goes between some of the public lots.

Vitousek said the Wailea Property Owners Association was formed for the limited purpose of acquiring and maintaining the easements. The access was a 20-year easement granted by the Board which expired and was replaced with a revocable permit to the Wailea Property Owners Association. They have since maintained and insured the access. Vitousek said the Lalamilo Association has not been formed yet.

Member Yuen referenced the amendment of Item 4 that the issuance of the easement over the road reserve is subject to review by the Attorney General's office pursuant to Section 264.1 HRS. He felt that the Board should state as a matter of policy that the road reserve is under State jurisdiction and it should be treated as part of State land and specifically for park purposes. He said that the road reserve does not connect to any lot or any other road.

Motion made to approve with amendment that as a matter of policy, finds that the 40 foot roadway parcel is not a paper road, if necessary, the Board issue a perpetual, non-exclusive access easement, to the Wailea Property Owners Association, over the aforementioned 40-foot Road Reserve, subject to review by the Attorney General's Office, pursuant to Chapter 264.1, HRS, and subject to terms and conditions. (Yuen/McCrory).

Member McCrory had a problem with issuing revocable permit or an easement to a non-existing entity that should have been formed. Vitousek said the application was made in the name of the individual landowners. It was the recommendation from the staff that it be granted to the association. He was agreeable to either the revocable permit and the easement to be granted in the name of the individual owners or that it be assigned to the association. Vitousek said the association could be formed by way of a corporation within 10 days.

Amendment made to motion for the formation of the association. (Yuen/McCrory).

Vote: all in favor.

D-22 DISPOSITION OF GENERAL LEASE BY NEGOTIATION FOR DAIRY PURPOSES TO ISLAND DAIRY, INC. AND RIGHT-OF-ENTRY AT OOKALA, HAWAII, TMKS: (3) 3-9-1-1 & -2; 3-9-2-7 & -8; 4-1-1-6, AND 4-1-5-1

Uchida said Item D-22 is a request for disposition of the general lease by negotiation. This is for dairy purposes to Island Dairy, Inc. which involves approximately 2,400 acres of land in Ookala on Big Island which were part of the lands that were held by Hamakua Sugar.

They presently have 4 years remaining on leases which are involved with Hawaiian Homelands. They are concerned that at the end of the 4 year period, they would not be able to renew the Hawaiian Homeland leases because it would probably go back to their beneficiaries. Based on discussions between Island Dairy representatives, Land Division and DOFAW staff, a Business Plan and an Environmental Assessment (EA) was developed. The Dairy wants to relocate their existing operation over the next 2 or 3 years to State properties. The staff recommendation is that the Board authorize the direct issuance of a lease pursuant to 171-59 to Island Dairy and authorize a right-of-entry for surveying, subject to terms and conditions.

There was discussion regarding the State receiving a gross percentage of rent. Uchida said the dairy industry has a special provision in 171-59 that allows them a direct lease. Member McCrory said that the Dairy is a business using State land and felt that a percentage should be returned to the State.

Jimmy Nakatani, Director of the Board of Agriculture testified in support of the industry and felt that the farmers are providing economic development on the Big Island. He commented on Member McCrory's statement and said it is just as important to look at what an industry can offer the community in terms of economic development, especially when the island is struggling.

There was discussion regarding the number of direct and indirect jobs. Bahman Sadeghi said they currently employ 8 full time and 1 part time employee. They anticipate hiring 3 more people for the improvement of the new site. Bahman said for the dairy site, they will employ 15 and for the cheese production, they will start with 2 full time employees.

Sadeghi explained about the cheese production and their plans to expand on specialty cheeses. He said it is vital for them to expand as they are losing on the economy scale and they need to catch up. Sadeghi talked about the export of milk to Guam which has been a good market for them and felt that there are other export markets available to them once the shipping problems are resolved. He offered additional written testimonies. Sadeghi talked about restoring the lands back to productivity level by putting cattle on the land for the next generations. He said the dairy industry is unique in that it puts back organic matter into the land. Sadeghi said they are willing to start over and invest 1.2 million dollars because they believe in the future.

Member Yuen asked how they were going to deal with the road on the Ookala property which runs mauka-makai through Huumula Road as a public right-of-way. Sadeghi said it was addressed in their EA and that the road should remain open since many people use the road, even for access to their homes. Because of high usage by the dairy, they plan to maintain the road.

There was discussion regarding the total acreage once considered for the Oji lease and the availability of water. Sadeghi said studies were conducted on various soil suitability and

have had discussions with the Board of Water Supply. They were told 3 meters of potable water for the processing site and washing of the lines were available to them. The dairy is considering a development of water for the cattle through the spring permit process. Sadeghi said to comply with the guidelines, the dairy would collect all the waste water, separate the solids to pump back into the land and the waste water to be used for irrigation, which is a good nutrient.

Sadeghi said a projected site has been selected and described the site to be at 1,400 feet elevation with buffer zones of 50 feet around the water ways and gulches. There are existing roads and it is centrally located with very shallow slopes surrounding the property. Sadeghi said the road and gulches will be fenced off to avoid hazard to cattle and people. A native type forest will be developed to create wind protection, shade for the cattle and protection of the water ways.

There was discussion regarding the representations made with regard to future use of the land. Member Inouye recalled that the Board would receive recommendations and input from the community. Michael Buck, Administrator of the Division of Forestry and Wildlife (DOFAW) said there is a segment of the community still looking at some forestry options. It is presumed that the County Council on the Big Island and the community of Hamakua are aware of it.

Sadeghi said Tom Young, a former sugarcane worker showed him this particular site. Since Young is an active member of a community association, he asked him to set up a meeting with the community but no meeting took place during their EA process but that the draft EA was published. Nakatani felt this was an important attempt to gap the forestry and the milk industry.

There was discussion regarding animal unit per acre. Member Yuen said in his conversation with Sadeghi, he estimated approximately 600 or 700 animal unit. The formula that the Department has been using for pasture operations has worked out to approximately \$33 per animal unit per year which would then be approximately \$20-23,000 a year for rent which works out to under \$9-10 an acre per year.

There was discussion regarding discussions with the local community. Member McCrory recalling a similar situation on Kauai felt leery about no community contacts. Sadeghi said it was not accurate to say that they had not gone out to the community as they have had testimonies from a resident, a member of Hamakua Farm Bureau and an active member of the community association.

Member Matsumoto said the Board sat through two days of public testimony as far as the uses of these former sugar lands in Hamakua and it was communicated that they did not want more forestry, they wanted agricultural activity. He said this proposal is quite consistent with what was expressed in public testimony and felt that was more than an adequate opportunity to receive community input as to what the desired uses of those lands are.

Member Kennison concurred.

Dave Kugo introduced himself as President of Fresh Milk Industry and owner/operator of Evergreen Hillside Dairy. He testified in support of the lease as he had concerns about another dairy going out of business and more unemployed people.

Elizabeth Martin introduced herself representing the Native Hawaiian Advisory Council. She said since the dairy is trying to be ecologically efficient and has the experience in microbiology, she asked whether they could address the impact on leptospirosis. Sadeghi said they are seriously considering that and do have an extensive budget for veterinary problems.

Member Yuen stated that he is not in support of this project because it is his opinion that the person who has come before the Board is not a very good operator and does not have a sound project. He said there is approximately 600 acres of quality farm land authorized for public auction and was interested to see what the demands were for those lots. He said it has been 6 months since Oji was voted down in November 1997, and hopes that the auction can happen soon. Member Yuen said his preference would be either forestry or other types of crops since the return to the State on dollar basis would be quite higher than pasture leases and overall economic benefits in terms of employment.

Member Kennison felt that the dairy industry would be a viable entity for the Big Island. He said Hawaii is a tough place to do business and the Board should do everything to encourage businesses to help the State of Hawaii.

Motion made to accept staff recommendation. (Kennison/Inouye).

Member Inouye clarified her second is in favor of supporting the dairy industry and is not a motion against the support of forestry or agriculture.

Member Yuen said even if he has intentions of voting against the motion, he had suggestions to amend the motion. He suggested some conditions be included with the approval about keeping the road open, the gulches fenced, the handling of the waste water treatment and the location of the dairy itself. In Member Yuen's final pitch to the Board members he said a major commitment is being made and that in the 6 months since Oji has died down, the Board has not had enough time to evaluate to see whether this is the best use for this particular land.

Motion made to amend the recommendation to add Condition C that as represented in the EA, the applicant shall provide for continued public access through the property along the identified routes, provide for riparian buffer zones along the gulches and rivers, locate the dairy at the higher elevations on the subject properties, and provide for appropriate handling of wastewater disposal that would allow for the removal of the solids, and use of the nutrient rich effluent for irrigation. (Kennison/Inouye).

Vote: 5 in favor, 1 oppose (Yuen).

D-14 REQUEST TO DEVIATE FROM CONDITIONS OF CONSERVATION DISTRICT USE PERMIT MO-2680 FOR FISHPOND RESTORATION IN EAST MOLOKAI BY DELETING CONDITION 4 THAT REQUIRES SHORELINE CERTIFICATION

Uchida said Item D-14 is a request to deviate from a condition imposed on a Conservation District Use Permit for the restoration of fishponds in East Molokai. There is difficulty in completing survey work because of the lack of locating monuments and boundary pins. Uchida said the fishpond is a State owned pond that sits in the middle of privately owned property. He said staff has negotiated a right-of-entry agreement with the landowners. Uchida said staff recommendation is that the Board approve the request to delete condition 4 of CDUA MO-2680 subject to terms and conditions.

Walter Ritte testified in support of staff recommendation.

Motion made and unanimously approved as submitted. (Kennison/Matsumoto).

D-37 CONSERVATION DISTRICT USE PERMIT APPLICATION TO ESTABLISH AND CONSTRUCT A TELECOMMUNICATIONS FACILITY AT WAIAKEAKUA PEAK, KAOHAI, LANAI, TMK: 4-9-02: POR. 01

Uchida said Item D-37 is a Conservation District Use Application (CDUA) to establish a Telecommunications Facility on Lanai, in the resource subzone of Conservation District. The site is necessary to provide coverage for the Police Department specifically because this site opens up to the County of Maui. He said the application has been referred to the different agencies for comments. A public hearing on this matter was held in April on Lanai and there was no testimony in opposition. Staff recommendation is that the Board approve the CDUA for the Telecommunications site on Lanai subject to terms and conditions.

Motion made and unanimously approved as submitted. (Kennison/Matsumoto).

D-4 LAND LICENSE REQUEST BY GAY & ROBINSON, INC. FOR REMOVAL OF CINDER FROM THE OLOKELE CINDER PIT, HANAPEPE, KAUAI, TMK: 1-8-07: POR. 10

Uchida said Item D-4 is a request for a land license by Gay & Robinson for removal of cinder from the Olokele Cinder Pit, Hanapepe, Kauai. The area is presently encumbered by Revocable Permit 6842 to Gay & Robinson for sugarcane cultivation and related purposes. The term of the license would be for 5 years and the quantity allowed would be 1,500 cubic

yards of cinder annually at the rate of \$0.50 per cubic yard. The Board in April 1998, authorized a 25 year direct lease to the applicant for sugarcane cultivation and pasture purposes covering this parcel. Uchida said staff recommendation is that the Board authorize a land license to Gay & Robinson covering the cinder removal subject to terms and conditions.

Dave Martin representing the Native Hawaiian Advisory Council said they are a non-profit corporation that works primarily in the area of education and advocacy with respect to Hawaiian Rights issues. Martin submitted an application for a license on the same cinder pit. He said the reason for their application at this time is that they have been working with the process in conjunction with the University of Arizona, the Office of Hawaiian Affairs, and the Department of Hawaiian Homelands as well as James Severson, an architect. Scoria system utilizes cinder as it's primary component in a wall system that is mixed with cement that makes a light-weight material. Martin said they have found this to be cost effective for self-help housing projects to help people qualify for Hawaiian Homelands on Kauai. He asked that the Board consider their application in conjunction with the application of Gay & Robinson.

James Severson introduced himself as an architect and consultant for the Office of Hawaiian Affairs (OHA) and has been involved in various self-help effort. He explained that the Kauai Habitat for Humanity is currently building 20 homes in Hanapepe and has an option on a property that could accommodate 100 homes in Eleele. He said the system is low energy cost, fire and termite proof, very resistant to hurricanes, and is user friendly to unskilled self-help builders. Severson said the material complies with the Kauai building standards.

There was discussion regarding the cost per cubic yard and what the required amount of cubic yard per house is. Severson said the cost is dependent on the cost of cinder and cement and the required amount per house is approximately 60 or 70 cubic yards. He guessed the amount of homes built on Kauai by Habitat last year to be 15 and the year before that was over 20 or 25, averaging 20 homes a year. Member McCrory estimated their usage at 3,000 cubic yards for 40 homes a year. She felt that to be a "very large amount" to come out of the cinder pile compared to what Gay & Robinson is looking for.

There was discussion on the mining of the cinder by the non-profit group. Member McCrory clarified that the non-profit group's intent is to sell some of the cinders obtained under this license to other people, not just for the housing project, that would then allow the group to continue with the goals of the non-profit. The money would come back to the non-profit to support what the group is doing. Severson said that was their primary focus.

Severson said they have had discussions with Gay & Robinson in regards to access to the cinder pit. He said Gay & Robinson have indicated that they need all the cinder in the cinder pit and since they have the lease, they believe they have exclusive use of the pit. Severson said that is the reason they felt they had no alternative but to attempt to request for a license for the same pit.

After a short break, Member Yuen reconvened the meeting.

Winona Matsuzaki introduced herself representing the Office of Hawaiian Affairs who had concerns regarding this item. She said, however, during the break there was discussion between the parties and have agreed that they would like to have more time to conduct more studies and see if they could work out other avenues.

Motion made to defer item. (McCrorry/Inouye).

Member Inouye asked that an analysis requirement be addressed and brought back to the Board.

Motion made to add to deferment an analysis requirement to be done by the Native Hawaiian Advisory Council, Inc. on how many cubic yards of cinder and cement would be required for a 1,200 square foot house, cost compared to construction and to provide evidence of number of homes built on the average in the past five years on Kauai. From Gay & Robinson, substantiation for the need of 1,500 cubic yards per year for the next five years. (Inouye/McCrory).

Vote: all in favor.

D-13 CONSERVATION DISTRICT USE APPLICATION (HA-2885) FOR KA'U HAWAIIAN CULTURAL CENTER, TMK: 3/9-5-19: 34

Uchida briefed the Board on the CDUA for the Ka'u Hawaiian Cultural Center (KHCC), filed under Hana Laulima Lahui O Ka'u, Inc. Hana Laulima was formed in 1994 in response to the Ka'u community to address some of the economic problems triggered by the closure of Ka'u Sugar Company. Hana Laulima proposed to construct the Ka'u Hawaiian Cultural Center to be a community-based sustainable ecotourist attraction. The site is in Conservation District, formerly under lease for nursery and arboretum and landscaping. In March 1998, a fire razed the entire parcel. Uchida said the proposed use would involve some physical elements of a 2,700 square foot main building, Cultural Events Center, a Certified Commercial Kitchen, a Multi-purpose Room and a 900 square foot ADA restrooms/security/caretaker building. The application was routed to the different agencies and divisions for comments with no objections. A public hearing was held in May 1998, indicating a strong support from the community.

Uchida said one concern was the appropriateness of the land use in a Conservation District for a semi-commercial operation. He said based on the Conservation District Management Plan of a resource-based management, the staff is considering that as a higher use for the property. Uchida said staff recommendation is that the Board approve this application by the Ka'u Hawaiian Culture Center subject to terms and conditions. Condition #1 requires the applicant within 3 years of this approval to submit an acceptable petition to the SLUC or the

County Planning Committee and request that this Conservation District parcel be taken out of the Conservation District.

Uchida explained that there is no encumbered landowner because it is in Conservation zone and that the Board will need to approve the land use first then a follow up with a separate action on the land use position. He said it was under lease and permit to Hawaiian Investment Company for nursery operation until it was cancelled in 1989. There was discussion regarding the appropriate zoning of the parcel.

J. Keolalani Hanoa introduced herself as a Board member of Hana Laulima as well as the largest private property owner. She said their project is a cultural center to educate people, not a tourist attraction and the purpose is to do community-based economic development because of the suppressed condition of Ka'u. It will be a place for the private entrepreneurs to market their wares and goods. Hanoa talked about the squatters and the green sea turtles and the impact on the shorelines, where the Honu used to come to nest. Hanoa said they have a business plan that was presented to OHA for funding and their grant from OHA is dependent on whether they get approval from the Land Board. She said the County Planning Commission unanimously supported them and gave them their SMA permit at the last meeting. The County of Hawaii Economic Development granted them \$35,000 in grant money in support of their project. Hanoa said their organization made up of Native Hawaiians from their district, consists of 9 Board members and 500 members.

Member Yuen commented that the organization is supported by the community, that it is a very severely depressed area and people are trying to do something. He said this is a genuine community organization and not an attempt to do a commercial operation. Member Yuen said he is inclined to support the Conservation District Use Permit. With regards to the appropriate zoning, this parcel is in the general subzone which is less restrictive and does qualify as a public purpose and plantings do qualify as a botanical park.

Motion made to accept submittal with amendment to delete condition 1 of the submittal. (Yuen/Kennison).

D-8 GENERAL LEASE NO. S-3583, CONSENT TO ASSIGNMENT OF LEASE FROM EMMA YAMADA, TRUSTEE OF THE EMMA YAMADA REVOCABLE TRUST, ASSIGNOR, TO YAMADA CONSOLIDATED, INC. AS ASSIGNEE

Uchida said this is a request for Consent to Assignment of lease from Emma Yamada through Yamada Consolidated, Inc. Uchida said staff's recommendation is that the Board consent to the assignment of lease from Emma Yamada to Yamada Consolidated, Inc. subject to terms and conditions.

Mr. Shigeoka introduced himself as the attorney representing the various

Yamada Corporations and also introduced Donald Yamada, President of the Yamada Corporations.

Motion made and unanimously approved as submitted. (McCrory/Inouye).

D-30 GENERAL LEASE NO. S-4302: AMEND PRIOR BOARD ACTION ON CONSENT TO ASSIGNMENT OF LEASE FROM YAMADA DIVERSIFIED CORPORATION, ASSIGNOR, TO YAMADA TRANSFER, INC., ASSIGNEE; CONSENT TO ASSIGNMENT OF LESSOR'S INTEREST IN SUBLEASE; AND CONSENT TO SUBLEASE TO ROBERT'S CENTRAL LAUPAHOEHOE, INC.

Uchida said this request is to amend a prior action on Consent to Assignment of lease and also consent to the sublease. There was confusion when the Yamada Corporation went through a name change in 1992 and 1997. The consent was given to the wrong company and this action is to correct the issuance from Yamada Diversified Corporation to Yamada Transfer, Inc. and also asking for consent of a sublease to Roberts Central Laupahoehoe, Inc. subject to terms and conditions.

In response to Member Yuen's question regarding the security of the Special Installment Agreement, Uchida said they would be defaulted for non payment. Shigeoka said if the subleases are going to be made subject to the terms of the General Lease and the Special Installment Agreement, the sublessees should be subject to the same terms. Shigeoka said that the trustees of the Emma Yamada Trust will be assuming responsibility for the Special Installment Agreement.

Member Yuen wanted to make sure that the documents are in place as such. He said there is a Special Installment Agreement for the Yamada Company to repay a very large sum of money to the State for taking of rock during the period that they were not paying the State. He felt paragraph 3 was vague about how the subleases would be affected and clarified that the subleases are subject to the possibility that the main lease can be in default for failure to pay.

Motion made and unanimously approved as submitted. (McCrory/Inouye).

D-18 ISSUANCE OF A REVOCABLE PERMIT TO RENEW HAWAII, INC. AND A RIGHT-OF-ENTRY AT WAIAKEA, HAWAII, TMK: (3) 2-1-13-PORION 11

Uchida said Item D-18 is a request for issuance of a revocable permit to Renew Hawaii, Inc., a compositing and recycling business in Waiakea. The lease was formerly under Jason Glover for removal of rock and waste deposits for commercial use by mining. The applicant is presently contracted by the County of Hawaii, Department of Public Works (DPW) to recover and divert green and wood materials from the Hilo Landfill to serve as a educational

vehicle for the public. He said DPW is looking at this specific site as a possible site for long term construction and demolition waste landfill. Until the County decides, the staff recommendation is that the Board authorize the issuance of a revocable permit to Renew Hawaii subject to terms and conditions.

There was discussion regarding the processing period. It was determined that it is 30 days from the final publication, April 8th to May 8th. In response to Member Inouye's question, Uchida said there will be a requirement to restore the area if their lease is canceled.

Motion made and unanimously accepted as submitted. (Yuen/Matsumoto).

D-26 REQUEST FOR BOARD'S CONSENT BY HAWAIIAN CEMENT TO SUBLET PORTION OF GENERAL LEASE NO. S-5284-A TO PACIFIC MACHINERY, INC., ON STATE LANDS IDENTIFIED BY TMK: (2) 3-8-08: POR. 31, SITUATE AT PORTION OF PULEHUNUI AND WAIKAPU, WAILUKU, MAUI

Uchida presented Item D-26 as a request for the Board to consent to Hawaiian Cement to sublease a portion of an area to Pacific Machinery, Inc. who provides services to Hawaiian Cement. The staff recommendation is that the Board approve the consent to sublease subject to terms and conditions.

Motion made and unanimously accepted as submitted. (Kennison/McCrory)

D-17 DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE UTILITY EASEMENT OVER, UNDER AND ACROSS GOVERNMENT LANDS SITUATE AT LAHAINA, MAUI, TMK: (2) 4-6-18: PORS. 17 & 19

Uchida said Item D-17 is a request for direct sale of a perpetual, non-exclusive utility easement at Lahaina, Maui. The applicant is Maui Electric Company. Staff's recommendation is that the Board authorize the direct sale of a perpetual, non-exclusive access and utility easement to Maui Electric Company subject to terms and conditions.

Motion made and unanimously approved as submitted. (Kennison/Matsumoto).

D-31 CANCELLATION OF EXECUTIVE ORDER NOS. 639 AND 2186 AND THE SET-ASIDE OF PARCEL A (OLD HILO MEMORIAL HOSPITAL SITE) AND THE GILBERT CARVALHO PARK SITE TO THE COUNTY OF HAWAII AND THE SET-ASIDE OF THE RESERVOIR SITE TO THE WATER COMMISSION OF THE COUNTY OF HAWAII SITUATE AT PIHONUA, SOUTH HILO, HAWAII, TMKs: 3RD/2-3-26: 05, 07, 08, 09, 12, 58 AND 59

Uchida said Item D-31 is a request to cancel two Executive Orders and set-aside of parcels, at the Old Hilo Memorial Hospital site and the Gilbert Carvalho Park site to the County of Hawaii and also to set aside the Reservoir site to the Water Commission of the County of Hawaii. He said this is an effort by the staff to clean up different parcels with a mixture of land uses. The staff recommendation is that the Board rescind prior Board actions subject to terms and conditions.

Motion made and unanimously approved as submitted. (McCrorry/Inouye).

D-5 REQUEST FOR DIRECT SALE OF GOVERNMENT REMNANT PARCEL 6 TO OCEANHOUSE, INC., TMK: (2) 4-5-01: POR. 52, AKI, LAPAKEA, LAHAINA, MAUI

Uchida said this is a request for direct sale of a government remnant road parcel, for Oceanhouse, Inc. at Lahaina, Maui. The applicant wishes to consolidate with this parcel to provide additional public parking. Staff recommendation is that the Board authorize the direct sale of the remnant to Oceanhouse, Inc., subject to terms and conditions.

Matsuzaki said OHA is in opposition of the sale of ceded lands and reminded the Board that there is an on-going inventory that OHA is trying to work to complete. She said they hoped that any discussion for and approvals for ceded lands could come after the completion of the inventory.

Motion made and unanimously approved as submitted. (Kennison/Matsumoto).

D-21 REQUEST FOR CONSENT TO THE ASSIGNMENT OF GENERAL LEASE NO. S-5353 FROM DALE HARDINGER TO FREDDA A. STROUP REVOCABLE LIVING TRUST, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 1ST/4-1-08: 76

Uchida said Item D-21 is a request for consent to assignment of General Lease from the Hardingers to Fredda Stroup in Waimanalo. He recalled for the Board that actions were taken to relocate the Hardingers off this property unto another parcel under revocable permit because of hazardous situations involved between the Hardingers and their neighbors. Part of the Board's action allowed the Hardingers to assign their lease to someone who qualifies as a bona fide agricultural or cultural person under statute. Uchida said staff recommendation is that the Board consent to the assignment of General Lease subject to terms and conditions.

Member McCrorry asked Carla Hardinger if the lease was assigned to them by Mr. Aquino at no cost, how could they justify assigning the lease to Ms. Stroup for \$25,000. Hardinger said significant improvements were made to this property in the demolition of an existing

house, hiring a licensed surveyor and hauling of rubbish. Member McCrory recollected that the Board gave them rent credits for some of DLNR's requirements. Hardinger said the rent credit was not to compensate to improve the property but for the encroachment by the Hawaiian Homes lessee on the oceanside of their property for the period that they had the lease from 1995 until current.

Hardinger asked whether it would be acceptable for Ms. Stroup to pay the lease amount as of June 1, 1998. It was concurred that the lessee and the tenant should work it out between themselves. Member Kennison asked Ms. Stroup if she accepted the lease agreement, she said yes.

Motion made and unanimously approved as submitted. (Kennison/McCrory).

J-1 REQUEST PERMISSION TO ISSUE COMMERCIAL PERMITS FOR THE CURRENT KANEOHE BAY COMMERCIAL OPERATORS

Howard Gehring introduced himself as the Acting Administrator for the Division of Boating and Ocean Recreation (DOBOR). He also introduced Steve Thompson, Oahu District Manager, members of the Kaneohe Bay Regional Council chaired by Gretchen Gould and other members of the community. Gehring said their request is that the Board grant approval for issuance of new permits for commercial operations in Kaneohe Bay for a period of 1 year or until administrative rules are adopted, whichever occurs first. He said last November the Board authorized a 6 month extension of commercial permits issued to the commercial operators in Kaneohe Bay until the completion of the rule-making process to implement the provision of the Kaneohe Bay Master Plan. In October 1997, the Board approved to conduct public hearings on the rules subject to revision to the rules. Gehring said the most heated point of discussion was the use of personal water craft for recreational use by private citizens which was not in the Master Plan. He said public hearing on these rules which included those provisions was conducted on March 27, 1998, with Board member Kathy Inouye as the Hearings Officer. Gehring said on March 25, 1998, two days before the public hearing, a doctrine of Act 4 Session Laws of Hawaii 1998 became effective which contains statutory provisions affecting portions of the draft rules which would require another public hearing before the rules can be adopted. He said the new draft rules are ready to be delivered to the AG's office for review. The Legislature passed Senate Bill (SB) 2078, which the Governor is expected to sign will be significant in that it amends the language of Act 4. Once it is signed, additional revisions will probably be required.

Gehring asked that the Board authorize the issuance of new ORMS permits for continued commercial vessel operations on Kaneohe Bay for each of the companies that are listed on Exhibit A for an extension of one year. He said those permits would be subject to any statutory rule changes that comes along. Gehring amended the submittal by adding other provisions, that the Morning Star permit be issued to a Checker Reef location, to prohibit activity on top of Checker Reef, and that the two large whole service permits remain

assigned to Morning Star Cruises Incorporated and Mid-Pacific of Hawaii Incorporated during this period. Thompson said the expiration date for the permits is today, June 5, 1998. Pam Matsukawa, Deputy Attorney General clarified that Act 4 amended Section 200-39, Hawaii Revised Statutes (HRS), to specifically require that the locations indicated in the Kaneohe Bay Master Plan be implemented. She said as of now, the Morning Star Cruises is located at Sand Flat and according to the Master Plan, it should be at Checker Reef. Matsukawa said the Coast Guard's concern is the danger in having two full service operations in the Checker Reef area and DAR's concern is damage to the reef. She said once SB 2078 becomes law, that will stop the Department from actually moving Morning Star Cruises from Sand Flat to the Checker Reef until rules are adopted. Those rules would still have to be based upon the Master Plan but it would allow for an amendment to the Master Plan if those amendments are appropriate. Chairperson Wilson clarified that SB 2078 preserves the present location to the boats until such time as the rules are amended, that would preserve Morning Star's location at the Sandbar. Matsukawa explained until the rules are amended, the Division is trying to comply with Act 4 by attempting to move Morning Star Cruises to Checker Reef but first need to address the safety and environmental concerns.

In response to Member Matsumoto's question regarding Act 4, Matsukawa said in Section 200-39C, HRS, it requires that the permits be issued according to the number of permits by permit type and vessel capacity as provided through the Master Plan. Act 4 says that the location shall not be implemented until rules are adopted by the Department. Gehring said it gives the Regional Council the authority to move ahead and make recommendations or change the Master Plan.

Douglas Ing, Attorney representing Morning Star Cruises gave reasons for not wanting to move its location. He said there is a safety issue with two operating areas for the full service boats. The Master Plan adopted that same operating area as defined in the current rules but the Plan did not increase the size of the Checker Reef operating area. Ing said currently, 150 customers per day is allowed and there are many activities allowed under the rules of the Master Plan. Another full service operator would allow another 150 customers per day, "they're going to be on top of each other...". Ing said the second concern is the environment. They fear that the two large vessels which would require up to a minimum of 4 to 6 anchors would disturb and cause potential damage to the reef. Ing said the Master Plan required an EA to be conducted and the purpose of that was to assess the level of activity but the EA was not conducted. A task force was set up to develop the Master Plan, which was submitted to the Office of State Planning. Ing said some members in the task force felt because they were decreasing the level of activity on the bay, that the EA was not necessary, it would have been necessary only if activities were increased. He said the Master Plan was derived in meeting the criteria to reduce conflict, to change the role of the character of Kaneohe Bay, for safety, to protect reefs and submerged lands, and to preserve public interests. Ing referred to the language of Act 4, Section 200-39, HRS, and said despite the language regarding the location and the arguments from the Deputy Attorney General that the law itself is self-executing. He did not believe that was the case because

Subsection B overrides that claim of self-executing language in the Act and it still requires that the Board implement rules in order to implement the Master Plan and does not allow anyone to operate unless they are in conformance with rules that have been adopted.

Joe Pickard said he is one of the operators and has been involved with this process for 10 years. He said he was "unfortunately" placed in the position to represent the commercial operators and was also the President of the Kaneohe Business Group. They lobbied very strongly in support of the plan. The concern at that time was that commercial activity was going to be completely shut down at Kaneohe Bay and some members of the community pushed for a total elimination of all commercial recreation. Pickard said the plan was signed in 1991 and each Department was given a year to implement the recommendations of the plan, DOBOR failed to do so. He said in 1993, a law was passed to deal with the recommendations as a commercial operator but DOBOR failed to issue annual permits. Last year, two permits were issued to larger operators that exceeded capacity. Pickard said they requested the Legislators to pass Act 4 to ensure that the Master Plan continued to be law. He commented that no one objected to an operation that once carried 400 passengers per day with a mooring permit saying it would cause congestion or safety problems or degradation to the resources of the area. Pickard said he objects to the issuance of the permits as they are not in compliance with the Master Plan and requested a contested case hearing. He is opposed to SB 2078 and said that the Regional Council voted unanimously to support Act 4.

Gehring said the staff is looking at taking the existing permits and extending them for a year or until the rules are in place, which ever comes first. He said DOBOR could issue permits that are in compliance with the Master Plan even though the rules aren't adopted, but the question is, should they do that.

There was discussion about the Kaneohe Bay Cruises anchored to the poles on the reef. Thompson said they have held that position for years. David Eckert, Aquatic Biologist said DAR has a monitoring project under way to look at the mooring blocks that are being used after they saw evidence of abrasion to live coral from one installation. He expects within the next 4 weeks, to be able to look at sites that are being used to determine which ones show damages.

Pickard said there are definite concerns with Mid-Pacific of Hawaii not complying with the conditions set forth in the Master Plan with regards to safety and enforcement.

There was discussion regarding the significant differences between the draft rules and Act 4. Pickard said the locations makes a significant difference. Gehring said Act 4 says no personal water craft are allowed on Kaneohe Bay except for the commercial operations. He said the Board went along with the community to allow personal water craft for their own

recreational use. Gehring said Act 4 states that the Board's decision wasn't an appropriate one but that SB 2078 gives the Regional Council the authority and the ability to make these kinds of recommendations to reflect current changes needed in the Master Plan. Pickard said at last Wednesday's meeting, the Regional Council voted unanimously to support the enactment of Act 4 and to defer rule-making on recreational issues such as recreational jet skis.

Francis Shimanuki introduced himself as the owner of the Morning Star since January 1995. When he purchased the Morning Star, he said the Master Plan was in place and was aware of the conditions. Shimanuki said he didn't know what position to take and felt that status quo was best for them. He said he was under the impression that they would be able to work with DOBOR to come up with a location solution.

John Reppun clarified that SB 2078 has not been signed yet and that it was meant to be applied state-wide. He felt the language that related to Kaneohe Bay was "snuck" in. Reppun referred to page 3, line 9 and said there is tremendous amount of flexibility to stay within Act 4, move the operations that are required to be in Checker Reef and limit them according to whatever risks there are to the resources. He testified to adhere to the Master Plan, delete the non-conforming uses to the new permits and require them to go through the CDUA and EIS process. He also requested a contested case hearing.

Reppun was concerned about SB 2078 which would not give the Regional Council the authority to make recommendations to the Board. He also said the Master Plan stipulates a 30 day notice before action is taken on a renewal and there has been no notice. Reppun said at their May 27 Regional Council meeting, the Acting Administrator of DOBOR and the Oahu District Manager were in attendance but there was no mention with regards to the permits. Thompson apologized and said it was unintentionally overlooked. Reppun said he was at that meeting but was not aware that the permits were going before the Land Board.

Gould said the Regional Council has not addressed this because of some legal issues. She said part of the responsibility of the Council is to be a forum for the community and to weigh these issues and get them resolved. Gould said there are some issues in the Master Plan that should be addressed by the Regional Council, not to change it but to reach a consensus.

Eckert said the Division's opinion with regards to moving a second operator to the Checker Reef is a bad idea because it would be bad for the resources. Eckert clarified that the Sandbar habitat where Morning Star is now operating out of is biologically and environmentally different from the top of Checker Reef even though both have sand. At Checker Reef, they are concerned about the small fish and invertebrates that live in the

adjacent coral and rubble which use the Sand Flat portion. Eckert said the problem with the Morning Star in that area would be the general increase of activity with more people walking around on top of the reef and snorkeling on the reef. People would be touching the corals or picking seaweed. He said there could be chronic leakage spills from the jet ski fuel causing exposure of chemicals to the coral. Eckert said the larvae, during periods of low tide and coral spawning season would be particularly sensitive to the chemicals from the fuel. His recommendations for precaution of the resources would be 30 feet buffers for the moorings from the reef edge, 200 feet buffers for high speed jet skis, and the prohibition of volleyball on top of the reef.

Chairperson Wilson asked the Board before going into Executive Session to take two other agenda items to accommodate the people from the Neighbor Islands.

C-2 REQUEST APPROVAL OF CONTRACT WITH H&G KOA ENTERPRISES, INC. TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM

Buck said Item C-2 is an approval of a Forest Stewardship Contract with H&G Koa Enterprises. This is 10 acres of degraded pasture land and a reforestation area. He said the project's objectives are to produce quality koa timber for local industry and establish superior seed sources for future koa production and research various silvicultural treatments. Buck said the total project cost during the 10-year implementation and maintenance period is expected to be \$73,287.00 of which \$32,828.00 in cost-share assistance from the Forest Stewardship Program. The staff recommendation is that the Board approve this contract with H&G Koa Enterprises, Inc., and DOFAW to participate in the implementation of the State Forest Stewardship Program. Buck added an amendment that the best management practice be a part of the State Stewardship contract and that precaution be taken in the application of pesticides that it not drift into adjacent lands.

Steven Guttman introduced himself as one of the owners of H&G Koa Enterprises. He said they have been using hand method of spraying "Round up" in its proper application and that it does comply with regulations recommended by the manufacturer. Guttman said he understands the concerns of neighbors but that the use of pesticides will be necessary.

Joan Manor Philipp introduced herself and said she is the owner of an organic farm next to the proposed koa project. She said she is in support of koa reforestation and the reforestation of the Big Island, however, was very concerned about the impact of their [H&G Koa] use of the herbicides and pesticides on the existing and economically viable organic vegetable farms. Philipp said the entire length of her farm borders the land proposed to be planted in koa. Their market niche depends on their produce being totally free of chemicals

and pesticides. If chemicals are found on the products, their certification could be revoked for 3 years. Philipp said because the economic consequences would be disastrous to them, they requested that the Board incorporate into the plan protective procedures to insure that there will be no drift or trespass of pesticides or chemicals onto their property and 24 hour verbal or written notice to all adjacent neighbors before spraying occurs. She submitted photographs and called to attention written testimonies submitted about the impact of the spraying causing people to be ill.

There was discussion about the project. Buck said this is like a research project in which the landowner is taking some risks with unknown seed sources and that it is not totally commercial oriented. He said this is a new high risk venture using new seed sources and areas that people have not planted before. Member Matsumoto asked why the Stewardship program would pick this high risk project when the objective was to put as much private land in forestry production as possible. Buck said it is less expensive [for the State] to do this applied research in cooperation with a private land owner because this kind of work needs to be done. He said it is not known whether koa can be grown in the lower elevation and there may be a need for specific seed source. Buck said the Division has not had very much experimental plantings at lower elevations and they are mostly used for intensive agriculture.

Perry Philipp introduced himself as a Professor of Agriculture Economics at the University of Hawaii. He said the University for years have had plantings of koa at that level and have learned a lot. He commented that this is an important project and that research should be conducted by qualified people. Philipp said he and a colleague, an agricultural engineer has had discussions with regards to the spraying. He said there are methods which could be used in order to reduce the drift by using a large cone attached to a nozzle. Philipp felt that, "...this group has not shown any interest to work with the neighbors..."

Dave Frankel said the Sierra Club supports the idea of koa reforestation on the Big Island and appreciated that the Best Management Practices were included as a condition because that was agreed to by the Board many months ago.

Guttman said he understands the Best Management Practices and agrees that they are appropriate. He said some of the requests for restrictions go beyond the Practices such as the 50 feet free zones to measure wind each time spraying occurs, but felt that they were not practical considerations in order for them to have a profitable koa farm.

Joan Philipp did not think that measuring wind conditions was economically unfeasible and asked the Board to require that there be a measurement of wind conditions before spraying.

**Motion made and unanimously approved to add the Best Management Practices.
(Yuen/Kennison).**

J-2 ISSUANCE OF REVOCABLE PERMIT TO OUTFITTERS KAUAI FOR THE USE OF GOVERNMENT LANDS SITUATED AT THE NAWILIWILI HARBOR, ISLAND OF KAUAI, TAX MAP KEY: 3-2-03

John Hino, Property Manager for DOBOR introduced Rick Haviland, President of Outfitters Kauai and said Item J-2 is the issuance of a revocable permit to Outfitters Kauai for the use of government lands situated at the Nawiliwili Harbor on Kauai. The use of this parcel will be for staging and storage. Hino said staff recommendation is to approve a revocable permit rather than a lease due to minimal space and to maintain flexibility pending future development subject to terms and conditions.

There was discussion regarding the number of clients per day. Haviland said his average is 6 to 12 per day but projects that to increase to 50. He is willing to work with the staff on the limit.

Motion made to approve with amendments to set limit for the number of daily passengers with DOBOR and a determination of a percentage of gross retail sales. (McCroory/Matsumoto).

C-1 PERMISSION TO CONDUCT PUBLIC HEARINGS TO ESTABLISH ADMINISTRATIVE RULES FOR CHAPTER 195F, HRS, RELATING TO FOREST STEWARDSHIP PROGRAM AND CHAPTER 195-6.5, HRS, RELATING TO NATURAL AREA PARTNERSHIP PROGRAM

Buck said Item C-1 is a request for approval to hold public hearings to Natural Area Partnership and Forest Stewardship Programs.

Member Yuen suggested a provision for mutual termination be included as they are likely to be covered by lava. He was concerned about how funds can be used for research related projects. Buck said the rules allows DOFAW to utilize the money in the most effective ways.

Motion made and unanimously approved as submitted. (Yuen/Matsumoto).

B-2 REQUEST FOR APPROVAL TO CONTINUE AN AGREEMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH)

Eckert said this item is a request for approval to continue an agreement with the Research Corporation of the University of Hawaii. The project cost is \$237,000 which includes \$178,000 in federal funds and \$60,000 appropriated from the general fund.

Motion made and unanimously approved as submitted. (Matsumoto/Kennison).

K-4 CONSTRUCTION OF RIGHT-OF-ENTRY AND AMENDMENT TO HARBOR LEASE NO. H-92-22, SAND ISLAND CONTAINER FACILITY, HARBORS DIVISION (SEA-LAND SERVICE, INC.) TMK: 1-5-41: PORTION OF 111

Peter Garcia said Item K-4 is a construction right-of-entry agreement and amendment to Harbor Lease No. H-92-22. This is a construction of an operations building on Parcel 7, 3,500 square feet, annual rental of \$16,322 based on \$66 per square foot. The term of the construction is a maximum of one year and upon termination of the lease the applicant shall remove all improvements on the premises. DOT requests that the Board approve the issuance of the construction right-of-entry.

Motion made and unanimously approved as submitted. (Matsumoto/Kennison).

Motion made and unanimously approved to move into executive session for Item J-1. (Inouye/McCrory).

Chairperson reconvened the meeting @ 6:47 p.m. and continued with Item J-1.

Member Inouye acknowledged that the Task Force has worked diligently and worked very hard as a group to balance all of the issues to come to a resolution.

Motion made that the Board authorize the issuance of ORMA permits as previously approved by the Board and reviewed by the Attorney General for continued commercial vessel operations on Kaneohe Bay for each of the companies listed on Exhibit A for a period of 6 months or until an adoption of the Hawaii Administrative Rules which ever occurs first. These permits would be subject to any statutory rule changes; Morning Star's permit be issued with a Checker Reef location with temporary mooring privileges at the Sand Flat because of safety and environmental concerns raised by the Department and the U.S. Coast Guard and that they not move until directed by the Department; that Mid Pacific Hawaii be repositioned to a location and a manner approved by DLNR, and that any and all activity on top of Checker reef be prohibited. (Inouye/McCrory).

Vote: all in favor.

K-1 SUPPLEMENTAL LEASE AGREEMENT NO. 5 TO LEASE NO. DOT-A-89-6, HONOLULU INTERNATIONAL AIRPORT, OAHU (U.S. GENERAL SERVICES ADMINISTRATION, FOR AND ON BEHALF OF U.S. DRUG ENFORCEMENT ADMINISTRATION) TMK: 1-1-03: PORTION OF 55

Garcia said this item is a request for approval to a supplemental lease. He made an amendment that the statute should read 171-95 rather than 99. This is at the Honolulu

International Airport and the lessee is the U.S. General Services Administration on behalf of the U.S. Drug Enforcement Administration. This is to continue their present lease on the third floor at the Administration Building and when the FBA moves out, they will move into that space. The rental of the space is \$48,720 per annum.

Motion made and unanimously approved as submitted. (Matsumoto/McCrory)

K-2 REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

Garcia said this item is a report and does not need Board approval.

K-5 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI INDUSTRIAL LOTS (T S H DEVELOPMENT CORPORATION) TMK: 1-2-23: PORTION OF 33

Garcia said Item K-5 is a request for issuance of a revocable permit for T S H Development Corporation on the island of Oahu, Keehi Industrial Lots. This is for 1,000 square foot of access easement at \$50 per month.

Motion made and unanimously approved as submitted. (Matsumoto/McCrory).

K-6 ISSUANCE OF REVOCABLE PERMIT, PIER 20, HONOLULU HARBOR, OAHU, HARBORS DIVISION (HANG LOOSE JUICE, INC. LLC) TMK: 1-5-39: 7

Garcia said Item K-6 is an issuance of revocable permit at Pier 20, Honolulu Harbor, to Hang Loose Juice, LLC, Pier 20. This is approximately 320 square feet of open-paved land for refrigerated container storage under \$44 per month.

Motion made and unanimously approved as submitted (Matsumoto/Inouye).

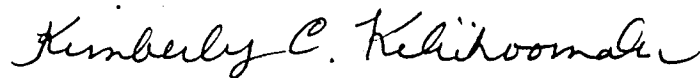
The following items were deferred:

D-3, D-6, D-7, D-9, D-10, D-11, D-12, D-15, D-16, D-19, D-23, D-24, D-25, D-27, D-28, D-29, D-32, D-33, D-34, D-35, D-36, D-38, E-1 and J-3

There being no further business, Chairperson Wilson adjourned the meeting at 7:07 p.m.

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

Respectfully submitted,



Kimberly C. Kelihoomalu

Approved for submittal:



Michael D. Wilson

Chairperson

Board of Land and Natural Resources