

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

DATE: FRIDAY, JULY 10, 1998
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE 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 9:27 a.m. The following were in attendance:

MEMBERS:

Mr. Michael D. Wilson	Ms. Lynn McCrory
Mr. William Kennison	Mr. Russell Kokubun (excused 4:35 p.m.)
Mr. Colbert Matsumoto (from 10:00 a.m.)	

STAFF:

Mr. Michael Buck, Division of Forestry and Wildlife (DOFAW)	Mr. Bill Devick, Division of Aquatic Resources
Mr. Curt Cottrell, DOFAW	Mr. Jim Schoocraft, Division of Boating and Ocean Recreation (DOBOR)
Mr. Dean Uchida, Land Division	Mr. John Hino, DOBOR
Mr. Sam Lemmo, Land Division	

OTHERS:

Ms. Dawn Chang, Department of the Attorney General	Mr. John Tolmie, D-15
Mr. Peter Garcia, Department of Transportation	Ms. J. Kealalani Hanoa, Hana Laulima Lahui O Kau, D-2
Mr. Kenneth Smith, Smith Development, C-2	Mr. Mike Miller, D-5
Mr. David Kimo Frankel, Sierra Club, C-2, D-32 & D-35	Ms. Vicky Miller, D-5
Dr. Warren Bucher, Oceanit Coastal Corporation, D-32	Mr. Donald Wilson, D-5
Dr. Chip Fletcher, University of Hawaii, D-32	Mr. Clarence Kaona, D-5
Mr. Jon Gomes, Nuhona Partners, Inc., D-35	Mr. Russell Hotori, D-5
Mr. Henry Curtis, Life of the Land, D-35 & D-10	Mr. Robert Hotori, D-5
Mr. Arthur K. Trask, B-1 & D-5	Ms. Nancy Goodale, D-5
Ms. Diane Quitiquit, County of Hawaii, K-15	Mr. Roy Uemura, HECO, D-10
Mr. Roy Uemura, Hawaiian Electric Co., D-10	Ms. Diane Anderson, North Shore Outdoor Circle, D-10
Mr. Chris Rose, J-2 & J-3	Ms. Rhoda Martin, D-10
	Mr. Martin, D-10
	Mr. Ken Murakami, HECO, D-10
	Ms. Carla Nakata, J-2 & J-3

Item A-1: Approval of the minutes of April 9, 1998.

Unanimously approved as submitted (McCrorry/Kennison).

Item A-2: Approval of the minutes of June 4, 1998 (briefing).

Unanimously approved as submitted (Kennison/McCrorry).

ITEM C-2: REQUEST TO REALIGN A PORTION OF THE HISTORIC HOAPILI-KING'S TRAIL (GOVERNMENT ROAD) THROUGH THE PROPOSED MALUHIA COUNTRY RANCHES, OF TAX MAP KEY: 3-1-01: 3, SITUATE AT WAIOKILA 2, KAHAKULOA, MAUI

Mr. Michael Buck, Administrator of the Division of Forestry and Wildlife (DOFAW) said this a request to realign a portion of the historic Pi'ilani Trail, commonly referred to as the King's Trail, on the Island of Maui. He gave some background information on trail issues, distributed a revised Board submittal and recommended that the Board accept Na Ala Hele's (NAH) proposed realignment of King's Trail through Maluhia Country Ranches subject to conditions.

Mr. Kenneth Smith of Smith Development said he is representing the property owner in developing the proposed Maluhia Country Ranches. He said since 1996 they have worked continuously with NAH and support their concept to enter into a reasonable partial realignment. He stated that they have no problem with public access.

Mr. David Kimo Frankel representing the Sierra Club stated that they did not support the realignment of the trails. However, if the Board is going to do so he brought up 2 points for consideration: 1) That on Condition 1.a. which currently reads: "The developer will design and build the trail to specification approved by NAH." He suggested adding a date or time frame on when public access is to be provided should be incorporated; and 2) That Condition 3. which currently reads: "That Smith Development will enter into good faith negotiations to explore various trail access, alignment and ownership strategies to resolve the issue of the State owned trails located in the adjacent Cliffs at Kahakuloa subdivision, to be brought back to the Board for their consideration by February of 1999.", was not sufficient to ensure that the proper trail alignment would be provided along the Cliffs at Kahakuloa. He said once permission is granted for this realignment, the State will lose much of their leverage with Smith Development. His understanding was that the issues have

not been resolved yet and felt there is a need to establish where the trails are. Mr. Buck thanked Mr. Frankel for the suggestion to add a time frame to Condition 1.a. and said 18 more months is something that Smith Development is comfortable with. He said he did not know specifically what will be done with the Cliffs at Kahakuloa and did not think the State would lose leverage because the State owns the land that people have built subdivisions on. Member William Kennison clarified that any realignment or trail access of the Cliffs at Kahakuloa has to be brought back to the Board for approval.

Member Kennison made a motion to amend staff recommendation by adding to the following condition: "1.a. The developer will design and build the trail to specification approved by NAH, within 18 months of receiving final subdivision approval."

Unanimously approved as amended (Kennison/McCrory).

ITEM D-34: GRANT OF PERPETUAL NON-EXCLUSIVE UTILITY EASEMENT AFFECTING PORTIONS OF STATE OWNED LANDS IDENTIFIED AS TMKS: 3-9-5: 19 AND 20, AND GRANT OF IMMEDIATE RIGHT OF ENTRY FOR SURVEYING AND CONSTRUCTION PURPOSES TO THE COUNTY OF KAUAI, PORTION OF WAILUA, LIHUE, KAUAI

Mr. Dean Uchida, Administrator of the Land Division presented the staff submittal recommending that the Board authorize the issuance of a perpetual non-exclusive easement access and utility easement and to authorize the issuance of an immediate right-of-entry to the County of Kauai subject to standard conditions.

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-32: CONSERVATION DISTRICT USE APPLICATION FOR BEACH NOURISHMENT AT KIKIAOLA, WAIMEA, KAUAI (ADJACENT TO TMK: 1-2-13: 31, 34, & 35)

Mr. Uchida said this is a Conservation District Use Application (CDUA) and that the applicant, Mr. Ronald Beckenfeld is proposing to nourish the beach in front of his property as well as 2 adjoining properties. He said there were shoreline structures put on the 3 properties in the wake of Hurricane Iniki. The 2 property owners adjacent to Mr. Beckenfeld removed their shoreline structure at the request of the County of Kauai. Mr. Beckenfeld still has an unauthorized shoreline structure that the County Kauai would like removed. As a compromise, Mr. Beckenfeld has asked that he be allowed to do a beach

nourishment project in front of his property on a trial basis for 2 years. Mr. Uchida said when the Kikiaola Harbor was constructed in 1959, it disrupted the flow of sand along the shoreline which could be attributed to Mr. Beckenfeld and his neighbors experiencing such rapid erosion. The proposal is to take sand from both within the Harbor and from the adjacent public beach and move it to the 3 properties on the other side of the Harbor. In addition, the U.S. Army Corps of Engineers has proposed a mechanical sand bypass system to mitigate coastal erosion on the western side of the Harbor. This future proposal and further information is contained in their "General Reevaluation Report and Environmental Assessment for Navigational Improvements at the Kikiaola Light Draft Harbor, June 1998". The purpose of the report is to support dredging plans for the Harbor. He said this CDUA was sent around for comments, and that most of the agencies involved were in support. The Army Corps did raise some questions regarding the use of material from within the Harbor as they are proposing to use some of that material for construction work in the reevaluation of navigation improvements in the Harbor. He referred to Condition 5 of staff's recommendation that indicates the removal of sand from within the Harbor first, and then from the updrift side of the Harbor. He said staff has recently done a site inspection and found that the sediment content of the material within the Harbor is of a much finer quality and may be prone to create siltation problems. He stated that after the applicant's consultant testifies, the Board may want to revisit condition 5 on the sequence of whether sand should be removed from the Harbor first or the from the updrift side of the Harbor. He said staff's recommendation is that the Board approve this request subject to conditions.

Mr. Sam Lemmo, Planner for the Land Division stated that he and Dr. Chip Fletcher of the University of Hawaii School of Ocean and Earth Science and Technology did the site inspection and took samples of 3 different areas (on the updrift side of the Harbor where the substantial accumulation is, from within the Harbor, and from in front of the three residents that are proposed for the nourishment). He showed the Board members samples of the different nature of sands explaining that the sample that was taken from within the Harbor has a higher silt content and finer material.

Dr. Warren Bucher, Vice-President of Oceanit Coastal Corporation and consultant for Mr. Beckenfeld said the Division of Boating and Ocean Recreation (DOBOR) recommended that they use the sand within the Harbor because DOBOR was going to dredge it anyway. He said they started writing the Environmental Assessment (EA) and the Army Corps, one of the various agencies that reviewed the EA, recommended that they use the sand from the updrift side of the Harbor since the Army Corps was eventually going to start the sand bypassing plan. This gave them a second source. He felt that the sand within the Harbor was usable, but preferred the sand from the updrift

side of the Harbor. He said his opinion is that this is a win-win situation for everybody, the sand is removed at no cost to the Army Corps or DOBOR and his client gets a beach to protect his property.

Member Russell Kokubun asked if there was going to be a shoreline certification after the sand has been placed. Mr. Lemmo said that the County Special Management Area (SMA) has a condition that states that once the nourishment occurs the property owner cannot claim accretion. Dr. Bucher added that the condition in the County SMA says that the 1994 certified shoreline will be the line that they use and that they can not go seaward from that. Member Kokubun asked if this is part of DLNR's conditions. Mr. Lemmo said it was not but could be included as a condition.

Dr. Fletcher stated that he supports the staff's recommendation. He strongly encouraged the use of the sand from the updrift of the Harbor rather than the sand from within the Harbor because the sand from the updrift is a coarser grain and more compatible with the wave environment that's in front of the 3 properties and the beach that is being created will be more stable.

Mr. Frankel testified in support of staff's recommendation. He suggested a condition that says the property owners cannot restrict public access to the new beach area.

Member Lynn McCrory commended the Land Division staff for going out of their way to get beach nourishment projects such as this and she also commended the client for being equally helpful and supportive. She made a motion to approve staff's recommendation with an amendment to Condition 5, that the priority of sand will come from the updrift area of the Harbor and then secondly, from within the Harbor. She also added 2 Conditions; Condition 21. to read: "The 1994 certified shoreline shall be used as the shoreline after beach nourishment, unless the natural shoreline retreats mauka of the 1994 certified shoreline, in which case, the mauka most shoreline shall be used." and, condition 22. to read: "Land makai of the 1994 certified shoreline are public lands and shall be opened for public use at all times."

Unanimously approved as amended (McCrory/Kennison).

ITEM D-35: DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR ROADWAY, UTILITY AND DRIVEWAY ACCESS PURPOSES AND A CONSTRUCTION AND MAINTENANCE RIGHT OF ENTRY OVER, UNDER AND ACROSS THE JUDD TRAIL AT KAUMALUMALU AND PAHOEHOE 1ST, NORTH KONA, HAWAII, TMKS: (3) 7-7-04: 02 AND 7-7-08: 27, KNOW AS THE "HO'OMALU ON ALII' SUBDIVISION.

Mr. Uchida said the applicant, Nohona Partner Inc., is requesting for a direct sale of perpetual, non-exclusive easements for roadway, utility and driveway access purposes and a construction and maintenance right-of-entry that involves the Judd Trail in North Kona, Hawaii. He said this proposal would allow the applicant to cross Judd Trail to access the lots that are created by the proposed subdivision and the applicant intends to leave the Judd Trail open for public or pedestrian access. He said they have received a Finding of No Significant Impact after the submission of the Final EA and this was published in the Office of Environmental Quality Control (OEQC) Bulletin on July 8, 1998. Staff has reviewed the application and has found that the County of Hawaii has approved the first increment of the subdivision, but that the second increment has not been approved. Staff has determined that there are 4 lots that require access for the first increment and that approving 9 to 12 lot easements, as proposed by the applicant, is premature because the applicant has not received permission on the subdivision for the second increment. He said they have received several comments from different groups and organizations and that the main concern was to have this Item deferred until they have a chance to review the applicant's Final EA. The applicant has received support from the NAH Advisory Council and Dr. Paul Rosendahl. Mr. Uchida made an addition to Condition C that reads: "...which requires the applicant to comply with any of the conditions or additional conditions that may be prescribed by the Historic Preservation Division." Staff's recommendation is that the Board approve this request subject to standard conditions

After consultation with the Deputy Attorney General, Member Kokubun recused himself from Item D-35 because of his prior involvement in this project.

Mr. Jon Gomes, President of Nohona Partners and fee simple owner of the parcel said they are proposing 10 foot buffers on both sides of Judd Trail. He said they are requesting for a 20 foot easement of which 10 feet may be paved and the rest may not. They will have metes and bounds and the trail will be marked out through staking. He stated that the actual number of easements needed is 9 and not 4 as recommended by staff.

Mr. Frankel of The Sierra Club strongly opposed the staff recommendation. He said the OEQC Bulletin was published on July 8, 1998 (2 days ago), and that most people who subscribe to the OEQC Bulletin would not know that the Final EA was done, and therefore they would not be given ample opportunity to read the Final EA. He said the conditions proposed are inadequate, and do not coincide with what the Developer is promising. He said a 20 foot wide road with traffic lights within 10 feet from the Trail destroys the quality of the Trail. A trail is supposed to be a place of tranquility. He felt that the applicant did not need 9 easements and that the Developer can build easements

crossing on their own land to get access to Kuakini Highway and build driveways that run through their own property so the Judd Trail does not have to be breached at all. He said there has been significant opposition and requested that the Board defer any decision-making until staff meets with the Community. He added that the Board meeting should be held in Kona so the Community could attend.

Mr. Henry Curtis representing Life of the Land, stated that when a Final EA is released that there is a public review period and that the Board's decision should come after the Final EA has run its course.

Member McCrory stated that she has a problem in moving forward with this because the Final EA has not run its course. She said 20 feet seems like a roadway not a driveway and the that easements are not clearly defined.

Member Colbert Matsumoto concurred with Member McCrory and added that the issues that have been raised could probably be better defined through consultation between staff and the applicant for resubmission to the Board.

Unanimously approved to defer Item D-35 (Matsumoto/McCrory).

ITEM B-1: REQUEST FOR APPROVAL TO HOLD A PUBLIC HEARING TO AMEND HAWAII ADMINISTRATIVE RULES, CHAPTER 13-28, HANAUMA BAY MARINE LIFE CONSTRUCTION DISTRICT, OAHU

Mr. Bill Devick, Acting Administrator of the Division of Aquatic Resources said this is a request for approval to hold a public hearing to ban fish feeding in the Hanauma Bay Marine Life Conservation District (MLCD). Established more than 30 years ago, Hanauma Bay is the first and most popular and heavily used MLCD. He stated that MLCD's are established in order to protect resources and to maintain some kind of natural status and quality of those resources. He said his staff has seen a reduction in the diversity of fish species in Hanauma Bay because of the increase in the number of people and the use of food to attract fish. By reducing the use of artificial food they can restore some of the original natural condition in Hanauma Bay. He said in addition to the ban on fish feeding, they are asking for some measure to clarify the prohibition on the use of boats in Hanauma Bay. Staff's recommendation is that the Board approve the holding of a public hearing for the amendments to Hawaii Administrative Rules (HAR), Chapter 13-28 relating to the Hanauma Bay MLCD.

Member McCrory asked over what period of time was the study conducted. Mr. Devick said they have noticed within the last decade a substantial shift

towards the schools of fish which are being created by artificial food.

There was some discussion about HAR, Chapter 13-28-6 that reads: "Penalty. A person violating the provisions of this rule or the terms and conditions of any permit issued as provided by this rule shall be guilty of a petty misdemeanor, and punished as provided by law." Mr. Arthur K. Trask, Jr. said he is against the violation being a petty misdemeanor because that's a maximum 30 days in jail. He suggested that there be a penalty instead with a maximum fine of \$500 and if they can't afford it than they can do community service. Chairperson Michael Wilson said he believed the Board has the discretion to say whether it would be a penalty or petty misdemeanor. He said most of the effort will be focused on educating people with the assistance of the City & County and hopefully we will get some cooperation. Member McCrory asked Deputy Attorney General (DAG) Dawn Chang if the rules would have to go back out for public hearing after the determination has been made on the phrasing of whether it would be a penalty or a petty misdemeanor. DAG Chang said probably not. She stated that the analysis would be whether that would be a substantial change. She suggested to approve staff's recommendation and in the process the Department of the Attorney General (AG's) will work with the Staff on structuring an appropriate penalty provision before it actually goes out to public hearing.

Member Matsumoto made a motion to approve staff's recommendation with an amendment that the AG's and staff review the penalty provision and determine on whether or not modification will be appropriate.

Unanimously approved as amended (Matsumoto/Kennison).

Chairperson Wilson announced at 11:50 a.m. that a lunch break would be taken by the Board and that the meeting would reconvene at 1:15 p.m.

The following items were heard before 1:15 p.m. and will be put back on the August 28, 1998 Land Board agenda (**):

**** ITEM K-2: APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT, NON-CONFORMING USE, HONOLULU INTERNATIONAL AIRPORT, OAHU (ROYAL HAWAIIAN MOVERS)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-3: ISSUANCE OF REVOCABLE PERMIT, KEEHI INDUSTRIAL LOTS, KALHI-KAI, HARBORS DIVISION, OAHU (S.I. BUILDERS, INC.)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-4: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HILO HARBOR, ISLAND OF HAWAII (JUANITO AND EREDULIN V. JULIAN)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-5: AMENDMENT OF REVOCABLE PERMIT, KAWAIHAE HARBOR, ISLAND OF HAWAII (GE CAPITAL MODULAR SPACE HAWAII, INC.)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-6: AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF HIGHWAY REMNANT AND PERPETUAL EASEMENT, INTERSTATE HIGHWAY, FEDERAL AID PROJECT NO. I-H-1(11), PALAILAI INTERCHANGE TO KUNIA INTERCHANGE (HAWAIIAN ELECTRIC COMPANY, INC. AND BOARD OF WATER SUPPLY, CITY & COUNTY OF HONOLULU)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-7: AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF HIGHWAY REMNANT, HANA BELT ROAD, FEDERAL AID PROJECT NO. 32-A(1) - AMENDMENT TO LAND BOARD APPROVAL DATED FEBRUARY 14, 1997, ITEM K-4 (HAIKU-OHANA ENTERPRISES, INC.)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-8: APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT, NON-CONFORMING USE, AIRPORTS DIVISION, HONOLULU INTERNATIONAL AIRPORT, OAHU (TM DESIGNERS, INC.)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-9: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 31A, HONOLULU HARBOR, OAHU (EQUILON ENTERPRISES LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-10: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 31A, HONOLULU HARBOR, OAHU, (EQUILON ENTERPRISE LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-11: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 31A, HONOLULU HARBOR, OAHU, (EQUILON ENTERPRISES LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-12: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIERS 31, 31A AND 32A, HONOLULU HARBOR, OAHU, (EQUILON ENTERPRISES LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-13: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIERS 24 THROUGH 29, HONOLULU HARBOR, OAHU, (EQUILON ENTERPRISES LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM K-14: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HILO HARBOR, ISLAND OF HAWAII (EQUILON ENTERPRISES LLC)**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM C-1: REQUEST APPROVAL OF CONTRACT WITH MR. KARL DALLA ROSA TO COORDINATE THE FEDERAL FUNDED FOREST STEWARDSHIP PROGRAM AND WITH MS. TERESA TRUEMAN-MADRIAGA TO COORDINATE THE FEDERAL FUNDED URBAN AND COMMUNITY FORESTRY PROGRAM FOR THE DIVISION OF FORESTRY AND WILDLIFE**

Unanimously approved as submitted (McCroory/Kennison).

**** ITEM D-1: SET ASIDE TO THE DIVISION OF FORESTRY AND WILDLIFE FOR POTENTIAL DEMONSTRATION FOREST PRODUCTS ALONG HAMAKUA COAST PURPOSE AT OOKALA, HAWAII, TMK: (3) 3-9-1-13 AND -18**

Mr. Uchida presented the staff submittal recommending that the Board add a condition that reads: "C. Timber resources taken from TMK 3-9-1: 13 and 18 shall be made available to local sawmill ventures."

Unanimously approved as amended (Kokubun/Matsumoto).

**** ITEM D-3: CONSENT TO SUBLEASE AND ASSIGNMENT OF SUBLEASE OF GENERAL LEASE S-3935 ASSIGNED TO LORI AND ALAN NAGAKURA, TRUSTEES AT WAIAKEA, HAWAII, TMK: (3) 2-2-37-66**

Unanimously approved as submitted (Kokubun/Kennison).

**** ITEM D-4: RESUBMITTAL: RESCIND PRIOR BOARD ACTION FOR CONSENT TO THE ASSIGNMENT OF GENERAL LEASE S-5434 ISSUED TO HATTIE SANTOS AND CONSENT TO ASSIGNMENT AT KIKALA-KEOKEA, HAWAII, TMK: (3) 1-2-7-PORTION 2**

Unanimously approved as submitted (Kokubun/Matsumoto).

**** ITEM D-6: ISSUANCE OF A REVOCABLE PERMIT TO HUGH HILL AT SOUTH KONA, HAWAII, TMKs: (3) 8-7-1-14; 8-7-4-5, -7, -8, -9 AND -10**

Unanimously approved as submitted (Kokubun/Matsumoto).

**** ITEM D-7: SALE OF LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES AT SOUTH KONA, HAWAII, TMKs: (3) 8-7-1-14; 8-7-4-5, -7, -8, -9 AND -10**

Unanimously approved as submitted (Kokubun/Matsumoto).

**** ITEM D-8: AMENDMENT TO PREVIOUS SUBMITTAL - PIONEER HI-BRED INTERNATIONAL, INC. ON BEHALF OF CITIZENS UTILITIES CO. REQUEST FOR CONSTRUCTION ROE AND GRANT OF DIRECT EASEMENT FOR ELECTRIC TRANSMISSION LINE AFFECTING PORTION OF GENERAL LEASE NO S-4913, KEKAHA, KAUAI**

Unanimously approved as submitted (McCrary/Kennison).

**** ITEM D-9: REQUEST TO SET ASIDE HALE O LONO HARBOR AND ACCOMPANYING ACCESS ROAD BY EXECUTIVE ORDER TO THE DIVISION OF BOATING AND OCEAN RECREATION, AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES, TMK: 5-1-02: 12, 23 AND 30, KALUAKOI, MOLOKAI**

Mr. Uchida presented the staff submittal recommending that the Board defer this item by request of the Division of Boating and Ocean Recreation (DOBOR).

Unanimously approved to defer Item D-9 (Kennison/McCrary).

**** ITEM D-11: CONSENT TO LICENSE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, LICENSOR, AND THE STATE OF HAWAII BY ITS BOARD OF LAND AND NATURAL RESOURCES ON BEHALF OF THE DEPARTMENT OF EDUCATION (DOE), AS LICENSEE, LICENSE NO. N6274298RP000111, AT WAIPIO, EWA, OAHU, TMK: 1ST/9-4-08: 24**

Unanimously approved as submitted (Matsumoto/Kennison).

**** ITEM D-12.: DIRECT SALE OF RECLAIMED (FILLED) LAND TO**

**CHRISTINA AND BERTIL WERJEFELT AT KANEOHE, OAHU,
TMK: 1ST/4-4-21: SEAWARD OF PARCEL 10**

Unanimously approved as submitted (Matsumoto/Kennison).

- ** ITEM D-13: RESUBMITTAL: CONSENT TO LEASE BETWEEN THE CITY AND COUNTY OF HONOLULU, A MUNICIPAL CORPORATION OF THE STATE OF HAWAII AS LESSOR AND THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL RESOURCES ON BEHALF OF THE DEPARTMENT OF THE ATTORNEY GENERAL, CRIMINAL JUSTICE DIVISION AS LESSEE, AT WAIAWA AND MANANA, EWA, OAHU, TMK: 1ST/9-7-23: 01 (PORTION)**

Unanimously approved as submitted (Matsumoto/Kokubun).

- ** ITEM D-14: CONSENT TO ASSIGNMENT OF GENERAL LEASE S-4227 ASSIGNED TO AZABU U.S.A. (KONA) CO., LTD. AT KAHALUU, HAWAII, TMK: (3) 7-8-13-42**

Unanimously approved as submitted (Kokubun/Kennison).

Chairperson Wilson announced that it's 1:15 p.m. and the Board will continue with the move-up agenda.

**ITEM K-15: ISSUANCE OF REVOCABLE PERMIT, KAWAIHAE HARBOR,
ISLAND OF HAWAII (NBC STUDIOS)**

Mr. Peter Garcia, Property Management Officer for the Department of Transportation (DOT) said the applicant, NBC Studios, is requesting for an issuance of a revocable permit for the Overseas Terminal, State Office Building and Soule Building, Kawaihae Harbor. The area is approximately 21,660 square feet of various office and warehouse space and the purpose is for a television series film production. The rental is a nominal amount of \$500 a month. The State through the Hawaii Film Office is assisting NBC Studios with various ways to reduce costs relating to basing the "Wind on Water" television series on the Island of Hawaii. While the applicant strongly desires to film the television series on the island, they may have to select another location if they are unable to address budget constraints. Toward this end, the State and County have requested the use of facilities at Kawaihae

Harbor at nominal cost for a period of 1 year. The Series has been picked up for 12 episodes and is tentatively scheduled for production from June to November of 1998 and an additional 9 episodes is projected to extend through May of 1999. The potential economic benefit and promotional value of the television series to both the State and the County of Hawaii have been documented many times in the past with such series as "Hawaii Five-O", "Magnum P.I." and other projects. The "Wind on Water" production has been estimated to generate economic benefits for the initial 12 episodes. There is anticipated approximately \$12 million boost to the economy and \$2.2 million to be generated in tax revenues over a four to five month period, approximately 200 jobs created on the Island of Hawaii, with additional crew members from Oahu, over 50 local vendors providing support services to the production, and as a prime time series on national television, the series will provide quality promotional exposure for the State and County of Hawaii. The current time slot for the Series is Saturday evenings at 8:00 p.m. The story line incorporates the scenic beauty, the history and culture of the Island, and the present day lifestyle of Big Island ranching families. This revocable permit is being issued in accordance with the State's policy to promote film production and as such, the conditions and rent for the use of public land are determined to serve the best interest of the State. DOT recommends that the Board authorize the Director of Transportation to issue the applicant a revocable permit for the stated purpose subject to the terms and conditions.

Ms. Diane Quitiquit representing the County of Hawaii, Department of Research & Development, distributed written testimony from Mayor Steven Yamashiro in support of DOT's request to lease the premises at Kawaihae Harbor to the NBC Studios. She said her Department houses the Big Island Film Office and has worked hard over the last 5 years to try and make filming on the Big Island a viable industry. She said this will be a great partnership for NBC, the State, the County, and the Film Industry.

Unanimously approved as submitted (Kokubun/Matsumoto).

ITEM K-1: REQUEST FOR PROPOSALS RELATING TO TAXI MANAGEMENT SERVICES CONTRACT AT HONOLULU INTERNATIONAL AIRPORT, OAHU

Mr. Garcia presented DOT's submittal requesting the approval of the Board to seek and award a new Taxi Management Services Contract covering Honolulu International Airport to a qualified Taxi Management Concessionaire via public advertisement of a Request for Proposals.

Member McCrory suggested deleting "and award" from the recommendation so that they would seek and bring the final applicant to the Board for final

approval as we are doing with Land Division and DOBOR. Member Matsumoto suggested instead, to replace "and award" with "and subject to Board approval, award". Member McCrory concurred with Member Matsumoto.

Unanimously approved as amendment (McCrory/Matsumoto).

ITEM D-15: APPROVAL IN PRINCIPLE TO THE ACCEPTANCE OF PRIVATELY OWNED LAND TO SATISFY OBLIGATIONS OWED BY GENERAL LEASE S-3029 ASSIGNED TO DAVID DELUZ AND JOHN TOLMIE AT WAIAKEA, HAWAII, TMK: (3) 2-1-5-22

Mr. Uchida said this is a request for approval in principle to the acceptance of a privately owned land to satisfy obligations owed under General Lease S-3029 assigned to Mr. David Deluz and Mr. John Tolmie on the Big Island for resort and related purposes. The Land Board at its meeting of February 27, 1998 approved staff's recommendation for an after-the-fact consent to the agreement of sale between Mr. Deluz and Mr. Tolmie and Reeds Bay Resort Hotel and subsequent assignment of the general lease from Mr. Deluz and Mr. Tolmie to Reeds Bay Resort Hotel, Ltd. and a consent of various subleases and subsequent assignment of subsequent multiple subleases. To fulfill its obligations to the State, by letter dated May 19, 1998, Mr. Tolmie has offered to transfer to the State, fee simple title to 100 acres of land that he owns for approximately \$213,651. The appraised value is approximately \$250,000. The Lessee's are asking that difference, if any, be applied to future rents owned under the general lease. Mr. Uchida said on a prior instance the AG's has advised that land can be received in lieu of rent and that there is nothing in the statute that prevents the receiving of land as payment on rent. He said staff's recommendation is that the Board approve in principle, the acceptance of fee simple title to 100 acres of land in lieu of back rent payments and any overage be applied to future rents owed under this general lease, subject to submittal of an appraisal report, title report and survey map and description. He stated that the details shall be submitted to the Board for ratification so that the Board would be able to see what the appraised value is and how much credit would be applied under lease rent in the future as well as having the AG's review and approve this transaction.

Mr. John Tolmie said he had discussions with staff about the special installment agreement and the proposal to offer land in lieu of paying off the full balance owed to the State. He said there is a paved road that leads to the property. The property does not have water although the subdivision next door to this property does have water and electricity. He said the property is probably for orchard growth but there hasn't been any of that type of use

developed up in that area. He stated that his concern is to bring this situation current as soon as possible and if the Board is not favorably inclined to accept the land in lieu of payment that he would like to proceed with the special installment agreement.

There was some discussion about the clearing of the property. Mr. Tolmie said it would cost approximately \$500 to \$1,000 per acre to clear the property. Member McCrory did not think that there were a lot of prosperous perspective agricultural lessees on the Big Island that could afford \$50,000 to \$100,000 just to clear the property and was concerned that the State would be stuck with a piece of land that they would end up having to deal with. Member Kokubun was concerned about the State holding on to a piece land that has no potential lease value. He questioned how the property would be converted into a revenue source. Mr. Uchida said they are at a conceptual level and they can address some of the issues that have been raised before it's brought back to the Board for final consideration.

Member Kokubun made a motion to amend staff's recommendation by adding the following conditions: "E. Included in the analysis for consideration by the Board, will be an assessment of the development cost for this property, as well as some type of market assessment on what type of return we might expect from the property in the existing market if the property were cleared for development." and "F. Concurrent with processing this conveyance, the applicant shall enter into a Special Installment Agreement to cover the amount owed the state. If the conveyance is agreeable, the conveyance can be done to payoff the Special Installment Agreement."

Unanimously approved as amended (Kokubun/McCrory).

ITEM D-2: DIRECT LEASE TO HANA LAULIMA LAHUI O KAU, INC. FOR THE KAU HAWAIIAN CULTURAL CENTER AND ALLIED PURPOSE AND RIGHT OF ENTRY AT KAU, HAWAII, TMK: (3) 9-5-19-34

Mr. Uchida said this is a request for direct lease to Hana Laulima Lahui O Kau, Inc. for the Kau Hawaiian Cultural Center and allied purpose and right-of-entry. He said he would like to amend staff's recommendation by having an improvement requirement under Section B.9. that would read: "Minimum improvements: Within 4 years from the commencement date of the lease, the lessee shall complete the construction of a museum and accessory facilities having a value of not less that \$150,000. Said facilities shall be in accordance with plans submitted to the Chairperson for approval prior to their construction." Staff's recommendation is that the Board authorize the direct

lease to Hana Laulima Lahui O Kau, Inc. subject to standard conditions.

Ms. J. Kealalani Hanoa testified on behalf of Hana Laulima Lahui O Kau, Inc. She said this is the second time that she received the notice of a Land Board meeting one day before the meeting. She stressed the problem she has in communicating with the Hawaii District Land Office and said something needs to be done. She said she teaches different culture programs all year round and this summer her students cleaned the beach and picked up 20 bags of rubbish. She mentioned her concern about the only accessible beach where they live which has become more populated and something has to be done about it as far as keeping it safe and clean for the students to utilize.

Mr. Uchida explained that the notice of the Land Board meetings are usually sent out the Friday when the Board folders go out to the Land Board members. Chairperson Wilson asked Mr. Uchida to touch base with Ms. Charlene Unoki about this situation. Ms. Hanoa said it would make it a lot easier if Ms. Unoki would return her phone calls. Chairperson Wilson said most people feel that Ms. Unoki is good at communicating. He said he does not know what happened but was concerned that the State is leasing directly to a non-profit organization, which not many organizations get to benefit from, and for the State to enter into this kind of relationship where we are allowing State land to be used at an under market value for the beneficial public purpose and then have the organization feel like the big problem is with the State, is very unfortunate because we are actually trying to help here.

Member McCrory suggested adding a condition to read: "B.10. That the lessee acknowledge, in their program brochures and literature, the contribution of the State in allowing them to use the public lands through a directly negotiated lease."

Member Kokubun made a motion to approve the amendment to staff's recommendation by adding condition's B.9. and B.10.

Unanimously approved as amended (Kokubun/Kennison).

ITEM D-5: REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITIES PURPOSES, WAIOLI, HANALEI, KAUAI, TMKS: 5-5-06: POR. 5 AND 5-5-08: POR. 2

Mr. Uchida said this is a request for perpetual, non-exclusive easement for access and utilities purposes in Waioli, Hanalei, Kauai. The applicants Mr. Michael Miller, Mr. John Anderson and Mr. Peter Anderson are proposing to establish a legal assess for parcel 17 through a right-of-way off of Kuhio

Highway. Mr. Uchida said on November 7, 1986, the Board approved the applicant's request for an access easement with an amended condition that the term be limited to 5 years. The Applicants, considering the costs they would incur in obtaining this easement for a limited term of 5 years decided not to pursue that easement. Mr. Uchida distributed to the Board a memo that he received from Mr. Ed Petteys, DOFAW's Kauai District Manager, indicating that DOFAW is no longer interested in preparing a comprehensive access plan for this area and with that Condition A.1. would need to be deleted from staff's recommendation. He said a letter was also received from Mr. Donald Wilson, Waioli's Attorney, listing several concerns and issues regarding the easement request and identified 3 specific violations made by the Applicants, 1) clearing of State land; 2) the construction of the road; and 3) the installation of a culvert, so the amount of the fine in staff recommendation B. would have to be revised from \$500 to \$1,500. He said based on that, staff is still recommending that the Board authorize the issuance of a 10-foot wide perpetual, non-exclusive easement to the Applicants for vehicle and utility purposes covering the government lands subject to standard conditions.

Mr. Arthur Trask representing Mr. Michael Miller, one of the Applicants, presented photographs of the property in question to the Board. He said there are 3 parcels that the Millers are trying to get an easement for and the total area for the 3 parcels would be 1,500 square feet. He gave some background information about Mr. Miller who at age 23 (20 years ago) bought the property for \$85,000 in light of the fact that it did not have an easement. He came to a point where he could not afford to pay off the balloon payment on his agreement of sale and he almost lost the property until he borrowed money from long time family friends, Mr. John Anderson and Mr. Peter Anderson, and soon thereafter, got his deed. He said Mr. Miller has no objections to staff's recommendation to authorize the issuance of a 10-foot wide perpetual, non-exclusive easement and clarified that Mr. Miller will not be building a road but putting gravel over the existing road to the first parcel. He said Mr. Miller has no intentions of using heavy equipment and mentioned that taro farmers are using half ton trucks to load 80-120 pound bags of taro on the existing road. He said the historic Mission House that Waioli claims is going to be disturbed is at least a couple hundred yards from the existing road and at least a half mile from Mr. Miller's actual property. He said the Miller's are entitled by statute and case law to an easement and they are willing to comply with staff's recommendations that are reasonable. He said staff recommendation A.1. says the subject easement shall terminate with the implementation of DOFAW's master plan. He said his understanding is that there is no such master plan and this recommendation should be deleted. He said assuming that there may be a master plan in the future, it should read the subject easement shall be subject to being relocated because they don't want it terminated and have to appear before the Board again. He explained staff

recommendation B. regarding the \$1,500 fine for 3 violations, 1) that there was never a construction of a road but 2 pathways; 2) that the clearing of State land was on existing trail leading to Mr. Miller's property which was covered with Hau bush (Mr. Miller walked through this 6 foot wide pathway with a machete and cleared it by hand and he had no intentions of violating and there was no malice); and 3) that the construction of the house he built was not on state property, it was build on Mr. Millers property, so if there is a violation, it's a violation of a County code because he could build a structure without having an easement. *Mr. Trask stated that Millers intended to use property only for ag. purposes but wanted utility easements.* Mr. Clarence Kaona, son of Mr. David Kaona testified in opposition to staff's recommendation.

Mr. Russell Hotori, a taro farmer testified in opposition to staff's recommendation. He said portions of the road are only 4 feet wide and wondered how Mr. Miller is not going to alter the road, like Mr. Trask said, without filling the taro patches. He said regarding the utility poles, the roads are very narrow and that there is about a foot on both sides of the road and then theres the ditch. He stated that he did not want the utility poles hanging over his wetland taro patches. He said the road is only a farm road and that they use it to haul fertilizer and taro back and forth. He said it's difficult as it is with the 3 of them farming and that it would be a big burden on all of them to have additional traffic going through. He stated that as much as possible they try and not run their trucks on the road because it can not stand up to heavy traffic. He said they use the road mostly to haul fertilizer and taro, and they do not haul 120 pound bags of taro like Mr. Trask stated. He said the road was built by his father 35 years ago.

Mr. Robert Hotori, brother of Mr. Russell Hotori also testified in opposition to staff's recommendation. He said he also farms alongside the road and most of his concerns and reasons why he's against this easement overlaps his brothers.

Ms. Nancy Goodale, President of the Waioli Corporation's Board of Trustees testified in opposition to staff's recommendation. She urged the Board to carefully consider the precedent which is being asked to establish in this case and to fully investigate the facts and conditions in Waioli Valley before making a final determination.

Mr. Donald Wilson, Attorney for the Waioli Corporation brought up some issues that he was concerned about. He urged the Board to require that an Environmental Impact Statement (EIS) or EA be prepared because of the sensitive environment in the area. He said regarding the utilities, he spoke to Hawaiian Electric's Engineering Department and they said that the poles can

not be put in because the access way is too thin, there is not sufficient room for the anchor wires, the surface is not stable enough to be sinking poles into it and the lines would hang too low for them to run across. He questioned why the utility easement is necessary if the use would be strictly for agricultural purposes.

In response to Member Matsumoto's question regarding the Waioli Corporations overtures to Mr. Miller to acquire his property, Mr. Donald Wilson stated that there has been a long course of conversations and proposals both ways. The types of proposals or ideas that have been discussed have included trying to arrange for an exchange of properties so that Mr. Miller could find another property to live on. Mr. Trask said Waioli's most recent appraisal for the property was appraised at \$63,000 assuming that the property had no easement. He said Mr. Miller purchased the property for \$85,000 plus interest payments and he certainly does not want anything more than what he is entitled to.

Member McCrory asked Mr. Don Wilson to explain the difference between a Kuleana Lot and Royal Patent Grant. Mr. Wilson said a Royal Patent Grant has different rights than a Kuleana Lot. He said Waioli disagrees with the staff submittal that Mr. Miller's parcel is a Kuleana Lot due to the fact that Mr. Miller's title is derived from a Royal Patent Grant, not a Land Commission Award. He said Waioli can find no authority for the staff's contention that the owner of a Royal Patent Grant acquires rights for access. He suggested that it would be appropriate for the AG's to express an opinion or participate.

A motion was made at 3:40 p.m. to go into Executive Session to consult with legal counsel (McCrory/Kennison). The meeting was reconvened at 3:55 p.m.

Member McCrory stated that it was unclear at this point whether or not Mr. Miller has a right to an easement. She said the easement that is being proposed is not in good alignment and she made a motion to deny staff's recommendation.

Unanimously approved to deny staff's recommendation (McCrory/Kennison).

ITEM D-10: RESUBMITTAL: REQUEST BOARD APPROVAL FOR THE DIRECT ISSUANCE OF PERPETUAL NON-EXCLUSIVE EASEMENTS TO HAWAIIAN ELECTRIC COMPANY FOR OVERHEAD ELECTRICAL TRANSMISSION PURPOSES FOR 46KV SUBTRANSMISSION LINES AND ISSUANCE OF A TEMPORARY RIGHT OF ENTRY FOR A STAGING AREA AT WAIALEE AND PAHIPAHIALUA, PUPUKEA

**AND PAUMALU, KOOLAULOA, OAHU, TMK: 1ST/5-9-06: 26
(PORTION) AND 1ST/5-8-02: 02**

Mr. Uchida said this is a request for approval of the direct issuance of a perpetual, non-exclusive easement to Hawaiian Electric Company (HECO) for overhead electrical transmission purposes for 46kV subtransmission lines and issuance of a temporary construction right-of-entry for a staging area at Waialee and Pahipahialua, Pupukea and Paumalu, Koolauloa, Oahu. He said a Conservation District Use Application (CDUA) was approved by the Board on August 23, 1996. He said staff has brought this disposition to the Board on February 13, 1998 and that the Board deferred it based on testimony received from the Life of the Land and Outdoor Circle regarding concerns about whether the community was consulted on the easement for overhead lines. He said since then HECO has provided staff with a listing of various community groups and organizations that they contacted from March 24, 1992 to August 12, 1996 as well as a decision and order from the Public Utilities Commission regarding the overhead lines and the underground portion of the lines that are in the Haleiwa Special Design District. Mr. Uchida requested that Condition B.8. be deleted from staff's recommendation because it should not have been part of the construction right-of-entry, but part of the easement. Staff's recommendation is that the Board authorize the direct issuance of the perpetual, non-exclusive easement and construction right-of-entry to HECO subject to terms and conditions.

Mr. Roy Uemura, Project Manager for HECO stated that he was present to answer any questions the Board might have.

Ms. Diane Anderson, President of the North Shore Outdoor Circle testified in opposition to staff's recommendation. Her main concern being the newspaper article that was published on March 9, 1998 in which Mr. Ken Murakami of HECO states that they will present their plan to the North Shore Neighborhood Board (NSNB) after the visual simulations are completed. Ms. Anderson said she has been in touch with the NSNB as early as yesterday and they were opposed to staff's recommendation. She said the NSNB was surprised to see this item on the Land Board agenda because they were waiting to receive a request from HECO to put it on the NSNB agenda. She urged the Board to defer HECO's request on the basis that they have not come back to the NSNB to show them the visual simulations.

Mr. Henry Curtis representing Life of the Land testified in opposition to staff's recommendation. He encouraged the Board to defer HECO's request because of the following 4 reasons: 1) At the August 24, 1996 Land Board meeting, HECO said they would get back to the Board on the huge cost differential between overhead and underground line. HECO has never

responded back to this Board on that; 2) HECO said that even though the Haleiwa Special Design District requires the line to be underground, they were going to put it overhead because the DOT might reconfigure the intersection and it would be much easier to change an overhead alignment than an underground alignment. DOT states in a response letter to Mr. Curtis that DOT has no plans on re-configuring the intersection at any time in the future; 3) On page 3 of the staff submittal it says "HECO informs staff that the initial general consensus ranged from favoring underground alternative to the acceptance of a mauka overhead route." HECO is saying that a mauka route is okay and they are going to put it on the mountains but the NSNB said they don't want it visible and they don't want to see on top of the mountains; and 4) HECO said that they were going to bring their plan back to the NSNB but has not.

Ms. Rhoda Martin, North Shore resident, testified in opposition to staff's recommendation. Her main concern was HECO not getting the Community's input.

Mr. Martin testified in opposition to staff's recommendation. He said approving this item based on the information that HECO has provided would be a distinct disadvantage for the standpoint of reflecting what the North Shore community really would like to have happen.

Mr. Roy Uemura said from 1992-1996 they worked and met with community groups in getting their input and there was no clear cut conclusion so they adjusted the routing to the middle mauka level. He said they had originally submitted their application with intentions to put temporary overhead lines through the edge of the Haleiwa's Special Design District, but since then, DOT had deleted their plans to reconfigure the intersection, so HECO will not be having any overhead lines there. He said in 1995, his Project Engineer and 2 or 3 NSNB members went out and shot photos of where the NSNB wanted the lines to be and HECO came back and presented this at the NSNB meeting. He informed the Board that there was a slight re-alignment from underground Haleiwa up to the Kamehameha Highway portion and the steel poles have to be reduced to 3. He said they haven't finished the design on this realignment so they are not ready to show that portion but will show it to the NSBS when the drawings are prepared.

Mr. Ken Murakami of HECO explained the March 9, 1998 article that was published. He said when the reporter asked him about this project there was a lot of concern about DOT's Highway Lighting Project. He said he told the reporter that they don't have to go back to the NSNB but are thinking of going back after the visual simulation is completed. He said HECO is concerned about the visualness of the overhead lines on Kamehameha Highway and they

are trying to mitigate that. He said they do have all the approvals along the entire alignment except for DOT's approval along the Weed Circle area and most of the commotion is because of that Weed Circle area which is totally apart from this area. He said they are doing the visual simulation right now and are planning to go back to the NSBS.

Chairperson Wilson said he was uncomfortable with this because the NSBS has taken a position against it. He said this was brought up at the last meeting where we asked that there be some feedback and HECO has been kind enough to give us feedback about all the meetings they had but it would be helpful for the Land Board to find out what the community is thinking and if the NSBS has been addressed. He said staff also needs to be advised as to what position the NSBS has taken. He said it would be helpful if the NSBS and the Land Board could have some photographs to see if there would be any significant visual impact because it doesn't seem like a lot of information has been presented on what it would look like and that's part of the issue that's being discussed.

Member Kennison concurred with Chairperson Wilson and said it's very important to hear what the NSBS has to say.

Member Matsumoto said he disagreed with the other Board members because procedurally the Board has already approved the CDUA with respect to the entire transmission line system and that issues were raised with the Community and the NSBS in connection with the CDUA process and that was the appropriate time in which to bring concerns regarding this issue to the Board for consideration. He said this is a disposition of an easement and the questioned is do we want to issue the easement or not and it's not a matter of do we revisit the CDUA.

Member McCrory said she shares some agreements with Member Matsumoto in that HECO has done their work, they've done all the things they need to do as a company, they've done all their community meetings and why should they be asked to do more.

Unanimously approved to defer Item D-10 (Kennison/McCrory).

Chairperson Wilson asked staff to get input from the NSBS before the Land Board takes action on this request.

ITEM J-2: REQUEST THAT THE BOARD OF LAND AND NATURAL RESOURCES GRANT APPROVAL TO PROCEED WITH RULE-MAKING PROCESS TO AMEND TITLE 13, CHAPTER 231, SECTION

13-231-86, HAWAII ADMINISTRATIVE RULES

Mr. Jim Schoocraft, Boating Staff Officer for DOBOR said this is a request to approve commencement of the rule-making process to amend Section 13-231-86(d), HAR. On June 15, 1998 a petition for amendment of administrative rules was filed by C.R. Rose Consultants, Ltd and Mr. Christopher Rose requesting that the Board of Land & Natural Resources initiate proceedings in accordance with Section 91-3, Hawaii Revised Statutes (HRS), for the amendment of Section 13-231-86(d), HAR, to delete length and vessel draft minima. Petitioners state that the proposed rule change will eliminate an arbitrary and wholly unnecessary restriction on the ability of DOBOR to make assignments based on the safe, convenient and efficient utilization of harbors facilities consonant with law and the public interest. He said this particular rule pertains to Lahaina Boat Harbor and the current rule states that vessels presently in berths 6-21 which did not meet minimum length requirements shall be permitted to remain provided that any replacement vessel must comply with Category B length requirements which is 45 to 50 feet. The vessel owned by the petitioners, Aerial III, is less than the 45 foot minimum and in 1985, it was given a mooring permit and later along with several other vessels were "grandfathered in" until the vessel was replaced. He said they consulted with the Harbor Advisory Committee and the Charter Boat operators during a period when they were upgrading their boats. This area was desired to accommodate the larger vessels as the companies improved and grew, therefore, generating more income. He said DOBOR does not concur with the Petitioner's statement that the length minima were never necessary and that their applications are arbitrary, violates the Constitution, and in derogation of DOBOR's statutory authority. These rules were properly adopted through the prescribed rule-making process and have the force and effect of law. DOBOR has the support of the Harbor Advisory Committee and the Maui District Manager to commence the normal rule-making process to amend this Section, as well as many others that maybe necessary, to provide greater flexibility for the harbor management. Staff's recommendation is that the Board grant permission to DOBOR to initiate proceedings in accordance with Section 91-3, HRS, for the amendment of Section 13-231-86(d), HAR.

Ms. Carla Nakata stated that she is an Attorney for Paul, Johnson, Park & Niles and is representing Mr. Rose. She said their request to the Board is to delete the length and draft minima as arbitrary and unnecessary to the safe, convenient, and efficient utilization of Lahaina Boat Harbor which is in direct contrast to the length maximum. She distributed to the Board, a copy of the latest correspondence from the Advisory Committee that states the proposed amendment to Section 13-231-86(d), HAR, draft 3 submitted by Dennis Niles should move forward as many of the berths in 22-100, Category A, are too narrow for the beam required by a 50 to 65 foot vessel. Berths 6-21, which

includes Mr. Rose's Berth 14, also need to fall into this category as many are narrow and do not have room between the pilings and fingerpiers to accommodate vessels with beams proportionate to the length required by the old rule. She said the Advisory Committee feels that the Maui District Manager should determine if a vessel will fit the slip and work well within the Harbor. She said she disagreed with the DOBOR's assessment that these rules were never necessary. However, if the recommendation does seem to imply that in any event they are no longer necessary we would ask that the petition be granted and that it be clarified and referred specifically to the deletion of length and draft minima.

Mr. Christopher Rose went through the photographs that were included in the petition explaining to the Board that the larger the boat the wider the boat and how some of the slips won't accommodate certain boats. He said the amendments they are requesting are: i.e. Commercial passenger vessels up to 65' in length rather than Commercial vessels from 50' to 65' in length; delete from Category A "Vessels with seven-foot minimum draft"; add additional phrasing that says "Any vessel proposed as a replacement of a vessel moored in Lahaina Harbor on the effective date of this section shall afford maximum, safe, convenient and efficient utilization of harbor facilities, and shall not be contrary to the public interest or otherwise unlawful or contrary to these rules."; and delete phrasing that says "Vessels presently moored in Berths 6 through 21 which do not meet minimum length requirements shall be permitted to remain, provided that any replacement vessel must comply with category B length requirements."

Member Matsumoto asked staff if they have a problem with the amendments that Mr. Rose is requesting. Mr. Schoocraft said they are in support.

There was some discussion about the amendment to change "Commercial vessels" to "Commercial passenger vessel". Member Matsumoto asked if it's necessary to amend the rule in a way that restricts it just to Commercial passenger vessels. Mr. Schoocraft said DOBOR needs to look at that a little more because they don't want to restrict either. Member Kennison made a motion to take out passenger and leave it as "Commercial vessels".

Unanimously approved as amended (Kennison/Kennison).

ITEM J-3: REQUEST THAT THE BOARD OF LAND AND NATURAL RESOURCES ISSUE A DECLARATORY RULING SUPPORTING SECTION 13-231-86, HAWAII ADMINISTRATIVE RULES

Mr. Schoocraft said this is a request that the Board issue a declaratory ruling

supporting Section 13-231-86(d), HAR. He said the petitioner, Mr. Rose is requesting for a repeal or an amendment of Section 13-231-86(d) before the rule-making process is completed. He said section 91-3, HRS specifies procedures for rule-making including the requirement of a public hearing, prior to the adoption, amendment, or repeal of any rules. The Petitioners also challenge the appropriateness of Section 13-231-86(d), HAR and if the Land Board believes that a change in rule may be in order, the appropriateness of the proposed change needs to be once again determined through the rule-making process. As a matter of administrative policy, DOBOR does not want to exempt the public from the boating rules. There are numerous requests for exemptions from our boating rules and everyone has to be treated equally. Once the exemption is made in one boating situation, it opens the door to exemptions in other boating situations. Allowing exemptions to the boating rules would undermine the enforcement of the boating rules. Staff's recommendation is that the Board find and order that: 1) Section 13-231-86(d), HAR is a properly adopted rule having the force and effect of law; 2) Petitioners have acknowledged, by filing their Petition for Amendment of Administrative Rule, that the proper legal process to amend Section 13-231-86(d), HAR, is set forth in Chapter 91, HRS; and 3) Section 13-231-86, HAR, is enforceable against the Petitioners.

Member Matsumoto asked if this was the right procedure. DAG Chang stated that they can petition and there is an administrative rule for declaratory action. She said the petition has been reviewed and it does comply.

Chairperson Wilson asked why staff's recommendation is stated the way it is opposed to recommending that the Board deny the request for declaratory ruling. DAG Chang said Mr. Rose is filing a petition requesting a declaratory ruling so the Board needs to take an action.

Ms. Carla Nakata said they are seeking a declaration that Section 13-231-86(d), HAR not be enforced against the petitioners during the short interim until the rule-making process is completed because there's a consensus out there to amend the rule ahead of time.

Member McCrory made a motion to approve staff's recommendation. Member Kennison seconded.

Member Matsumoto suggested that it would be better for the petitioners if this item was withdrawn as opposed to denying it. After consulting with Mr. Rose, Ms. Nagata agreed.

Unanimously approved to withdraw Item J-3 (McCrory/Kennison).

- ITEM D-17: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 43-HW-A, WAIMEA EXPLORATORY WELL, WAIMEA, HAWAII**
- ITEM D-18: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 81-OP-A, INTERPRETIVE KIOSK, DIAMOND HEAD MONUMENT, OAHU, HAWAII**
- ITEM D-19: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 33-HL-C1, KIKALA-KEOKEA RESIDENTIAL SUBDIVISION NEW 8-INCH WATERLINE, PUNA, HAWAII**
- ITEM D-20: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 62-MF-G1, KAHULUI BASEYARD UNDERGROUND STORAGE TANKS AND BUILDING REROOFING, KAHULUI, MAUI, HAWAII**
- ITEM D-21: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 81-HP-A, INTERPRETIVE KIOSK, LAPAKAHI STATE HISTORICAL PARK, NORTH KOHALA, HAWAII**
- ITEM D-22: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 84-OP-C1, MAKUA BEACH IMPROVEMENTS, KAENA POINT BEACH PARK, OAHU, HAWAII**
- ITEM D-23: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 17-OW-I, KAHUKU EXPLORATORY (MALAEKAHANA) WELL, KAHUKU, OAHU, HAWAII**
- ITEM D-24: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 17-OW-J, WINDWARD EXPLORATORY WELL, KANEOHE, OAHU, HAWAII**
- ITEM D-25: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 17-OW-K, WAIAWA EXPLORATORY WELL, WAIAWA, OAHU, HAWAII**
- ITEM D-26: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 19-KW-A, HANAPEPE WELL DEVELOPMENT, TRANSMISSION, AND APPURTENANCES, HANAPEPE, KAUAI, HAWAII**
- ITEM D-27: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 5-OW-J, DRAINAGE SYSTEM IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU, HAWAII**

ITEM D-28: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 31-OW-J1, WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU, HAWAII

ITEM D-29: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 31-OL-P, PAUKAULA STREAM MOUTH DREDGING, OAHU, HAWAII

ITEM D-30: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 31-OL-S, DLNR OAHU BASEYARD, OAHU, HAWAII

Mr. Uchida said Items D-17 through D-30 are award of construction contracts and will be taken together. He said the recommended bidders are as follows: Item D-17, Wai'eli Drilling & Development, \$882,232.00; Item D-18, Stan's Contracting, Inc., \$62,700.00; Item D-19, Isemoto Contracting Co., Ltd., \$714,090.00; Item D-20, Mid Pacific Environmental, \$426,200.00; Item D-21, James Ishii General Contractor, \$47,490.00; Item D-22, RMY Construction, Inc., \$218,363.00; Item D-23, Roscoe Moss Hawaii, Inc., \$126,910.00; Item D-24, Roscoe Moss Hawaii, Inc., \$275,200.00; Item D-25, Roscoe Moss Hawaii, Inc., \$356,990.00; Item D-26, Goodfellow Brothers, Inc., \$1,440,242.00; Item D-27, JAS. W. Glover, Ltd., \$251,800.00; Item D-28, Bodell Construction, \$1,836,720; Item D-29, North Pacific Construction, \$171,950.00; and Item D-30, Pacific Hydroelectric Co., Inc., \$846,935.00.

Unanimously approved as submitted (Matsumoto/McCrory).

ITEM D-31: PERMISSION TO HIRE CONSULTANTS FOR DLNR CIP PROJECTS

Mr. Uchida said Item D-31 is a request for permission to hire consultants for DLNR CIP projects.

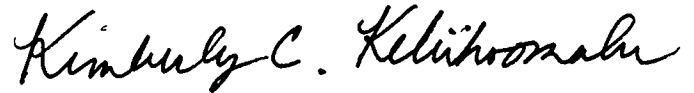
Member McCrory was concerned about the Mana Drag Strip Race Track project. She questioned the returns DLNR is getting from this facility and how DLNR would justify the expense in upgrading the facility. She requested that this project be deleted from the list of projects.

Unanimously approved as amended (Matsumoto/McCrory).

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

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office 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.

Respectfully submitted,



Kimberly C. Keliioomalu

Approved for submittal:



MICHAEL D. WILSON

Chairperson

Board of Land and Natural Resources

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