

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

DATE: FRIDAY, NOVEMBER 20, 1998
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS:

Mr. Michael Wilson	Mr. William Kennison
Mr. Colbert Matsumoto	Ms. Lynn McCrory
Ms. Kathryn Inouye	Mr. Russell Kokubun

STAFF:

Mr. Dean Uchida, Land Division	Mr. Michael Buck, Division of Forestry and Wildlife (DOFAW)
Mr. Carl Masaki, DOFAW	Mr. Tom Eisen, Land Division
Mr. Ralston Nagata, Division of State Parks	Mr. Alton Miyasaka, DAR
Mr. Bill Devick, Division of Aquatic Resources (DAR)	Mr. Gary Moniz, Division of Conservation and Resource Enforcement

OTHERS:

Ms. Dawn Chang, Department of the Attorney General	Mr. Peter Garcia, Department of Transportation
Mr. Tom Summers (D-9)	Ms. Eloise Oclit (D-9)
Mr. Lloyd Jones (C-1)	Mr. Kimo Frankel (C-1)
Mr. Peter Worcester (D-29)	Dr. Joseph Mobley (D-29)
Ms. M. Hudson (D-29)	Dr. Paul Nachtigall (D-29)
Dr. Whitlow Au (D-29)	Mr. Paul Achitoff (D-29)
Mr. Henry Curtis (D-29 & E-2)	Mr. Reb Bellinger (D-29)

ITEM D-35 RESUBMITTAL - DIRECT LEASE OF WATER RIGHTS TO HAWAII ELECTRIC LIGHT COMPANY, INC. FOR THE USE OF GROUNDWATER AND A RIGHT-OF-ENTRY AT KEAHOLE, HAWAII, TMK: (3) 7-3-49-POR. OF 36

Mr. Dean Uchida, Administrator of the Land Division requested that Item D-35 be deferred to allow the Attorney General's (AG) Office more time to legally review this matter.

Unanimously approved to defer Item D-35. (Kokubun/Kennison).

ITEM D-26 GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT, AND ISSUANCE OF IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY AFFECTING A PORTION OF STATE OWNED LAND, POR. OF WAILUA, LIHUE, KAUAI, TMK: 3-9-2: POR. 20

Mr. Uchida presented the staff submittal recommending that the Board authorize the issuance of a perpetual non-exclusive utility easement and issuance of an immediate construction right-of-entry subject to standard conditions.

Unanimously approved as submitted. (McCrorry/Inouye).

ITEM D-27 COUNTY OF KAUAI, DEPARTMENT OF WATER'S REQUEST FOR A CONSTRUCTION RIGHT-OF-ENTRY FOR EXPLORATORY WELL DRILLING PURPOSES, KAPILIMAO VALLEY, KEKAHA, KAUAI, TMK: 1-2-02: POR. 1

Mr. Uchida presented the staff submittal recommending that the Board authorize the issuance of a construction right-of-entry to the County of Kauai, Department of Water to drill an exploratory water well subject to standard conditions.

Unanimously approved as submitted. (McCrorry/Kennison).

ITEM D-9 ISSUANCE OF REVOCABLE PERMIT FOR LOT 1, POR. KAPAA TOWN LOTS, KAWAIIHAU, KAUAI, TMK: 4-5-11: 7

Mr. Uchida said the applicant, Ms. Eloise Oclit, is requesting for an issuance of a revocable permit for maintenance and beautification purposes for Kapaa Town Lots. The subject lot is a long time vacant house lot site that had been utilized as a dumping area and was overgrown and unsightly prior to Ms. Oclit's efforts. He said the Kauai District Land Office (KDLO) issued a right-of-entry to Ms. Oclit for landscaping purposes, and the subsequent follow-up would be an issuance of a month-to-month revocable permit. He distributed copies of

written testimony from Reverend James F. Hargis to the Land Board, and indicated that KDLO has talked to several of the landowners in the area and everyone except for one landowner and Reverend Hargis has been in support. He said Ms. Oclit has provided an improved situation by calling staff's attention to some unauthorized uses of the property that has been corrected. Staff's recommendation is that the Board authorize the issuance of a revocable permit for maintenance and landscaping purposes subject to standard conditions.

Mr. Tom Summers, a supporter of Ms. Oclit,, testified in support of staff's recommendation. He distributed copies of letters from: Mr. Bernard Carvalho, Director of Recreation for the County of Kauai; Reverend Richard Chun of the Kapaa First Hawaiian Church; Kapaa Business Association Sub-Committee on Beautification & Safety of Downtown Kapaa; Ms. Ann Leighton, Owner of Two Wheels and Director of Kapaa Business Association; Ms. Mary Thomas, Council Chair for the County Council, County of Kauai; and Mr. Roy Nishida, Governor's Liaison-Kauai, all in support of staff's recommendation. He also distributed a copy of Ms. Oclit's testimony along with a copy of her insurance.

Ms. Eloise Oclit, Kupuna with the Kupuna Association of Kauai, and a teacher at Wilcox Elementary School said her intentions are to continue to teach the art of la'aulapa'au - hawaiian medicine, and to be able to teach the children with hands on experience. She presented photographs of the subject area and urged the Board to approve her request for the issuance of a revocable permit for maintenance and beautification purposes.

There was some discussion about condition no. 4. Member Lynn McCrory suggested that there be a timeframe for the completion of the survey. Member Kathryn Inouye felt that because Ms. Oclit is performing a service to the State, she should not have to bear the cost of hiring a surveyor. Mr. Summers indicated that he could probably get a private surveyor to do it for approximately \$300. He suggested that Ms. Oclit pay for the survey and then have the cost for the survey credited against her permit rent.

A motion was made to approve staff recommendation with an amendment to condition no. 4 to read:

4. The property shall be surveyed and the corners staked and flagged, at the cost of the permittee, to ensure that use of the state land does not encroach on any other abutting property. The timeframe for completing the survey shall be determined by KDLO. The cost of the survey shall be applied as a credit on the rent for the permittees revocable permit.

Unanimously approved as amended. (McCrory/Inouye).

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

Mr. Peter Garcia, Property Management Officer for the Department of Transportation (DOT) presented DOT's submittal requesting approval of the Board to award the Taxi Management Concession Contract covering Honolulu International Airport for a contract term of 4 years, commencing on February 1, 1999, to Sida of Hawaii, Inc.

Unanimously approved as submitted. (Inouye/McCrory).

**ITEM C-1 APPROVAL TO ADVERTISE A REQUEST FOR PROPOSALS (RFP)
FOR THE WAIAKEA TIMBER MANAGEMENT AREA, ISLAND OF
HAWAII, AS REQUIRED BY CHAPTER 103D-303, H.R.S.**

Mr. Michael Buck, Administrator of the Division of Forestry and Wildlife (DOFAW) introduced Mr. Carl Masaki, Forestry Program Manager of DOFAW. He said Item C-1 is a request to advertise a Request for Proposals (RFP), to solicit bids to harvest and process the timber resources and other special forest products located within the Waiakea Timber Management Area (WTMA). The RFP has been reviewed by a committee formed by the Hawaii Forest Industry Association (HFIA). Valuable and pertinent recommendations from this committee have been incorporated into the RFP. Their recommendation of allowing only bids for the entire WTMA timber types was not incorporated, in order to allow smaller timber processors an opportunity to bid on the timber resources. The State hopes to use its timber resources to encourage the domestic processing of the wood material grown in Hawaii, to ensure the highest number and quality of jobs for the residents of the State. This policy will strongly influence the final award for the RFP as the criteria for selection has been designed to favor those proposals willing to commit to building and/or enhancing local wood processing capabilities (veneer and plywood mill, high quality furniture manufacturing, etc.) in Hawaii. Specific selection criteria are grouped in 3 broad categories in the RFP with the following percentage weighing: 1) Forest Development and Management Experience - 15%; 2) Forest Development Plan - 25%, and 3) Economic Benefits to the State of Hawaii - 60%. The rationale for using the RFP process is to select a proposer(s) who can best meet the selection criteria. Since there are many potential projects that could be submitted, ranging from a chip operation to a veneer slicing operation, the State would like to pick and choose the best proposal(s) and then negotiate the terms and conditions of the Timber Land License. The RFP process allows the State to do this. Proposers will be bidding on one or more of the timber types contained in Appendix E of the WTMA plan. One or more proposers could be selected to fully utilize the timber resources to its highest and best potential use. A Selection Committee, comprised of a member from the Department of Business, Economic Development, and Tourism (DBEDT), a member of the Department of Land and Natural Resources (DLNR), and a member from DOFAW, will evaluate all proposals and select the best one(s). This Selection Committee can be assisted by staff from other government agencies and partners of the HFIA. Should the Board approve this request, the next steps will be to file an Environmental Assessment (EA) with the Office of Environmental Quality Control, evaluate all RFPs, and select and finalize a Timber Land License with the proposer(s) of the best RFP which will be submitted for Board approval.

Mr. Buck recommended that the acreage limitation be deleted from page 8 of the RFP that states: "6.9 Set Asides. For certain parcels of land within the project area, small portions of land may be reserved for research and demonstration forest plots. These set asides of land [(not to exceed a total of 20 acres)] will be identified...". He said the deletion of the acreage limitation would give them the flexibility to deal with the Department of Public Safety's proposal for the State prison in the WTMA. Staff's recommendation is that the Board approve DOFAW's advertising of a RFP in accordance with Chapter 103D-303 and the processing of a Timber Land License to be approved by the Board, and the approach and content of the draft RFP contingent upon final approval as to form by the Deputy AG.

In response to Member Russell Kokubun's question regarding staff submittal that states: "Their recommendation about allowing only bids for the entire WTMA timber types was not incorporated, in order to allow smaller timber processors an opportunity to bid on the timber resources." Mr. Buck said the RFP does not preclude anyone from making a complete proposal for the whole area, but at the present time, staff would like to see what is out there first before saying 1 person has to have it all, which might exclude some small local entrepreneurs. Member Kokubun asked staff to emphasize to the AG's Office, as they are reviewing the RFP, to be sure that there is no legal preclusion from occurring in terms how the bids will be submitted.

Member Kokubun was concerned about HFIA's written testimony in which they believe that a prudent bidder must price his proposal on the assumption that an EIS will be required. Mr. Buck said because of the nature of the area and the management plan, they are not expecting that an EIS will be needed. He clarified that the cost of the EA that the Division will be submitting will not be recoverable because staff has already done 85% of the work that is needed but asked that the Board not accept this as a precedent of how things might be worked out in the future in commercial timber sales.

Member McCrory recommended that 2 revisions be made to the RFP: 1) on page 8 - "6.6 Reforestation bond. ...tree species will be determined by the State, the Proposer(s) will be responsible to provide the tree seedlings. She felt that a size should be designated for the tree seedlings; and 2) on page 9 - "6.11 Community liaison. ...phone/fax numbers will be provided to DOFAW within a reasonable period after the issuance of the Timber Land License." She felt that "reasonable" should be defined more specifically.

Mr. Lloyd Jones, President of HFIA and Chairman of the Committee formed by HFIA to review the RFP, summarized some of the changes that were recommended in their November 20, 1998 letter to the Land Board. He suggested that the best way to manage the multiple contract issue is to have 1 umbrella contractor or a master contractor. He felt that a member of the private sector should be included in the Selection Committee.

Mr. Kimo Frankel of the Sierra Club raised 4 issues regarding this proposal: 1) the RFP, that was worked on very closely with HFIA is developed with the participation of industries that will be bidding on it. The Board seems to be considering adding a private sector

representative to the Selection Committee, without even considering the prospect of adding those who have particular concerns of harvesting as the environmental community, 2) although the RFP does not call for the harvesting of native forest areas, it should go one step further and state that "no native trees be cut", 3) the departments Best Management Practices (BMP) is unenforceable. DOFAW needs to go back and re-write it because it tells an applicant to consider this, and think about doing that, but they are not in anyway binding and, 4) disagreed with HFIA's suggestion about having everything under 1 umbrella contractor because of concerns that were raised during the Hamakua Timber deal where people were afraid of having this big monolithic entity. They wanted to participate and do things small scale and they had not had that ability. He urged the Board to look at the close relationship between HFIA and the State in developing this RFP, ask that "no native trees be cut" as a part of this RFP, fix the BMP problem and make sure that there is not just 1 contractor.

In response to Mr. Frankel's concern regarding the enforcement of BMP's, Mr. Buck clarified that the BMP's are set up as guidelines and are not written as binding regulations.

Member McCrory suggested that former Board Member Christopher Yuen be asked to sit on the Selection Committee because of his familiarity with the area and his fair environmental representation. Mr. Frankel and Mr. Buck concurred with Member McCrory's suggestion.

Member Kokubun made a motion to approve Item C-1 with the following amendments and asked staff to incorporate any other concerns that may have been expressed by other Board members: 1) The AG's Office shall review the RFP to be sure that there is no legal preclusion from occurring in terms of how the bids will be submitted. 2) Staff will look into the EA process such that if it gets to an EIS level, this will be something that the State does not want to assume costs for. 3) After the Selection Committee has done their prioritization. Staff will provide the Board with pertinent information in a complete package after the proposals have been opened. 4) The RFP, page 8: "6.6 Reforestation bond. ...tree species will be determined by the State, the Proposer(s) will be responsible to provide the tree seedlings, according to seedling specifications approved by the State." 5) The RFP, page 8: "6.9 Set Asides. For certain parcels of land within the project area, small portions of land may be reserved for research and demonstration forest plots. These set asides of land [(not to exceed a total of 20 acres)] will be", and 6) The RFP, page 9: "6.11 Community liaison. ...phone/fax numbers will be provided to DOFAW within a [reasonable] period of 1-month after the issuance of the Timber Land License."

Unanimously approved with amendments. (Kokubun/McCrory).

ITEM D-20 FORFEITURE OF REVOCABLE PERMIT NO. S-5424, THOMAS L. NOA, SR., SITUATE ON A PARCEL OF LAND IN WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-13: 11

Mr. Uchida requested that Item D-20 be withdrawn. The applicant has provided staff with a copy of their insurance policy.

Unanimously approved to withdraw Item D-20. (Kokubun/Inouye).

ITEM D-29 REQUEST TO AMEND PERMIT CONDITIONS: CONSERVATION DISTRICT USE PERMIT KA-2734 FOR ACOUSTIC THERMOMETRY OF OCEAN CLIMATE (ATOC) PROJECT UTILIZING SUBMERGED LANDS (OFFSHORE OF KAUAI)

Mr. Uchida said Item D-29 is a request to amend Conservation District Use Permit (CDUP) KA-2734 for the Acoustic Thermometry of Ocean Climate (ATOC) project, filed by Scripps Institute of Oceanography. On February 23, 1996, the Board approved this CDUP for the installation of cables and sound sources in submerged lands on the North Shore of Kauai. The cable provides power to an associated sound source which is part of a national research project attempting to prove the concept that acoustic submarine signals can be successfully and feasibly used in global climate research (i.e. the ATOC Project), and to determine the potential effects of such low frequency sound signals on marine mammals (i.e. the Marine Mammal Research Project [MMRP]). The MMRP involved observations from both air and shore, as well as underwater observation using passive acoustic monitoring system. On September 16, 1998, Scripps submitted 2 requests to amend the CDUP: 1) to amend the 3 year expiration date, and, 2) to amend a condition that the Board imposed to remove the cables and sound sources. He said if the Board grants this request, the \$430,000.00 that was initially budgeted for the removal of the cable and sound source, will be used to fund observation components for the MMRP. There are enough funds to run the ATOC Project but unexpected expenses in other areas of the program have left certain elements of the MMRP with insufficient funds to conduct the next phase. Staff has no problem in granting the time extension for an additional 8 months because there was a legitimate reason as to why the project was not able to start on time, however, staff was unable to recommend in favor of the request to transfer the funds and perpetually leaving the cable in its current location. Staff's understanding is that the applicant represented at public hearings that the equipment would be removed at the end of the ATOC experiment. Staff feels that public comments should be solicited on this matter before the Board takes action. Staff's recommendation is that the Board amend CDUP KA-2734 to provide the permittee until October 31, 1999 to complete the project and that all other conditions imposed by the Board remain in effect.

Mr. Peter Worchester, Research Oceanographer with the Scripps Institution of Oceanography provided some background information on the project. He urged the Board to approve the time extension in accordance with staff recommendation and commented on staff's opposition to leaving the cable in its current location. He said the EIS contemplates the possibility that the cable could be left in place because it concludes that "The cable is a benign system and would have virtually no impact if left unrecovered." He pointed out that there has been an

opportunity for public comments because copies of his letter, addressed to the Chairperson, dated September 15, 1998, regarding permission to leave the cable in place were copied to the entire MMRP Advisory Board and no response or comments were received. He mentioned that the MMRP Advisory Board includes observers nominated by environmental groups. He requested that the Board consider their request to leave the cable in place.

Dr. Joseph Mobley, Professor with the University of Hawaii (UH) and Co-Principal Investigator of the ATOC MMRP, provided information to the Board regarding the proposed enhancement to the MMRP. He explained that funding of \$20,000.00-\$30,000.00 is difficult to find, but funding of this magnitude (\$430,000.00) to allow them this opportunity is a once in a decade possibility.

There was some discussion about what was represented at the public hearings. Mr. Mobley stated that he was present at some of the public hearings and the focus of the concern at that time seemed to be the transmissions. He could not recall if the concern was specifically the status of the cable. Dr. Worcester said he also seems to recall that the discussions were focused on the sound of the transmission. Mrs. M. Hudson, Attorney for the Scripps Institution of Oceanography said that the plan at the time was to remove the equipment, but did not recall it being discussed at the public hearings.

Member McCrory asked if anyone from the community, who does not deal specifically with Whale research, come forward in support of leaving the cable in place. Mr. Worcester stated that no one has approached him specifically on that issue.

Dr. Paul Nachtigall of the UH and Chairperson of Hawaii Humpback Whale Sanctuary Advisory Council's Research Working Group testified in support of ATOC's proposal to divert funds that was initially budgeted for the removal of the cable over to the ongoing MMRP program. He explained that the Hawaii Humpback Whale Sanctuary Advisory Council is made up of some scientist and a lot of good environmental people and stated that the Board shouldn't pass up this opportunity for additional research.

Dr. Whitlow Au of the UH testified in support of ATOC's proposal and gave some background information regarding the research of Humpback Whales. He said this is an excellent opportunity to further their research and this will help them in terms of getting information for better management of our environment.

Mr. Paul Achitoff of the Sierra Club submitted and read through written testimony on behalf of Mr. Raymond Chuan, Co-Chairperson of Kauai Friends of the Environment. He concurred with Mr. Chuan's testimony which was in opposition to leaving the cable in place. He stated that he attended the public hearings which was very controversial and there was no representation that the equipment might be left in place. He questioned the legality of getting rid of a permit condition and urged the Board to approve staff's recommendation.

Mr. Henry Curtis, Executive Director of Life of the Land, testified in opposition to ATOC's

proposal in leaving the cable in place. He said there's been some misunderstanding about the relationship between an EIS and a Board permit and explained that an EIS is meant to look at all possible scenarios and is not a permit document. He said the applicant quoted condition no. 10 as "that the Board reserves the right to amend these conditions", but the full quote is "that the Board reserves the right to amend these conditions and the right to stop the project should any unanticipated and/or unreasonable adverse ecological results occur."

Mr. Reb Bellinger stated that he is not involved with ATOC or any of the parties involved and did not plan to testify on this agenda item, but sitting through all the testimony, he felt he needed to say something. He said he has over 20 years of experience in the marine field and many times the removal of cable causes far more adverse environmental damage than leaving it in. He noted that the leaving of cable is nothing new, there is hundreds of thousands of miles of it around the world. He urged the Board to keep a broad open mind and to remember that the Board's process allows for these changes to occur.

There was some discussion regarding staff's submittal with reference to Section 13-5-42(c), Hawaii Administrative Rules (HAR) that provides direction for deviating from permit conditions. Member Kokubun asked if Section 13-5-42(c), HAR, would supersede the provisions in the EIS and Member Inouye asked if the applicant must demonstrate all 4 criterias that are listed. Deputy AG Dawn Chang stated that although it does seem to indicate that all 4 criterias would have to be satisfied, because of the word "and" after number 3, she is not familiar with this particular permit and would like to be able to look at the entire document before rendering an opinion.

Motion was made to amend staff recommendation by adding a condition to read:

3. That the Board requests that the Department of the AG advise the Board on the proper procedures to follow should the Board wish to deviate from condition number 7 of CDUP KA-2734 which requires the applicant to remove the subsea cable within six (6) months of the termination of the ATOC project.

Unanimously approved as amended. (McCrary/Kennison).

EXECUTIVE MEETING: THE BOARD WILL MEET IN AN EXECUTIVE MEETING UNDER SECTION 92-4, HRS, AND PURSUANT TO SECTION 92-5 (a) (4), HRS, TO CONSULT WITH LEGAL COUNSEL ON QUESTIONS AND ISSUES PERTAINING TO THE BOARD'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES, AND LIABILITIES ARISING FROM THE ALLEGATIONS CONTAINED IN THE LAWSUIT NOH V. WILSON AND BLNR.

Chairperson Wilson announced that the Board will be taking a lunch break in which an executive session item will be covered and suggested that discussion on Item D-29 be included.

Unanimously approved to move into executive session. (Inouye/Kennison).

The meeting was reconvened at 2:00 p.m.

ITEM D-10 TERMINATION OF LEASE AND DIRECT ISSUANCE OF LEASE TO THE UNIVERSITY OF HAWAII, GENERAL LEASE NO. S-4407, PIERCO PIER, WAIMANALO, OAHU, TMK: 4-1-14: 14

Mr. Uchida presented the staff submittal recommending that the Board approve the conveyance of the improvements and the breakwater from High Technology Development Corporation, approve the surrender and termination of General Lease No. S-4407 and approve the issuance of a direct lease to the UH subject to standard conditions.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM E-1 ADOPTION OF AMENDED AND COMPILED CHAPTER 13-146, THE ADMINISTRATIVE RULES FOR THE HAWAII STATE PARK SYSTEM

Mr. Ralston Nagata, Administrator of the Division of State Parks presented the staff submittal and recommended that the Board approve the adoption of the amended and compiled Chapter 13-146, HAR, pending final approval by the Governor.

Member McCrory stated that she did not get a copy of the rules and would like to have an opportunity to review them. Mr. Nagata said if the Board is going to consider deferring Item E-1, he would suggest that they also defer Item E-2, since they are somewhat related. Member McCrory said she would like to ask some questions regarding Item E-2, so that when these Item's are brought back to the Board, staff will have answers.

Unanimously approved to defer Item E-1. (Inouye/Kennison).

ITEM E-2 REQUEST TO ESTABLISH FEES FOR CAMPING IN STATE PARKS, AND ENTRANCE TO DIAMOND HEAD STATE MONUMENT

Mr. Nagata said this is a request to establish fees for camping permits and entrance to Diamond Head State Monument. He said revenues generated by any state park fees is deposited into the Aina Hoomalu Special Fund, except for 20% which is set aside for the Office of Hawaiian Affairs. He explained the proposed fees in detail and requested that the Board approve this agenda item.

Member McCrory inquired as to whether the funds that are deposited in the Aina Hoomalu Special Fund could be used towards maintenance. Mr. Nagata explained that the way the law is written, the Aina Hoomalu Special Fund is to be used to operate and maintain interpretive programs. He said during the past legislative session, they tried to have more liberal language in the law so that the monies could also be used for general park maintenance, and that did not pass.

Member McCrory asked what the projected revenues for the proposed fees are estimated to be and advised Mr. Nagata that he could come back with that answer when this item is brought back to the Board.

Member Colbert Matsumoto shared with staff and other Board members an article that he read while in San Francisco. He explained that a City in San Francisco has a concept where vendors have agreed to build and maintain toilet facilities in exchange for a Kiosk where they can sell magazines and other kinds of items. The vendor charges users of the facility 25 cents per use. He said this program was very successful and turned out to be a win-win situation. He thought that this might be a good concept to transport into Hawaii's parks system since toilets are a high maintenance problem. He said this has nothing to do with this agenda item but it might be something that the division might want to explore because it might help address a number of different concerns.

Mr. Curtis, Life of the Land said he has nothing against charging user fees for tourists but did not feel that residents of the state should be charged user fees because they pay state taxes that should include managing the assets that are essentially held for public trust and interest.

Unanimously approved to defer Item E-2. (McCrory/Inouye).

ITEM E-3 REQUEST FOR APPROVAL TO CONDUCT PUBLIC HEARINGS, AND APPOINT HEARING OFFICERS FOR THE AMENDMENT OF CHAPTER 13-7, HAWAII ADMINISTRATIVE RULES, ENTITLED "ASSEMBLIES, MEETINGS, AND SALE OR DISTRIBUTION OF LITERATURE"

Mr. Nagata said changes to Chapter 13-7, HAR, are proposed to address a number of concerns which have become apparent with the original version of the rule. The department has experienced recurring problems with groups and individual selling drinks and merchandise in conjunction with literature, claiming that the non-literature items are free. In addition, the original rules had the effect of prohibiting community fairs, carnivals, plant sales and fund-raising walks or athletic competition on DLNR lands. There are areas where these events are appropriate, and areas where no commercial activity is appropriate. The amended rules address that issue. The version of the rules departs significantly from the old rules by allowing distribution and sale of merchandise, subject to certain conditions, but not in Iao Valley, Diamond Head, Iolani Palace, Royal Mausoleum, Nuuanu Pali, Fort DeRussey

Beach, and Duke Kahanamoku Beach. The rules outline specific conditions under which sales of merchandise will be approved, including specifying when applications can be submitted, and requiring a deposit, a rental fee and liability insurance. The rules require Department of Health authorization for any sale of food or drink. The rules set restrictions on the location of sales booths, limit the permits to a fourteen day time period, and specify that permittees are eligible for such permits only once a year. This section is intended to provide for and regulate, where appropriate, group gatherings such as fund-raising carnivals. The enforcement section of the rules has been changed to allow criminal penalties as well as civil (administrative) penalties for violations of the rules. This will allow enforcement officers to issue citations for violations, rather than having to rely on more cumbersome administrative action. Mr. Nagata mentioned that there was a typo on page 7-10, and changed it to read: "(7) No sales booths are allowed within fifty feet of roads or paths". Staff's recommendation is that the Board grant approval to conduct public hearings for the proposed amendments to Chapter 13-7, HAR, and delegate authority to the Chairperson to appoint hearing officers to conduct the hearings.

Member McCrory requested that Haena State Park on Kauai be added to the list of areas where no distribution of literature be allowed.

Motion made to approve Item E-3 with amendments to page 7-10, to correct the typo from [parks] to paths, and to include Haena State Park to the lists of areas where no distribution of literature be allowed.

Unanimously approved as amendment. (McCrory/Kennison).

ITEM B-1 REQUEST FOR FINAL APPROVAL FOR AMENDMENTS TO HAWAII ADMINISTRATIVE RULES, CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS.

Mr. Bill Devick, Administrator for the Division of Aquatic Resources (DAR) said this is a re-submittal requesting final approval for amendments to Chapter 13-74, HAR, for certain fee increases. The Board deferred the original request during the meeting of August 23, 1998. The proposed amendments would have generally increased fees for existing licenses and permits on January 1, 1999. As there is insufficient time to prepare for this increase, staff has revised the proposal to start the fee increases on September 1, 1999. Fees for commercial permits and licenses would generally increase to a standard \$50 per year and \$200 for non-residents, except for certain licenses and permit. The recreational freshwater fishing license fees would increase from \$1.50 - \$3.75 to the new fees of \$3.00 - \$5.00 per year (\$20 for non-residents). Those receiving free freshwater licenses would remain free. Based on comments received during the August 28, 1998 Board meeting, the following suggestions are requested: 1) Regarding the comments by Mr. Howard Araki, staff proposes a new 7-day tourist license that would cost \$10.00 in Section 13-74-10(d)(4); 2)

Regarding the comments by Mr. Bob Endreson, his concerns may be more appropriately addressed at another time through a vessel license that is beyond the discussion of the proposed fee increases. Staff is currently in discussions with enforcement to consider a vessel license; 3) Regarding the comments by Mr. Stuart Simmons, some of his concerns dealt with requirements of certain licenses and the need for such licenses. Staff is currently in discussions with enforcement to consider removal of the reporting requirements. Such concerns are also beyond the discussion of the proposed fee increases and will be addressed at a later time. Staff met with Mr. Simmons to discuss his concerns about how high the fees will be for the closed season and import licenses at the restaurant (retail) level. Staff also met with other seafood dealers who expressed their feelings that the license fees should be the same for all dealers. In an effort to fairly treat all dealers equally, staff recommends that the fees be the same for all dealers and that the fees should remain at \$50 per year as proposed; 4) Regarding the comments by DBEDT, their concerns seem to follow those of Mr. Simmons. As such, staff recommendations remain the same, that the Board approve the amendment of Chapter 13-74, HAR, relating to license and permit provisions for fishing, fish and fish products. He mentioned that there was an error in the standard draft, Section 13-74-10(a), HAR, that should read: "...only when accompanied by a licensed adult." and requested that the Board approve this revision.

Unanimously approved as amended. (Kennison/McCrory).

ITEM B-2 REQUEST FOR FINAL APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES, CHAPTER 13-47, HILO BAY, WAILOA RIVER AND WAILUKU RIVER, HAWAII AND CHAPTER 13-63, WAIAKEA PUBLIC FISHING AREA, HAWAII

Mr. Devick presented the staff submittal recommending that the Board approve the amendments to Chapter 13-47, HAR, relating to the Hilo Bay, Wailoa River and Wailuku River, Hawaii Fisheries Management Area and Chapter 13-63, HAR, relating to rules for the Waiakea Public Fishing Area, Hawaii.

Member Kokubun felt that because the County has the maintenance responsibility for the Alenaio Flood Control Channel which is an adjunct to the Waiolama Canal, he was concerned about conflict between the State and the County regarding jurisdiction issues because of overlapping responsibilities. He made a motion to approve Item B-2 with the understanding that staff will work cooperatively with the County of Hawaii with respect to the Waiolama Canal.

Unanimously approved as submitted. (Kokubun/Inouye)

ITEM K-2 CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-79-10, HONOLULU INTERNATIONAL AIRPORT, OAHU (FIRST HAWAIIAN

BANK/MAKENA HAWAII, INC.) TMK: 1-1-72-19

Mr. Garcia presented DOT's submittal recommending that the Board approve the Consent to Assignment of Lease No. DOT-A-7910.

Unanimously approved as submitted. (Inouye/Kennison).

ITEM K-3 LEASE - COIN-OPERATED STORAGE LOCKERS, LIHUE AIRPORT, KAUAI (SMART CARTE, INC.) TMK: 4-3-5-01-8P

Mr. Garcia presented DOT's submittal recommending that the Board approve the granting of a lease to Smarte Carte, Inc.

Unanimously approved as submitted. (Inouye/McCrory).

ITEM K-4 CONSENT TO CONTRACTUAL AGREEMENT TO MARITIME HERITAGE TOUR BOAT LANDINGS AT PIER 7, HONOLULU HARBOR, OAHU (HAWAII MARITIME CENTER AND VM CORPORATION) 1-2-01-58P

Mr. Garcia presented DOT's submittal recommending that the Board consent to Contractual Agreement to Maritime Heritage Tour Boat Landings at Pier 7.

Unanimously approved as submitted. (Inouye/McCrory).

ITEM K-5 REPORT ON REVOCABLE PERMITS RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR INCONSISTENT USES

Mr. Garcia stated that Item K-5 is a report on revocable permits renewed by DOT for inconsistent uses and this Item does not require action by the Board.

ITEM D-1 AMENDMENT OF LEASE, GENERAL LEASE NO. S-5502, KALIHI-PALAMA MODEL CITY ASSOCIATION, HONOLULU, OAHU, TMK: 1-5-07: 02

Mr. Uchida presented the staff submittal recommending that the Board approve the amendment to General Lease No. S-4407 to allow the term to be extended from September 20, 1997 to September 19, 1999 subject to conditions.

Unanimously approved as submitted. (Inouye/McCrory).

ITEM D-2 REQUEST FOR DIRECT ISSUANCE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO MS. KAREN L. NOLAND FOR UTILITY PURPOSES, AND AN IMMEDIATE RIGHT-OF-ENTRY FOR SITE CONTROL PURPOSES, OVER, UNDER, ACROSS AND ON GOVERNMENT LAND, IDENTIFIED BY TMK: 3-1-02: PORTION OF 01, SITUATE AT A PORTION OF KAHAKULOA HOMESTEADS, KAHAKULOA, WAILUKU, MAUI

Mr. Uchida presented the staff submittal recommending that the Board authorize the direct issuance of a perpetual, non-exclusive easement to Ms. Karen L. Noland for utility purposes, and an immediate right-of-entry for site control purpose subject to standard conditions.

Unanimously approved as submitted. (Kennison/Kokubun).

ITEM D-3 REQUEST BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT FOR THE SET ASIDE OF STATE LAND AND THE ISSUANCE OF AN EXECUTIVE ORDER FOR BASEYARD AND OFFICE PURPOSES, TMK: 5-2-04: 51, PORTION OF HOOLEHUA-PALAAU HOMESTEADS, HOOLEHUA, MOLOKAI

Mr. Uchida presented the staff submittal recommending that the Board authorize the issuance of an executive order to the Division of Conservation and Resource Enforcement for baseyard and office purposes subject to standard conditions.

Unanimously approved as submitted. (Kennison/Kokubun).

ITEM D-4 CONSENT TO SUBLEASE OF GENERAL LEASE #S-4717 ISSUED TO THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY AT KEAHOLE, HAWAII, TMKS: (3) 7-3-43-3 AND -42

Mr. Uchida presented the staff submittal recommending that the Board consent to the sublease of General Lease No. S-4717 between the Natural Energy Laboratory of Hawaii Authority and Uwajima Fisheries, Inc. subject to standard conditions.

Unanimously approved as submitted. (Kokubun/McCrory).

ITEM D-5 RESCIND PRIOR BOARD ACTION FOR ISSUANCE OF A LEASE TO THE YMCA OF KAUAI AT KAPAA, KAWAIIHAU, KAUAI, TMK: 4-6-14: POR. 26

Mr. Uchida noted a change on the staff submittal, which was erroneously dated for October 30, 1998 and should have been November 20, 1998. He said this is a request from the YMCA Kauai to rescind a prior action for the issuance of a lease. The YMCA Board of Directors would like to return the lease because they feel that the current DLNR Board lease targets non-profits for state revenues and this was not in the long term interests of the YMCA. He said YMCA has been paying rent for this site even though the lease document hasn't been issued. He said they have been waiting for the County subdivision approval on this property and is not sure why this account was opened. He requested a 3rd recommendation be added in which any monies that was put into this account be returned.

Member McCrory stated that the reason YMCA could not get a subdivision approval was because they haven't been working on the land. She said the County had come up with another piece of land that was very simple for them to build on and they decided that it was easier to go with that. She objected to adding a 3rd recommendation that would return the monies. Mr. Uchida withdrew his request to add a 3rd recommendation.

Unanimously approved as submitted. (McCrory/Kennison).

ITEM D-6 REQUEST PERMISSION TO STOP BILLING 48 GENERAL LEASES ISSUED TO THOSE PERSONS QUALIFIED UNDER ACT 314, SESSION LAWS OF HAWAII 1991 AT KIKALA-KEOKEA, HAWAII, TMK: (3) 1-2-7-PORION 2

Mr. Uchida presented the staff submittal recommending that the Board authorize the Land Division to instruct the Fiscal Office to stop rental billings on the 48 general leases and upon submittal of liability insurance coverage by the Kikala-Keokea Tenants Residential Community Association, amend the lease documents to reflect a new commencement date, determined by the Chairperson subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Inouye).

ITEM D-7 CANCELLATION OF REVOCABLE PERMIT #S-6997 SKI SHOP HAWAII AND REVOCABLE PERMIT #S-6998 MAUNA KEA SKI CORP. LOCATED ON HAWAII

Mr. Uchida presented the staff submittal recommending that the Board authorize the cancellation of Revocable Permit No. S-6997 and S-6998 subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-8 SET ASIDE TO THE WATER COMMISSION OF THE COUNTY OF

**HAWAII FOR THE KUKUIHAELE SPRING SITE, PUMP STATION
AND PIPELINES AND A RIGHT-OF-ENTRY AT HAMAKUA, HAWAII,
TMK: (3) 4-8-7-20**

Mr. Uchida presented the staff submittal recommending that the Board authorize the set aside of 1.50 acres to the Water Commission of the County of Hawaii for development and use of the Kukuihaele Spring Site and authorize a right-of-entry to the County of Hawaii, Department of Water Supply subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

**ITEM D-11 REQUEST TO AMEND BOARD'S ACTION OF AUGUST 12, 1994,
AGENDA ITEM F-8 INVOLVING VARIOUS LAND DISPOSITIONS TO
THE COUNTY OF MAUI, TMKs: 3-9-05: PORTION 52 AND 3-9-12:
PORTION 36, KIHEI, MAUI**

Mr. Uchida presented the staff submittal recommending that the Board approve the County of Maui's request to amend the action of August 12, 1994 and also approve the site control right-of-entry subject to standard conditions.

Unanimously approved as submitted. (Kennison/Kokubun).

**ITEM D-12 LAHAINALUNA HIGH SCHOOL, DEPARTMENT OF EDUCATION
REQUEST FOR AFTER-THE-FACT LEASE AGREEMENT APPROVAL
COVERING PRIVATELY-OWNED PROPERTY IDENTIFIED BY TMK:
4-5-12: 50, SITUATE IN LAHAINA, MAUI**

Mr. Uchida presented the staff submittal recommending that the Board approve an after-the-fact lease between Mr. Lanny Tihada (lessor) and Lahainaluna High School, Department of Education subject to standard conditions.

Unanimously approved as submitted. (Kennison/Kokubun).

**ITEM D-13 LEASE EXTENSION FOR GENERAL LEASE #S-4881 ISSUED TO THE
COUNTY OF HAWAII AND A RIGHT-OF-ENTRY AT SOUTH HILO,
HAWAII, TMK: (3) 2-8-6-12**

Mr. Uchida presented the staff submittal recommending that the Board grant a 10 year lease extension for General Lease S-4881 and also authorize the issuance of a right-of-entry to the County of Hawaii subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-14 ADJUSTMENT OF THE ANNUAL RENTAL OF GENERAL LEASE #S-5186 ISSUED TO JACK UMPHREY AND JOHN UMPHREY AT WAIAKEA, HAWAII, TMK: (3) 2-2-37-96

Mr. Uchida presented the staff submittal recommending that the Board adjust the annual rent for General Lease S-5186, effective January 1, 1998 to a revised figure of \$19,950 and accept the cancellation and termination of the sublease document effective August 1, 1998 subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-15 SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES ON HAWAII, TMK: (3) 7-3-10-2

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for intensive agriculture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Inouye).

ITEM D-16 SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES ON HAWAII, TMK: (3) 2-5-9-1

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for intensive agriculture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-17 CONSENT TO ASSIGN GENERAL LEASE NO. S-5344, MANUEL H. ANDRADE AND MICHAEL ANDRADE, ASSIGNOR, TO CARL BRAUN, ASSIGNEE, LOTS A & B, KAPPA RICE AND KULA LOTS, KAPAA HOMESTEADS, 4TH SERIES, KAPAA, KAUAI, TMK: 4-5-15: 17, 19, 20 & 30

Mr. Uchida presented the staff submittal recommending that the Board consent to the assignment of General Lease No. S-5344 from Mr. Manuel H. Andrade and Mr. Michael Andrade to Mr. Carl Braun subject standard conditions.

Unanimously approved as submitted. (McCrory/Inouye).

ITEM D-18 SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES ON HAWAII, TMK: (3) 9-8-1-12

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for intensive agriculture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Inouye).

ITEM D-19 SALE OF A LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES ON HAWAII, TMKS: (3) 9-8-1-3 AND -6

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for pasture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-21 SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES, TMK: (3) 4-3-6-12

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for intensive agriculture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-22 SALE OF A LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES ON HAWAII, TMK: (3) 4-2-7-2

Mr. Uchida presented the staff submittal recommending that the Board authorize a sale of a lease at public auction for pasture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/Kennison).

ITEM D-23 REQUEST FOR DIRECT ISSUANCE OF A LAND LICENSE TO HANA TRUCKING & EQUIPMENT CO. FOR MINING AND SALE OF ROCK PURPOSES, ON GOVERNMENT LAND IDENTIFIED BY TMK: 1-3-06:

15

Mr. Uchida presented the staff submittal recommending that the Board determine that the public interest will be best served by disposition of the subject land license by negotiation,

authorize the publication of a Notice of Disposition in accordance with Section 171-16(d), Hawaii Revised Statute (HRS), and also authorize the direct issuance of a land license to Hana Trucking & Equipment Co. by direct negotiation pursuant to Section 171-54, HRS, subject to standard conditions.

Unanimously approved as submitted. (Kennison/Kokubun).

**ITEM D-24 SALE OF A LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES
ON HAWAII, TMK: (3) 9-5-13-1**

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for pasture purposes subject to standard conditions, that includes a condition to preserve access for Na Ala Hele.

Unanimously approved as submitted. (Kokubun/Kennison).

**ITEM D-25 SALE OF A LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES
ON HAWAII, TMK: (3) 4-1-4-33**

Mr. Uchida presented the staff submittal recommending that the Board authorize the sale of a lease at public auction for pasture purposes subject to standard conditions.

Unanimously approved as submitted. (Kokubun/McCrory).

**ITEM D-28 TERMINATION OF GRANT OF EASEMENT - BLAIR, LTD., NON-
EXCLUSIVE ROAD ACCESS EASEMENT, LAUPAHOEHOE, NORTH
HILO, HAWAII (LOD NO. S-27,529), TMK: 3RD/3-7-01: 2**

Mr. Uchida presented the staff submittal recommending that the Board authorize the termination of the subject easement based on the "nonuse and abandonment" provision subject to standard conditions.

Unanimously approved as submitted. (Kokubun/McCrory).

**ITEM D-30 REQUEST FOR CONSIDERATION OF RENT ADJUSTMENT UNDER
GENERAL LEASE NO. S-5276 BY MR. BRENDAN BALTHAZAR,
TMK: 1-8-01: 03, NAKULA, KAUPU, HANA, MAUI**

Mr. Uchida requested that Item D-30 be withdrawn. He stated that staff would like to try and work this out with Mr. Balthazar.

Unanimously approved to withdraw. (Kennison/McCrory).

ITEM D-31 MANAGEMENT AGREEMENT BETWEEN THE UNIVERSITY OF HAWAII AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES FOR INTERIM MANAGEMENT OF THE UNIVERSITY OF HAWAII'S WEST OAHU CAMPUS SITE, HONOULIULI, EWA, OAHU, TMKs: 9-2-01: 1, 9-2-02: 1 AND 9-2-04: 5

Mr. Uchida presented the staff submittal recommending that the Board authorize the Land Division to develop an agreement with the UH for the management of lands subject to standard conditions.

Unanimously approved as submitted. (Inouye/McCrory).

ITEM D-32 FORFEITURE OF REVOCABLE PERMIT NO. S-3158, NISEI, LIMITED, SITUATE AT KAPALAMA-KAI, ADJACENT TO HART STREET, HONOLULU, OAHU, TMK: 1-5-33: 16

Mr. Uchida requested that this item be withdrawn because the applicant has paid the delinquent rent.

Unanimously approved to withdraw Item D-32 (Kokubun/Inouye).

ITEM D-33 FORFEITURE OF REVOCABLE PERMIT NO. S-6264, JAMES AND ESTER ANN DOMINGUES, SITUATE AT KAHANA VALLEY, OAHU, TMK: 5-2-03

Mr. Uchida presented the staff submittal recommending that the Board authorize the cancellation of Revocable Permit No. S-6264 subject to standard conditions.

Unanimously approved as submitted. (Inouye/Kokubun).

ITEM D-34 FORFEITURE OF REVOCABLE PERMIT NO. S-6962, DEAN AND LIGAYA AGCAOILI, BEING A PORTION OF WAIKELE STREAM, WAIKELE, EWA, OAHU, TMK: 9-4-10: 61

Mr. Uchida presented the staff submittal recommending that the Board authorize the cancellation of Revocable Permit No. S-6962 subject to standard conditions.

Unanimously approved as submitted. (Inouye/McCrory).

There being no further business, Chairperson Wilson adjourned the meeting at 3:55 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