

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

DATE: FRIDAY, FEBRUARY 12, 1999
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Chairperson Timothy E. Johns called the meeting of the Board and Natural Resources to order at 9:05 a.m. The following were in attendance.

MEMBERS:

Mr. Timothy Johns
Ms. Lynn McCrory

Mr. William Kennison
Mr. Russell Kokubun

STAFF:

Mr. Alton Miyasaka, Division of Aquatic
Resources (DAR)
Mr. Keoni Fairbanks, Kahoolawe Island
Reserve Commission (KIRC)

Ms. Emily Gardner, DAR
Mr. Dean Uchida, Land Division
Mr. Deepak Neupane, KIRC

OTHERS:

Ms. Pamela Matsukawa, Department of
the Attorney General (DAG)
Ms. Dawn Chang, DAG
Mr. Norman Miyata (D-1)
Mr. Steven Yuson (D-1)
Mrs. Stephanie Fry (J-1)

Mr. Peter Garcia, Department of
Transportation, DOT
Mr. Kenneth H. Nakamura (D-1)
Mrs. Yaeko Miyata (D-1)
Mr. Mike Schmidt (D-6)
Mr. Jeremy Fry (J-1)

**ITEM B-1: REQUEST FOR FINAL APPROVAL TO AMEND HAWAII
ADMINISTRATIVE RULES, CHAPTER 13-28, HANAUMA BAY MARINE
LIFE CONSERVATION DISTRICT, OAHU**

Mr. Alton Miyasaka, Aquatic Biologist for the Division of Aquatic Resources (DAR) presented the staff submittal recommending that the Board approve the amendments to Hawaii

Administrative Rules (HAR), Chapter 13-28 relating to the Hanauma Bay Marine Life Conservation District, Oahu.

Unanimously approved as submitted (Kennison/McCrory).

ITEM B-2: REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE DEPARTMENT OF HEALTH

Ms. Emily Gardner, Protected Species Coordinator for DAR, presented the staff submittal recommending that the Board authorize the Chairperson to negotiate and, subject to necessary approvals, execute an Agreement with the Department of Health to conduct a water quality monitoring program for the Hawaiian Island Humpback Whale National Marine Sanctuary.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-1: FORFEITURE OF GENERAL LEASE NO. S-5355, NORMAN AND YAEKO MIYATA, LESSEES, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-18: 51

Mr. Dean Uchida, Administrator for the Land Division said this a request to forfeit General Lease (GL) No. S-5355 to Mr. and Mrs. Norman Miyata. On July 12, 1996 the Land Board consented to the assignment from the Miyata's to Waimanalo Hydro Farms Corp. On February 13, 1998 the Land Board approved an amendment to the July 12, 1996 action and amended staff's recommendation to require that the outstanding rent and financial obligations due the Department and other government agencies be met by May 14, 1998 otherwise the lease would be terminated as of that date. Staff's submittal of February 13, 1998 did not delineate the specific outstanding rent and financial obligations due. Because of this lack of clarity, staff decided to initiate the normal breach process, starting from July 1, 1998, rather than terminate the lease without coming to the Land Board. Staff has spent an inordinate amount of time attempting to work out an acceptable outcome for all parties involved to get the assignment completed. Mr. Kenneth H. Nakamura, Waimanalo Hydro Farms Corp., has failed to acquire a mortgage to satisfy the outstanding rent, delinquent property taxes, a performance bond and insurance requirements. Staff's recommendation is that the Board authorize the termination of the lease, terminate all rights and obligations and authorize the Department of the Attorney General (AG) to start collection proceedings.

Mr. Kenneth H. Nakamura, Waimanalo Hydro Farms Corp., disagreed with a statement on page 2 of the staff submittal that reads: "Furthermore, it is staff's understanding that Mr. Nakamura has cancelled his application for a loan with the lender he had been working with." He explained that Ameriquest Mortgage Company gave him the impression that they would approve the loan that he had applied for, but was recently informed that his loan had been denied because of his delinquent payments to the Miyata's and the State. He clarified that he is still

interested in this project and intends to pay the Miyata's and the State for any delinquencies that have accrued. He asked the Board to delay consideration in cancelling this lease to give him more time to obtain financing and to fulfill his obligation to the Miyata's and the State.

Mr. Steven Yuson testified on behalf of the Miyata's. He said in 1996, the Miyata's had agreed to sell the property to Mr. Nakamura. Mr. Nakamura is presently on the property and has the benefit of using the property. Mr. Nakamura has paid up until the first half of 1998, but the second half of 1998 and the first half of 1999 is now delinquent. He requested that the Board defer this item to allow the Miyata's time to clear up the situation as it exists with Mr. Nakamura.

In response to Member William Kennison's question regarding Mr. Nakamura's loan that was denied, Mr. Uchida said staff has talked directly to the lender, and the lender was also concerned about a personal delinquent tax lien that Mr. Nakamura needs to cure. Mr. Nakamura said he is trying to get a loan company to agree to have his children's name on the loan application.

There was some discussion about rescinding the consent to assignment of the lease from the Miyata's to Mr. Nakamura. Chairperson Timothy Johns believed that the consent to assign is not a requirement being forced on the lessee by the Board. If the assignor and assignee are unable to agree, there will be no assignment. If the Board were to rescind its approval of the assignment at this time, the Board may be interjecting itself into the contractual agreement between the 2 parties. Mr. Uchida supported Chairperson Johns' approach based on the fact that the Miyata's has indicated that they were hiring an attorney to represent their interests.

Member Lynn McCrory made a motion to amend the staff recommendation by deleting the recommendation and replacing it with the following:

That the Board allow the lessee, Mr. and Mrs. Miyata, time to cure the default for the back rent in the following manner:

1. All rents for the second half of 1998 [July through December] must be paid by the end of February 1999;
2. All rent for the first half of 1999 [January through June] must be paid by June 1, 1999;
3. Failure of the lessee to adhere to these deadlines, will result in the matter being brought back to the board for termination.

Unanimously approved as amended (McCrory/Kennison).

ITEM D-16: CONSERVATION DISTRICT USE APPLICATION FOR KAHOO LAWE ISLAND RESERVE COMMISSION'S (KIRC) MAUI BASEYARD, MAALAEA, MAUI, TMK: (2) 3-6-01: 14

Mr. Uchida said this is a Conservation District Use Application (CDUA) for Kahoolawe Island Reserve Commission (KIRC) to build a baseyard at Maalaea, Maui. The proposed project site is 8 acres and is situated within the Limited and General subzones. The application was referred to various agencies and the only significant comment came from the Department of Transportation (DOT) which indicated a concern regarding the access and safety on to the highway from the proposed location. Staff notes that the applicant, DOT, and the Division of Boating and Ocean Recreation (DOBOR) have been meeting to try to develop a mutually satisfactory resolution to this matter. Staff understands that these discussions are still underway, and believes that, should a condition be mandated to resolve this matter, it could be attached to the Revocable Permit that must still be obtained from DLNR. Staff has conducted an analysis and has found that the proposed use is compatible in the area. Staff is recommending that the Board approve the application to construct KIRC's Administration Building, Boat House and Storage Facility and Native Hawaiian Plant Nursery, and also authorize the subdivision of the 8 acre parcel, subject to standard conditions.

Mr. Keoni Fairbanks, Executive Director of KIRC distributed pictures of the proposed Maalaea Project Site and explained some of the options that was discussed at meetings that involved KIRC, DOT and DOBOR.

In response to Member Kennison's question regarding potential storm run-off into Maalaea Harbor, Mr. Deepak Neupane, Mediation Project Engineer for KIRC, clarified that erosion control measures will be taken for any type of grading that needs to be done on the site. He said he attended a site visit, about 2 months ago, with Mr. Michael Spaulding, Maui District Land Agent Phil Ohta, Maui Engineer Curtis Powers and a representative from the Maui Natural Resources Conservation Service, and they were all convinced that there would be no run-off or erosion problems.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-8: AMEND PRIOR BOARD ACTION OF JULY 24, 1998 (AGENDA ITEM D-20), GRANT OF EASEMENT TO PRIMECO PERSONAL COMMUNICATIONS, L.P., WAIMANALO-KAILUA CORPORATION YARD, OLOMANA AGRICULTURAL SUBDIVISION, KAILUA, OAHU, TMK: 4-2-98: POR. 47

Mr. Uchida presented the staff submittal recommending that the Board amend its action of July 24, 1998, under agenda item D-20, by changing the grantee from Primeco Communications, L.P. to Sprint Com., Inc. All other conditions of agenda item D-20 shall remain the same.

Unanimously approved as submitted (Kennison/McCrory).

ITEM D-2: REQUEST ISSUANCE OF A LAND PATENT IN CONFIRMATION OF

**THE AWARD ON LAND COMMISSION AWARD #10,374, APANA 2
LOCATED AT NORTH KONA, HAWAII, TMK: (3) 7-5-19-5**

Mr. Uchida presented the staff submittal recommending that the Board issue the land patent in confirmation of land commission award #10,374, subject to standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-3: SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE
AGRICULTURE PURPOSES AT NORTH HILO, HAWAII, TMK: (3) 3-1-4-
2**

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

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-4: RESCIND PRIOR BOARD ACTION FOR LEASE - PUBLIC AUCTION
AND APPROVE THE SALE OF A LEASE AT PUBLIC AUCTION FOR
INTENSIVE AGRICULTURE PURPOSES AT KAU, HAWAII, TMK: (3)
9-6-9-4**

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

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-5: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO
THE COUNTY OF HAWAII, DEPARTMENT OF PUBLIC WORKS FOR
SEWER LINE PURPOSES AND A CONSTRUCTION RIGHT-OF-ENTRY
AT SOUTH HILO, HAWAII, TMK: (3) 2-3-20-PORION OF 2**

Mr. Uchida presented the staff submittal recommending that the Board authorize the direct sale of a perpetual, non-exclusive easement for sewer line purposes, subject to standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-6: RELEASE PERFORMANCE BOND FOR GENERAL LEASE #S-3875

**ASSIGNED TO PARADISE AUCTION, LTD. FOR
COMMERCIAL/INDUSTRIAL PURPOSES AT WAIAKEA, HAWAII,
TMK: (3) 2-2-50-93**

Mr. Uchida presented the staff submittal recommending that the Board release the performance bond for GL S-3875 assigned to Paradise Auctions, Ltd., subject to standard conditions.

Mr. Mike Schmidt, President of Paradise Auction, Ltd., testified in favor of staff's recommendation.

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-7: SALE OF A LEASE AT PUBLIC AUCTION FOR INTENSIVE
AGRICULTURE PURPOSES AT NORTH HILO, HAWAII TMK: (3) 3-5-1-1**

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

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-9: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO
RICHARD CARVALHO FOR ACCESS PURPOSES AT KAHEI, HAWAII,
TMK: (3) 5-5-3-PORION 13**

Mr. Uchida amended the legal reference section of the staff submittal by changing Section 171-95, to Section 171-13, and recommended that the Board authorize the direct sale to Mr. Richard Carvalho, subject to standard conditions.

Member Russell Kokubun asked staff to notify the County of Hawaii of the Board's action, and also provide the County of Hawaii, Planning Department a copy of the easement document for their records.

Unanimously approved as submitted (Kokubun/Kennison).

**ITEM D-10: AMEND SET ASIDE TO THE DEPARTMENT OF EDUCATION FOR
ADDITION TO THE WAIAKEA EDUCATION COMPLEX AT WAIAKEA,
HAWAII, TMK: (3) 2-4-1-PORION 5**

Mr. Uchida presented the staff submittal recommending that the Board amend the Land Board authorization of November 20, 1997, Item D-9 to the Department of Education, subject to

standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-11: RESUBMITTAL: THE UNIVERSITY OF HAWAII REQUESTS THE CANCELLATION OF REVOCABLE PERMIT NO. S-5567 AND SUBSEQUENT SET ASIDE OF THE PREMISES TO THE UNIVERSITY FOR GENERAL UNIVERSITY PURPOSES, WAILUA, KAWAIHAU (PUNA), KAUAI, TMK: 4-2-01: POR. 3

Mr. Uchida withdrew Item D-11.

Unanimously approved to withdraw Item D-11 (McCrorry/Kennison).

ITEM D-12: AMEND PRIOR BOARD ACTION OF MAY 9, 1997 (AGENDA ITEM D-15), SET ASIDE OF STATE LAND TO THE COUNTY OF KAUAI FOR ADDITION TO NAWILIWILI PARK, LIHUE, KAUAI, TMK: 3-2-04: 9, 10, 14 & 15

Mr. Uchida presented the staff submittal recommending that the Board amend its action of May 9, 1997, under agenda Item D-15, by deleting Remnant R1 as a set aside to the County of Kauai and retain the said remnant in DLNR's land inventory and all other recommendations remain the same.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-13: AMEND PREVIOUS BOARD ACTION FOR DISPOSITION OF LAND LICENSES BY PUBLIC AUCTION TO REMOVE SAND FROM KAWAIELE WILDBIRD REFUGE COVERED BY EXECUTIVE ORDER NO. 3437, KAWAIELE, MANA, KAUAI

Mr. Uchida presented the staff submittal recommending that the Board amend Land Board authorization of August 28, 1998, Item D-11 by increasing the number of land licenses, from 4 to 5, and limiting the number of land licenses per business or person to 1 only. Should all qualified bidders have obtained a land license, and any vacant parcels remain, then this restriction would not apply.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-14: DEPARTMENT OF HEALTH REQUESTS APPROVAL OF AMENDMENT NO. 12 OF LAND OFFICE DEED LOPP-OA-06, WAIKIKI, HONOLULU,

OAHU, TMK: 2-6-03: 24 (PORTION)

Mr. Uchida presented the staff submittal recommending that the Board approve Amendment No. 12 of a sub-lease by and between Polynesian Plaza Investment Co., subject to standard conditions.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-15: CERTIFICATION OF ELECTION OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS (KONA)

Mr. Uchida presented the staff submittal recommending that the Board certify the elections of Mr. Rick Robins and Mr. Bruce Witcher as directors of the Kona Soil and Water Conservation Districts.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM K-1: ISSUANCE OF REVOCABLE PERMIT, KAAHUMANU AVENUE PARCEL, KAHULUI HARBOR, MAUI (ALOHA HYUNDAI, LTD., A HAWAII CORPORATION) TMK: (2) 3-7-8-6

Mr. Peter Garcia, Property Management Officer for DOT, presented DOT's submittal recommending that the Board authorize the Director of Transportation to issue the applicant a revocable permit, subject to standard conditions.

Unanimously approved as submitted (Kennison/McCrory).

ITEM K-2: REPORT ON REVOCABLE PERMITS RENEWED BY THE DEPARTMENT OF TRANSPORTATION

No action required.

ITEM K-3: LEASE, WAIMEA-KOHALA AIRPORT, ISLAND OF HAWAII (FEDERAL AVIATION ADMINISTRATION) TMK: (3) 6-7-01-8P

Mr. Garcia presented DOT's submittal recommending that the Board approve the lease for Waimea-Kohala Airport.

Unanimously approved as submitted (Kokubun/McCrory).

ITEM K-4: CONSTRUCTION RIGHT OF ENTRY, KONA INTERNATIONAL AIRPORT AT KEAHOLE, ISLAND OF HAWAII (HAWAIIAN AIRLINES, INC.) TMK: (3) 7-3-10-2P

Mr. Garcia presented DOT's submittal recommending that the Board approve the Right-of-Entry for Hawaiian Airlines, Inc.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM K-5: ISSUANCE OF REVOCABLE PERMITS, INCONSISTENT USES, AIRPORTS DIVISION

Mr. Garcia presented DOT's submittal recommending that the Board approve the issuance of 3 revocable permits for American Savings Bank, Peacock Termite & Pest Control, Inc., and Dorvin D. Leis Co., Inc.

Unanimously approved as submitted (McCrory/Kennison).

A motion was made at 10:30 a.m. to go into Executive Session to consult with Legal Counsel (McCrory/Kennison). The meeting was reconvened at 10:50 a.m.

Member McCrory recused herself from Item G-1 and Item J-1. Chairperson Johns recused himself from the Minutes as he was not present at the meetings. He announced that the Board is willing to take testimony, but because there is a lack of quorum, the Board is unable to take action on the following items: Item G-1, Item J-1, Minutes of September 11, 1998, October 30, 1998 and December 11, 1998. These items were deferred.

Mr. and Mrs. Jeremy Fry, Petitioners and Owners of Kayak Adventure, Inc., testified on Item J-1. Mrs. Fry indicated that their petition is requesting that the Board consider amending HAR, Sections 13-256-36 & 13-256-38 with respect to the Anini Beach ocean waters only. She said they are proposing to offer guided kayak tours on a bi-weekly basis to shuttle patrons in and out of the Anini area to provide a unique, safe and less physically challenging ocean kayak experience other than the NaPali Coast or the Kipu Kai Coastline, to visitors traveling to the island of Kauai.

Chairperson Johns had some concerns on Item J-1, as drafted by DOBOR. He said he will be asking DOBOR to make some revisions before its taken up again at an upcoming Land Board meeting.

There being no further business, Chairperson Johns adjourned the meeting at 11:05 a.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:



TIMOTHY E. JOHNS

Chairperson

Board of Land and Natural Resources