

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

DATE: FRIDAY, MAY 14, 1999
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Chairperson Timothy Johns called the meeting of the Board of Land and Natural Resources to order at 9:11 a.m. The following were in attendance:

MEMBERS:

Mr. Timothy Johns	Mr. William Kennison
Mr. Colbert Matsumoto	Ms. Lynn McCrory
Ms. Kathryn Inouye	Mr. Russell Kokubun

STAFF:

Mr. Howard Gehring, Division of Boating and Ocean Recreation
Mr. John Hino, Division of Boating and Ocean Recreation
Mr. Dean Uchida, Land Division
Mr. Bill Devick, Division of Aquatic Resources
Mr. Francis Oishi, Division of Aquatic Resources

OTHERS:

Mr. Edwin Kamauoha, Department of the Attorney General	Mr. Peter Garcia, Department of Transportation
Mr. Bob Masuda (J-1)	Mr. Maulili Dickson (J-1)
Mr. Kenny Brown (J-1)	Mr. Barry Hill (D-5)
Ms. Wendy Oda (D-1)	Mr. Roy Uemura (D-1)
Mr. Henry Curtis (D-1)	Ms. Kat Brady (D-1)
Mr. Don Schug (B-1)	

ITEM A-1: MINUTES OF SEPTEMBER 11, 1998

Member Inouye made the following amendments:

- 1) page 4, first paragraph – “Sally Amitiad...”, should be “Sally Amantiad...”,
- 2) page 7, second paragraph, 5th line from bottom – “...outside improvements...”, should be “...offsite improvements...”

Member McCrory made the following amendments:

- 1) page 9, 4th paragraph (Item C-2, amendments to staff recommendation) – should include: “delete staff recommendation 4, and bring the draft RFP back to the Board for approval of approach and content.”;
- 2) pages 10-11 (Item D-14, amendments to Exhibit B, Step 9C) – add: “The department would look to determine option of all proceeds from revenue generated, which are invested in improvement of the State assets, would not require percentage rent.”

Member McCrory commented on a letter dated October 28, 1998, from former Land Board Member Christopher Yuen, regarding amendments that he felt should have been included in the Minutes of September 11, 1998, particularly Item D-14 (Establishment of Policy Regarding the Leasing of State Lands by Non-profits). Regarding Lease Term, Member McCrory said the Board did not look at a longer lease period than 30 years and requested that it be left at that. She clarified that the discussion on the Environmental Assessment was to give the non-profits the “intent to lease”, and this would still allow the non-profits to go ahead and look at Chapter 343 requirements. She said regarding the Reopening at Fair Market Value, it wouldn't be a matter of not providing any rental reopening because the rental reopening should still cover using the non-profit process. Member McCrory's second amendment (above), addresses the issue on Revenues Generated.

Chairperson Johns recused himself as he was not present and has not reviewed the transcripts for this meeting.

Unanimously approved as amended (McCrory/Inouye).

**ITEM J-1: ISSUANCE OF REVOCABLE PERMIT TO ISLAND OF HAWAII'S
YMCA FOR A COMMUNITY AQUATIC CENTER LOCATED AT
KAWAIHAE BOAT HARBOR**

Mr. Howard Gehring, Acting Administrator of the Division of Boating and Ocean Recreation (DOBOR) said this is a request by the Island of Hawaii YMCA, a Non-Profit Community Based organization, to relocate their Aquatics Center onto the National Broadcasting Company (NBC)

"Wind on Water" site. After the television series "Wind on Water" was canceled on November 7, 1998, NBC donated the remaining structures to DOBOR. The YMCA is currently on a Revocable Permit (RP) with the Department of Transportation (DOT) Harbors Division at Kawaihae Harbor and they believe this new site will provide a safer environment and will greatly improve its existing programs. DOBOR and the Division of Conservation and Resource Enforcement will monitor this area and may attend the committee meetings in an advisory non-voting capacity. Staff's recommendation is that the Board approve the RP as requested, subject to the following conditions: 1) Standard RP terms and provisions; 2) That the RP lease document be submitted to the Attorney General (AG) for review and approval as to form; 3) The YMCA will allow acceptable activities for the public's use of the facility e.g. public hearing, boating associations and Coast Guard meetings; 4) Will not at any time or under any circumstance impede or deny access to public thoroughfare; 5) All entities utilizing the parcel shall have proof of liability and property insurance listing the State of Hawaii as an additional insured; and, 5) Other terms and conditions as may be required by the Chairperson of the Board of Land and Natural Resources.

Mr. Bob Masuda, President and Chief Executive of the Island of Hawaii YMCA, introduced Maulili Dickson, Executive Director for the Waimea Family YMCA, and Kenny Brown, Volunteer Sailing Committee Chairman. Mr. Dickson stated that their sailing program is presently on a month-to-month RP with DOT which is adjacent to the military complex. He said this proposed area would allow them to properly administer their programs and get their boats in and out of the water more efficiently than on the DOT end of the harbor. Mr. Brown gave some background information about their sailing program and urged the Board to approve the new facility that will benefit the community.

Member McCrory mentioned a discrepancy on page 1 of the staff submittal that shows the approximate area at 56,000 square feet, and Exhibit B that shows an area of 40,000 square feet. Mr. Dickson said the difference is the right-of-way and should be 40,000 square feet. Member McCrory asked if they were comfortable with providing insurance coverage and liability. Mr. Masuda said they already provide \$2 million per incident with a \$2 million umbrella. Mr. Dickson added that the State is already insured because they are presently crossing State property as they tow the boats back and forth. Member McCrory asked if there was a problem with writing in the \$2 million limit in condition 5. Mr. Masuda said he would prefer that it be based on standard practices.

Because of concerns raised by Member Matsumoto, Chairperson Johns directed staff to follow up with the AG's office on what the States liability is to OHA, for non-profits leasing ceded lands at gratis. Mr. Masuda stated that the YMCA would work with OHA in regards to this specific request. Mr. Dickson felt that the YMCA would have a better chance in getting a letter from OHA, rather than DOBOR because most of the descriptions of their programs fall under the preview of OHA.

The Board amended staff submittal as follows: 1) on page 1 of the staff submittal, change the size of the area from 56,000 square feet, to 40,000 square feet; and 2) add to recommendation 5.: "...

additional insured [.]at levels based on standard practices.

Unanimously approved as amended (Kokubun/Matsumoto).

ITEM D-5: ISSUANCE OF REVOCABLE PERMIT TO U.S. GEOLOGICAL SURVEY, WATER RESOURCES DIVISION, HANAIEI HOMESTEADS, HANAIEI, KAUAI, TMK: 5-4-2: POR. 16 & 31

Mr. Dean Uchida, Administrator of the Land Division presented the staff submittal recommending that the Board authorize the issuance of an immediate right-of-entry for management and construction purposes, and a RP to the U.S. Geological Survey, Water Resources Division, for the relocation of the Hanalei River streamgale, subject to standard conditions.

Mr. Barry Hill, U.S. Geological Survey was present to answer questions that the Board might have.

Unanimously approved as submitted (McCroy/Kennison).

ITEM D-1: AMENDMENT TO PRIOR BOARD ACTION OF AUGUST 28, 1998 (AGENDA ITEM D-26) FOR PERPETUAL NON-EXCLUSIVE EASEMENT AND CONSTRUCTION RIGHT OF ENTRY TO HAWAIIAN ELECTRIC COMPANY, INC. FOR A 46kV SUBTRANSMISSION LINE AT WAIALEE AND PAHIPAHIALUA, PUPUKEA AND PAUMALU, KOOLAULO, OAHU, TMK: 5-9-06: 26 (PORTION) AND 5-8-02: 02 (PORTION)

Mr. Uchida said this is a request to amend prior Board action of August 28, 1998 for perpetual non-exclusive easement and construction right-of-entry to Hawaiian Electric Company, Inc. (HECO) for a 46kV subtransmission line on the North Shore. Staff's recommendation is that the Board: 1) Delete Recommendation II.B.8 that states: "Vegetation growth extending beyond 9 feet on both sides of the transmission pole structure can not be cut down below a point 15 feet above the ground; 2) Amend Recommendation II.B. to read: "Authorize the issuance of an immediate construction and management right-of-entry to HECO to the above described subject areas, including approximately 40,000 square feet for a temporary staging area, subject to the following terms and conditions."; 3) Add recommendation II.B.10 to read "HECO and/or its contractor, shall procure, at their own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Department (\$500,000 per incident/\$1,000,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall, cover the entire right-of-entry area, including all improvement and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of HECO and/or its contractor."; and

4) Other terms and conditions as may be prescribed by the Chairperson.

Mr. Roy Uemura, Project Manager for HECO introduced HECO's Assistant Forester who explained HECO's Integrated Vegetation Management Program (IVMP) and addressed the challenges that they are faced with in construction and maintenance reliability.

Member McCrory requested that HECO's IVMP be approved by DOFAW.

There was some discussion about the clearing for a helicopter landing site. Mr. Uemura clarified that they will not be landing or constructing a landing pad on State land. Chairperson Johns asked that page 1 of the staff submittal that reads: "A larger cleared area is needed for landing purposes." be deleted.

Mr. Henry Curtis, representing Life of the Land, submitted written testimony in opposition to HECO's request. He felt that HECO should plan their programs in advance, instead of continually wanting to change past conditions.

A representative of the North Shore Outdoor Circle testified in opposition to HECO's request. He stated that the community is strongly against piecemeal approvals and prefers underground lines, particularly where it hits view plains.

Ms. Kat Brady, Life of the Land, testified in opposition to HECO's request. She urged the Board to require that HECO put on the table exactly what they are going to do, so that the community is aware.

Mr. Uemura explained the safety issues involved and the circumstances that they are faced with in the Pupukea area. He said the clearing would be restricted to 50 feet, as opposed to the original 18 feet clearance. He clarified that the temporary staging area could be changed from 40,000 to 10,000 square feet.

The Board amended staff submittal, page 1, by deleting the statement "A larger cleared area is needed for landing purposes." and amended staff recommendation as follows:

1. Delete Recommendation II.B.8., and require HECO to prepare an Integrated Vegetation Management Plan, approved by DOFAW, for the subject easement.
2. Amend Recommendation II.B. to read "Authorize the issuance of an immediate construction right of entry to expire on December 31, 1999, and management right of entry that shall be in effect until the issuance of the easement documents, to Hawaiian Electric Company, Inc., to the above described areas, including approximately [40,000] 10,000 square feet for a temporary staging area, subject to the following conditions."

Unanimously approved as amended (Inouye/McCrory).

ITEM A-2: MINUTES OF APRIL 9, 1999

Members McCrory and Inouye recused themselves as they were not present at the meeting.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM B-1: REQUEST FOR ADOPTION OF AMENDMENT TO HAWAII ADMINISTRATIVE RULES, CHAPTER 13-91, PINK, GOLD AND BLACK CORALS

Mr. Bill Devick, Administrator of the Division of Aquatic Resources (DAR) briefed the Board and recommended adoption of the proposed amendment to Hawaii Administrative Rules (HAR) Chapter 13-91, "Pink, Gold and Black Corals". He requested the Boards approval to correct 2 errors on the Ramseyer and Standard Draft Rules, Section 13-91-6, to remove the word "main" that was inserted before "Hawaiian Islands". Mr. Francis Oishi, Aquatic Biologist for DAR, submitted written testimony from 2 commercial fisherman, both in support of the rules.

Mr. Don Schug, Western Pacific Fishery Management Council, stated that the Councils Precious Coral Plan Team feels that the 3/4" minimum size for black coral would result in an insufficient reproductive cushion and would jeopardize long term sustainability of the fishery if harvesting pressure is increased. He said the Plan Team recommends that the size limit for harvesting of black coral be limited to a 1" basal diameter or a minimum tree height size of 48".

Member Kokubun was concerned about the sustainability of the resource. He asked staff to closely monitor the harvesting. Mr. Devick explained that if they were to see a problem in increased harvesting pressures, they have the authority, under emergency conditions, to shut an operation down.

Unanimously approved as submitted (Matsumoto/Kokubun).

ITEM D-2: SELL TO THE COUNTY OF KAUAI, DEPARTMENT OF PUBLIC WORKS FOR ROAD PURPOSES, LOT 19 OF FILE PLAN 599, AT WAILUA RIVER LOTS, KAWAIIHAU, KAUAI, TMK: 4-1-4

Mr. Uchida presented the staff submittal and recommended that the Board authorize the direct sale to the County of Kauai, for 2 road parcels, subject to 4 conditions.

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-3: SET ASIDE OF STATE LANDS TO THE COUNTY OF KAUAI, FOR

PUBLIC PARK AND RECREATIONAL PURPOSES, POR. KAPAA RICE & KULA LOTS, AND POR. KAPAA HOMESTEADS, SERIES 4, KAPAA, KAUAI, TMKs: 4-5-13: 2 & 28; 4-6-14: 34, 36 & 90; AND 4-5-15: POR. 36

Mr. Uchida briefed the Board and recommended approval of and recommend to the Governor issuance of an executive order setting aside the subject properties, to the County of Kauai, for recreational purposes, and authorize the issuance of an immediate right-of-entry for planning, management, site control, and/or maintenance purposes to the County of Kauai, subject to standard conditions.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-4: RESCIND LAND BOARD ACTION DATED SEPTEMBER 25, 1970 (AGENDA ITEM F-13) FOR THE ISSUANCE OF RIGHT OF ENTRY AND SET ASIDE TO THE CITY AND COUNTY OF HONOLULU A PORTION OF THOMAS SQUARE KING AND BERETANIA STREETS FOR WARD AVENUE WIDENING PROJECT, TMK: 1ST/2-4-001: 001

Mr. Uchida presented the staff submittal recommending that the Board rescind its prior action of September 25, 1970.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-6: AMENDMENT REQUEST OF PREVIOUS BOARD ACTION INVOLVING THE TRANSFER OF COUNTY OF MAUI LANDS IDENTIFIED BY TMK: 5-3-01: 03 AND 05, KAUNAKAKAI, MOLOKAI, AND THE SET ASIDE BY EXECUTIVE ORDER TO THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM FOR THE MALAMA CULTURAL PARK, TMK: 5-3-01: 02, 97, 99 AND 100, KAUNAKAKAI, MOLOKAI

Mr. Uchida presented the staff submittal recommending that the Board amend their previous action of May 15, 1998, by withdrawing the transfer of Parcel 03 from the County of Maui and the set aside of said parcel by executive order to the Department of Business, Economic Development and Tourism for the Malama Cultural Park, subject to the same terms and conditions established with the Board's previous action.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM K-1: ISSUANCE OF LEASE BY NEGOTIATION, NEAR PIER 33, HONOLULU HARBOR, OAHU (MCCABE, HAMILTON & RENNY CO.,

LTD.) TMK NO. 1-5-35-7

Mr. Peter Garcia, Property Management Officer for DOT briefed the Board and recommended that the Board: 1) Find the area to be an economic unit in terms of the intended use, and 2) Approve the lease by negotiation covering the public lands at the location mentioned, subject to the terms and conditions.

Unanimously approved as submitted (Inouye/Kennison).

ITEM K-2: RESCISSION OF THE LAND BOARD'S ACTION OF AUGUST 28, 1998, UNDER AGENDA ITEM-7, CONSENT TO THE SECOND AMENDMENT OF HARBOR LICENSE NO. 124, AS AMENDED, CONSENT TO SURRENDER OF TWO SUBLICENSES AND CONSENT TO THE ASSIGNMENT OF HARBOR LICENSE NO. 124 FROM KAWAIHAE TERMINALS, INC. TO TOSCO CORPORATION, KAWAIHAE HARBOR, ISLAND OF HAWAII, TMK NO. (3)-6-1-3

Mr. Garcia presented DOT's submittal recommending that the Board rescind its action of August 28, 1998, consent to the surrender of a sublicense dated September 4, 1959 between KTI and Union Oil, consent to the assignment of License No. 124 from KTI to Tosco, and following the assignment of License No. 124 from KTI to Tosco, consent to the second amendment of Harbor License No. 124 as amended.

Unanimously approved as submitted (Kokubun/Matsumoto).

ITEM K-3: ISSUANCE OF LEASE BY DIRECT NEGOTIATIONS, PIER 40, HONOLULU HARBOR, OAHU (ATLANTIS SUBMARINES HAWAII) TMK NO. 1-5-32-2

Mr. Garcia presented DOT's submittal recommending that the Board approve the lease by direct negotiation, subject to terms and conditions.

Unanimously approved as submitted (Matsumoto/Kokubun).

ITEM K-4: ISSUANCE OF LEASE BY DIRECT NEGOTIATION, PIER 18, HONOLULU HARBOR (LEO OHAI) TMK NO. 1-5-39-21

Mr. Garcia briefed the Board and recommended approval of the lease by direct negotiations, subject to terms and conditions.

Unanimously approved as submitted (Matsumoto/Kokubun).

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

Mr. Garcia said Item K-5 is a report for the Boards information and does not require any action.

There being no further business, Chairperson Johns adjourned the meeting at 12:07 p.m.

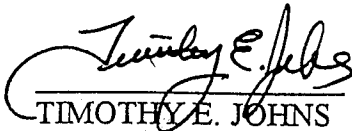
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Kimberly C. Kelihoomalu

Approval for submittal:



TIMOTHY E. JOHNS

Chairperson

Board of Land and Natural Resources

