

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

DATE: FRIDAY, JUNE 25, 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. Colbert Matsumoto
Ms. Kathryn Inouye

Mr. William Kennison
Ms. Lynn McCrory
Mr. Russell Kokubun

STAFF:

Mr. Carl Masaki, Division of Forestry and Wildlife
Mr. Randy Kennedy, DOFAW
Mr. Paul Conry, DOFAW
Ms. Betsy Gagne, DOFAW

Mr. Dean Uchida, Land Division
Mr. Jim Schoocraft, Division of Boating
and Ocean Recreation
Mr. Steve Thompson, DOBOR

OTHERS:

Ms. Pamela Matsukawa, Department of the
Attorney General
Mr. Robert Luuwai, C-2
Mr. Brian Baron, C-3
Mr. Stuart Lau, D-5
Mr. Andrew Carvalho, D-17
Mr. Dan Collins, D-4
Mr. John Kapu, D-10
Sen. Bob Nakata, J-1
Mr. David Higgins, J-1
Mr. Joe Pickard, J-1

Mr. Peter Garcia, Department of
Transportation
Mr. Alan Murakami, C-2
Ms. Joyce Toy, D-5
Ms. Winona Matsuzaki, D-14
Ms. Karin Joao, D-15
Mr. Jim Wriston, D-10
Mr. Faleagafulu Tuaolo, D-16
Mr. Bruce Morita, J-1
Ms. Amy Luerson, J-1
Mr. John Reppun, J-1

ITEM A-2: MINUTES OF MAY 14, 1999

Unanimously approved as submitted (McCrory/Kennison).

ITEM C-2: APPROVAL OF A SPECIFIC USE PERMIT FOR TRADITIONAL CULTURAL FISHING IN AHIHI-KINAU NATURAL AREA RESERVE ON THE ISLAND OF MAUI

Mr. Carl Masaki, Acting Administrator for the Division of Forestry and Wildlife (DOFAW), introduced Mr. Randy Kennedy, Native Forest Specialist for DOFAW. Mr. Kennedy said this is a request for the Board to approve a Special Use Permit to Mr. Rudolf Luuwai and Mr. Robert Luuwai for traditional and cultural fishing in the Ahihi-Kinau Natural Area Reserve on the Island of Maui. He indicated that the Division of Aquatic Resources (DAR) has been involved and is familiar with this particular issue and requested that the permit not be issued until August 1, 1999 to allow DAR to monitor the area. He gave some background information and recommended that the Board approve the permit for 1-year to the Luuwai Family.

Mr. Robert Luuwai testified that they are willing to help with enforcement. He clarified that when they take the kids to Makena for family gatherings it will be to show the kids the place and not to fish.

Member Kennison expressed his appreciation to Mr. Luuwai regarding the enforcement issue because of concerns raised by the Division of Conservation and Resources Enforcement regarding the kind of precedent this will set for the larger community.

Mr. Alan Murakami testified in favor of staff's recommendation and stated that there is no other family that could be a better model for this precedent to be based on given their reputation in the local community..

Unanimously approved as submitted (Kennison/McCrory).

ITEM A-1: MINUTES OF APRIL 23, 1999

Member's McCrory and Kennison both recused themselves.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM C-3: FINAL APPROVAL OF DRAFT AMENDMENTS TO HAWAII ADMINISTRATIVE RULES, CHAPTER 122 "RULES REGULATING GAME BIRD HUNTING, FIELDS TRAILS AND COMMERCIAL SHOOTING PRESERVES" AND CHAPTER 123 "RULES REGULATING GAME MAMMAL HUNTING"

Mr. Masaki introduced Mr. Paul Conry, Wildlife Program Manager for DOFAW. Mr. Conry briefed the Board and recommended that the Board approve the amendments to Hawaii Administrative Rules, Chapters 122 and 123, HAR, pending "Final Approval as to Form" from the Attorney General's, and authorize the Chairperson to request final approval by the Governor.

Mr. Brian Barron representing the Hawaii Rifle Association felt that the rules were well written and testified in support of the provisions to Chapter 123 relating to handgun hunting.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM C-1: APPROVAL FOR PROPOSED FENCE CONSTRUCTION, ANUNU UNIT, PUU MAKAALA NATURAL AREA RESERVE, WAIAKEA, SOUTH HILO, HAWAII

Mr. Masaki presented the staff submittal recommending that the Board approve the requested action allowing that DOFAW commence with construction of the fence line project in conjunction with the Upper Puna Volcano Regional Forest Management Advisory Council and recognize that the project is an appropriate activity within the protected subzone.

Unanimously approved as submitted (Kokubun/Matsumoto).

ITEM D-5: CONSENT TO PETITION THE LAND COURT TO TERMINATE AND RELEASE AN ACCESS ENCUMBRANCE ON LOTS 20 AND 21, LAND COURT ORDER # 19680 AT HALAWA, OAHU, TMK: (1) 9-9-10: 10

Mr. Dean Uchida, Administrator of the Land Division noted an amendment to the TMK referenced in the staff submittal that should read 9-9-77:69 instead of 9-9-10:10. He recommended that the Board consent to petition the Land Court to terminate and release an access encumbrance on Lots 20 and 21, Land Court Order #19680, subject to conditions listed.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-14: FORFEITURE OF GENERAL LEASE (GL) NO. S-3773, MR. MAURICE M. & MRS. WINONA H.Y. MATSUZAKI, LESSEE, WAIMANALO, KOOLAULOA, OAHU, TMK: 4-1-27: 11

Mr. Uchida said this is a forfeiture of GL No. S-3773 to Mr. Maurice and Mrs. Winona Matsuzaki for failure to post performance bond. Staff recommended that the Board terminate GL No. S-3773, subject to conditions listed.

Ms. Winona Matsuzaki informed the Board of the difficult time she has had in securing a performance bond. She requested that the Board extend this requirement and clarified that she has had recent conversations with her insurance carrier regarding obtaining a performance bond.

The Board agreed to defer this item for 60 days.

Unanimously approved to defer for 60 days (Inouye/Kennison).

Note: Items D-14 (page 3), D-15 (page 4), D-16 (page 9) and D-17 (page 4) are similar cases.

ITEM D-17: FORFEITURE OF GL NO. S-5496, MR. ANDREW EARL CARVALHO, LESSEE, WAIMANALO, KOOLAULO, OAHU, TMK: 4-1-10: 81

Mr. Uchida said this is a forfeiture of GL No. S-5496 to Mr. Andrew Carvalho for failure to post performance bond. Staff's recommendation is that the Board terminate GL No. S-5496, subject to standard condition.

Mr. Andrew Carvalho explained that the problem he has encountered in securing the performance bond is that the amount is not large enough. He suggested that the Board put all of the lessees under 1 category and then maybe the insurance company could insure 1 group of people.

Member Kennison was concerned about lessees like Mr. Carvalho who keeps up with their rent payments, has no defaults or delinquencies, protect and improve the land, and then their lease is cancelled for failure to post the performance bond. He asked staff to try and see if there are other avenues that can be looked at as far as obtaining a performance bond.

The Board agreed to defer this item for 60 days to allow staff some time to work with the lessees on finding other means to secure the required performance bond.

Unanimously approved to defer for 60 days (Inouye/McCrory).

ITEM D-15: FORFEITURE OF GL NO. S-5495, MR. AUTHUR JOAO, LESSEE, WAIMANALO, KOOLAULO, OAHU, TMK: 4-1-10: 86

Mr. Uchida said this is a forfeiture of GL No. S-5495 to Mr. Authur Joao who has also not been able to post a performance bond.

Ms. Karin Joao testified that she is having the same problems in obtaining a performance bond as the other lessees. She felt that it was a good idea, like Member McCrory had suggested earlier, for everyone to get into an umbrella like insurance pool.

Unanimously approved to defer for 60 days (Inouye/Kennison).

ITEM D-1: FORFEITURE OF REVOCABLE PERMIT NO. S-5761, MR. JOSEPH K. & MRS. IRIS E. ABREU, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-08: 74

Mr. Uchida said this is a request to forfeit Revocable Permit (RP) No. S- 5761 to Mr. Joseph and Mrs. Iris Abreu for failure to provide fire and liability insurance certificate and to increase the security

deposit amount. Staff's recommendation is that the Board authorize the cancellation of RP No. S-5761, subject to standard conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-2: RESCIND PRIOR BOARD ACTION FOR THE EXCHANGE OF LANDS BETWEEN THE STATE OF HAWAII AND WAIANAE AMUSEMENT CO., LTD. AT WAIANAE, OAHU, TMKs: (1) 8-5-13: PORTION OF 12 AND PORTION OF 38

Mr. Uchida presented the staff submittal recommending that the Board rescind Land Board authorization of December 19, 1986 for land exchange between the State and Waianae Amusement Co., Ltd., subject to standard conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-4: ISSUANCE OF REVOCABLE PERMIT TO DOONWOOD ENGINEERING, SITUATE KALIHI-KAI, HONOLULU, OAHU, TMK: 1-2-021: 44

Mr. Uchida presented the staff submittal recommending that the Board authorize the issuance of revocable permit to Doonwood Engineering, subject to standard conditions.

Mr. Dan Collins, Vice-President of Doonwood Engineering said they are currently based in Kailua and is asking for a permit to rent this land to have a baseyard in Honolulu because of contracts they have in the Honolulu area.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-3: AFTER-THE-FACT CONSENT TO ASSIGN GL NO. S-4007, MR. THOMAS A. LAU, COMMISSIONER, ASSIGNOR, TO FEDERAL LAND BANK ASSOCIATION OF HAWAII, ASSIGNEE; AND FEDERAL LAND BANK ASSOCIATION OF HAWAII, ASSIGNOR, TO ALOFA CORPORATION, ASSIGNEE, WAIMANALO, OAHU, TMK: (1) 4-1-27: 23 AND 24

Mr. Uchida presented the staff submittal recommending that the Board consent to the after-the-fact assignment of GL No. S-4007 from the Commissioner to Federal Land Bank Association of Hawaii, and subsequently from Federal Land Bank Association of Hawaii to Alofa Corporation, subject to standard conditions.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-6: SET ASIDE OF GOVERNMENT LAND FOR THE ISSUANCE OF AN

**EXECUTIVE ORDER TO THE DEPARTMENT OF TRANSPORTATION,
AIRPORTS DIVISION, ISLAND OF LANAI, TMK: 4-9-02: PORTION 01**

Mr. Uchida presented the staff submittal recommending that the Board authorize and recommend to the Governor the issuance of an executive order setting aside the subject area to the Department of Transportation, Airports Division, subject to 3 conditions.

Unanimously approved as submitted (Kennison/Matsumoto).

**ITEM D-7: RESCISSION OF PRIOR BOARD ACTION OF FEBRUARY 24, 1995
(AGENDA ITEM F-1-B) ISSUANCE OF REVOCABLE PERMIT TO A.E.
UNIVERSAL DBA KEY CONSTRUCTION, KEEHI INDUSTRIAL LOTS
SITUATE KEEHI LAGOON, KALIHI-KAI, OAHU, TMK: 1-2-23: 69**

Mr. Uchida presented the staff submittal recommending that the Board rescind its prior action of February 24, 1995 with regards to the issuance of a revocable permit to A.E. Universal dba Key Construction.

The Board deferred this item because of a concern raised by Member Matsumoto regarding whether or not the permittee was allowed on the property after the Board's prior action.

Unanimously approved to defer (Inouye/Matsumoto).

**ITEM D-8: DECLARATIONS OF INTENT TO DISPOSE OF LEASES AT PUBLIC
AUCTION, TMKs: VARIOUS, KAUALI, HAWAII**

Mr. Uchida presented the staff submittal recommending that the Board declare its intent to dispose of two 30-year Intensive Agricultural leases and one 20-year Pasture lease.

Unanimously approved as submitted (McCrorry/Kennison).

**ITEM D-9: COUNTY OF MAUI REQUEST FOR CONSENT TO ENTER INTO AN
AGREEMENT WITH MAUI PINEAPPLE CO., LTD ON LANDS UNDER
EXECUTIVE ORDER NO. 3206, HONOKOWAI, LAHAINA, MAUI, TMK:
4-4-04: PORTION 09**

Mr. Uchida presented the staff submittal recommending that the Board grant consent approval to the agreement request between the County of Maui, and Maui Land and Pineapple Co., Ltd., covering Executive Order No. 3206, subject to conditions listed.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-10: ACQUISITION OF THE HONOKOHAU DITCH AND SUPPORTING INFRASTRUCTURE OF DEVELOPMENT TUNNELS, STREAM DIVERSIONS, WELLS, RESERVOIRS, PUMPS AND INTAKES, AND THOSE PORTIONS OF LAND, OWNED BY THE PIONEER MILL CO., LTD., TRAVERSED BY THE DITCH OR CONTAINING ANY OF TIS SUPPORTING INFRASTRUCTURE FROM HONOKOWAI TO LAHAINA, MAUI, TMKs: 4-4-VAR. TO 4-6-VAR.

Mr. Uchida said the action before the Board is to authorize staff to begin negotiations with Amfac/Pioneer Mill Co., Ltd. (PMCL) to secure and acquire the necessary infrastructure and lands to keep agricultural viable in West Maui. He amended staff recommendation A. as follows: "Authorize the negotiations for the acquisitions of the Honokohau Ditch and supporting infrastructure of development tunnels, stream diversions, wells, reservoirs, pumps and intakes, and those portions of land, owned by the Pioneer Mill Co., Ltd., traversed by the Ditch, serviced or containing any of its supporting infrastructure from Honokowai to Lahaina, Maui, pursuant to Sections 101-2, 107-10 and 171-30, Hawaii Revised Statutes, as amended, subject to any applicable conditions previously cited, which are by reference incorporated herein[.] and subject to final approval by the Board of Land and Natural Resources."

Chairperson Johns disclosed that he was a former employee of Amfac. He thought it was appropriate to list this item on the agenda for the following reasons: 1) the State and the Department has an interest in making sure that the lands are continually used for agriculture purposes, 2) the Department has a direct interest in that State lands are involved currently being farmed by PMCL, soon to go out of agriculture, and water is needed in order to do that, and 3) because of previous connections with Amfac, he felt it appropriate that negotiations like this be made in the open so that there are no allegations of back room dealing between his former employer, himself, and the department.

There was some discussion among the Board members. Member Matsumoto commented on a letter that was copied to the Board from the President of Amfac Land Company, Ltd. He said the letter seems to state that PMCL is prepared to continue to operate the Honokohau ditch and undertake the expense of maintaining the system and if that's the case maybe the Board should reconsider whether or not this should be further investigated. Chairperson Johns agreed with Member Matsumoto, however, stated that he did not want the State to be caught in a reactive mode in case the infrastructure is returned back to the State in disrepair. Member Kennison stated that he supports staff recommendation and that the State should move forward on this. He indicated that Maui has experienced a lot of droughts and expressed his concern on what direction PMCL will be taking in the future.

Mr. Jim Wriston, Manager of Land Administration for Amfac Land Company, Ltd., said that they were surprised about the State asking for the acquisition of the ditch because of their ongoing agricultural operation. He felt that it would have been appropriate to have a discussion prior to bringing this to the Board for the acquisition, however, because they are committed to water for their lands, they are willing to explain the system and work with the State on the acquisition of the ditch.

In view of the comments that were made, Member Matsumoto requested for a follow up letter from PMCL to clarify what their position is.

Mr. John Kapu testified on behalf of his family regarding water rights. He explained that once PMCL's lease is over it will be returned to his family. He urged the Board to not only look at this acquisition of the ditch at the State and PMCL's level, but to also look at the interest pertaining to what families have claims to those lands. He felt that his family would be strongly affected by this.

Chairperson Johns advised Mr. Kapu to give the information to staff about where his property is located.

The Board amended portion of staff recommendation A to read as follows: "Authorize the negotiation for acquisition of the Honokohau Ditch and supporting infrastructure of development tunnels, stream diversions, wells, reservoirs, pumps and intakes, and those portions of land, owned by the Pioneer Mill Co., Ltd., traversed by the ditch, serviced or containing any of its supporting infrastructure from Honokowai to Lahaina, Maui, pursuant to Sections 101-2, 107-10 and 171-30, Hawaii Revised Statutes, as amended, subject to any applicable conditions previously cited, which are by reference incorporated herein[.], and subject to final approval by the Board of Land and Natural Resources."

Unanimously approved as amended (Kennison/McCrory).

ITEM D-11: ANNUAL REVIEW OF REVOCABLE PERMITS ON THE ISLAND OF HAWAII, MAUI/MOLOKAI, AND KAUAI

Mr. Uchida presented the staff submittal recommending that the Board approve the continuation of revocable permits, on a month-to-month basis for another year, except for permits which are in arrears of rental payment for more than 60 days. Permits in arrears of rental for 60 days or more shall not be renewed. Approve rents as recommended in the schedule for all permits issued up to December 31, 1998. The rental rate changes shall be effective September 1, 1999.

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-12: CANCELLATION OF RP NO. S-6250 AND ISSUANCE OF REVOCABLE PERMIT TO MR. TERRY L. PASCOE, POR. KAPAA TOWN LOTS, KAWAIIHAU, KAUAI, TMK: 4-5-13: 26 AND 32

Mr. Uchida presented the staff submittal recommending that the Board cancel RP No. S-6250 effective December 31, 1998, and authorize the issuance of a new permit to Mr. Terry Pascoe, effective January 1, 1999, subject to standard conditions.

Member McCrory amended the staff recommendation by adding condition no. 5 to read as follows:

5. Given the future plans for the area, no temporary or permanent structures or improvements shall be built on the property.

Unanimously approved as amended (McCrorry/Kokubun).

ITEM D-13: CONSERVATION DISTRICT USE PERMIT 0A-2921 APPLICATION FOR THE RESTORATION AND REVITALIZATION OF THE HUILUA FISHPOND AT KAHANA VALLEY STATE PARK, KOOLAULO, OAHU, TMK: 5-2-05: 21

Mr. Uchida presented the staff submittal recommending that the Board approve this application for the restoration and revitalization of Huilua Fishpond at Kahana Valley State Park, subject to 13 conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-16: FORFEITURE OF GL NO. S-5387, MR. FALEAGAFULU M. TUAOLO, LESSEE, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-10: 26

Mr. Uchida said this is a forfeiture of GL No. S-5387 to Mr. Faleagafulu Tuoalo who has also not been able to post a performance bond. Staff was recommending cancellation of the lease but in light of what the Board has done to the other 3 leases (see Item nos. D-14, 15 & 17), staff would be inclined to take the same action of deferral and report back on these 4 leases in 60 days.

Mr. Faleagafulu Tuoalo suggested a possibility of the State collecting a certain percentage of the performance bond each year until the total amount is collected and the State simply hold the money in their account for their performance bond.

Unanimously approved to defer for 60 days (Inouye/Matsumoto).

ITEM K-1: AMENDMENT TO LEASE NO. N6274284RP00035, DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, FOR ADDITIONAL WAREHOUSE SPACE AT THE PORT ALLEN PIER SHED, ELEELE, KAUAI

Mr. Peter Garcia, Property Management Officer for DOT, presented the submittal recommending that the Board consent to the amendment of Navy Lease No. N6274284RP00035 in accordance with the terms and conditions outlined and such terms and conditions as may be prescribed the Director of Transportation.

Unanimously approved as submitted (Matsumoto/Kokubun).

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

Mr. Jim Schoocraft, Acting Administrator for the Division of Boating and Ocean Recreation (DOBOR) introduced Mr. Steve Thompson, Oahu District Manager for DOBOR. Mr. Thompson briefed the Board and recommended that the Board authorize the issuance of 11 permits for Kaneohe Bay, for a period of 1-year or until the adoption of the Hawaii Administrative Rules, whichever occurs first, and that this action will not grant Club Kona's request for a large full service permit. He mentioned that when this item was brought before the Board in December 1998, there were 12 operators. One operator was omitted because of a peculiar situation with regard to a bankruptcy and the fact that 2 companies (Dina Morita & Associates and Windward Sea Yacht Charters) have been joined on 1 permit.

Senator Bob Nakata testified for the removal of the high-speed activities from these permits. He explained that the intention of the Kaneohe Bay Master Plan is to phase out these high-speed activities by attrition and one mechanism for attrition was to eliminate these activities as permits expired. These permits expired as of June 10, 1999 and subsequently extended till June 27, 1999. He questioned whether the permits could be extended by DOBOR without the action of the Board before the expiration date. He also questioned whether the operators requested an extension on new permits in a timely fashion.

Mr. Bruce Morita of Windward Sea Yacht Charters stated that his request to renew his permit is not on the agenda. He referred to a letter that was sent to him from the Kaneohe Bay Regional Council (KBRC) that says there are rumors that his company was sold and clarified that his company has not been sold. He said he has complied with all the normal conditions and has no outstanding violations and could supply the Board with documents. He mentioned that he had voluntarily stopped his jet ski operation because of the investigation of the jet ski accident and explained the problems he has encountered with the bankruptcy of Dina Morita & Associates. He requested that the Board grant him a permit so that he be allowed to operate.

Mr. David Higgins, Newly Appointed Chairperson of the KBRC, read through a letter that he authored to Mr. Thompson. He requested that certain information be provided to the KBRC, by DOBOR, about the status of Dina Morita & Associates and Windward Sea Yacht Charters permit and the proposed resumption of commercial activities in order to respond appropriately to inquiries and concerns that KBRC has received. He also requested that no decision be made on matters relating to the resumption of discontinued commercial operations until the KBRC has had an opportunity to review the information that they are requesting along with any supplemental information they may seek which they believed to be public record. He questioned whether or not the attrition concept which is promoted in the Kaneohe Bay Master Plan, is being followed under this circumstance. He requested that the permits be extended for 6-months, or until the Kaneohe Bay Master Plan is amended, whichever occurs first, but not necessarily until the adoption of the rules.

Ms. Amy Luerson testified that it was stated by DOBOR at the last Long Range Planning Committee that the permit for Dina Morita & Associates and Windward Sea Yacht Charters would not be on today's Land Board agenda. She commented on page 69 of the master plan that relates to Environmental Assessments.

Mr. Joe Pickard of Club Kona requested for a contested case hearing based on staff's recommendation to provide a full service permit to Morning Star Cruises, Inc., in the vicinity of Sand

Flats. He said according to law, only 2 small full service operators are permitted. Mr. Thompson clarified that the permit to Morning Star Cruises, Inc., is actually issued for a location at Checker Reef with the ability to be temporarily relocated to Sand Flats as provided for by Act 129, Session Laws of Hawaii (SLH). Mr. Pickard commented on staff recommendation no. 3 that says "... The certificate of insurance shall identify each vessel and activity covered such as scuba diving, Sea Walker, etc." He questioned whether or not they would be in violation if this recommendation is approved by the Board because their current insurance certificate provides for vessels and insures the number of people on board and does not cover specific pieces of equipment. He felt they would need the opportunity of time to go through this process with their insurance carrier.

Mr. John Reppun explained that both Mr. Pickard and himself had requested a contested case hearing back in June of 1998. They filed an action together with the court and the court dismissed it with prejudice. He felt that his request in June of 1998 was ignored and mentioned that he received nothing in writing from the department during that time. He commented on the expiration of the permits and felt that it's the responsibility of the permittees to work closely with DOBOR in renewing their permits in a timely fashion. He requested that the Board deny the 11 permits on procedural grounds because DOBOR ignored the mandatory 30-day notice, except for Mr. Pickard who had submitted a timely request.

In response to Mr. Reppun's question regarding whether the Board is allowed to take action if someone requested a contested case hearing, Chairperson Johns explained that they would need to go into executive session to get advise from legal counsel as to whether or not the matter that the contested case hearing was requested for has standing. If it does not have standing then the Board can take action on it, however, if it's decided that it does have standing then the Board would not act until the standing determination has been made.

Member Inouye was concerned about the procedures for allowing new activities (i.e. Sea Walker and Scuba activities). She wanted to make sure that new proposed activities go to the KBRC for their review and recommendation. She also expressed her concern on staff's suspicion that North Bay Boat Club's statement of gross receipts is not accurate.

Mr. Reppun requested for a contested case hearing on his own behalf and on behalf of Friends of Kaneohe Bay on the basis that DOBOR ignored the mandatory 30-day notice period for public and agency comment as required by the master plan, information relevant to the criteria for permit renewal is not provided, ensure that permits issued in the future are in conformance with the master plan and that the administrative rules comply with the master plan. He said he will send something to this effect in writing within 10-days.

Chairperson Johns announced that a recess will be taken to allow the Board to go into Executive Session to consult with legal counsel on some of the legal issues that were raised regarding Item J-1, and to also be briefed by legal counsel regarding Item D-18.

Unanimously approved to recess (Matsumoto/Kokubun).

The meeting was reconvened at 2:30 p.m.

Chairperson Johns stated that after consultation with legal counsel regarding the 2 requests for contested case hearings, a determination was made that there is no basis, either in statute or in case law, for a contested case hearing for the reasons that they have stated. He informed Mr. Pickard and Mr. Reppun that they will be getting a letter clarifying this.

Member Inouye made a motion to revise staff recommendation as follows: 3.b) "... The certificate of insurance shall cover any and all activities conducted by the permittee." Delete: "[identify each vessel and activity covered such as scuba diving, Sea Walker, etc]", and 6) "That the KBRC review the appropriateness of the Sea Walker and Scuba activities as approved activities." She requested that a submittal from staff be submitted for the July 23, 1999 Board meeting regarding the appropriateness of reissuing a permit to Dina Morita & Associates and Windward Sea Yacht Charters. She also requested, with regard to the gross receipts, that an audit be conducted of the permittees.

Unanimously approved as amended (Inouye/Kennison).

**ITEM D-18: BOARD BRIEFING BY LEGAL COUNSEL OHA V. BLNR ET AL.
REGARDING THE SUPREME COURT'S REMAND OF THE CASE TO THE
BOARD (CHAPTER 91 PROCEEDINGS)**

The Board combined this briefing by legal counsel with the Executive Session from Item J-2.

There being no further business, Chairperson Johns adjourned the meeting at 2:47 p.m.

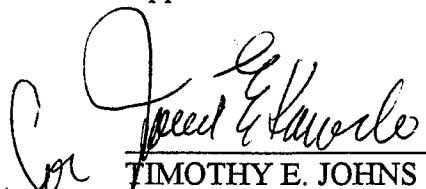
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Kimberly C. Keliioomalu

Approval for submittal:



TIMOTHY E. JOHNS

Chairperson

Board of Land and Natural Resource