

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

DATE: FRIDAY, JULY 14, 2000
TIME: 9:00 A.M.
PLACE: COUNTY OF MAUI
PLANNING DEPARTMENT
CONFERENCE ROOM
250 SOUTH HIGH STREET
WAILUKU, MAUI, HI 96793

Chairperson Timothy Johns called the meeting of the Board of Land and Natural Resources to order at 9:07 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. Dean Uchida, Land Division
Ms. Carol She', Division of Boating and
Ocean Recreation

Mr. Phil Ohta, Land Division
Mr. Charley Lindsey, Kahoolawe Island
Reserve Commission

OTHERS:

Ms. Linden Joesting, Department of the
Attorney General
Mr. Robert Garcia, D-10
Ms. Leinaala Leighton, D-10
Mr. Jerry King, D-10
Mr. Andrew Evans, J-1
Mr. Brian Miskae, D-4
Mr. Keith Kurahashi, D-15
Mr. Ray Ah Chin, D-14
Mr. Paul Horikawa, D-7
Mr. Ed Murley, D-21
Mr. Randy Vitousek, D-33
Mr. Thomas Welch, D-34
Mr. James Tanaka, D-34
Ms. Michelle Anderson, D-34
Mr. Peter Martin, D-34

Mr. Peter Garcia, Department of
Transportation
Mr. Christopher Yuen, D-10 & D-33
Mr. Mikio Kato, D-10
Mr. Vince Bagoyo, D-32
Mr. Dennis Niles, J-1
Mr. Clancy Fuchigami, D-11
Ms. Lucienne de Naie, D-15, D-5 & D-34
Ms. Sandy Pfund, D-1
Ms. Tammy Harp, D-5
Mr. Mitch Miyoshi, D-21
Mr. Isaac Hall, D-6
Dr. Jim Bendon, D-34
Mr. Glenn Shepherd, D-34
Ms. Juanita Charkas, D-34

{Before the meeting was called to order, the Board honored Ms. Hattie Anderson, Clerk V for the Division of Boating and Ocean Recreation, Maui District, and presented her with a Superior Performance Award.}

ITEM A: APPROVAL OF THE MAY 26, 2000 MINUTES

Unanimously approved as submitted (McCroory/Kennison).

ITEM E-1: AMENDMENT AND RENEWAL OF CURATOR AGREEMENTS FOR THE WAILUA COMPLEX OF HEIAU, WAILUA RIVER STATE PARK, KAUAI AND ULUPO HEIAU, OAHU

Unanimously approved to withdraw (Inouye/Kennison).

ITEM D-10: CONSENT TO ASSIGNMENT OF GENERAL LEASE (GL) NO. S-3589 FROM MR. F. NEWELL BOHNETT, AS ASSIGNOR, TO MR. ERNEST DELUZ, MR. STEPHEN DELUZ AND MR. MIKIO KATO, AS ASSIGNEE.; APPROVAL OF A 1-YEAR HOLDOVER OF GL NO. S-3589, PUUWAAWAA AND PUUANAHULU, NORTH KONA, HAWAII, TMKs: 3RD/7-1-01: 06, 7-1-02: 13, 7-1-03: 16, AND 7-1-04: 18

Mr. Dean Uchida, Administrator of the Land Division, said this pasture lease, first issued in August 1960, is scheduled to expire on August 14, 2000. In the last several years there has been discussions with various interested parties in the community regarding a "Multi-Use Plan" for the management of the Ahupuaa of Puuwaawaa and Puuanahulu areas. Land Division staff has been participating to a limited degree in discussions, and the Division of Forestry and Wildlife has taken an active role in the planning. To date, there has been no formal proposal that all the parties have agreed to, as far as future uses. Considering the fact that the lease expires in a month, staff believes that a 1-year holdover will give the parties some time to work out a long-term solution, and at the same time preserve the lessees rights under the lease. Also proposed is an assignment from the current lessee Mr. Bohnett, to the DeLuz's and Mr. Kato. Staff's recommendation is that the Board consent to the assignment of GL No. S-3589 from Mr. Bohnett, to the DeLuz's and Mr. Kato, and authorize a holdover extension of GL No. S-3589 for a period of 1-year, from August 15, 2000 to August 14, 2001, subject to standard conditions.

Chairperson Johns noted that written testimony was received from Ms. Sally Rice, Hui Ohana mai Puuanahulu a me Puuwaawaa, and the Sierra Club. One of the issues raised is that it should be a revocable permit as opposed to a holdover, the implications being that the holdover is leading towards something that is not acceptable to the groups. Mr. Uchida explained that if the lease expires and the Deluz's and Mr. Kato are put on a month-to-month permit, ownership and responsibility of the improvements becomes the States, including certain liabilities. The 1-year holdover will keep the existing lease in place and the ownership and responsibility issues will still be the lessees as far as clearing out the improvements on the property.

In response to a concern raised by Member Kokubun regarding the unpermitted structures on the lease land, Mr. Uchida suggested that the Board condition the assignment and require the new lessees to secure all necessary approvals.

Member Matsumoto was concerned about assigning the lease when there are possible pending violations. Mr. Uchida indicated that staff is of the opinion that most or all of the violations have been addressed. After this staff submittal was prepared, concerns have been raised and staff has been trying to find out exactly what occurred. Mr. Matsumoto was concerned that if Mr. Bohnett were put in a secondary position as opposed to the assignee, would this enhance or detract from the State's ability to ensure that all of the conditions are going to be properly performed upon termination. He made an observation that, upon termination of the lease, the division conduct an audit to verify that all post lease conditions have been satisfied. Mr. Uchida indicated that the possible assignees have indicated a willingness to resolve the outstanding issues within the 1-year holdover period. Chairperson Johns asked that information on the performance bond, the closure audit, and other issues that need to be resolved, be provided to the Board in more detail.

Mr. Robert Garcia, on behalf of the Deluz's and Mr. Kato, understood that all the violations have been addressed. His understanding regarding the employee dwelling is that it could be put to agricultural use. He presented a letter from a recycling company, and stated that the only violation pending is the derelict vehicles on the property, that would be removed by September 2001. He indicated that if the undisclosed violations were a significant amount, his clients would probably not be prepared to be held accountable.

Mr. Christopher Yuen indicated that he would be speaking as a private individual, as the non-profit community group that he has been working with, Ka Ahahui O Puuwaawaa, has not yet come to an official position. He felt that the goal of leaving the lessee on the property and accomplishing this transition could be met by allowing the lease to terminate and issuing a revocable permit, rather than an assignment and holdover of the lease. His concern was that, although he was told this is not a prelude to a future extension of the lease, in looking at the past history of the State, many things happen on momentum and convenience. In the chronology of the staff submittal, during 1985 to 1996, there has been several flurries of violations on the lease by the public, which are missing. He felt that proper building permits should be obtained for the facility called the "Party House" as it was built originally by the lessee without any approvals, and the fencing requirement should be complied with. He believed that within 6-months, the groups would be able to present something to the Board that could be approved in principle, subject to an environmental assessment being completed before the Board gave final approval.

Ms. Leinaala Leighton, representing Hui Ohana mai Puuanahulu a me Puuwaawaa, submitted written testimony and expressed their interest as possible lessees. Within the past few years, they have been involved with The Nature Conservancy in participating in the Multi-Use Plan. They hope that the violations will be corrected and the wrong doings not held to the proposed lessees. She indicated that the families are committed to presenting a Final Conceptual Plan to the Board within 4-5 months.

Mr. Kato, employee and resident of Puuwaawaa Ranch for 40 plus years, stated that the ranch has

modified a lot of the ranching procedures, which included reforestation. He explained that in discussions with a former employee of DLNR regarding the fire prevention problem, it was agreed to have the cattle consume the grass instead of cutting it down, that way when the dry season comes there is not much to burn. Regarding the perimeter fencing, an agreement was made to control the overgrown grass in the adjacent area also, and to use the lava flow as a bearer instead of putting in the cost for fencing.

Mr. Jerry King stated that he is obligated to do his part in maintaining the area, and that cooperation is needed by everyone to work together.

A motion was made at 10:45 a.m to move into executive session to consult with legal counsel. (Matsumoto/Kokubun). The meeting was reconvened at 11:10 a.m.

Member Kokubun made a motion to approve staff recommendation with the following amendments:

3. That the assignee [new lessee] obtain the proper building permit and any other permits for the existing unauthorized structures on the leased premises.
4. That within six (6) months of this decision, interested community groups and/or organizations either submit a Management Plan for the future multiple uses at Puuwaawaa or provide a status report on the preparation of such a plan.
5. That within six (6) months of this decision, the Land Division Staff submit an audit identifying all of the lease conditions and/or other issues that need to be resolved in order to release the Performance Bond to Mr. F. Newell Bohnett. [This may include consultation with DOFAW, on certain items.]

There was some discussion by the Board:

Member McCrory, in listening to the advantageous and disadvantageous, felt that it wasn't clear whether the assignment and 1-year holdover of the lease was the way it should be outlined. She believed that it would be much better and cleaner to go with a revocable permit. She did not support the motion.

Member Inouye felt that the 1-year holdover presents a deadline for performance required of everyone. Her concern with the revocable permit process is that there is no deadline or trigger. She was in favor of the motion.

Member Matsumoto's concern was that there was already a deadline of August 15, 2000, and yet all the interested parties have not been able to work something out within that deadline. He wasn't sure what the benefit an additional year would serve. He did not support the motion.

Approved as amended (Kokubun/Kennison).

**Vote: 4 in favor (Kokubun/Kennison/Inouye/Johns).
2 opposed (Matsumoto/McCrory)**

ITEM D-9: CANCELLATION OF REVOCABLE PERMIT NO. 7069 TO PUUWAAWAA RANCH, INC.; ISSUANCE OF REVOCABLE PERMIT TO MR. ERNEST DELUZ, MR. STEPHEN DELUZ AND MR. MIKIO KATO, PUUWAAWAA, NORTH KONA, HAWAII, TMK: 3RD/7-1-01: POR. OF 04

Mr. Uchida briefed the Board and recommended that the Board authorize the cancellation of Revocable Permit No. 7069 to Puuwaawaa Ranch, Inc., and authorize the issuance of a new revocable permit to the Deluz's and Mr. Kato, subject to standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-32: REQUEST TO CANCEL REVOCABLE PERMIT NO. S-6249, ISSUANCE OF AN INTERIM REVOCABLE PERMIT TO MRF-LANAI, L.P. AND CASTLE & COOKE, INC., RESCINDMENT OF PREVIOUS BOARD ACTION OF OCTOBER 11, 1985, AGENDA ITEM F-4, AND AUTHORIZE TO SELL A GENERAL LEASE AT PUBLIC AUCTION, KAOHAI, LANAI, TMK: 4-9-03: SEAWARD OF PARCEL 10

Mr. Uchida briefed the Board and recommended that the Board rescind their previous action of October 11, 1985, involving the direct sale of an exclusive easement; authorize sale of a lease at public auction covering the subject area; authorize the cancellation of a Revocable Permit No. S-6249; and authorize the issuance of a new revocable permit to MRF - Lanai, L.P. and Castle & Cooke, Inc. covering the subject area, subject to standard conditions.

Mr. Vince Bagoyo, Castle & Cooke, Inc., was present to answer questions.

Unanimously approved as submitted (Kennison/Inouye).

ITEM J-1: PETITIONER, PAUL, JOHNSON, PARK & NILES, A LAW FIRM, REPRESENTING THE INTERESTS OF CAPTAIN ANDY'S SAILING, INC. AND EVANS PACIFIC, LTD. REQUEST THAT THE BOARD AMEND HAWAII ADMINISTRATIVE RULES, (HAR), SECTION 13-256-41 BY DELETING SUBSECTION (b)(2) OF THE RULE THAT RESTRICTS VESSELS WITH A PASSENGER CARRYING CAPACITY OF FIFTY OR MORE FROM ENTERING WITHIN THE NA PALI COAST OCEAN WATERS ON KAUAI AND STAY ENFORCEMENT OF THIS SUBSECTION OF THE RULE PENDING THE RULE MAKING PROCESS

Ms. Carol She', Boating Regulations Officer for the Division of Boating and Ocean Recreation, briefed the Board and recommended that the Board: 1) Deny the petition of Paul, Johnson, Park & Niles, on behalf of Captain Andy's Sailing, Inc. and Evans Pacific, Ltd., to amend HAR, Section 13-256-41(b)(2)

capacity of 50 or more from entering within the Na Pali Coast Ocean Waters on Kauai, 2) Deny the Petition of Paul, Johnson, Park & Niles, on behalf of Captain Andy's Sailing, Inc., and Evans Pacific, Ltd. to amend HAR, Section 13-256-41(b)(2) by staying enforcement of this subsection of the rule pending rule making, and 3) Grant approval to the Division and the Petitioners for the opportunity to present to the community a change in passenger carrying capacity of 50 or more along the Na Pali Coast through the existing and on-going rule making process.

A motion was made at 11:30 a.m to move into executive session to consult with legal counsel regarding the relation, if any, between the petition and the pending litigation. (Matsumoto/Kokubun). The meeting was reconvened at 12:05 p.m.

Mr. Andrew Evans testified in favor of the petition that was submitted through counsel to amend HAR 13-256-41, by deleting subsection (b)(2). This would allow their recently acquired vessel to access within the three thousand foot restricted ocean area, and allow the increase of passenger carrying capacity from 49 to 109. Mr. Dennis Niles provided some additional context in favor of the petition.

Member McCrory made a motion to grant the part of the petition that requests rulemaking process on HAR 13-256-41(b), the petition made pursuant to Section 91-6, Hawaii Revised Statutes (HRS), that requires the department to respond within 30 days; that the rules be included in a package of rules that deals with the Na Pali coast area; that the rules be completed and sent to the Governor for final approval by June 1, 2001; and, that the part of the petition that requests suspension of the rule until rulemaking is completed, be denied.

Member Matsumoto clarified that the motion concerning the submission of the rules to the Governor by June 1, 2001, does not suggest that the Board, by taking action on the motion, would somehow tie the Board's hands with respect to what's finally presented to the Board for submission to the Governor. Chairperson Johns also clarified that the existing rule is still enforced, notwithstanding the rulemaking and litigation process.

Unanimously approved as amended (McCrory/Inouye).

ITEM D-4: PARTIAL WITHDRAWAL FROM GL NO. S-4197 AND SET ASIDE TO THE COUNTY OF MAUI FOR PUBLIC AND RECREATIONAL PURPOSES, PORTION OF PULUHUNUI AND WAIKAPU, WAILUKU, MAUI, TMK: 3-8-08: PORTION 01

Mr. Uchida briefed the Board and recommended that the Board authorize the withdrawal of 230 acres from GL No. S-4197; and set aside the area to The County of Maui, subject to standard conditions.

Mr. Brian Miskae, Executive Assistant to Maui Mayor Apana, was present to answer questions.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-11: GRANT OF TERM, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO BLUE CHIP CORPORATION FOR STANDING AND MAINTENANCE OF GUNNITED SURFACES SEAWARD OF SEAWALL PURPOSES, HEEIA BAY, HAIKUUA AND KEAUHOU BAY, NORTH KONA, HAWAII, TMK: 3RD/7-8-12: SEAWARD OF 40, 41, 51 & 75

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a term easement to Blue Chip Corporation for the gunnited area, subject to 6 conditions.

Mr. Clancy Fuchigami, Blue Chip Corporation, was present to answer questions.

Unanimously approved as submitted (Kokubun/Matsumoto).

ITEM D-15: CONSERVATION DISTRICT USE APPLICATION (CDUA) OA-2994 FOR CONSTRUCTION OF WEDDING CHAPEL AND DINING FACILITY AT SEA LIFE PARK, WAIMANALO, OAHU, TMK: 4-1-14: 13 (PORTION)

Mr. Uchida briefed the Board and recommended that the Board approve this application for a Wedding Chapel and Dining Facility, subject to 17 conditions.

Mr. Keith Kurahashi, Kusao & Kurahashi, Inc., representing Attractions Hawaii dba Sea Life Park, testified in support of staff's recommendation.

Ms. Lucienne de Naie commented in favor of the applicant considering the use of native plants.

Unanimously approved as submitted (Inouye/Matsumoto).

ITEM D-14: ISSUANCE OF REVOCABLE PERMIT TO ORKIN EXTERMINATING COMPANY, INC., LOT 13, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-50: 81

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Orkin Exterminating Company, Inc., subject to 3 conditions.

Mr. Ray Ah Chin, Orkin/Hawaii Pest Control, was present to answer questions.

Unanimously approved as submitted (Kokubun/Matsumoto).

ITEM D-1: RESCIND PRIOR LAND BOARD APPROVAL AND SET ASIDE TO HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII FOR A SENIOR PROJECT WITH ASSISTED LIVING AND/OR HEALTHCARE

**SUPPORT SERVICES AND A MANAGEMENT RIGHT-OF-ENTRY,
KAAKAUKUKUI, OAHU, TMK: (1) 2-1-51: PORTION OF PARCEL 9**

Mr. Uchida briefed the Board and recommended that the Board rescind Land Board approval of November 20, 1992, approve of and recommend to the Governor issuance of an executive order setting aside the subject lands to the Housing and Community Development Corporation of Hawaii, and authorize the management right-of-entry to the Housing and Community Development Corporation of Hawaii with the understanding that the existing permit will terminate when construction commences.

Ms. Sandy Pfund, Housing and Community Development Corporation of Hawaii, testified in support of staff's recommendation.

Unanimously approved as submitted (Inouye/Matsumoto).

**ITEM D-7: REQUEST TO RESCIND PREVIOUS BOARD ACTION OF JUNE 19, 1998,
AGENDA ITEM D-23 AND CONSENT TO ASSIGNMENT OF A PERPETUAL,
NON-EXCLUSIVE EASEMENT FROM MR. MICHAEL J. BOTEILHO
(ASSIGNOR) TO MR. GENE LEROY WEAVER AND MRS. LAJON DUMAS
WEAVER (ASSIGNEE) FOR ACCESS PURPOSES, KALIAE, HANA, MAUI,
TMK: 1-2-01: PORTION 03**

Mr. Uchida briefed the Board and recommended that the Board rescind previous action of June 19, 1998, and authorize the assignment of this easement from Mr. Boteilho to Mr. & Mrs. Weaver, subject to 4 conditions.

Mr. Paul Horikawa, representing Mr. Boteilho, concurred with staff's recommendation.

Unanimously approved as submitted (Kennison/Matsumoto).

The Board recessed at 1:00 p.m. The meeting was reconvened at 1:45 p.m.

**ITEM D-5: REQUEST TO AMEND ISSUANCE OF REVOCABLE PERMIT TO MAUI
PINEAPPLE CO., LTD. HANAKAOO & HONOKOWAI, LAHAINA, MAUI,
TMK: 4-4-04: 02 AND 4-5-21: PORTION 03**

Mr. Uchida briefed the Board and recommended that the Board amend their previous action of November 19, 1999, by extending the boundary to include the 2 reservoir sites.

Ms. Tammy Harp, 7th generation resident of Lahania/West Maui, submitted written testimony expressing her disappointment and disapproval of pineapple cultivation on the Lahaina side of Honokowai Stream. Her concerns were the chemicals used, contamination to the soil and groundwater, the small black

biodegradable black plastic used to keep moisture in and weeds under control, that could have an effect on the marine environment. She requested for a list or inventory of the chemicals used including the amounts and frequency, and that monitoring be done of the water quality along the shoreline periodically.

Chairperson Johns requested that staff ask Maui Pineapple Company to address in writing, the issues raised by Ms. Harp.

Ms. de Naie, Maui Sierra Club, indicated that they have received several calls from folks who are concerned about the pineapple bugs and the black plastic.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-3: SET ASIDE TO KAHOOLAWE ISLAND RESOURCE COMMISSION (KIRC) FOR OFFICE/INFORMATION CENTER, BOAT HOUSE/STORAGE FACILITY, AND NATIVE HAWAIIAN PLANT NURSERY, AND A CONSTRUCTION RIGHT OF ENTRY, PORTION KAMAOLE HOMESTEADS, KIHEI, WAILUKU, MAUI, TMK: 3-9-04: PORTIONS 01 AND 61

Mr. Uchida briefed the Board and recommended that the Board approve the set aside and authorize the issuance of a construction right of entry to KIRC, subject to standard conditions.

Chairperson Johns noted a correction in the Applicants name throughout the submittal that should read: "Kahoolawe Island Reserve Commission".

Mr. Charley Lindsey, Ocean Resource Technician for KIRC, testified in favor of staff's recommendation.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-21: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF MANAGEMENT AND CONSTRUCTION RIGHT OF ENTRY TO TIME WARNER TELECOM OF HAWAII L.P. DBA OCEANIC COMMUNICATIONS FOR UTILITY PURPOSES, WAIALUA, OAHU, TMKs: 6-9-01: 02 AND 03; 6-9-05: 01; 6-9-04: 07, 11, 13, 14 & 17

Mr. Uchida requested an amended to the staff submittal by correcting page 1, under Location to "Kaena"; and on page 2, under Character of Use, to read "...remove underground and overhead telecommunication transmission cables...". Staff's recommendation is that the Board authorize the issuance of perpetual non-exclusive easement to Time Warner Telecom of Hawaii L.P. dba Oceanic Communications, and authorize an immediate management and construction right-of-entry, subject to standard conditions.

Mr. Ed Murley and Mr. Mitch Miyoshi, Time Warner Telecom of Hawaii L.P. dba Oceanic Communications, were both present to answer questions.

Unanimously approved as amended (Inouye/Kokubun).

ITEM D-33: APPROVAL IN PRINCIPLE TO LAND EXCHANGE BETWEEN THE STATE OF HAWAII AND MR. EARL E. & MRS. DORIS J. BAKKEN, FOR PORTION OF VACANT STATE-OWNED TMK: (3) 7-1-02: POR. 8 [ABUTTING BAKKEN-OWNED TMK: (3) 7-1-02: 3] AND BAKKEN-OWNED PROPERTY TMK: (3) 7-1-02: 2 (THREE ACRES FORMERLY OWNED BY MS. LORETTA LYNN), PUUWAAWAA, NORTH KONA, HAWAII

Mr. Uchida briefed the Board and recommended that the Board approve in principle the previously described land exchange between Mr. and Mrs. Bakken and the State, subject to 4 conditions.

There was some discussion regarding the improvements. Mr. Uchida explained that the public purpose of the land exchange is to acquire the land for future park expansion. The improvements on the property are not the subject of the acquisition because there is no public purpose served in acquiring the house. Member Kokubun felt that the improvement are an asset to the property. Chairperson asked that the appraisal be done with and without the improvements on the property. He wanted to maintain the option to keep the structure and not foreclose that option at this point.

Mr. Randy Vitousek, representing Mr. and Mrs. Bakken, concurred with the staff's recommendation and agreed with the suggestion that there be an appraisal on the alternative. He felt that there is no rationale to appraise the land and property as if it were something other than what it is, which is a 3-acre property with a permitted single family home.

Mr. Chris Yuen testified in favor of the land exchange proposal. He felt that in keeping the improvements, there would probably be some good use that could be made.

The Board amended the staff recommendation as follows:

5. That the private property being exchanged be appraised with and without the improvements on the property.

Unanimously approved as amended (Kokubun/Kennison).

ITEM D-6: CONSENT TO ASSIGN PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT [L.O.D. NO. S-28403] FROM MR. MICHAEL J. PISCITELLI, TRUSTEE, ASSIGNOR, TO MS. LESLIE ANN DANZIGER, ASSIGNEE, HOOLAWA-MOKUPAPA, MAKAWAO, MAUI, TMK: (2) 2-9-002: POR. 012

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of the easement, subject to 5 conditions.

Mr. Isaac Hall, representing Mr. Piscitelli, was present to answer questions.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-34: UNAUTHORIZED DREDGING ON STATE LAND SEAWARD OF THE SHORELINE AND WITHIN THE CONSERVATION DISTRICT ADJACENT TO OLOWALU WHARF, ISLAND OF MAUI AND PROPOSED AMENDMENTS TO BOARD ACTION D-24 APRIL 24, 2000: CONSERVATION DISTRICT AND STATE UNENCUMBERED LAND VIOLATIONS AT OLOWALU, MAUI

Mr. Uchida briefed the Board and recommended that the Board, in regards to alleged dredging violations: 1) That the Board find that the alleged violated the provisions of Chapter 183C, HRS, and Chapter 13-5, HAR, by failing to obtain the appropriate approvals for the dredging of coral rubble and other material to the side of Olowalu Wharf and the placing of the material on Olowalu Wharf and that Olowalu Elua Associates (OEA) be fined \$48,000 pursuant to Chapter 183C, HRS; 2) That the Board find that the alleged violated the provisions of Chapter 171, HRS, and Chapter 13-221, HAR, for the unauthorized mining or taking of dead coral and other material from a location seaward of the shoreline on state unencumbered land for a period of 3 days and that the Board impose a fine of \$1500 and collect \$1315 for damages to unencumbered state land pursuant to Chapter 171, HRS; 3) That the Board impose a fine of \$550 to pay for additional administrative cost (\$225 DOCARE and \$225 Planning Staff) and that all fines imposed by this action, \$51,365, be paid by the alleged within 30 days of this action; In regards to Item D-24 of the agenda of the Board at its meeting of April 14, 2000: 4) That condition number 3 of Board action D-24 of April 14, 2000 be amended to require that OEA plant and nurture the retention of 2 local Hau tree limbs to replace those removed that OEA, its successors and assigns will nurture the growth of the transplanted trees after they are planted as necessary. If the transplanted trees do not survive or subsequently die or are removed for any reason, OEA, its successors and assigns shall transplant more trees according to this condition; 5) That condition number 5 of Board action D-24 of April 14, 2000 be amended regarding cement removal to allow for a stay; 6) If the CDUA required by Board action D-24 of April 14, 2000 is denied, or otherwise not approved by the Board the stay will be automatically rescinded and OEA, its successors or assigns shall immediately remove all cement applied to Olowalu Wharf since October 1, 1964 according to a plan approved by the department; 7) That in the event of failure of OEA, its successors or assigns to comply with any approved recommendations, the matters shall be turned over to the Attorney General for disposition, including all administrative costs.

Mr. Thomas Welch, Attorney for OEA, responded to condition no. 6, in that the only cement work done by his clients since the time they owned the property, was the cement work identified as part of this violation, anything done before their ownership was deposited by the prior landowners over the years. He argued the calculation of the fine, the assessment of \$2000 per scoop, and indicated that he would be prepared to submit legal analysis of the appropriate fine to the Department of the Attorney General. He felt it reasonable and fair, that the Board consider assessing a fine of \$2000 per day.

Dr. Jim Bendon, principal of OEA, and initiator of the alleged violations, apologized to the Board, the Staff and his Managing Partners for all the problems this event has caused. He indicated that he was trying to accomplish a safe condition in the restoration of the wharf.

Ms. de Naie, read through and distributed written testimony on behalf of Mr. Ed Lindsey of Na Kapuna O Maui, indicating the end of their efforts to work cooperatively with OEA for various reasons. Na Kapuna O Maui's recommendation is to allow the laws of enforcement to take its full turn on the violations, and the approval of an issuance of a "stay" should be denied. She also read through and distributed written testimony on her own behalf, and asked that the Board require OEA to work out a negotiated settlement with Community Organizations and DLNR for appropriate mitigation's to offset the illegal actions that have occurred.

Mr. James Tanaka, Na Kapuna O Maui, asked the Board to protect Maui from the developers who don't know the history.

Mr. Glenn Shepherd, retired Geologist, testified in favor of staff's recommendation.

Ms. Michelle Anderson testified regarding the protection of the reef system off Olowalu, the most pristine living reef system in Hawaii.

Ms. Juanita Charkas, OEA, distributed written testimony in support of the work that was done, of people who are familiar with the area, in which the concrete either benefited their use or the general public. She indicated that they were trying to improve the area, to make it a better place where people can enjoy and feel welcome.

Mr. Peter Martin, OEA, clarified that Dr. Bendon wanted to make the area look nice, with no personal gain, and no gain for commercial use.

A motion was made 3:15 p.m. to move into executive session to consult with legal counsel (Kennison/Matsumoto). The meeting was reconvened at 3:55 p.m.

In response to a question raised by the Board, Mr. Welch indicated that the CDUA has been completed, and filed within the past 2-3 days.

Member Kennison made a motion to amend staff recommendation as follows:

1. "...that Olowalu Elua Associates be fined \$48,000 pursuant to Chapter 182C, HRS, and this portion of the fine is to be paid within sixty (60) days of this action to allow Olowalu Elua Associates to submit their legal objections and analysis of the fine to the Department of Attorney for review."
3. "...and that all fines imposed by this action, \$51,365, excluding the \$48,000 fine for the dredging which will be paid within sixty (60) days, be paid by the alleged within 30 days of this action;

[6. {Condition #6 is deleted in its entirety}]

[7]6. {Condition #7 is renumbered to #6}.

Unanimously approved as amended (Kennison/McCrory).

ITEM D-2: FORFEITURE OF GL NO. S-4551, THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, GOVERNMENT LAND SITUATE AT THE NORTH SIDE OF KAPAA DRAINAGE CANAL AT KAPAA, KAWAIIHAU (PUNA), KAUAI, TMK: 4-5-9: BLOCK K

Mr. Uchida briefed the Board and recommended that the Board authorize the cancellation of GL No. S-4551, subject to standard conditions.

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-8: CONSENT TO LEASE OF PRIVATE PROPERTY AGREEMENT BETWEEN MS. HERMINIGILDA M. SMITH, LESSOR, AND THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL RESOURCES, ON BEHALF OF AND FOR THE DEPARTMENT OF HEALTH, LESSEE, COVERING A GEOTHERMAL MONITORING STATION SITE AT KEAHIALAKA (DESCRIBED AS PAHOA IN LEASE AGREEMENT), PUNA, ISLAND OF HAWAII, TMK: (3) 1-3-46: POR. 72

Mr. Uchida briefed the Board and recommended that the Board consent to the agreement between the Department of Health and the private party, subject to 4 conditions.

Unanimously approved as submitted (Kokubun/Inouye).

ITEM D-12: CONSENT TO ASSIGN GL NO. S-4642, MR. JAMES MICHAEL O'BRIEN AND MRS. MARGARET ANNE HANNEGAN O'BRIEN, ASSIGNOR, TO MR. JAMES MICHAEL O'BRIEN, ASSIGNEE, CONSENT TO ASSIGN GL NO. S-4642, MR. JAMES MICHAEL O'BRIEN, ASSIGNOR, TO ALOHILANI FARMS, INC., ASSIGNEE, OLAA, PUNA, HAWAII, TMK: 1-8-006: 103

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of GL No. S-4642, subject to 5 conditions.

Unanimously approved as submitted (Kokubun/Inouye).

ITEM D-13: SALE OF LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE

PURPOSES, KAUMANA, SOUTH HILO, HAWAII, TMK: 3RD/2-5-3: 21

Mr. Uchida briefed the Board and recommended that the Board authorize the sale of a lease at public auction, subject to standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-16: AFTER-THE-FACT CONSENT TO ASSIGN GL NO. S-3856, MR. LIBBY ELLETT, AS COMMISSIONER, ASSIGNOR, TO MR. HEMALOTO AND MRS. LEONA ALATINI, ASSIGNEES, AT WAIMANALO, OAHU, TMK: (1) 4-1-24: 23

Mr. Uchida briefed the Board and recommended that the Board approve the consent to assign GL No. S-3856, subject to standard conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-17: RESCIND PRIOR BOARD ACTION OF MAY 15, 1998 (AGENDA ITEM D-21), CONSENT TO THE ISSUANCE OF A REVOCABLE PERMIT BY THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM TO TOUCHSTONE TELEVISION FOR THE USE OF THE DIAMOND FILM FACILITY SITUATE KAPAHULU, WAIKIKI, HONOLULU, OAHU, TMK: 3-1-042: 9 (POR.)

Mr. Uchida briefed the Board and recommended that the Board rescind its action of May 15, 1998.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM D-18: SET ASIDE TO DEPARTMENT OF TRANSPORTATION FOR HIGHWAY PURPOSES AND A MANAGEMENT RIGHT OF ENTRY, MALAEKAHANA, OAHU, TMK: (1) 5-6-1: PORTIONS OF 25 AND 47

Mr. Uchida requested that this item be withdrawn because of federal funding circumstances.

Unanimously approved to withdraw (Kokubun/Kennison).

ITEM D-19: REQUEST TO ENTER INTO A LEASE WITH HONOLULU WAREHOUSE CO., LTD. ON BEHALF OF THE DEPARTMENT OF EDUCATION AT WAIPAHAU, OAHU, TMK: (1) 9-4-48: 51

Mr. Uchida briefed the Board and recommended that the Board approve the new lease agreement with

Honolulu Warehouse Co., Ltd., subject to 3 conditions.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-20: AFTER-THE-FACT GRANT OF A NON-EXCLUSIVE, PERPETUAL EASEMENT TO HAWAIIAN ELECTRIC COMPANY, LTD. AND GTE HAWAIIAN TELEPHONE COMPANY AT PAUOA ELEMENTARY SCHOOL PAUOA VALLEY, HONOLULU, OAHU, TMK: 2-2-16: PORTION OF 20

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a perpetual, non-exclusive easement to Hawaiian Electric Company, Ltd., and GTE Hawaiian Telephone Company, subject to standard conditions.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM D-22: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF MANAGEMENT AND CONSTRUCTION RIGHT OF ENTRY TO GTE HAWAIIAN TELEPHONE COMPANY FOR UTILITY PURPOSES, WAIALUA, OAHU, TMK: 6-9-01: 02 & 03

Mr. Uchida requested an amended to the staff submittal by correcting page 1, under Location to "Kaena"; and on page 2, under Character of Use, to read "...remove underground and overhead telecommunication transmission cables...". Staff's recommendation is that the Board authorize the issuance of perpetual non-exclusive easement to GTE Hawaiian Telephone Company, and authorize immediate management and construction right-of-entry, subject to standard conditions.

Unanimously approved as amended (Inouye/Kokubun).

ITEM D-23: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT – JOB NO. F48-C-612-A, KEAIWA HEIAU STATE RECREATION AREA PARK IMPROVEMENTS, OAHU, HAWAII

ITEM D-24: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT – JOB NO. 83-OP-E1, CONSTRUCTION OF CURATOR'S RESIDENCE, ROYAL MAUSOLEUM STATE MONUMENT, HONOLULU, HAWAII

ITEM D-25: APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT – JOB NO. F72C767A, KAENA POINT STATE PARK, OAHU, HAWAII

Items D-23, D-24 & D-25 were taken together. Mr. Uchida briefed the Board and recommended that the Board approve the awards for construction contracts for the various State Park projects.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-26: RESCIND PRIOR BOARD ACTION OF APRIL 28, 2000, AGENDA ITEM D-6; GRANT OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT; AND ISSUANCE OF IMMEDIATE RIGHT OF ENTRY TO MR. RICHARD J. HOEHN AND MRS. JANA L. HOEHN FOR SITE CONTROL PURPOSES, KIHEI, WAILUKU, MAUI, TMK: (2) 3-9-009: POR. 013

Mr. Uchida briefed the Board and recommended that the Board rescind its action of April 28, 2000, authorize an immediate right-of-entry, cancel the existing easement, and issue a new easement to Mr. and Mrs. Hoehn.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-27: AMENDMENT OF PREVIOUS BOARD ACTION – CONSENT TO ASSIGNMENT OF LEASE, GL NO. S-5001, MS. MARY LOO WOO, TRUSTEE FOR BANKRUPTCY OF RUS SHO DEN, INC., AS ASSIGNOR, TO PUBTIME, INC., AS ASSIGNEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-32: 10

Mr. Uchida briefed the Board and recommended that the Board amend its prior action of October 8, 1999 by amending Item No. 1 of the Recommendation section to read as follows: "The standard terms and conditions of the most current consent to assignment of lease form, as may be amended from time to time, with the exception of the deletion of the on-release provision".

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-28: FORFEITURE OF GL NO. S-3949, BIG ISLAND FLORAL, INC., LESSEE, KEONEPOKO HOMESTEADS LOTS, PUNA, HAWAII, TMK: 3RD/1-5-07: 17, 18, 62, 63, 64, 65 & 66

Mr. Uchida requested that this item be withdrawn. The applicant has paid the delinquent rent and is current.

Unanimously approved to withdraw (Kokubun/Kennison).

ITEM D-29: PERMISSION TO HIRE CONSULTANTS FOR DLNR CIP PROJECTS

Mr. Uchida briefed the Board and recommended that the Board authorize the Chairperson to sign the necessary documents for the various CIP projects.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-30: SALE OF RECLAIMED LAND REMNANT TO SHERRYL E. BUECHER, KANEOHE, KOOLAUPOKO, OAHU, TMK: 4-4-07: 17 (SEAWARD)

Mr. Uchida briefed the Board and recommended that the Board authorize the sale of the reclaimed lands, subject to 4 conditions.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-31: RESCIND PRIOR BOARD ACTION OF JANUARY 26, 1996 (AGENDA ITEM F-1-J), CONSENT TO THE ISSUANCE OF A REVOCABLE PERMIT TO MS. ANTHURIUM KAMAKA FOR THE USE OF STATE LAND SITUATE NANAKULI, OAHU, TMK: 8-9-02: 1 (POR.)

Mr. Uchida briefed the Board and recommended that the Board rescind its action of January 26, 1996.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM K-1: LEASE, LIHUE AIRPORT, KAUAI (FEDERAL AVIATION ADMINISTRATION) TMK: (1)-4-3-5-01

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, briefed the Board and recommended that the Board approve the lease to the Federal Aviation Administration.

Unanimously approved as submitted (McCrory/Kokubun).

ITEM K-2: AMENDMENT NO. 8 TO LEASE NO. DOT-A-65-2, KAHULUI AIRPORT, MAUI (FEDERAL AVIATION ADMINISTRATION)

Mr. Garcia briefed the Board and recommended that the Board grant the additional 5-year term to the Federal Aviation Administration.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM K-3: ISSUANCE OF A DIRECT LEASE FOR THE MANAGEMENT OF KAUMALAPAU HARBOR, LANAI, MAUI (THE LANAI COMPANY, INC.) TMK: (2)-4-9-01-01P

Mr. Garcia briefed the Board and recommended that the Board consent to the issuance of the lease to

The Lanai Company, Inc.

Unanimously approved as submitted (Kennison/Inouye).

ITEM K-4: ISSUANCE OF A TEN YEAR LEASE THROUGH A REQUEST FOR PROPOSALS FOR THE OBSERVATION DECK OF THE ALOHA TOWER, TOGETHER WITH PROVIDING SECURITY AND TOURIST INFORMATIONAL SERVICES AT ALOHA TOWER, PIER 9, HONOLULU HARBOR, OAHU, TMK: (1)-2-1-01P

Mr. Garcia briefed the Board and recommended that the Board authorize the issuance of the lease through negotiation.

Unanimously approved as submitted (Inouye/McCrory).

ITEM K-5: ISSUANCE OF LEASE BY DIRECT NEGOTIATION, PIER 9, HONOLULU HARBOR, OAHU, TMK: (1)-2-1-01-13P

Mr. Garcia briefed the Board and recommended that the Board approve the issuance of a lease by negotiation.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM K-6 DIRECT ISSUANCE OF LEASE FOR A NON-EXCLUSIVE EASEMENT TO MAUI OIL COMPANY, INC. AT KAUMALAPAU HARBOR, LANAI, MAUI, TMK: (2)-4-9-02P

Mr. Garcia amended the applicants name throughout the submittal that should read: "Lanai Oil Company." DOT recommends that the Board consent to the issuance of the direct lease to Lanai Oil Company.

Unanimously approved as amended (Kennison/McCrory).

ITEM K-7: ISSUANCE OF REVOCABLE PERMIT, KAWAIHAE HARBOR, ISLAND OF HAWAII (SUN INDUSTRIES), TMK: (3)-6-1-3-33P

Mr. Garcia briefed the Board and recommended that the Board authorize the Director of Transportation to issue the revocable permit.

Unanimously approved as submitted (Inouye/Kennison).

ITEM K-8: AMENDMENT OF REVOCABLE PERMIT, PIER 29, HONOLULU HARBOR, OAHU (JOEY, INC.), TMK: (1)-4-38-2P

Mr. Garcia briefed the Board and recommended that the Board authorize the amendment of the revocable permit.

Unanimously approved as submitted (Inouye/Kennison).

ITEM K-9: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

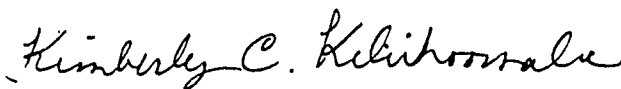
ITEM K-10: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

Mr. Garcia said Items K-9 and K-10 are reports, and do not have to be acted on by the Board.

There being no further business, Chairperson Johns adjourned the meeting at 4:20 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 Resources

