

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

DATE: FRIDAY, JANUARY 26, 2001
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS:

Mr. Gilbert Coloma-Agaran
Mr. Colbert Matsumoto
Dr. Fred Holschuh

Mr. William Kennison
Ms. Lynn McCrory

STAFF:

Mr. Dean Uchida, Land Division
Mr. Benjamin Marx, Land Division
Mr. Michael Nugent, Land Division

Mr. Dan Quinn, Division of State Parks
Mr. Howard Gehring, Division of Boating
and Ocean Recreation

OTHERS:

Mr. Ray Enos, Department of the
Attorney General (AG)
Mr. Allan Kawada, AG, D-20
Mr. Jimmy Nakatani, D-18
Mr. John R. Cates, D-18
Mr. Joe Tabrah, D-18
Mr. Ben Kudo, D-20
Mr. Wayne Nasser, D-20
Mr. Mahi Cooper, D-20
Ms. Linda Colburn, E-1
Mr. Julius Ah Sam, D-13

Mr. Peter Garcia, Department of
Transportation
Mrs. Ernestine Tabrah, D-2
Mr. Bill Tam, D-18
Ms. Virginia Enos, D-18
Mr. Glen Koyama, D-14
Mr. Michael Matsukawa, D-20
Ms. Peggy Ratliff, D-20
Mr. Boy Kanae, E-2
Mrs. Barbara Nishek, D-5
Mr. Ernest Kimoto, D-9

ITEM A-1: APPROVAL OF THE NOVEMBER 17, 2000 MINUTES

Chairperson Coloma-Agaran and Member Holschuh were not present at this meeting. Chairperson Coloma-Agaran indicated that he was able to listen to the tapes of the meeting to confirm the accuracy of the minutes.

Unanimously approved as submitted (McCroory/Kennison).

ITEM D-2: AMEND PRIOR BOARD ACTION FOR THE GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO MR. FRANK L. TABRAH, MRS. ERNESTINE TABRAH AND MS. RUTH M. TABRAH FOR EASEMENT AND UTILITY PURPOSES, LAMALOLOA, NORTH KOHALA, HAWAII, TMK: 3RD/5-7-01: POR. 22

Mr. Dean Uchida, Administrator of the Land Division, requested an amendment to the staff submittal by removing any reference to Ms. Ruth Tabrah. Staff's amended recommendation is that the Board amend prior Board action of November 8, 1996, issue the easement to Mr. Frank and Mrs. Ernestine Tabrah, and remove any reference to Ms. Ruth Tabrah, subject to standard conditions.

Mrs. Ernestine Tabrah provided a copy of the Quitclaim deed removing Ms. Ruth Tabrah from the deed.

Unanimously approved as amended (Kennison/Matsumoto).

ITEM D-18: CONSERVATION DISTRICT USE APPLICATION (CDUA) NO. OA-2989 AND REQUEST FOR A LEASE OF STATE MARINE WATERS FOR MARINE ACTIVITIES – SUBMERGED OFFSHORE FISH FARM: FINFISH, OPEN OCEAN, CAGE AQUACULTURE FACILITY

Mr. Uchida briefed the Board and requested amending the staff recommendation as follows:

Condition No. A.12., delete in its entirety, as there is no need for a mooring permit from the Division of Boating and Ocean Recreation, and replace with wording from the Division of Aquatic Resources to read: “12. The use of feeds containing supplemental hormones or antibiotics shall not be allowed.”

Condition No. A.18., amend by adding language as suggested by the Division of Aquatic Resources to read: “18. ...environment to the department. The applicant need not submit information related to farm operations which is not necessary to evaluate the quality of the environment at the submerged fish farm and surrounding areas.”

In conformance with procedures in Section 190D, Hawaii Revised Statute (HRS), delete in its entirety Conditions B. and C. and replace with the following:

“B. That the Board of Land and Natural Resources finds that:

1. Applicant’s lease shall be subject to section 171-53, HRS, and to the concurrence of the Director of Transportation;
2. Applicant’s lease is for commercial purposes;
3. Applicant’s lease will not adversely impact existing programs of the Department;
4. Applicant’s lease is clearly in the public interest upon consideration of the overall economic, social and environmental impacts and is consistent with other State policy goals and objectives; and
5. Applicant has complied with applicable Federal, State and County statutes, ordinances and rules.”

“C. That the Board of Land and Natural Resources authorizes the direct negotiation of a lease with the Applicant, provided that approval for this disposition, including presentation of the negotiated terms and conditions of the lease, shall be obtained at a future Board meeting.”

Staff’s recommendation is that the Board approve the operation by Cates International, Inc. subject to the amended conditions.

Mr. Jimmy Nakatani, Chairperson of the Department of Agriculture, provided written and oral testimony in support of the project.

Mr. Bill Tam, Attorney for Cates International, Inc., clarified that the contested case hearing originally asked for in this case has been withdrawn and terminated. He asked that the Board approve the CDUA, and the lease in concept, subject to the lease coming back to the Board to work out the term of the lease.

There was some discussion on the following conditions:

Condition No. A.5. - Mr. Tam requested, concerning the requirement for submitting construction plans, that as part of the recommendation, the information in the environmental assessment and the staff submittal be adequate, as there is not much in the way of construction plans, there is no architect, and the cages are prefabricated. Mr. Uchida indicated that the information in the environmental assessment and staff submittal would be sufficient.

Condition No. A.16. - Member McCrory wanted to be sure that its clear in the staff recommendation that the State will not be covering the cost of monitoring.

Condition No. A.18. – Mr. Tam, after initially requesting an amendment to read: “18. The applicant shall submit all public and non-proprietary research, data...”, agreed to have their proposed amendment substituted with the Division of Aquatic Resources suggested language.

Condition No. A.19. – Mr. Tam requested, as a practical matter, and to avoid multiple information requests, that copies of all information be submitted to the Chairperson Office, and the Chairperson’s Office distribute to the appropriate division, instead of the Applicant submitting to both the Land and Aquatic Divisions. Mr. Uchida indicated that the applicant can submit information to the Chairperson’s Office, which is the usual protocol.

Condition No. A.27. - Member Matsumoto requested specifically inserting a condition restricting the cultivation under the permit to Moi.

Mr. Tam requested adding a new condition that would deal with other users in the area interfering with their operation. Member McCrory was concerned about adding this condition. Mr. Uchida pointed out that this issue will be covered in the discussion regarding the area that will be leased.

The Board was concerned about written testimony received from the Office of Hawaiian Affairs (OHA) requesting deferral of this item until the following are addressed: 1) OHA’s entitlement to revenues for the use of submerged lands, which constitute ceded land; and 2) the concerns of the Ewa Beach Community that have not been addressed, and lack of consultation with the Native Hawaiians in the area. Mr. Uchida, regarding OHA’s entitlement, indicated that this issue is somewhat premature, the entitlement issue would come out when the lease is discussed, and there is no presentation that OHA will not get their 20% entitlement. Mr. John R. Cates, Officer of Cates International, Inc., regarding the concerns of the Ewa Beach Community and lack of consultation with Native Hawaiians, indicated that he was present at several Ewa Beach Neighborhood Board meetings, of which the public and the Limu Group were invited. There were no concerns addressed at that time. The Ewa Beach Neighborhood Board supported the project 7-0 unanimously, which is in the environmental assessment. Ms. Virginia Enos, Officer of Cates International, Inc., has met with the Hawaiian Civic Club in Kahuku, in the company of the petitioners to the contested case hearing that has since been withdrawn.

Mr. Joe Tabrah, representing The Oceanic Institute, summarized written testimony submitted to the Board, in support of the project.

The Board amended section A. of the staff recommendation as follows:

12. Replace existing wording with the following: The use of feeds containing supplemental hormones or antibiotics shall not be allowed.
13. Any culture of fish species, besides the Moi fish, shall be approved by the Chairpersons of the Department of Land and Natural Resources and Department of Agriculture.
16. The applicant, at their own expense, shall...”
18. “...environment to the department. The applicant need not submit information related to farm operations which is not necessary to evaluate the quality of the environment at the submerged fish farm and surrounding areas.

27. This initial approval is restricted to Moi.

The Board also replaced staff recommendation B and C with the following:

B. That the Board of Land and Natural Resources finds that:

1. Applicant's lease shall be subject to section 171-53 HRS, and to the concurrence of the Director of Transportation;
2. Applicant's lease is for commercial purposes;
3. Applicant's lease will not adversely impact existing programs of the Department;
4. Applicant's lease is clearly in the public interest upon consideration of the overall economic, social and environmental impacts and is consistent with other State policy goals and objectives; and
5. Applicant has complied with applicable Federal, State and County statutes, ordinances and rules.

C. That the Board of Land and Natural Resources authorizes the direct negotiation of a lease with the Applicant, provided that approval for this disposition, including presentation of the negotiated terms and conditions of the lease, shall be obtained at a future Board meetings.

Unanimously approved as amended (Matsumoto/Holschuh).

ITEM D-14: CDUA NO. OA-2998 – BY THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU FOR SUBDIVISION AND CONSOLIDATION OF LAND AND EROSION CONTROL AND DRAINAGE IMPROVEMENT AT THE WAIHEE 265 RESERVOIR, PUU KOLO, KAALAEA AND WAIHEE, KOOLAUPOKO, OAHU

Mr. Uchida briefed the Board and recommended that the Board approve CDUA No. OA-2998 for subdivision and consolidation of land and erosion control and drainage improvements at the Waihee 265 Reservoir, subject to 14 conditions.

Mr. Glen Koyama, Consultant for the Board of Water Supply, concurred with the staff report.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-20: REQUEST FOR TIME EXTENSION FOR CDUA NO. HA-487A, PROPOSED RECLASSIFICATION OF THE PROJECT SITE TO THE URBAN LAND

USE DISTRICT, AND RESPONSE TO DECEMBER 26, 2000 REQUEST FOR PROMPT ACTION ON SEVERAL LEGAL QUESTIONS FROM THE KEAHOLE DEFENSE COALITION

Chairperson Coloma-Agaran recused himself. Member Kennison presided.

Mr. Uchida briefed the Board and recommended that the Board approve an extension of the construction deadline for 3-years from the date of approval, January 26, 2001, to January 25, 2004, providing a total time extension of 4-years and 9-months, from the retroactive date established by the court of April 25, 1999. Staff also recommends that the Board instruct the applicant to file a request with the Land Use Commission to rezone the property out of the Conservation District into the Urban District within 1-year of the approval of this time extension, that the applicant complete the project by the extended deadline, and that failure to comply with these conditions shall render the permit void under Section 13-5-42 (b), Hawaii Administrative Rules.

Based on concerns raised by the Board, a motion was made at 10:16 a.m. to move into executive session to consult with legal counsel (Matsumoto/McCrory). The meeting was reconvened at 11:16 a.m.

Member Holschuh stated, as to the request of the Keahole Defense Coalition for a contested case hearing, the Board found that procedurally, the matter of an extension of the 3-year deadline should be done in a contested case hearing and not handled administratively. He made a motion that this matter be processed as a Contested Case Hearing. Member Matsumoto seconded.

Mr. Ben Kudo, Attorney for the Hawaii Electric Light Company, Inc., asked that they be able to proceed forward and get on with the project which is 60% complete. He believed that the parties have not been denied due process because of the previous contested case hearing, and that another contested case hearing on this same matter would not yield any other positive evidence, it's the same project, nothing has changed. He asked the Board to consider granting an extension without a contested case hearing.

Mr. Michael Matsukawa, representing the Keahole Defense Coalition, agreed with the motion and felt it was well placed. He felt that a contested case would be beneficial to all parties and would give everyone an opportunity for engagement.

Mr. Wayne Nasser, representing the Department of Hawaiian Homelands, explained that there is a concrete property interest that will be lost if this project is allowed to continue. He urged very strongly that the motion be carried to move forward with a contested case hearing.

Ms. Peggy Ratliff, Neighbor of the Keahole Generation Station, explained the problems with the previous contested case hearing, and thanked the Board for the opportunity to have another contested case hearing.

Mr. Mahi Cooper, Neighbor of the Keahole Generation Station, believed a contested case is highly recommended to protect the public's interest, the neighbors bordering the power facility, and to also

organize and get things straight.

Member McCrory asked, because of numerous issues raised in written testimony submitted by the Keahole Defense Coalition, that all parties bring in any new issues to the contested case hearing process.

Member Matsumoto indicated that it's the Board's discretion based upon the action that is being requested of the Board, to define the appropriate scope of the contested case process. The Board recognizes that there was a previous contested case hearing for which there was written record, and that it's not the Board's intention that this process be abused to merely delay an outcome. He asked that all sides that are involved avail themselves of measures that can be utilized to expedite the resolution of this matter. He hoped to reach finality at the end of this process.

The staff recommendation was amended to read as follows:

The Board deleted the staff recommendation and found the following:

As to the request of the Keahole Defense Coalition for a contested case hearing, the Board found that procedurally, the matter of an extension of the 3-year deadline should be considered in a contested case hearing procedure and should not be handled administratively. The Board finds that the matter should be processed as a Contested Case Hearing.

Unanimously approved as amended (Holschuh/Matsumoto).

ITEM E-2: REQUEST FROM MAJESTIC SHOWS TO USE A PORTION OF THE OLD KONA AIRPORT STATE RECREATION AREA IN KAILUA-KONA, HAWAII, FOR PRESENTATION OF THE CANADIAN INTERNATIONAL ALL STAR CIRCUS

Mr. Dan Quinn, Acting Administrator of the Division of State Parks, briefed the Board and recommended that the Board approve the issuance of a Special Use Permit to Majestic Shows to stage the Canadian International All-Star Circus on a portion of the Old Kona Airport State Recreation Area's runway, subject to 19 conditions.

Mr. Boy Kanae, representing Majestic Shows, gave some background information about the proposed activities, and commented on some of the staff recommendations. Condition No. 1, he asked for consideration to allow exchange of monies on the property; Condition No. 4, requirement to provide and hire security including at least 1-DLNR Conservation and Resources Enforcement Officer, he asked that they be allowed to contact the officer ahead of time to make sure that all the requirements are fulfilled before the event; Condition No. 8, he asked, instead of hiring a licensed electrical contractor, that they be allowed to use their own licensed electrician who is part of the Circus, but not of the State; and, Condition No. 13, concerned about the inspection requirement 1-week prior to set up, as they normally set up 1-day before the event.

Member McCrory agreed with amending the staff's recommendation by deleting Condition No. 1., because of the difficulty in running an event without collecting monies.

In response to a question raised by Member Holschuh regarding Condition No. 8 and the requirement for a State licensed electrical contractor, Mr. Quinn indicated that liability would be a concern. He preferred that this requirement not be waived.

The Board amended the staff recommendation by deleting condition no. 1 in its entirety, and eliminating , "one week" from Condition No. 13.

Unanimously approved as amended (Holschuh/Kennison).

{Item E-2 was reconsidered, see page 15 **.}

ITEM E-1: APPROVAL OF A GRANT-IN-AID AGREEMENT FOR THE HAWAII NATURE CENTER, INC.

Mr. Quinn briefed the Board and recommended that the Board authorize the Chairperson and another member of the Board to enter into an agreement of \$100,000 for fiscal year 2000-01 with the Hawaii Nature Center, Inc., subject to funding restrictions and applicable requirements for Grants-in-Aid.

Ms. Linda Colburn, Executive Director of the Hawaii Nature Center, Inc., encouraged the Board to approve staff's recommendation.

Unanimously approved as submitted (Matsumoto/McCrory).

ITEM D-19: CDUA NO. KA-3003 FOR NAVIGATION IMPROVEMENTS AND BEACH NOURISHMENT AT KIKIAOLA LIGHT DRAFT HARBOR, KEKAHA, KAUAI, TMK: (4) 1-2-6: 17

Mr. Uchida briefed the Board and recommended that the Board approve this application for improvements to the Kikiaola Light Draft Harbor (Phase I) and for sand bypassing to nourish West Kikiaola Beach at Kekaha, Kauai, subject to 26 condition.

Mr. Howard Gehring, Acting Administrator of the Division of Boating and Ocean Recreation, Applicant for this CDUA, proposed an amendment to Condition No. 3 to read: "3. That the applicant shall initially and in concert with, or immediately after, Phase I harbor improvements, ...". His concern was the way condition no. 3 is worded, it gives the impression that the beach nourishment has to be done at the same time, concurrent with Phase I. He advised the Board that the beach nourishment project may not be done through Federal funding as part of the Federal project because of the delay in the project of about 9-months. The division may be pulling it out at this juncture and doing it through a State independent project funded by a division program.

Member McCrory wanted to make sure the beach nourishment project occurs, and that it not be moved out of Phase I. She asked that condition no. 3 not be changed. Mr. Gehring concurred.

Chairperson Coloma-Agaran noted that written testimony was received by Ms. Cheryl Lovell-Obatake indicating her concern about erosion impacts within the area which this application may cause to the surrounding shoreline that fronts the Japanese Cemetery of which her maternal great-grandfather is buried. Mr. Gehring clarified that the project would not affect that particular area.

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-5: FORFEITURE OF GENERAL LEASE (GL) NO. S-5480, MR. LELAN AND MRS. BARBARA NISHEK, LOT 153, KAPAA HOMESTEADS, 2ND SERIES, PARTS 1 & 2, NORTH AND SOUTH OLOHENA, KAWAIIHAU (PUNA), KAUAI, TMK: 4-4-2: 31

Mr. Uchida briefed the Board and recommended that the Board authorize the cancellation of GL No. S-5480, subject to conditions.

Mrs. Barbara Nishek apologized and assured the Board that she will cure the defaults.

The Board amended the staff recommendation to read as follows:

A. That the Board allow the lease until the close of business on January 26, 2001 to make a payment on the lease rent of \$2,500.00. If no payment is made by this time, the Board authorize the following:

1. Authorize the cancellation...

B. That based on the action of the Board at its meeting of January 26, 2001, any future defaults by the lessee under this subject lease, will result in automatic termination/cancellation of the lease with no further action by the Board.

Unanimously approved as amended (McCrory/Holschuh).

ITEM D-13: FORFEITURE OF GL NO. S-4007, ALOFA CORPORATION OR FEDERAL LAND BANK, LESSEE, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-27: 23 & 24

Mr. Uchida explained that the lessee was given notices of default for fire insurance, liability insurance, lease payments, real property tax and unauthorized use of the land. Since the notices have been sent, the applicant has cured the fire and liability insurance. The applicant has not brought in the necessary increase in the performance bond based on the rent change. The real property tax has been paid and a payment plan worked out with the City and County. The illegal unauthorized uses of the property

are still unresolved. Staff's recommendation is that the Board authorize the cancellation of GL No. S-4007, subject to standard conditions.

Mr. Julius Ah Sam, representing Alofa Corporation, submitted written testimony and commented on the lateness of the lease reopening, the excessive and unreasonable rent increase, not being properly represented and unfairly treated regarding the appraisal process, and much of the land unusable.

The Board amended the staff recommendation to read as follows:

"That the Board allow the lessee 30 days from today to enter into an installment plan with the Department to pay all of the back rent. Should the lessee fail to enter into the installment agreement with the Department within the 30 day period, the Board:

1. Authorize the cancellation of ..."

Unanimously approved as amended (Matsumoto/McCrory).

ITEM D-9: CONSENT TO LEASE BETWEEN OHA AND AHA PUNANA LEO, A HAWAII NON-PROFIT ORGANIZATION, COVERING LAND UNDER THE OPERATION OF GOVERNOR'S EXECUTIVE ORDER NO. 3724 COVERING THE KEKAHA ARMORY, SITUATE AT KEKAHA, KAUAI, TMK: 1-3-2: 23

Mr. Uchida indicated that this request for consent to lease between OHA and Punana Leo, for a term of 99-years, was found to be in violation of the statute. Staff's intention was to amend the term of lease to 65-years, however, the Attorney representing OHA has asked that this matter be withdrawn to allow the OHA Board to take an action before submitting this to the Land Board.

Mr. Ernest Kimoto, Attorney for OHA, asked that this item be withdrawn for technical reasons, to allow the new OHA Board a chance to review the lease and insert the appropriate number of years in compliance with the statute, and to make clear that the lease that comes forward is indeed the will of the Board of Trustees.

The Board preferred amending the term of the lease to 65-years now, which would not require any further Board action. OHA can then go back and do their technical amendments.

Member McCrory made a motion to change the term of the lease from 99-years, to 65-years.

Unanimously approved as amended (McCrory/Holschuh).

ITEM D-1: REQUEST TO AMEND BOARD'S ACTION OF JANUARY 22, 1999, AUTHORIZING THE DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AND AN IMMEDIATE

**RIGHT-OF-ENTRY ON STATE LANDS IDENTIFIED AS TMK: (2) 2-9-03:
POR. 20, HONOPOU-HOOLAWA, HAMAKUALOA, MAKAWAO, MAUI**

Mr. Uchida briefed the Board and recommended that the Board authorize the amendment to its action of January 22, 1999, by revising the name of the applicant to "Halaula Road Association, LLC.", subject to standard conditions.

Unanimously approved as submitted (Kennison/McCrory).

ITEM D-3: CANCELLATION OF GL NO. S-4829, SET ASIDE TO THE COUNTY OF HAWAII AND AUTHORIZATION OF A MANAGEMENT RIGHT-OF-ENTRY TO THE COUNTY OF HAWAII FOR SANITARY LANDFILL PURPOSES, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/ 2-1-13: 142 AND 156

Mr. Uchida briefed the Board and recommended that the Board authorize the cancellation of GL No. S-4829, authorize the set aside of the area to the County of Hawaii for landfill purposes, and authorize immediate management right-of-entry to the County of Hawaii, subject to standard conditions.

Unanimously approved as submitted (Holschuh/Kennison).

ITEM D-4: DECLARATIONS OF INTENT TO DISPOSE OF AN INTENSIVE AGRICULTURE LEASE [LOTS 10-A & 10-B OF THE HANAPEPE RICE AND KULA LOTS, HANAPEPE, WAIMEA (KONA), KAUAI, TMK: 1-9-2: 13 & 45] AND PASTURE LEASE (KUWAAWAA PASTURE RESERVE, KALAHEO, KOLOA, KAUAI, TMK: 2-4-3: 1) AT PUBLIC AUCTION

Mr. Uchida briefed the Board and recommended that the Board declare its intent to dispose of an intensive agriculture lease and pasture lease, subject to conditions.

Unanimously approved as submitted (McCrory/Matsumoto).

ITEM D-6: CONSENT TO ASSIGN GL NO. S-5378, MR. JOSEPH F. DE COITE, ASSIGNOR, TO MR. JOSEPH F. DE COITE AND MR. JULIAN A. DE COITE, ASSIGNEES, AND MODIFY PERFORMANCE BOND CONDITION, WAIMANALO, OAHU, TMK: (1) 4-1-25: 55

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of GL No. S-5378, and modify the performance bond requirement, subject to standard conditions.

Unanimously approved as submitted (Matsumoto/Holschuh).

ITEM D-7: REQUEST AN EXTENSION ON A NOTICE OF DEFAULT FOR GL NO. S-3756, MR. DAVID AND MRS. MICHELE CAMPBELL, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-10: 34

Mr. Uchida briefed the Board and recommended that the Board approve a 60-day extension for GL No. S-3756 to secure a performance bond, subject to standard conditions.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-8: RESUBMITTAL: AMENDMENT TO THE SUBLEASE RENT PARTICIPATION POLICY

Mr. Uchida distributed language suggesting an amendment to staff's recommendation A., page 3, under Policy, that read: "This policy shall apply to leases under the direct management of the Land Division. Furthermore, the following formulae generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board authorizes staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae." Staff's recommendation is that the Board amend the policy as stated, subject to conditions.

In response to Member McCrory's concern regarding the State receiving 50% when the lessees are paying less than fair market rent and the improvements are owned by the State, Mr. Benjamin Marx, Appraiser for the Land Division, clarified that staff recommendation A.2.b should be revised from 50% to 100%.

The Board amended the staff recommendation to read as follows:

A. Policy: "This policy shall apply to leases under the direct management of the Land Division. Furthermore, the following formulae generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board authorizes staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae."

A.2.b. "If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 100% of that portion of the sublease rent..."

Unanimously approved as amended (McCrory/Matsumoto).

ITEM D-10: ISSUANCE OF RIGHT-OF-ENTRY TO THE GARDEN ISLE RACING ASSOCIATION, INC., FOR INTERMITTENT USE OF THE KAUAI

RACEWAY PARK FACILITY, MANA, KAUAI, TMK: 1-2-2: POR. 40

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a right-of-entry for automobile racing and ancillary purposes to the Garden Isle Racing Association, Inc., subject to 7 conditions.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-11: SET ASIDE TO THE DEPARTMENT OF TRANSPORTATION (DOT), HIGHWAYS DIVISION, FOR CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX, LD. CT APP. 1087, MAP 103, LIHUE, PUNA, KAUAI, TMKs: 3-3-12: 24, 25, POR. 27, AND 3-3-13: POR. 12

Mr. Uchida briefed the Board and recommended that the Board issue an executive order setting aside the subject lands to DOT, and authorize a management right-of-entry to DOT, subject to standard conditions.

In response to written testimony received from Ms. Cheryl Lovell-Obatake recommending that DLNR support the conditions by the Kauai County Planning Department by making sure that the applicant comply with the conditions, Mr. Uchida indicated that these are conditions that the Kauai County Planning Department had already placed on DOT, and are not necessarily included again in DLNRs set aside.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-12: PERMISSION TO HIRE CONSULTANTS TO PREPARE HAZARDOUS WASTE ASSESSMENTS FOR VARIOUS STATE-OWNED SITES ON KAUAI, OAHU AND MAUI

Mr. Uchida briefed the Board and recommended that the Board authorize the Land Division to hire consultants to conduct a hazardous waste assessments for the State-owned sites and authorize the Chairperson to sign the necessary documents pertaining to the project, subject to Deputy Attorney General's approval as to form and Governor's permission to hire consultants.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-15: RESCIND LAND BOARD ACTION OF JULY 28,2000, AGENDA ITEM NO. D-1 AND DIRECT SALE OF RECLAIMED (FILLED) LAND AND SEAWALL, LOT 8, KANEOHE, OAHU, TMK: (1) 4-5-01: SEAWARD OF PARCEL 32

Mr. Uchida recommended amending the staff recommendation by inserting the following:

- A. Rescind its action of July 28, 2000, agenda item no. D-1 for a grant of non-exclusive term easement for after-the-fact seawall purposes.

Change condition A to B, and B to C.

Unanimously approved as amended (Matsumoto/McCrory).

ITEM D-16: REQUEST TO AMEND BOARD'S ACTION OF SEPTEMBER 8, 2000, AUTHORIZING THE CONSENT TO ASSIGN A PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT [LOD S-28093] TO HALAULA ROAD ASSOCIATION, LLC, ON STATE LANDS IDENTIFIED AS TMK: (2) 2-9-03: POR. 16, 17, 20, AND 39, HONOPOU-HOOLAWA, HAMAKUALOA, MAKAWAO, MAUI

Mr. Uchida briefed the Board and recommended that the Board amend its action of September 8, 2000, by revising the name of the applicant to "Halaula Road Associates, LLC", subject to standard conditions.

Unanimously approved as submitted (Kennison/McCrory).

ITEM D-17: ANNUAL REVIEW OF REVOCABLE PERMITS ON THE ISLAND OF HAWAII, MAUI/MOLOKAI, KAUAI AND OAHU

Mr. Uchida briefed the Board and recommended that the Board approve continuation of all revocable permits in force as of December 31, 2000 on a month-to-month basis for another year, except for permits that 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 the continuation of current rents for all permits issues up to December 31, 2000.

The Board asked staff to report by listing existing permits and rents at a future meeting.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-21: CONSENT TO ASSIGN GRANT OF EASEMENT NO. 5123, MAKALEI VENTURES, LLC, ASSIGNOR, TO MR. JAMES POSNER, ASSIGNEE, HONOLULU, OAHU, TMK: (1) 3-1-35: POR. 23

Mr. Uchida amended the staff submittal by changing James Posner to, "James Posner-Trust 90, dated 4/1/90". Staff's recommendation is that the Board consent to the assignment of the grant of easement, as amended, to James Posner-Trust 90, dated 4/1/90, subject to standard conditions.

Unanimously approved as amended (Kennison/McCrory).

{** Continued from page 8.} Item E-2 was reconsidered. Mr. Quinn indicated that the applicant realized that the wrong dates are on their application, it should be the following weekend. The applicant requested that the staff submittal be amended to read: February 16-18, 2001.

The Board made a motion to change the performance dates from February 9-11, 2001, to "February 16-18, 2001".

Unanimously approved as amended (Kennison/McCrory).

ITEM K-1: ISSUANCE OF REVOCABLE PERMIT TO KAIKOR CONSTRUCTION ASSOCIATES, INC., IWILEI, HONOLULU HARBOR, OAHU, TMK: (1) 1-5-39-26P

Mr. Peter Garcia, Property Management Officer for DOT, briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Kaikor Construction Associates, Inc., subject to standard terms and conditions of the most current revocable permit form, and such other terms and conditions that the Director of Transportation may imposed.

Unanimously approved as submitted (Kennison/McCrory).

ITEM K-2: AUTHORIZATION FOR DOT TO NEGOTIATE FOR THE ACQUISITION OF PRIVATELY-OWNED LANDS, INCLUDING THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN, FOR VOLCANO ROAD INTERSECTION IMPROVEMENTS AT HUINA ROAD AT OLAA, KEAAU, PUNA, ISLAND OF HAWAII, PROJECT NO. 11M-01-00 AND SUBSEQUENT DEDICATION OF LOT R-1 AND R-2 TO THE COUNTY OF HAWAII, TMK: (3) 1-7-01-12 AND (3) 1-7-17-02

Mr. Garcia briefed the Board and recommended that the Board authorize the DOT to negotiate the acquisition Lot R-1 and Lot R-2, authorize the DOT to obtain rights-of-entry from the land owners for site inspection, engineering and design studies, topographic, test boring and land boundary surveys, appraisal, construction and other related purposes, upon completion of the subject land acquisition and intersection improvement project, approve the dedication of Lot R-1 and Lot R-2 to the County of Hawaii.

Unanimously approved as submitted (Holschuh/Kennison).

ITEM K-3: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES (DECEMBER 2000)

ITEM K-4: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES (JANUARY 2001)

Mr. Garcia indicated that Items K-3 & K-4 are reports on revocable permits, and that there is no action required by the Board.

In response to a request by the Board, Mr. Garcia agreed to ask DOT's Harbors Administrator to contact Gay & Robinson about the permits issued to the Lihue Plantation Company, Ltd.

No action.

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 1:30 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. Kelihoomalau

Kimberly C. Kelihoomalau

Approved for submittal:

Gilbert Coloma-Agaran

GILBERT COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources