

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

**DATE:** FRIDAY, APRIL 27, 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. William Kennison
Mr. Colbert Matsumoto (from 12:00 p.m)	Ms. Lynn McCrory
Ms. Kathryn Inouye	Dr. Fred Holschuh

**STAFF:**

Mr. Gary Moniz, Division of Conservation and Resources Enforcement	Mr. Jim Schoocraft, Division of Boating and Ocean Recreation (DOBOR)
Mr. Dean Uchida, Land Division	Mr. John Hino, DOBOR
Mr. Al Rogers, Division of State Parks	Mr. Harry Yada, Land Division
Mr. Bill Devick, Division of Aquatic Resources	Mr. Alton Miyasaka, Division of Aquatic Resources
Ms. Janet Kawelo, Deputy Director	Mr. Dave Parson, DOBOR
Ms. Carol She, DOBOR	

**OTHERS:**

Mr. Ray Enos, Department of the Attorney General (AG)	Mr. David Shimokawa, Department of Transportation
Ms. Jan Yokoyama, I-1	Mr. Michael Lau, AG, J-2
Mr. Andy Evans, J-2	Mr. John R. Cates, D-9 & J-1
Mr. J. Gordon Cran, D-11	Mr. Bill Dornbush, D-7
Mr. Phil Hauret, D-5	Mrs. Malama Vierra, D-10
Ms. Vicky Vierra, D-10	Ms. A. Sonia Faust, AG, D-13
Mr. Edsel Yamada, AG, D-13	Dr. Chris Kelly, B-2

**ITEM A-1: APPROVAL OF THE MARCH 9, 2001 MINUTES**

Member Inouye recused herself.

**Unanimously approved as submitted (McCrorry/Kennison).**

**ITEM I-1: REQUEST BOARD APPROVAL TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT, AND THE DEPARTMENT OF LIQUOR CONTROL, COUNTY OF HAWAII**

Mr. Gary Moniz, Enforcement Chief of the Division of Conservation and Resources Enforcement, briefed the Board and recommended that the Board approve the Memorandum of Agreement, and that the Chairperson be authorized to sign the agreement provided that the Attorney General's Office first approve the content of the agreement or make substantive changes to the agreement in order to meet all State requirements.

Ms. Jan Yokoyama, Public Health Nurse with the Department of Health, explained that the multi-jurisdictional task force was put together to address the problem of underage drinking in the parks.

**Unanimously approved as submitted (Holschuh/Inouye).**

**ITEM J-2: REQUEST FOR PRELIMINARY APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES, SECTION 13-256-41, NA PALI COAST OCEAN WATERS, GENERAL RESTRICTIONS**

Mr. Jim Schoocraft, Acting Administrator of DOBOR, briefed the Board and recommended that the Board grant preliminary approval to conduct a public hearing on the proposed amendments to the Hawaii Administrative Rules, by increasing the maximum carrying capacity to not more than 75.

Mr. Michael Lau, Deputy AG, gave some general information about the lawsuits filed by Captain Andy's Inc. He explained that the Judge urged the parties to try and settle this particular claim and this is the result of the settlement. This particular action addresses 1 of 5 claims, the other 4 remaining claims are still outstanding. He also informed the Board that it doesn't appear that the packet of rules would meet the June 1, 2001 deadline.

Member McCrorry was concerned about the rules not meeting the deadline, and the possibility of the carrying capacity increasing to perhaps 100 passengers when the rules do come in front of the Board. Mr. Schoocraft did not anticipate any increase, and indicated that they will try and get the rules to the Board as soon as possible.

Mr. Andy Evans, Captain Andy's Inc., supported the petition to take it to rulemaking,

**Unanimously approved as submitted (McCrary/Holschuh).**

**ITEM D-9: AMEND PRIOR BOARD ACTION OF MARCH 9, 2001 (AGENDA ITEM D-5), DIRECT ISSUANCE OF LEASE TO CATES INTERNATIONAL, INC., FOR MARICULTURE PURPOSES, EWA, OAHU, TMK: (1) 9-1-5: SEAWARD**

Mr. Dean Uchida, Administrator of the Land Division, briefed the Board and recommended that the Board amend its prior action of March 9, 2001 by extending the right-of-entry for an additional 6 months. He also amended the staff submittal by adding a condition to read: "3. Delete rental reopening at the end of the 10<sup>th</sup> and 20<sup>th</sup> years of the lease term."

Mr. Johns R. Cates, Cates International, Inc., was present to answer questions.

**Unanimously approved as amended (Inouye/Kennison).**

**ITEM J-1: ISSUANCE OF REVOCABLE PERMIT TO CATES INTERNATIONAL, INC., AT KEEHI SMALL BOAT HARBOR, ISLAND OF OAHU**

Mr. John Hino, Property Manager for DOBOR, briefed the Board and recommended that the Board approve the revocable permit, subject to 2 conditions.

**Unanimously approved as submitted (Inouye/Kennison).**

**ITEM D-11: ISSUANCE OF REVOCABLE PERMIT TO KAPAPALA RANCH, A HAWAII LIMITED PARTNERSHIP, KAPAPALA, KAU, HAWAII, TMK: 3<sup>RD</sup>/9-8-01: PORTION OF 03**

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Kapapala Ranch, subject to conditions.

Mr. J. Gordan Cran, Kapapala Ranch, was present to answer questions.

**Unanimously approved as submitted (Holschuh/Kennison).**

**ITEM D-7: REQUEST FOR AUTHORIZATION TO ACQUIRE PRIVATE LAND AND SET ASIDE TO THE JUDICIARY FOR THE HILO JUDICIARY COMPLEX, SITUATE AT WAIAKEA, SOUTH HILO, HAWAII – TMK: (3) 2-2-15: 76**

Mr. Uchida briefed the Board and recommended that the Board approve of and authorize the fee simple acquisition of the subject land, and upon acquisition of the property, approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to The Judiciary, State of Hawaii, for the Hilo Judiciary Complex, subject to standard conditions.

Mr. Bill Dornbush, on behalf of The Harry & Jeanette Weinberg Foundation, Inc., testified in support of staff's recommendation.

**Unanimously approved as submitted (Holschuh/Inouye).**

**ITEM D-5: GRANT OF AN AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO HAWAIIAN ELECTRIC COMPANY, INC. FOR UTILITY PURPOSES, MAKAKILO, HONOULIULI, EWA, TMK: 9-2-19: 22**

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a perpetual non-exclusive easement, and authorize a construction right-of-entry, to Hawaiian Electric Company, Inc., subject to standard conditions.

Mr. Phil Hauret, Hawaiian Electric Company, Inc., was present to answer questions.

**Unanimously approved as submitted (Inouye/Holschuh).**

**ITEM D-10: FORFEITURE OF REVOCABLE PERMIT NO. S-6274, MR. CHARLES A. VIERRA, PERMITTEE, KAHANA VALLEY STATE PARK, KOOLAULOA, OAHU, TMK: 5-2-02: PORTION OF 01**

Mr. Uchida briefed the Board and recommended that the Board cancel Revocable Permit No. S-6274, subject to standard conditions.

Mrs. Malama Vierra, and daughter Ms. Vicky Vierra, both testified that they have complied. The Friends of Kahana are willing to loan them the amount for the delinquent rent, and the liability insurance has been purchased from Hawaii Insurance Consultants.

Member Inouye asked that this matter be deferred to allow staff time to research and include more background information on the status of this particular permittee.

**Deferred (Inouye/McCrory)**

**ITEM I-2: REQUEST BOARD APPROVAL OF PROCEDURES FOR THE USE OF HELICOPTERS DURING MARIJUANA ERADICATION MISSIONS ON THE**

**ISLAND OF HAWAII THAT ADDRESS THE CONCERNS OF THOSE LIVING  
IN THE AREAS OVER WHICH THE HELICOPTER FLY**

Mr. Moniz briefed the Board and recommended that the Board adopt the 5 procedures for the use of helicopters during marijuana missions on the Island of Hawaii.

Member Holschuh made a motion to accept the policy, with an amendment that the conditions described in the 5-page letter to Senator Levin dated February 11, 1999, be incorporated.

**Unanimously approved as amended (Holschuh/Inouye).**

**ITEM I-3: REQUEST BOARD APPROVAL TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT, AND THE U.S. DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION**

Mr. Moniz briefed the Board and recommended that the Board approve the agreement, and that the Chairperson be authorized to sign the agreement provided that the Attorney General's Office first approve the content of the agreement or make substantive changes to the agreement in order to meet all State requirements.

**Unanimously approved as submitted (Holschuh/Kennison).**

**ITEM D-6: BOARD SELECTION AND APPOINTMENT OF A HEARING OFFICER TO CONDUCT ALL HEARINGS FOR VARIOUS PETITIONS FOR A CONTESTED CASE HEARING (DOCKET NO. 01-03-HA)**

Mr. Uchida explained that a list had been compiled in response to the Board's request for names of potential candidates, from which the Board can select a hearing officer. The candidates, who have indicated they do not have a conflict, and are interested in acting as a hearing officer, are as follows: Mr. William S. Chillingworth, Retired Circuit Court Judge from Kamuela; Mr. Thomas L.H. Yeh, Attorney from Hilo; Mr. John McConnell, Retired Circuit Court Judge from Maui; and Mr. Robert Klein, Retired Supreme Court Judge from Honolulu.

The Board decided, as the hearing officer for the Keahole Contested Case Hearing, on the Retired Circuit Court Judge Chillingworth as the first selection, and Attorney Yeh as the second selection.

**Unanimously approved as submitted (Holschuh/Kennison).**

**ITEM D-13: BRIEFING BY LEGAL COUNSEL REGARDING A REQUEST MADE BY MR. GEORGE PEABODY FOR A CONTESTED CASE HEARING IN**

**CONNECTION WITH A FINE TO BE LEVIED FOR VIOLATION OF  
CONSERVATION DISTRICT LAW**

**THE BOARD MAY GO INTO EXECUTIVE SESSION, PURSUANT TO  
SECTION 92-5(a)(4), HAWAII REVISED STATUTES, IN ORDER TO  
CONSULT WITH ITS ATTORNEY**

**Motion made at 11:45 a.m. to move into executive session to consult with legal counsel  
(McCrorry/Inouye). The meeting was reconvened at 12:00 p.m.**

**ITEM D-1: RESUBMITTAL – SET ASIDE TO THE DEPARTMENT OF  
TRANSPORTATION, AIRPORTS DIVISION FOR AIRPORT PURPOSES,  
KAHANA AND MAHINAHINA 1, 2 AND 3, LAHAINA, MAUI, TMK: 4-3-01:  
68 AND POR. 31**

Mr. Uchida briefed the Board and recommended that the Board approve of and recommend to the Governor the issuance of an executive order setting aside the subject land, and authorize the issuance of a management right-of-entry, to the Department of Transportation, subject to conditions.

**Unanimously approved as submitted (Kennison/Holschuh).**

**ITEM D-2: RESCIND PRIOR BOARD ACTION OF FORFEITURE OF GENERAL  
LEASE NO. S-4884, MS. LOUISE MAU AI AND MS. VELMA KEAHO  
QUEN TAI KUKUALANI FOSTER, LESSEES, MAUNALAHA  
HOMESITES, OPU, HONOLULU, OAHU, TMK: 2-5-24: 17**

Mr. Uchida briefed the Board and recommended that the Board rescind its action of January 12, 2001, subject to conditions.

**Unanimously approved as submitted (Inouye/Holschuh).**

**ITEM D-3: APPOINTMENT AND SELECTION OF A HEARING OFFICER TO CONDUCT  
ALL HEARINGS FOR VARIOUS PETITIONS FOR A CONTESTED CASE  
HEARING (DOCKET NO. 01-02-HA)**

Mr. Uchida briefed the Board and recommended that the Board authorize the appointment of a hearing officer to conduct all the hearings relevant to the subject petition for a contested case hearing, subject to conditions.

Member Matsumoto was concerned that the title listed on the subject matter heading, and notice on the agenda, were not specific in describing the action.

The Board made an amendment to staff recommendation by adding the following condition:

- 3) Subject to review and approval by the Department of the Attorney General of the subject matter heading and notice on the agenda.

**Unanimously approved as amended (Holschuh/Inouye).**

**ITEM D-4: RETROACTIVE TERMINATION OF REVOCABLE PERMIT NO. S-4792, MAUI SENIOR OPPORTUNITY CENTER, INC., PERMITTEE, WAILUKU, ISLAND OF MAUI, TMK: 3-8-001: 008 (PORTION)**

Mr. Uchida briefed the Board and recommended that the Board authorize the termination of Revocable Permit No. S-4792, retroactive to October 16, 1974.

**Unanimously approved as submitted (Kennison/Holschuh).**

**ITEM D-8: REQUEST TO ENTER INTO A PERMIT WITH DAICHI REALTY ON BEHALF OF THE HAWAII TOURISM AUTHORITY AT WAIKIKI, OAHU, TMK: (1) 2-3-22: 25**

Mr. Uchida briefed the Board and recommended that the Board approve the request to enter into a permit, subject to conditions.

**Unanimously approved as submitted (Inouye/Holschuh).**

**ITEM D-12: CONSENT TO ASSIGN GENERAL LEASE NO. S-3158, PENNIMAN TITLE COMPANY, INC., ASSIGNOR, TO MR. RICHARD E. ALDERSON, TRUSTEE OF THE RICHARD E. ALDERSON 1987 INTERVIVOS TRUST, ASSIGNEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-1-07: 24**

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of General Lease No. S-3158, subject to standard conditions.

**Unanimously approved as submitted (Holschuh/Matsumoto).**

**ITEM B-1: REQUEST FOR APPROVAL TO AMEND TWO AGREEMENTS WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH)**

Mr. Bill Devick, Administrator of the Division of Aquatic Resources, briefed the Board and recommended that the Board authorize the Chairperson to negotiate and, subject to necessary approvals, amend/extend two Agreements with RCUH.

**Unanimously approved as submitted (Inouye/McCrory).**

**ITEM B-2: REQUEST FOR APPROVAL TO AMEND TWO AGREEMENTS WITH THE UNIVERSITY OF HAWAII (UH)**

Mr. Devick briefed the Board and recommended that the Board authorize the Chairperson to negotiate and, subject to necessary approvals, amend/extend two Agreements with the University of Hawaii.

Dr. Chris Kelly, University of Hawaii, was present to answer questions.

**Unanimously approved as submitted (McCrory/Kennison).**

**ITEM B-3: REQUEST FOR APPROVAL TO AMEND/EXTEND AN AGREEMENT WITH THE BERNICE P. BISHOP MUSEUM**

Mr. Devick briefed the Board and recommended that the Board authorize the Chairperson to negotiate and, subject to necessary approvals, amend/extend the subject Agreement with the Bernice P. Bishop Museum.

**Unanimously approved as submitted (Kennison/McCrory).**

**ITEM B-4: REQUEST FOR APPROVAL TO HOLD STATEWIDE PUBLIC HEARINGS TO AMEND HAWAII ADMINISTRATIVE RULES (HAR) CHAPTER 13-49, HANAMAULU BAY AND AHUKINI RECREATIONAL PIER, KAUAI; CHAPTER 13-75, RULES REGULATING THE POSSESSION AND USE OF CERTAIN FISHING GEAR; AND CHAPTER 13-95, RULES REGULATING THE TAKING AND SELLING OF CERTAIN MARINE RESOURCES; AND TO ADOPT HAR CHAPTER 13-49.5, PORT ALLEN, KAUAI; AND CHAPTER 13-49.6, NAWILIWILI HARBOR, KAUAI**

Mr. Devick briefed the Board and recommended that the Board approve the holding of Statewide public hearings for the amendment of Chapters 13-49, 13-75, and 13-95; and the adoption of Chapters 13-49.5, and 13-49.6.

**Unanimously approved as submitted (McCrory/Kennison).**

**ITEM B-5: REQUEST FOR APPROVAL TO HOLD A SECOND PUBLIC HEARING TO AMEND HAWAII ADMINISTRATIVE RULES, CHAPTER 13-30, MANELE-HULOPOE MARINE LIFE CONSERVATION DISTRICT, LANAI AND CHAPTER 13-53, MANELE HARBOR FISHERIES MANAGEMENT AREA, LANAI**



Mr. Devick briefed the Board and recommended that the Board approve the holding of a second public hearing for the amendments to Chapter 13-30, and 13-53.

Member Matsumoto, regarding the amendment to allow some throw netting to continue as a compromise measure which was originally prohibited in the rules, requested that this item be withdrawn and the rules returned back to its original proposal because of the akule/halalu situation with the pole and throw net fishers in the area.

**Withdrawn (Kennison/Matsumoto).**

**ITEM K-1: AUTHORIZATION FOR SALE, IN FEE SIMPLE, AT PUBLIC AUCTION OF THE MARKS ESTATE BUILDING AND PROPERTY SITUATE AT HONOLULU, OAHU, TMK: (1) 1-9-5: 4 AND 1-9-8: 39**

Mr. David Shimokawa, representing the Department of Transportation, amended the staff submittal. Page 2, Upset Price, should read: "December, 2000 appraisal by DLNR staff for minimum upset price set at one million, eight-hundred thousand dollars (\$1,800,000.00)." Page 3, second paragraph, second sentence, should read: "Despite its R-10 zoning, neither subdivision of the property nor demolition of improvements are permitted." Page 4, staff recommendation 2.f., last sentence, should read: "... the federal, state, municipal, and county governments." Department of Transportation recommends that the Board approve the item as amended.

There was some discussion about written testimony received from the Office of Hawaiian Affairs that mentioned a current moratorium on the sale of ceded lands. The Board, and the Attorney General, were not informed, or aware of any moratorium.

**Unanimously approved as amended (Inouye/Kennison).**

**ITEM K-2: AUTHORIZE FOR SALE IN FEE SIMPLE, PORTION OF OLD KAMEHAMEHA ROAD, PORTION OF EXCLUSION 18 OF L.C. AWARD 8241 TO THE ABUTTING PROPERTY OWNER, PROPERTY SITUATE AT WAIPAHAU, HAWAII, TMK: (1) 9-4-06-ROAD**

Mr. Shimokawa briefed the Board and recommended that the Board authorize the Department of Transportation to dispose of the portion of Old Kamehameha road, and sell the parcel at a fair market value for the reimbursement of the Federal Aid Project, subject to conditions.

**Unanimously approved as submitted (Inouye/Holschuh).**

**ITEM K-3: ISSUANCE OF A SUPPLEMENTAL LEASE AGREEMENT NO. 9 FOR THE EXTENSION OF LEASE NO. DOT-A-89-6 (GSA LEASE NO. GS-09B-89432), HONOLULU INTERNATIONAL AIRPORT**

Mr. Shimokawa briefed the Board and recommended that the Board approve the Supplemental Agreement No. 9 to Lease No. DOT-A-89-6, subject to conditions.

**Unanimously approved as submitted (Inouye/Matsumoto).**

**ITEM K-4: ISSUANCE OF REVOCABLE PERMIT TO KERR PACIFIC CORPORATION, DBA HFM FOODSERVICE, IWILEI, HONOLULU HARBOR, HAWAII, TMK: 1<sup>ST</sup>/1-5-39: 26 (PORTION) AND TMK: 1<sup>ST</sup>/1-5-39: 25 (PORTION)**

Mr. Shimokawa briefed the Board and recommended that the Board authorize the Director of Transportation to issue the applicant a revocable permit, subject to conditions.

**Unanimously approved as submitted (Inouye/Holschuh).**

**ITEM K-5: REPORT OF REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES (APRIL 2001)**

No action.

#### **OTHER MATTERS**

**BRIEFING BY THE DEPUTY DIRECTOR REGARDING THE AUDIT OF THE MANAGEMENT OF STATE BOATING FACILITIES BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.**

**THE BOARD MAY GO INTO EXECUTIVE SESSION, PURSUANT TO SECTION 92-5(a)(4), HAWAII REVISED STATUTES, IN ORDER TO CONSULT WITH ITS ATTORNEY**

Ms. Janet Kawelo, Deputy Director of the Department of Land and Natural Resources, briefed the Board on the audit report, and department's comments. DOBOR staff, were present to answer questions.

The Board raised many concerns regarding statements made in the audit report, one of which read: "during the course of the audit several attempts were made to interview land board members with no response." The Board members that have served during the time of the audit work attested that this is a false statement, and that there is no record of such contacts. The Board asked that communication be made to the auditor on behalf of the Land Board about the concerns raised.

**Motion made at 2:05 p.m. to move into executive session to consult with Legal Counsel (McCrorry/Inouye). The meeting was reconvened at 2:45 p.m.**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 2:45 p.m.

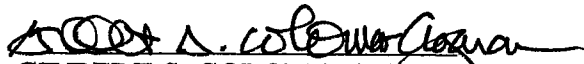
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Kimberly C. Kelihoomalu

Approved for submittal:



GILBERT S. COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources

