

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

DATE: FRIDAY, SEPTEMBER 28, 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 9:07 a.m. The following were in attendance:

**MEMBERS:**

Mr. Gilbert Coloma-Agaran	Mr. Timothy Johns
Ms. Lynn McCrory	Ms. Kathryn Inouye
Dr. Fred Holschuh	Mr. Ted Yamamura

**STAFF:**

Mr. Harry Yada, Land Division	Mr. Michael Buck, Division of Forestry and Wildlife
Mr. Sam Lemmo, Land Division	Mr. Barry Cheung, Land Division
Mr. Bill Devick, Division of Aquatic Resources	Ms. Athline Clark, Division of Aquatic Resources
Dr. Kimberly Lowe, Division of Aquatic Resources	Dr. Don Hibbard, Historic Preservation Division
Dr. Ross Cordy, Historic Preservation Division	Ms. Dede Mamiya, Land Division

**OTHERS:**

Mr. Ray Enos, Department of the Attorney General	Mr. Peter Garcia, Department of Transportation
Mr. Ivan Nakano, D-3	Ms. Lori Tuengel, D-15
Senator David Matsuura, C-1	Mr. Roger Cable, D-13
Mrs. Barbara Guild, D-7	Mr. Don Guild, D-7
Mr. Ben Matsubara, D-10	Mr. Miguel Ramirez, D-21
Mrs. Val Ramirez, D-21	Mr. David Cheever, D-5
Mr. Kevin Mendes, D-5	Mr. Ivan Nishiki, D-20
Mr. Bob Cunningham, D-16 & D-17	Dr. Alison Kay, D-9
Mr. Barry Fukunaga, D-18	Mr. David Blane, D-18
Mr. Lionel Aono, D-18	Mr. Daniel Iwata, D-18
Mr. Robert Smith, F-1	Mr. Louis Agard, F-1
Mr. David Raney, F-1	Mr. Isaac Harp, F-1
Ms. Stephanie Fried, F-1	Dr. Stephen Athens, I-1
Dr. Robert Hommon, I-1	

Before starting on the meeting agenda the Board recognized the 2001 DLNR Employees and Manager of the Year. Mr. Arthur Buto, State Land Information Systems Manager for the Land Division, was presented with a Sustained Superior Performance Award for outstanding performance in transforming the Division into a technological system that streamlined operations, improved internal controls, improved electronic communication and increased access to information. Ms. Lenore Nakama, Hydrologist V for the Commission on Water Resources Management, was also presented with a Sustained Superior Performance Award for outstanding performance in fulfilling her regulatory responsibilities within the Branch and taking on additional duties in support of other program areas. Ms. Athline Clark, Planner V for the Division of Aquatic Resources, was presented with a Sustained Superior Performance Award *and* the DLNR Department Employee of the Year Award for her outstanding performance in the protection and use of Hawaii's invaluable marine resources. Mr. Gary Moniz, Enforcement Chief for the Division of Conservation and Resources Enforcement, was presented with the DLNR Manager of the Year Award for his outstanding performance in his efforts to develop and implement a Policy Manual for the Conservation and Resource Enforcement Officers and for his efforts to revise penalty provisions by removing ambiguous language thereby ensuring the DLNR's statutes and rules can be legally enforced.

**ITEM A-1: APPROVAL OF THE DECEMBER 15, 2000 MINUTES**

Chairperson Coloma-Agaran and Member Holschuh were not present at this meeting, but were able to review the tapes of the meeting to confirm the accuracy of the minutes.

Member McCrory and Member Yamamura were recused, as they were not in attendance.

Member Holschuh made the following amendments:

Page 3, Item D-1, line 3, to read: "...ACRES OF VACANT STATE-OWNED LAND ..."

Page 6, Item B-1, line 1, to read: "REQUEST FOR APPROVAL TO ENTER INTO TWO AGREEMENTS WITH..."

Page 7, paragraph 6, last sentence, to read: "...viable plan can be put together."

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

**ITEM A-2: APPROVAL OF THE JULY 27, 2001 MINUTES**

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

**ITEM A-3: APPROVAL OF THE AUGUST 10, 2001 MINUTES**

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

**ITEM D-3: ISSUANCE OF REVOCABLE PERMIT TO BIG ISLAND TOYOTA, INC.,  
WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-2-58: 17**

Mr. Harry Yada, Acting Administrator for the Land Division, briefed the Board and recommended that the Board approve the issuance of a revocable permit to Big Island Toyota, Inc., subject to terms and conditions.

Mr. Ivan Nakano, Big Island Toyota, Inc., was present to answer questions.

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

**ITEM D-15: GRANT OF TERM, NON-EXCLUSIVE EASEMENT TO ASSOCIATION OF  
APARTMENT OWNERS OF KANAI A NALU FOR SEAWALL PURPOSES,  
MAALAEA, WAILUKU, MAUI, TMK: (2) 3-8-014: SEAWARD OF 004**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Kanai A Nalu for seawall purposes, subject to terms and conditions, including the imposition of the standard \$500.00 fine.

Ms. Lori Tuengel, Island Property Management, representing the Applicant, was present to answer questions.

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

**ITEM C-1: REQUEST FOR APPROVAL OF SAFE HARBOR AGREEMENT AND  
INCIDENTAL TAKE PERMIT FOR KOLOA (HAWAIIAN DUCK) AND NENE  
(HAWAIIAN GOOSE) ON UMIKOA RANCH, ISLAND OF HAWAII**

Mr. Michael Buck, Administrator of the Division of Forestry and Wildlife, briefed the Board and recommended that the Board approve the Safe Harbor Agreement to create and maintain habitat for Koloa, and Nene, on Umikoa Ranch, by the required two-thirds vote of the authorized membership, subject to approval as to form by the Department of the Attorney General, and on the condition that the Chairperson be authorized to approve non-substantive changes in the Agreement.

Senator David Matsuura, representing Umikoa Ranch, was present to answer questions.

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

**ITEM D-13: ISSUANCE OF REVOCABLE PERMIT TO SENTER PETROLEUM INC., C/O  
MR. ROGER CABLE, KAUAI, AUTOMATED FUELS NETWORK, POR.  
KEKAHA, WAIMEA, KAUAI, HAWAII, TMK: 1-2-2: POR. 1**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Senter Petroleum Inc., in accordance with terms and conditions.

Mr. Roger Cable, Sales Manager for Senter Petroleum, Inc., submitted written testimony, requesting the Board's reconsideration of the monthly rent to \$500.00 per month, as opposed to \$1,500.00 per month.

Mr. Yada indicated that the Applicant's previous lease with Amfac Land Company was for \$1,500.00 per month plus a gallonage fee and a percentage rent.

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

**ITEM D-7: ALLEGED UNAUTHORIZED SAND NOURISHMENT ON CONSERVATION AND UNENCUMBERED LANDS ADJACENT TO SUGAR COVE CONDOMINIUM COMPLEX, SPRECKELSVILLE BEACH LOTS, WAILUKU, MAUI**

Mr. Sam Lemmo, Staff Planner for the Land Division, explained that the condominium representative authorized the placement of or caused sand to be deposited on the beach at Spreckelsville Maui without authorization of the Department or Board. He mentioned concerns about the type of material being put on the beach and the need to monitor this to maintain environmental quality and to protect the resources. Staff's recommendation is that the Board find that the condominium violated provisions by failing to obtain the appropriate approvals for the subject work, impose a fine of \$2,000.00, that the fine be paid within 30-days, and that within 60-days the condominium shall submit an after-the-fact application for sand nourishment to the Land Division.

Member Yamamura advised fellow Board Members that he met with staff from the Maui District Land Office, and the chief concern was that the quality of the sand was poor which clouded the beach area in front of the condominium.

Mr. Lemmo indicated that the Department of Land and Natural Resources, through its Coastal Lands Program, is in the process of establishing a State Program General Permit with the Army Corps of Engineers and the Department of Health. He explained some of the problems in getting the program in place, and indicated that at some point and time he will report back to the Board on this matter.

Mrs. Barbara Guild, representing Sugar Cove Association of Apartment Owners, was aware of the permits needed and apologized for not obtaining the proper ones. She explained the difficult process in getting the proper permits, and believed that the beach nourishment permit process should be simplified. She supported the State Program General Permit and felt it was a step in the right direction.

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

Discussion: Member Inouye asked that staff report to the Board on any discussions held with the Department of Health to expedite permits through the State Program General Permit, and report on the amount of time taken for Mrs. Guild to obtain all the proper permits, her case to be used as an example.

**ITEM D-10: REQUEST FOR EXTENSION OF A NOTICE OF DEFAULT FOR GENERAL LEASE NO. S-3782, MR. PUONGPUN SANANIKONE & MRS. THANH-LO SANANIKONE, LESSEES, WAIMANALO, KOOLAUPOKO, OAHU, TMK: (1) 4-1-026: 017**

Mr. Yada briefed the Board and recommended that the Board grant the requested 1-year extension, up to August 25, 2002, to the cure period of the Notice of Default dated June 19, 2001 against Mr. and Mrs. Sananikone, subject to terms and conditions.

Mr. Ben Matsubara, representing the Applicant, testified in favor of staff's recommendation.

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

**ITEM D-21: FORFEITURE OF GENERAL LEASE NO. S-4297, MR. MIGUEL A. AND MRS. VALERIE S. RAMIREZ, LESSEES, WAIMANALO, KOOLAUPOKO, OAHU, TMK: (1) 4-1-010: 004**

Mr. Yada explained that at the time of the Board submittal, the Lessees had a rental delinquency of \$18,300.00 for the period of March 12, 1999 to March 11, 2002; a delinquency of \$4,537.30 resulting from an immediate rental reopening on a lease extension for the period of April 4, 1997 to December 22, 2001; and failure to post the required performance bond. The Lessees have since made a payment of \$2,000.00 toward the delinquency, and provided a current and appropriate performance bond. Staff had recently discovered that the Lessees have never been billed for the new annual rent, and that there have been a number of circumstances leading to the cancellation of the performance bond. He indicated that under the current policy staff can only recommend forfeiture of the lease, however, the Board has the option of issuing a Special Installment Agreement (SIA), as requested by the Lessees. Staff's recommendation is that the Board authorize the cancellation of General Lease No. S-4297, in accordance with terms and conditions.

Mr. Miguel Ramirez, Lessee, explained that they are starting to get themselves back on their feet after going through some financial hardships. He indicated that when they met with staff, they proposed 6-months to rectify the delinquent rent situation.

Mrs. Valerie Ramirez, Lessee, indicated that they should have some additional funds by the next lease rental period, that they would keep the new rental payments current, and that they would also make more payments towards the rental delinquencies. She asked that they be given time to payback the old debt.

There was some discussion about the performance bond, cancelled on July 1, 2001, and recently reinstated by the bond company. Member McCrory wanted the performance bond to be in cash instead of through a bond company. Her concern was that a performance bond is suppose to cover the delinquent rent, and the previous performance bond that was cancelled did not protect the State. Mr. Ramirez explained that the bond was cancelled because of a misunderstanding with the bond company. Mrs.

Ramirez offered to get a letter from the bond company explaining why it was cancelled. Member Inouye asked for staff's analysis on why the bond company cancelled the performance bond. Mr. Barry Cheung, Project Development Specialist for the Land Division, indicated that the bond company was provided with a copy of the Notice of Default, the bond company cancelled the performance bond, even though staff wrote to the bond company and said that they are not filing a claim at that moment. Mrs. Ramirez indicated that they have a letter from the bond company rescinding that, and they have a new bond enforced, increasing the amount to the new rental price. Member Inouye instructed staff, that when a Notice of Default is sent to a bond company, it should be for an immediate claim, and that the bond should not be released until the State is made whole.

Member McCrory preferred that the terminology SIA not be used. She recalled a point made years ago that the State was not a bank, and in setting up an SIA, it would start setting a precedent that moves the State back into that position.

Member Inouye made a motion to amend the staff submittal by allowing the lessee up until March 31, 2002 to pay the current delinquency amount. The Lessee shall also keep all rent that becomes due after the Board's action current. Should the Lessee fail to comply with either condition, the lease shall be forfeited in accordance with the submittal.

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

**ITEM D-5: GRANTOR PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO TYCOM NETWORKS (US) INC. FOR FIBER OPTICS TELECOMMUNICATION SYSTEM PURPOSES, LUALUALEI, WAIANAE, OAHU, TMK: 8-6-1: POR. 7; 8-7-1; SEAWARD OF 9-2-3: 15 AND 8-6-1: 7**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a perpetual non-exclusive easement to Tycom Networks (US) Inc., in accordance with terms and conditions.

Mr. David Cheever and Mr. Keven Mendes, representing the Applicant, were present to answer questions.

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

**ITEM D-20: AFTER-THE-FACT CONSENT TO LEASE OF LANDS UNDER GOVERNOR'S EXECUTIVE ORDER NO. 3736 TO THE HAWAII STATE FEDERAL CREDIT UNION, KAPOLEI, EWA, OAHU, TMK: (1) 9-1-088: POR. 005**

Mr. Yada briefed the Board and recommended that the Board consent to the lease between the Department of Accounting and General Services and the Hawaii State Federal Credit Union, in accordance with terms and conditions.

Mr. Ivan Nishiki, Department of Accounting and General Services, Public Works Division, was present to answer questions.

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

**ITEM D-16: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO THE CITY AND COUNTY OF HONOLULU FOR SEWER LINE PURPOSES, NUUANU, OAHU, TMK: (1) 1-9-7: PORTION 2**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a perpetual non-exclusive easement to the City and County of Honolulu, in accordance with terms and conditions.

Mr. Bob Cunningham, Belt Collins Hawaii, was present to answer questions.

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

**ITEM D-17: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO R.R. MIDKIFF LUAKAHA FAMILY LIMITED PARTNERSHIP AND MS. ELIZABETH MIDKIFF MYERS, TRUSTEE UNDER THAT CERTAIN UNRECORDED REVOCABLE TRUST OF MS. ELIZABETH MIDKIFF MYERS DATED APRIL 24, 1989, AS AMENDED, FOR WATERLINE, RESERVOIR AND FIRE PUMP STATION PURPOSES, NUUANU, OAHU, TMK: (1) 1-9-7: PORTION 2**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a perpetual non-exclusive easement, subject to terms and conditions.

Mr. Cunningham was present to answer questions.

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

**ITEM D-9: ISSUANCE OF A DIRECT LEASE TO THE UNIVERSITY OF HAWAII, KAPAHULU, HONOLULU, OAHU, TMK: 3-1-42: 11**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a direct lease to the University of Hawaii for educational purposes, in accordance with terms and conditions.

Dr. Alison Kay, Chairperson of the Diamond Head Citizens Advisory Committee, testified in support of the property being leased to the University of Hawaii for the particular purposes. She reminded the Board that not only is Diamond Head a State Monument, but also a National Natural Monument, and there are very specific requirements within those 2 contexts as to the use of any land that involves Diamond Head. She asked that when the lease is written up, that there be consultation with the DLNR staff familiar with these requirements, and that it come within the bounds of both types of monuments.

Member Inouye made a motion to approve staff's recommendation as follows:

1. c. "Prior to developing the site, the University of Hawaii shall first consult with the State Parks Division and the Diamond Head Advisory Group on a development plan compatible with the site's eventual set aside as part of the Diamond Head State Monument. Development plans for the property shall be subject to the approval of the Chairperson."
1. e. "That within 5 years [a reasonable period of time] the University reimburses the Department's..."

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

**ITEM D-18: CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 1920 ISSUED TO THE CITY AND COUNTY OF HONOLULU FOR ALA WAI GOLF COURSE AND RESET ASIDE TO CITY AND COUNTY OF HONOLULU FOR GOLF COURSE AND PARK PURPOSES, HONOLULU, OAHU, TMK: (1) 2-7-36: 2**

Mr. Yada briefed the Board and recommended that the Board approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 1920, and subject to the City and County of Honolulu retaining ownership of all improvements on the premises, approve of and recommend to the Governor issuance of an executive order setting aside the subject lands to the City and County of Honolulu for golf course and park purposes, subject to terms and conditions.

Mr. Barry Fukunaga, Director of the Department of Enterprise Services, City and County of Honolulu, was present to answer questions.

Mr. David Blane, Director of the Office of Planning, Department of Business, Economic Development and Tourism, testified in support of staff's recommendation. He indicated that this has nothing to do with the potential closure of the golf course, the golf course will continue as is for a long period of time.

Mr. Lionel Aono, Chairperson of the Board of Public Golf Courses, submitted written testimony representing the interests of 97,000 golfers on Oahu, whose main concern was making sure the new executive order did not result in a new threat to the Ala Wai Golf Course.

Mr. Daniel Iwata, on behalf of Representative Scott Saiki, submitted written testimony raising concerns from constituents and polling results regarding the encroachment of commercial activities in residential areas, and opposition to the Governor's proposal to convert the Ala Wai Golf Course to a park, which will likely result in added congestion and security problems.

The Board clarified that there is no specific alternative plan being proposed for the Ala Wai Golf Course; the action before the Board is to legitimize what is already there. The Board instructed staff to send a copy of the staff submittal to Representative Saiki, and all legislators that represent districts in the area.

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



The Board recessed at 11:20 a.m. The meeting was reconvened at 11:35 a.m.

**ITEM F-1: REQUEST FOR RE-APPROVAL TO HOLD PUBLIC HEARINGS TO ESTABLISH HAWAII ADMINISTRATIVE RULES, CHAPTER 13-60.5, NORTHWESTERN HAWAIIAN ISLANDS (NWHI) FISHERIES MANAGEMENT AREA (FMA)**

Ms. Athline Clark, Planner V for the Division of Aquatic Resources, explained that subsequent to the rules being approved by the Board to go to Public Hearing, a Coral Reef Task Force further discussed and recommended regulatory measures for the NWHI Coral Reef Ecosystem Reserve created by President Clinton's Executive Order. Some of these measures have required that the language in the current draft be revised. The first change was the removal of Section 13-60.5-2(b), that read: "Any Federal law, including but not limited to, limited entries, closed areas, and quotas, that apply in Federal jurisdictions adjacent to the area which are more restrictive than state laws, shall also apply in the area, except as may be otherwise provided by law." The second change was adding a new section that read: "13-60.5-3(c) Even with a valid permit, the department may prohibit fishing or entry into French Frigate Shoals or into any other location or locations within the area as it may deem appropriate to conserve or manage the resources." Staff's recommendation is that the Board approve the holding of public hearings for the establishment of Chapter 13-60.5, NWHI FMA.

Mr. Robert Smith, Reserve Coordinator for the NWHI Coral Reef Ecosystem Reserve, submitted written testimony on behalf of the National Ocean Service, in support of the Board approval to begin the public process to address the interests of the State in sovereign waters of the NWHI.

Mr. Louis Agard, Fisherman, Resident and Employee of French Frigate Shoals from 1946 – 1956, and Member of the NWHI Coral Reef Ecosystem Reserve, gave some background of the area. He requested that language be retained, stating that it is the policy of the State of Hawaii to provide protection to the resources of the NWHI commensurate for the protection afforded by the Federal Government in adjacent waters, and that the rules go out to public hearing for community input.

Mr. Dave Raney, Chairperson of the Sierra Club's National Coral Reef Working Group, Pacific Non-Government Organizational Representative to the United States Coral Reef Task Force, and Secretary of the NWHI Coral Reef Ecosystem Reserve, provided written and oral testimony as a concerned citizen of Hawaii. He questioned whether designation of an FMA in the NWHI is the appropriate management option to use, and mentioned the possibility of a two-pronged approach, wherein the FMA may be replaced by a more appropriate alternative in the future, perhaps a Marine Natural Area Reserves. He made some suggestions: A) Retain language stating that it is the policy of the State of Hawaii to provide protection to the resources of the NWHI commensurate with the protection afforded by the Federal Government in adjacent waters; B) Retain the proposed new Section 13-60.5-3(c); C) Provide a means for public notification and comment on any permit application submitted under the NWHI FMA, with a minimum of 60-days allowed for public comment; and D) Include permit language making it clear that the permits are of limited duration and do not constitute vested rights of access to the NWHI resources.

Mr. Isaac Harp, Oceans Program Director for KAHEA The Hawaiian-Environmental Alliance, Fishing Representative of the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, and Vice-Chairperson of the NWHI Coral Reef Ecosystem Advisory Council, provided written and oral testimony. His concern was the proposed deletion of Section 13-60.5-2(b), in particular language that states, "... except as otherwise provided by law." He believed it unnecessary to delete this language that should be used as a guide. The area is under State jurisdiction, and the State creates law for this area and could allow access to fishing "as proposed by law". He shared with the Board a proposal to place the State waters in the NWHI under the jurisdiction of the Natural Area Reserves System program. He indicated that a letter of interest was submitted to the Natural Area Reserves System Program Director, that no discussions have taken place on this matter, and that they are not looking at moving forward with this right now, but perhaps as an alternative that could be folded in after the FMA plan is installed.

Mr. Harp submitted written testimony on behalf of Mrs. Tammy Harp, requesting that the original language in Section 13-60.5-2(b) be retained

Ms. Stephanie Fried, Scientist for the Environmental Defense, formerly Environmental Defense Fund, supported the two-pronged approach as recommended by Mr. Raney, and supported the new Section 13-60.5-3(c). She requested, that if the FMA will be instituted, that a means for public notification and comment be provided on any application submitted under the FMA within a minimum 60-day period, that language be included that the permits are of limited duration and do not constitute vested rights of access to these resources, and that language be included that this is a first step at protection, that may be replaced with a broader more systematic approach.

There some discussion about public notification and the 60-day comment period. Member Johns inquired as to how the public notification would be administered or implemented. Mr. Bill Devick, Administrator of the Division of Aquatic Resources, mentioned the possibility of posting the information, to include public comments, on their website. Member Inouye felt that a 60-day public comment period would be too long, and suggested 30-days instead. Ms. Clark suggested clarification on the activity involved for the issuance of any permit, because of research cruises occurring consistently in the area, through the National Marine Fisheries Service. Member Johns suggested an amendment to Section 13-60.5-2(1) to read: "To enter into the area without first obtaining a permit, which shall be publicly noticed including the purpose for entering, with a 30-day comment period;".

There was some discussion about retaining Section 13-60.5-2(b). Member Johns suggested retaining the language in this section, and including a statement, acknowledging that when this Chapter is implemented, the State would consider, or take into account, any Federal laws. Chairperson Coloma-Agaran suggested that a new Section be added to read: "In implementing this Chapter, the State shall consider any Federal law including but not limited to, limited entries, closed areas, quotas and alike, that apply to Federal jurisdiction adjacent to the area."

Member Johns suggested, regarding the vested rights issue, that it be worked out with the Attorney General's Office, that language be added about limiting the duration and making it clear that the permits are not creating any vested rights, and allowing the Chairperson to sign off on the final language.

Member Johns made a motion to approve staff's recommendation with the following amendments:

- 1) Add new Section to read: "In implementing this Chapter, the State shall consider any Federal law including but not limited to, limited entries, closed areas, quotas and alike, that apply to Federal jurisdictions adjacent to the area."
- 2) Amend Section 13-60.5-2(1) to read: "To enter into the area without first obtaining a permit, which shall require public notification that includes the purpose and expected duration of the proposed access, with a 30-day comment period on any permit application."
- 3) Add additional permit language making it clear that the permits are of mooted duration and do not constitute vested rights of continuing access to the NWHI or their resources. This language will be worked on with the Attorney General's Office, and the Chairperson will approve the final language.

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

**ITEM F-2: REQUEST FOR APPROVAL TO HOLD PUBLIC HEARING TO AMEND HAWAII ADMINISTRATIVE RULES, CHAPTER 13-95, RULES REGULATING THE TAKING AND SELLING OF CERTAIN MARINE RESOURCES**

Mr. Devick made a correction to Section 13-95-8(b), to read: "...possession any mullet during the months of December, January, [or ]February, or March,". Staff's recommendation is that the Board approve the holding of public hearings to amend Chapter 13-95, relating to the taking and selling of certain marine resources.

Dr. Kimberly Lowe, MHI-MRI Project Manager for the Division of Aquatic Resources, explained the public meetings held to discuss the changes to the rules. The public generally supported the proposed minimum size regulations.

Mr. Harp suggested that the State also look at establishing maximum size limits.

**Unanimously approved as amended (Johns/McCrory).**

**ITEM I-1: RESUBMITTAL – REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS ON TITLE 13, CHAPTERS 275 THROUGH 284, HAWAII ADMINISTRATIVE RULES, PROPOSED RULES OF PRACTICE AND PROCEDURE RELATING TO VARIOUS ASPECTS OF THE HISTORIC PRESERVATION PROGRAM**

Dr. Don Hibbard, Administrator of the State Historic Preservation Division, addressed an issue raised at a briefing held last night regarding some contemplation on the possibility of doing an inventory work plan prior to doing an inventory survey. He indicated that about 95% of the inventory surveys are more

general and straightforward and do not have a need for this specialized expertise, that this will increase staff's workload in having to process additional paperwork, and that the time it will take to complete a project will also be increased.

He distributed revised language that included giving the Division the option of whether such a work plan would be required, and an opportunity for public comments. The revised language is as follows:

“Section 13-275-5 Identification and inventory of historic properties.

- (c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the division may require an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan would include, but not be limited to:
- (1) All the information required in Chapter 13-276-5(a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, and reviews any relevant prior archaeological studies.
  - (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be used in the archaeological field survey, which shall include:
    - (A) The names and qualifications of the principal investigator;
    - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
    - (C) The anticipated duration of time for the survey;
    - (D) The extent of survey coverage. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
    - (E) A discussion of any factors which might limit the survey effort;
    - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
    - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, with the rationale for these techniques given; and,
    - (H) The method to be used to plot site location.
  - (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in Chapter 13-276-5(g).
- (d) If any inventory plan is required, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the information contained in the plan is adequate or inadequate.
- (1) Any interested persons may comment on the plan. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the plan. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the

determination letter, the SHPD shall reconsider under the provisions of Section 13-275-11.

- (2) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and submit the results.
- (3) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.”

Section 13-284-5 will also be amended with similar language, less (d)(1).

Sections 13-276-5(b) and (g) will also be amended by adding subsections (b)(3) and (g)(4) to read: “If an inventory plan was submitted to, and approved by, the SHPD the information in this section may be omitted from the inventory report.”

In response to a question raised by Member McCrory, Dr. Hibbard amended Sections 13-275-4, and 13-284-4, by changing numbers (2) through (11), to numbers (3) through (12), and by adding a new number (2) to read: “\$150 for an inventory plan.”

Member Johns requested that the proposed revised language to Section 13-275-5(d)(1), be changed to “... the SHPD may [shall] reconsider its determination under the provisions of Section 13-275-11.” Mr. Hibbard indicated that he will change this in other parts of the rule as well.

Dr. Hibbard indicated that the new revised language for Section 13-275-5(c) and (d), will re-letter the previous letters from (c) through (e), to (e) through (g).

Member McCrory asked that Hawaiian Groups on each island be notified of the Public Hearing.

Dr. Stephen Athens, Member of the Society for Hawaiian Archaeology, testified against staff's recommendation that a work plan not be required before an inventory survey is done.

Dr. Robert Hommon, President of the Society for Hawaiian Archaeology, provided written and oral testimony, representing more than 200 Professional Archaeologist and others who work in Historic Preservation in Hawaii, supporting Dr. Athen's recommendation that a work plan be required for each inventory survey.

Member Johns asked Mr. Hommon if all the members he represents agrees that a work plan should be mandatory. His concern was that should the Board decide to make the work plan mandatory, and then hear from other Archeologists that they were comfortable with the way the draft rules were written and that the work plan is unnecessary, then this whole process would be slowed down again. Mr. Hommon indicated that he often speaks for the organization in accordance with the bylaws, and a vote is not always taken of the entire membership on these issues.

Dr. Ross Cordy, Archeologist Branch Chief for the State Historic Preservation Division, gave explanation on the process in making a decision that a project would be unusual enough to require a work plan. He indicated that they could do it the other way, make the work plans mandatory across the board except for when the Division says it's not, but a lot more complications would arise.

Member Johns made a motion to approve staff's recommendation with the following amendments:

- 1) Amend index for Section 13-275-3 to read: "Obtaining a determination letter, generally".
- 2) Amend typographical errors:
  - Section 13-275-6(d)(4), to Section 13-275-6(d)(3).
  - Section 13-276-5(b)(2)(C) to "Predictions as to types..."
  - Section 13-276-5(g)(1)(C)(C), to Section 13-276-5(g)(1)(C)(D).
  - Section 13-277-5 to read: "Interim protection measures. Interim protection measures shall protect the significant historic property and its buffer zone during construction activities. Interim measures may...".
  - Section 13-282-3(f)(3) to read: "The permittee shall ensure all personnel are capable...".
  - Section 13-282-5(1)(3)(4), to Section 13-282-5(1)(2)(3).
  - Section 13-283-3(10)(12)(13), to Section 13-283-3(10)(11)(12).
- 3) Add staff's new revised language to Sections 13-275-5, 13-284-5, and 13-276-5.
- 4) Amend Sections 13-275-4 and 13-284-4, by changing numbers (2) through (11), to numbers (3) through (12), and by adding a new number (2) to read: "\$150.00 for an inventory plan".
- 5) Amend the new revised language in Section 13-275-5(d)(1) to read: "..., the SHPD may [shall] reconsider its determination under the provisions of Section 13-275-11.", and change appropriately in others parts of the rule.
- 6) Division to make special efforts for outreach to the Hawaiian communities on all islands before the Public Hearings are conducted.

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

Discussion: There was some discussion regarding the proposed fees. The Board recalled that staff's estimate for revenues generated from the proposed fees were about \$60,000.00, and the operating budget for the Division is about \$500,000.00. Member McCrory wanted to see the proposed fees increased, to at least fund part of the current operations. Member Inouye reminded the Board that the fees do not

depend on the project size, that it could be for a 6,000 home master plan development, or a single-family residence. Dr. Hibbard requested an amendment to say, that additional charges will be assessed for any inventory or recovery report above a certain number of pages (i.e. anything over 150-pages will be charged \$300 per 100-pages). Member Inouye wanted to see the rules go out to public hearing, and give staff time to really access how the rules are working, and then come back and do the amendments to the rules. She felt it difficult to make any amendments without really knowing the impact. Member McCrory requested that staff take a look at alternative ways to attach a dollar amount for the larger projects.

**ITEM K-1: ISSUANCE OF LEASE BY DIRECT NEGOTIATION TO PACIFIC FISHING & SUPPLY, INC., PIER 38, HONOLULU HARBOR, OAHU, TMK: (1) 1-5-42-26P**

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, requested that recommendation no. 1 be deleted that read: "Find the Area to be an economic unit in terms of the intended use." The Department of Transportation's recommendation is that the Board approve the lease by direct negotiation covering the subject area, subject to terms and conditions.

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

**ITEM K-2: GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENTS TO THE BOARD OF WATER SUPPLY AND THE DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU, NEAR PIER 32, HONOLULU HARBOR, OAHU, TMK: (1) 1-5-35P**

Mr. Garcia briefed the Board and recommended that the Board authorize the granting of a perpetual non-exclusive easements to the City and County of Honolulu, the Board of Water Supply and the Department of Environmental Services for underground water meter purposes and sanitary sewer lines, subject to conditions.

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

**ITEM K-3: ISSUANCE OF REVOCABLE PERMIT TO OAHU TREE EXPERTS, INC., TO STORE VEHICLES AND EQUIPMENT, KAWAIHAE HARBOR, ISLAND OF HAWAII, TMK: (3) 6-1-3-25P**

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

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

**ITEM K-4: CONSENT OF ASSIGNMENT OF LEASE NO. DOT-A-90-18, AIR SERVICE CORPORATION, ASSIGNOR, TO UNIVERSAL ENTERPRISES, INC.,**

**ASSIGNEE, SOUTH RAMP, HONOLULU INTERNATIONAL AIRPORT,  
OAHU, TMK: (1) 1-1-03**

Mr. Garcia briefed the Board and recommended that the Board approve the Consent to the Assignment of Lease No. DOT-A-90-18 from Air Service Corporation, to Universal Enterprise, Inc., subject to conditions.

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

**ITEM K-5: APPROVAL OF AIRPORT USE AND OCCUPANCY UNDER HOLDOVER AND  
EXTENSION AGREEMENTS FOR AIRPORT-AIRLINE LEASE SIGNATOR  
AIR CARRIERS**

Mr. Garcia briefed the Board and recommended that the Board ratify and approve, the lease extension agreements, use and occupancy of State Airports, and the New Signatory Airlines.

Member McCrory recused herself.

Member Johns made a motion to approve this item, subject to the Attorney General's confirmation that the Board has the authority to extend the leases beyond a 35-year period, and confirmation on when the 35-year period begins.

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

**ITEM D-4: AMENDMENT TO THE DELEGATION OF AUTHORITY TO ISSUE RIGHT-  
OF-ENTRY PERMITS ON UNENCUMBERED STATE LANDS**

Ms. Dede Mamiya, Assistant Administrator of the Land Division, briefed the Board and recommended that the Board rescind the prior Board actions of June 24, 1983 and June 14, 1991, delegate the authority to the Chairperson, Land Division Administrator, District Land Agents and Supervising Land Agent to issue right-of-entry permits for public lands under the management of the Land Division, subject to terms and conditions.

The Board approved staff's recommendation by adding a condition:

"3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."

**Unanimously approved as amended (Johns/McCrory).**



**ITEM D-1: ISSUANCE OF REVOCABLE PERMIT TO THE ASSOCIATION OF APARTMENT OWNERS OF MAUI KAMAOLE, INC., KAMAOLE HOMESTEADS, WAILUKU, MAUI, TMK: 3-9-004: POR. 061**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a revocable permit to The Association of Apartment Owners of Maui Kamaole, Inc., subject to terms and conditions.

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

**ITEM D-2: GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT, AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO MRS. CHARLOTTE A. SEYER FOR ACCESS AND UTILITY PURPOSES, KAPAA HOMESTEADS, 1<sup>ST</sup> SERIES, KAWAIIHAU, KAUAI, HAWAII, TMK: 4-6-4: POR. 28**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of an immediate right-of-entry, subject to terms and conditions.

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

**ITEM D-6: TRANSFER OF COUNTY OF MAUI LAND TO THE STATE OF HAWAII FOR SET ASIDE TO THE DEPARTMENT OF EDUCATION FOR THE IAO MIDDLE SCHOOL SITUATE AT OWA AND KALUA, WAILUKU, MAUI - TMK: (2) 3-4-09: 3**

Mr. Yada briefed the Board and recommended that the Board approve of and authorize the conveyance in fee simple at gratis, from the County of Maui to the State of Hawaii, in accordance with terms and conditions.

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

**ITEM D-8: RESCIND PRIOR BOARD ACTION OF APRIL 9, 1998, UNDER AGENDA ITEM D-13: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT COMPANY AND GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, AND CONSTRUCTION RIGHT-OF-ENTRY, WAIAKEA, HAWAII, TMK: 2-4-01: POR. 5**

Mr. Yada briefed the Board and recommended that the Board rescind its prior action of April 9, 1998, Item D-13, in accordance with terms and conditions.

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

**ITEM D-11: AMEND PRIOR BOARD ACTION OF OCTOBER 10, 1997 (AGENDA ITEM D-12), AFTER-THE-FACT REQUEST FOR NON-EXCLUSIVE EASEMENTS FOR GAS AND PETROLEUM PRODUCTS TRANSMISSION PIPELINES, AIEA, EWA, OAHU, TMKs: 9-9-03: POR. 35; 9-9-04: POR. 3, 24; 9-9-12: POR. 5, 46, 47**

Mr. Yada briefed the Board and recommended that the Board amend its action of October 10, 1997, Item D-12, by consenting to the assignment of BHP's easement rights to Tesoro and deleting all reference to BHP and replacing it with Tesoro, subject to the same conditions contained in agenda Item D-12.

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

**ITEM D-12: AMENDMENT TO PRIOR BOARD ACTION OF APRIL 12, 1991 (AGENDA ITEM F-6) FOR THE ACQUISITION OF LAND AND IMPROVEMENTS FOR DEVELOPMENT OF ONSHORE PARK FACILITIES AT WAIMEA PIER, WAIMEA, KAUAI, TMK: (4) 1-6-07: POR. 1 AND 2**

Mr. Yada briefed the Board and recommended that the Board amend its prior action of April 12, 1991, Item F-6, by approving of and recommending to the Governor the issuance of an executive order setting aside the subject areas to the Division of State Parks, in accordance with terms and conditions.

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

**ITEM D-14: RESCIND PRIOR BOARD ACTION OF JANUARY 14, 2000 (AGENDA ITEM D-3) CANCELLATION OF REVOCABLE PERMIT NO. S-6593 AND ISSUANCE OF REVOCABLE PERMIT TO MRS. JOSEPHA PERREIRA, HANEHOI, MAKAWAO, MAUI, TMKs: 2-9-10: 12 AND 2-9-11: 13**

Mr. Yada briefed the Board and recommended that the Board rescind its prior action of January 14, 2001, Item D-3, by canceling the issuance of a revocable permit to Mrs. Perreira.

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

**ITEM D-19: AMEND PRIOR BOARD ACTION OF SEPTEMBER 10, 1993 (AGENDA ITEM F-6), SET ASIDE TO HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII FOR PUBLIC HOUSING PURPOSES AT WAIMANALO, OAHU, TMK: (1) 4-1-13: PORTION OF 23**

Mr. Yada briefed the Board and recommended that the Board amend its prior action of September 10, 1993, Item F-6, by deleting recommendation no. 2, subject to terms and conditions.

The Board deferred action due to questions as to whether the road was included in the executive order. If not included in the executive order, they wanted information as to who had ownership or jurisdiction over Saddle City Road.

**Deferred (Johns/Holschuh).**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 3:20 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

Approved for submittal:

  
GILBERT S. COLOMA-AGARAN  
Chairperson  
Board of Land and Natural Resources

