

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

DATE: FRIDAY, OCTOBER 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 9:12 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. Sam Lemmo, Land Division  
Mr. Jeff Walters, Division of Aquatic Resources (DAR)  
Ms. Dede Mamiya, Land Division  
Mr. Dan Quinn, Division of State Parks  
Mr. W. Mason Young, Division of Boating and Ocean Recreation (DOBOR)  
Mr. Steve Thompson, DOBOR  
Mr. Alton Miyasaka, DAR

**OTHERS:**

Ms. Pamela Matsukawa, Department of the Attorney General	Mr. Peter Garcia, Department of Transportation
Mr. Max Graham, D-10	Mr. James Leonard, D-12
Ms. Gail Edmondson, D-6	Mr. Paul Moore, D-6
Mr. Presley Pang, D-6	Mr. Lindy Sutherland, D-11
Mr. Alfredo Lee, D-11	Mr. Kevin McMahan, D-11
Dr. Joe Mobley, D-18	Mr. Jim Mercer, D-18
Ms. Jackie Miller, D-18	Mr. Douglas Luther, D-18
Dr. Alex Leonard, D-18	Mr. Tom Leonard, D-18
Dr. Paul Nachtigall, D-18	Dr. Whitlow Au, D-18
Mr. Peter Worcester, D-18	Dr. Richard Pang, D-8

Ms. Kellie Inouye, D-4  
Mrs. Stephanie Phillips, D-4  
Mr. Peter Nottage, D-4  
Mrs. Jean Porter, D-4  
Mr. Chris White, D-4 & J-1  
Ms. Marie Kastensmith, D-4  
Ms. Coco Needham, D-5  
Ms. Valerie Barruga, E-1  
Mr. John Reppun, J-1  
Mr. Curt Mench, J-1  
Dr. Warren Bucher, D-7

Mr. Alvin Maeda, D-4  
Mr. Joseph Phillips, D-4  
Mr. Philip Steingraeber, D-4  
Mr. Frank Barton, D-4  
Mr. Craig Kagawa, D-4  
Mrs. Velma Foster, D-5  
Ms. Lena Soliven, E-1 & E-2  
Mr. Jim Basset, J-1  
Ms. Pat Pettigrew, J-1  
Mr. Ian Wasnich, D-7  
Ms. Connie Kita, D-13

{Note: language for deletion is [bracketed], new/added is underlined.}

**ITEM A-1: APPROVAL OF THE SEPTEMBER 14, 2001 MINUTES**

Member McCrory recused herself.

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

**ITEM D-10: CONSENT TO THE ASSIGNMENT OF GENERAL LEASE (GL) NO. S-3832 AND S-5578, MS. LINDA J. HARDING WARRINER, ASSIGNOR, TO PIXAR DEVELOPMENT, LLC, ASSIGNEE, KAPAA, KAWAIIHAU, KAUAI, TMKs: 4-5-11: 46 AND 4-5-12: 5**

Mr. Harry Yada, Acting Administrator of the Land Division, amended staff's recommendation by adding a condition that the Performance Bond requirement be reinstated. Staff's recommendation is that the Board consent to the assignment of GL No. S-3832 and S-5578, in accordance with terms and conditions.

In response to questions raised by Member Inouye regarding some discrepancies in the staff report, Mr. Max Graham, representing the Assignee, indicated that the correct name of the company should be Pixar Development, LLC, not Pixler Development, LLC, and that the Deposit Receipt Offer and Acceptance form also covers the Assignors fee simple parcel which is TMK: 4-5-12:6.

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

**ITEM D-12: REQUEST FOR 1) DIRECT LEASE TO WB KUKIO RESORTS, LLC, OR ITS PUC REGULATED UTILITY COMPANY FOR A WATER TREATMENT PLANT AND RELATED PURPOSES, 2) ISSUE CONSTRUCTION RIGHT-OF-ENTRY, 3) ISSUE RIGHT-OF-ENTRY TO COUNTY OF HAWAII FOR A WATER PIPELINE, AND 4) AMEND PRIOR BOARD ACTION OF JULY 24, 1992 (AGENDA ITEM F-5), KUKIO 2<sup>ND</sup>, MANINIOWALI, NORTH KONA, HAWAII, TMK: 7-2-04: POR. 4**

Member Inouye recused herself.

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a direct lease to WB Kukio Resorts, LLC, for a water treatment plant and related purposes, authorize the issuance of a right-of-entry to WB Kukio Resorts, LLC, for construction of a water treatment plant and related purposes, authorize the issuance of a right-of-entry to the County of Hawaii to install, repair, and maintain a temporary, at grade, water pipeline from the Applicant's proposed leased premises to the County's West Hawaii Veteran's Memorial Cemetery, and amend Board action of July 24, 1992, by deleting all reference to Huehue Ranch Associates, LP, and replace with WB Kukio Resorts, LLC, subject to terms and conditions.

Mr. James Leonard, representing WB Kukio Resorts, LLC, was present to answer questions.

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

**ITEM D-6: RESCIND PRIOR BOARD ACTION OF JULY 27, 2001 (AGENDA ITEM D-9); WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER NO. 3814; ISSUANCE OF A DIRECT LEASE TO THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA), WAIAKEA, SOUTH HILO, ISLAND OF HAWAII, TMK: (3) 2-4-01: 12 AND 122**

Mr. Yada briefed the Board and recommended that the Board rescind its prior Board action of July 27, 2001, approve of and recommend to the Governor issuance of an executive order withdrawing approximately 30 acres from Governor's Executive Order No. 3814, and authorize the issuance of a direct lease to USDA, subject to terms and conditions

Ms. Gail Edmondson, Program Management Analyst for the USDA Forest Service, Institute of Pacific Islands Forestry, testified on behalf of the Institute Director, Dr. Jack Ewel, in favor of staff's recommendation.

Mr. Paul Moore, Acting Center Director for the USDA Agriculture Research Service, testified in support of staff's recommendation.

Mr. Presley Pang, representing the University of Hawaii, also testified in favor of staff's recommendation.

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

**ITEM D-11: DIRECT ISSUANCE OF LEASE TO AGRIBUSINESS DEVELOPMENT CORPORATION (ADC); ISSUANCE OF REVOCABLE PERMIT TO ADC FOR IRRIGATION WATER USE AND SYSTEM MANAGEMENT PURPOSES, KEKAHA, WAIMEA, KAUAI, TMK: 1-2-02: VARIOUS PARCELS**

Mr. Yada briefed the Board and explained staff's suggested amendments, that the water system and land for agriculture use needs to be separated to retain the integrity of the water system on its own, and to incorporate some comments that were made by Historic Preservation. The requested amendments to the staff submittal were as follows:

Page 1, under AREA, add: "Land Lease: 14,000 +/- acres, more or less, (excluding the irrigation water system), subject to confirmation by the..."

Page 2, under ANNUAL RENT, add: 1) "Land Lease: ...including the interior roadways but excluding expenses for maintaining the water irrigation system...", and 2) "Water Revocable Permit: Charges for use of water and use of water system shall be determined by staff or independent appraisal, subject to review and approval by the Chairperson. The charges payable to DLNR shall begin accruing effective September 1, 2001."

Page 3, under ANNUAL FINANCIAL REPORTS, add: "Water Revocable Permit: ADC shall submit an annual financial report which details the water usage and charges. The monthly financial reports will be filed with the Chairperson of the Board of Land and Natural Resources within 30 days after the end of each month, and the annual report will be filed together with annual payment within 30 days after the end of each calendar year."

Page 12, under staff's recommendation, add new: "2. g. Include the two conditions as stated in the DLNR Historic Preservation Division's comments on page 10, 6.a. and 6.b, with the following requirement: That prior to any modification, alteration, renovation, demolition of the Puu Lua ditch man's cabin, ADC shall first consult with the DLNR Historic Preservation Division."

Member McCrory wanted to make sure that comments from DOFAW, regarding the water bird habitat, and the 313 acres of land that was not excluded from the land permits for the water bird sanctuary, were incorporated in staff's recommendation.

Member Inouye questioned the last two items under the Division of State Parks comments on Page 8, 2. A. Kokee Ditch System, that doesn't seem to be addressed in the staff's recommendation. The comments read: 1) An agreement or conditions for the transiting and staging on park lands for operation and maintenance of the ditch system need to be worked out.; and 2) The lease or permit should incorporate conditions to protect the park resources and park visitors. Mr. Yada suggested adding a requirement to consult with the Division of State Parks to deal with the two conditions.

Mr. Lindy Sutherland, Chairperson of the ADC, was present to answer questions.

Mr. Alfredo Lee, Executive Director of ADC, was present to answer questions, and was agreeable to the amendments made to the staff's recommendation.

Mr. Kevin McMahon, Syngenta Seeds, expressed his support for the direct issuance to ADC.

Member McCrory made a motion to amend the submittal as requested by staff, with the following additional conditions:

"2. h. ADC shall be required to consult with DOFAW with regard to any water bird habitat issues."

"2. i. Approximately 313 acres in the area adjacent to the existing water bird sanctuary project shall be excluded from the ADC lease for planned set aside to DOFAW as an addition to the sanctuary that shall come to the Board for separate disposition."

"2. j. ADC shall be required to consult with State Parks Division in the resolution of the last two items under their comments 2. A. for the Kokee Ditch Systems."

"3. o. ADC shall be required to consult with DOFAW with regard to any water bird habitat issues."

"3. p. ADC shall be required to consult with State Parks Division in the resolution of the last two items under their comments 2. A. for the Kokee Ditch Systems."

Unanimously approved as amended (McCroy/Inouye).

**ITEM D-18: CONSERVATION DISTRICT USE APPLICATION (CDUA) KA-2941 TO RETAIN IN PLACE AND RE-USE A SUBSEA POWER CABLE AND SOUND SOURCE (INSTALLED OFFSHORE OF KAUALI, PURSUANT TO APPROVED CDUA KA-2734), TO CONTINUE FEASIBILITY RESEARCH ON THE USE OF ACOUSTIC TRANSMISSIONS TO MEASURE THE LONG-TERM TEMPERATURE TRENDS OF THE GLOBAL OCEANS**

Mr. Sam Lemmo, Senior Staff Planner for the Land Division, made a correction to page 21 of the staff submittal by changing the publication date of the Office of Environmental Quality Control's Environmental Notice, from June 8, 2001, to July 23, 2001. He also made a correction to condition no. 7 that refers to a Final Environmental Assessment, that should read: "...Final Environmental Impact Statement for this project are hereby incorporated as conditions of the permit." Staff's recommendation is that the Board approve the application to retain in place and re-use, for five years, a subsea cable and power source to continue feasibility research on the use of acoustic transmissions to measure the long-term temperature trends of the global oceans, subject to 13 conditions.

Mr. Jeff Walters, Co-Manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary for DAR, indicated that there were concerns in particular about humpback whales, however, with the monitoring program that is proposed, it was decided that there are significant benefits associated with the monitoring program in terms of understanding the population of humpback whales, which in essence mitigated the potential negative impacts. DAR would gain a lot of information about how many humpback whales are in the area, the aerial surveys are a great way to measure the number of whales, and DAR doesn't have funding to do it otherwise.

Dr. Joe Mobley, Professor of Psychology with the University of Hawaii, one of the Principal Scientists involved in the Acoustic Thermometry of Ocean Climate/Marine Mammal Research Program (ATOC/MMRP) 1993 - 1998, and currently the Principal Investigator for this Kauai

North Pacific Acoustic Laboratory (NPAL) project, explained that the results of the Kauai ATOC/MMRP have been published in at least 5 separate articles, representing work of many scientists dedicated to protecting the species under study, and to identify the effects of the ATOC signal on marine species endemic to Hawaii. Based on the results, the scientist involved reached the conclusion of no significant biological impact. He commented on the National Research Council's (NRC) report, indicating that the report was based on partial information and piece meal data from partial progress reports. The report cites that there are differences in numbers based on aerial surveys performed off the California ATOC source not the Kauai source, that MMRP failed to find any behavioral responses when subtle behavioral responses were detected, and that articles have not been published when there were in fact 5 separate articles published as stated earlier. He believed that a lot of the public comments at the Public Hearing stemmed from confusion between the Navy's Low Frequency Acoustic Sonar (LFAS) and the NPAL source, because they tend to see it as the same when in fact there are a number of differences between the two.

Member Holschuh was concerned about written testimony received from Mr. Lanny Sinkin regarding whales hemorrhaging as a result of sound transmission and eventually perishing and sinking to the bottom. Mr. Mobley indicated that their surveys show an increase in population and there is no indication that the whales are evading detection. He felt that the aerial surveys remain the most cost effective and efficient way of monitoring the population in the area.

Mr. Jim Mercer, Research Professor for the Department of Earth and Space Sciences and Principal Physicist at the Applied Physics Laboratory, both at the University of Washington in Seattle, described some of the differences between the LFAS and the NPAL sources, often understandably mistaken because they both use underwater transducers or underwater speakers. The NPAL source generates a sound level of 195 decibels, converted into power level, would be about 250 watts of acoustic power, and the Navy's LFAS program uses an array of 18 sources, each producing 25,000 watts. The Navy's LFAS source works relatively close to the surface, whereas the ATOC source is planted on the bottom of the ocean, approximately half a mile deep, so the impacts are significantly different. He indicated that the sound level of 250 watts is not a lot different then the sound that large whales produce on their own, and it's presumed that the whales don't damage themselves.

Ms. Jackie Miller, Environmental Center, University of Hawaii, indicated that the center reviews Environmental Impact Statements (EIS), and as part of the their usual review activity they did look at the Final EIS for the NPAL project, and believes that it reflects an accurate and adequate disclosure of the potential environmental impacts to this project and its mitigation. She concurred with the proposed action to leave the cable in place at the termination of this study, that removal of the cable would be far more environmentally damaging then leaving it in place. In response to a question raised by the Board, she indicated that the EIS includes the mitigations that were described in the Biological Opinion.

Mr. Douglas Luther, Department of Oceanography at the University of Hawaii, urged the Board to grant the requested permit to facilitate the NPAL's operations. He believed that the NPAL source is a superior and cost effective method of observing the oceans interior structure for climate studies.

Dr. Alex Leonard, PhD in Marine Biology from the Scripps Institution of Oceanography, testified against the proposal. He indicated that he prepared the summary of the NRC comments and felt that the contents of the NRC report is critically relevant for decision making, because the NRC warns that there is in fact no scientific basis for claims that are being made in the Final EIS of

negligible impact on marine resources, and to the contrary that there is considerable cause for concern that some marine resources including whales, sharks, and turtles, may be seriously impacted if ATOC is allowed to proceed in the manner currently proposed. The NRC further warns that the mitigation measures and the study procedures that are being proposed by this program are completely inadequate to meet the objectives for which they are intended. He asked the Board to heed the NRC, the viewpoints of the committee appointed by the National Academy of Sciences, the most eminent scientific organization in this country and probably the world.

Mr. Tom Leonard, representing Friends of Whales, provided written and verbal testimony against the granting of the permit. Some concerns raised were, that the EIS document was not prepared by people involved in biological ecological science, and, as stated in the NRC review, the data presented is inadequate to draw any conclusion, positive or negative, impact or no impact. He believed there would be no upside for the State, and potential for tremendous downside should the Applicant be wrong. He did not support the proposal in its present form, and indicated that he would feel more comfortable if there were additional marine mammal research.

Dr. Paul Nachtigall, Director of the Marine Mammal Research Program (not the same as MMRP of ATOC), University of Hawaii, Hawaii Institute of Marine Biology, believed that concern on marine mammal survival should be based on facts. He indicated that they have conducted researches on animals and there were no resonance effect on them, and the particular sounds produced by the NPAL are not likely to bother the animals in the environment. He disagreed with the findings in the NRC report, and believed they made an error in confusing the sources, the Navy's LFAS, with this particular project.

Dr. Whitlow Au, Chief Scientist for MMRP, University of Hawaii, Hawaii Institute of Marine Biology, First Silver-Medal Recipient and Editor on Animal Bioacoustics for the Journal of the Acoustical Society of America headquartered in New York, Co-Editor of books called Hearing by Whales and Dolphins, and The Sonar of Dolphins, testified in favor of granting the permit, based on 30 years of acoustic research with marine mammals. He indicated that the NPAL source should not have any negative effect on marine mammals, and felt that the NPAL program is extremely important for the society as a whole in terms of global warming. He commented on the NRC report, that it didn't use certain pieces of information that would have been helpful to them, and that perhaps they were looking in one direction and it didn't cover some other areas that were important.

Mr. Peter Worchester, Oceanographer for the University of California, San Diego, Scripps Institution of Oceanography, clarified that the NRC report dealt with both California and Hawaii, and was commissioned early in the ATOC project, substantial delays were encountered and funding for the panel was due to run out. The report was issued before the research was completed or had a chance to be published. In his review the ATOC/MMRP was the most reviewed research protocol ever seen. The advisory board consisted of members of the academic community, who reviewed that protocol and agreed that this was the best way to do the science throughout the ATOC program. The Ocean Studies Board which oversees the functioning of these panels for the NRC, subsequently arranged for a new panel to be commissioned entitled "Assessing Ambient Noise in the Ocean with Regard to Potential Impacts on Marine Mammals." There were 3 of 4 meetings and they anticipate having their report sometime next year. Their intent is to present a balanced report of all sources of sound in the sea with relative importance, and put the earlier panel report at least in part in context. He wasn't sure if this project would be covered in this subsequent report as the deliberations are confidential until a panel report comes out. Mr. Worchester indicated that the National Marine

Fisheries Service (NMFS), has prepared numerous pieces of environmental documentation on this project since the NRC report was prepared, and used much more recent information than was available to the NRC panel.

There was some discussion on concerns raised by DAR in the staff report that read: "We continue to be concerned about the potential for serious adverse impacts of NPAL on humpback whales, other marine mammals, and sea turtles, especially during breeding periods. We suggest therefore, that a comprehensive marine protected species, monitoring program be included as a component of the project." Member McCrory asked that the comprehensive marine protected species monitoring program be included as part of the project. She also referred to condition no. 6 that reads: "That the Applicant enter into negotiations with the Department's Division of Aquatic Resources to determine an appropriate role within the Marine Mammal Monitoring Studies.", and asked that it be expanded, that it be an appropriate program within the Marine Mammal Monitoring Studies, that the program be determined within the initial 6 months, with funding to be provided by the Applicant. Mr. Worchester was concerned that funding for the operation is about \$125,000.00 a year, of that about \$50,000.00 a year will be used to fund the 8 aerial surveys. In response to concerns raised by DAR, the surveys have been expanded to be Kauai wide, not just off the North Shore, also encompassing Niihau. Member McCrory asked DAR staff to comment on whether there still is concern for a monitoring program or is the island wide aerial survey adequate. Mr. Walters indicated that their concern was for other animals, such as the smaller cetaceans, turtles and monk seals. In communications with the U.S. Fisheries Service and other experts, DAR understands more fully that to survey these is difficult because they are small and not on the surface that often. DAR could certainly benefit from additional surveying of these animals, just from basic understanding of how many are out there, where they are, what they are doing, and if this project is having any impact on them, but it is costly and involves a lot of resources and manpower. Member Johns was concerned that DAR is saying they are uncertain about the potential impacts, that they need additional monitoring to feel more comfortable about this project, and that the Board could possibly be put in a position to deny the project if the additional information is not provided to address the issues raised by DAR. Member McCrory made a motion to defer this item, to allow DAR and the Applicant time to discuss where the additional information is needed, and report back to the Board. She also wanted the Whale Sanctuary to review the NRC report, primarily because the next NRC report will be coming out in a about year, and it's not known whether or not this project will be reviewed in the next report. Member Holschuh seconded. Member Johns felt that the impacts need to be addressed on the outset, or as this project moves forward, and if this can't be done than additional discussion needs to be held between the Applicant and DAR to address these issues. He supported the motion to defer this item. Mr. Walters indicated that their comments in the staff report were written before the Applicant expanded the aerial survey from 4 to 8. The survey information would provide a lot of useful information, the benefit would be significant, but the Divisions concern would be the certainty of whether the impacts are in fact minimal. Chairperson Coloma-Agaran suggested deferring this item until later on in the meeting, to allow time for DAR and the Applicant to discuss these concerns.

(Continued on page 18.)

**ITEM D-8: AFTER-THE-FACT APPROVAL FOR A BREAKWATER STRUCTURE (ON SUBMERGED LAND FRONTING THE PROPERTY AT 45-131 MAHALANI CIRCLE ON KANEOHE BAY), TMK: (1) 4-5-58: 29**



Mr. Lemmo briefed the Board and recommended that the Board approve this application for after-the-fact approval for a breakwater structure, subject to 10 conditions.

Dr. Richard Pang, Applicant, was present to answer questions.

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

The Board recessed at 12:05 p.m. The meeting was reconvened at 12:10 p.m.

**ITEM D-3: REPORT TO THE BOARD OF LAND AND NATURAL RESOURCES ON THE PUBLIC INFORMATIONAL MEETING HELD ON THE KANEOHE BAY PIERS AMNESTY PROGRAM**

Ms. Dede Mamiya, Assistant Administrator of the Land Division, gave some background information, and reported on the status and process for non-residential piers and on the public information meeting held on the Kaneohe Bay Piers Amnesty Program.

**No action.**

**ITEM D-4: AMENDMENT TO PRIOR BOARD ACTION OF AUGUST 24, 2001, AGENDA ITEM D-29, ISSUANCE OF 150 LEASES FOR PRIVATE RESIDENTIAL NON-COMMERCIAL PIERS PURSUANT TO THE KANEOHE BAY PIERS AMNESTY PROGRAM, KANEOHE, KOOLAUPOKO, OAHU; VARIOUS TAX MAP KEYS**

Ms. Mamiya briefed the Board and recommended that the Board amend its prior action of August 24, 2001, agenda item D-29, by: 1) adding the Applicants identified in Exhibit A to the List of Applicants. 2) amending the performance bond requirement to read as follows: a) no performance bond shall be required for Applicants who pay a one-time consideration for the pier lease. b) a performance bond of \$20 per square foot of the leased area shall be required for Applicants who pay annual lease rents., and 3) amending the standard boilerplate pier lease documents for all pier leases to contain the Surrender and Run with the Land provisions, provided that the Department of Attorney General may amend the boilerplate pier lease document to ensure consistency with these provisions throughout the document, subject to review and approval by the Department of the Attorney General.

In response to a question raised by Member Johns, Ms. Mamiya explained that the rationale for the requirement of a performance bond for lessees who choose to pay annually is the concern of non-payment. The \$20 per square foot is from estimates received from the Boating Division regarding the cost of removing piers, it is not tied to the rent.

In response to a question raised by Member McCrory, Ms. Mamiya explained that if it's decided to remove the pier, they would go through the process of removing the pier and try to get the lessee to pay, if they don't pay then the lien will be placed. Member McCrory suggested placing the lien first, and then removing it if payment is made.

Ms. Kellie Inouye, Pier Owner, testified in opposition to the performance bond, as specific to her pier it would double the price, and having that money in the bank for that long period of time would not make it affordable to her. She also testified against the rate of 50% base, approved at an earlier meeting for the calculation of pier rents, as she felt it unfair for residential owners to be paying the same rate as commercial piers.

Member Yamamura explained that residential owners are not being charged the commercial rate. The 50% discount applies to whatever the zoning is of the adjacent fast lands.

Mr. Alvin Maeda, Protect Our Shoreline Ohana, provided written and verbal testimony recommending that there be no performance bond at this time with the stipulation that a performance bond is warranted if default piers are not being dismantled at the expense of the pier owners.

Mr. Joseph and Mrs. Stephanie Phillips, Pier Owners, testified against the performance bond. Mrs. Phillips felt that the cost of the pier using the 50% methodology with the performance bond, would be costly on their part and something that they can't afford. Mr. Phillips showed a picture of their pier, indicating that it's 171 feet out into the water.

Mr. Peter Nottage, Pier Owner, testified against the performance bond. He indicated that his pier is cantilevered, extends 8 feet out, and is not in submerged land. He was concerned about additional surveys, legal fees, and felt the whole project should be re-thought.

Mr. Philip Steingraeber, Pier Owner, commented on the performance bond, that he would rather take that money and put it into its maintenance so that they could insure it, and preserve the pier, which is also being used by their neighbors, the community, is a breeding reef, and a navigational aide that shows up on all the old charts.

Mrs. Jean Porter, Pier Owner, was concerned about the lump sum of money being asked of, plus the performance bond. She gave some background information on her particular situation, and inquired about a refund for the all money she has put in, while some of her neighbors have paid nothing.

Mr. Frank Barton, Pier Owner, testified against the performance bond. He shared results of a survey he conducted among the property owners in the neighborhood to find out what their assessed values were on the properties.

Mr. Chris White, on behalf of Representative Colleen Meyer, thanked the staff for meeting with the Pier Owners on September 27, 2001. He noticed that none of the Pier Owners were testifying for the performance bond, and pointed out that after reviewing the alternatives in the staff's analysis, they concur with staff's recommendation.

Mr. Craig Kagawa, Pier Owner, asked for the possibility of looking into something like charging a one-time fee for the initial permit.

Ms. Marie Kastensmith, Pier Owner, indicated that a lot of pier owners wouldn't have to worry about a performance bond if the cost was reasonable to make a one-time payment. She indicated

that everyone shares their piers with their neighbors and they want to be able to keep them and maintain them.

Member Inouye suggested that the performance bond requirement be twice the annual lease rent, to be consistent with the Department's practice for revocable permits, and still have the same clause where a lien could be placed on the property if the pier is not removed.

Ms. Mamiya requested that Exhibit A be revised, by adding Mr. Craig Kagawa as No. 10, TMK: 4-5-58:037.

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

2) b) A performance bond equal to twice the annual rent [of \$20 per square foot of the leased area] shall be required for Applicants who pay annual lease rent.

Exhibit A add: No. 10, TMK 4-4-58:037, Applicant names shown on the application form Craig Kagawa.

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

**ITEM D-5: FORFEITURE OF GL NO. S-4884, MRS. LOUISE MAU AI AND MRS. VELMA KEAHO QUEN TAI KUKUALANAI FOSTER, LESSEES, MAUNALAHA HOMESITES, OPU, HONOLULU, OAHU, TMK: 2-5-24: 17**

Mr. Yada explained that the lessee is currently in default for failure to keep real property taxes current. Staff's understanding is that the lessee has made some attempts in working out a payment plan with the City and County, however, the lessee failed to make a payment that was due yesterday. Staff's recommendation is that the Board authorize the cancellation of GL No. S-4884, in accordance with terms and conditions.

Mrs. Velma Foster, Lessee, clarified that a check is mailed out every month to the City and County, and that a check was mailed out yesterday. She explained that she was granted permission to defer payments for the months of August and September 2001 with the understanding that when she gets her return on investments from Transoceanic International she will pay the entire tax balance. Meanwhile, she has and will be making the monthly payments with the exception of those 2 months.

Ms. Coco Needham, President of the Maunalaha Community Association, indicated that she spoke with the City and County and payment was received for the month of October 2001. She believed the payment in question was the 2 back months. The City and County is willing to reinstate the payment plan as long as the family will make up the back payments. She requested an extension to get this situation resolved.

The Board deferred this item and asked staff to re-confirm with the City and County as to the status of the lessees agreement and confirmation that the check mailed out yesterday by the lessee was

received. If the City and County did not receive payment, staff should bring this lease back to the Board for forfeiture.

**Deferred (Inouye/Yamamura).**

**ITEM E-1: FORFEITURE OF GL NO. S-5283, MS. VALERIE MAI LIN BARRUGA, LESSEE, AND TERMINATION OF REVOCABLE PERMIT NO. S-7248, KAHANA VALLEY STATE PARK, KOOLAULOA, OAHU, TMK: 5-2-02: 32**

Mr. Dan Quinn, Administrator of the Division of State Parks, revised the staff submittal by deleting any references to Revocable Permit No. S-7248, as this revocable permit has never been executed. Staff's recommendation is that the Board authorize the cancellation of GL No. S-5283, authorize the retention of all sums heretofore paid under GL No. S-5283, terminate all rights and obligations of the lessee effective immediately, authorize the removal of the lessee from the property as prescribed by law, and authorize the Attorney General's Office and/or the Department's private collection agency to collect all monies due the State under GL No. S-5283.

In response to questions raised by Member Johns regarding the interim milestone deadlines that the lessee has missed, and the Board's previous action that should they not meet the deadlines the lease will be terminated by staff and not for Board consideration, Mr. Quinn indicated that the mortgage was to be closed on March 1, 2001 with building plans approved, building permit obtained, and basic materials purchased, on April 1, 2001 foundation of the pillars, lay sub-floor and utility lines, on June 30, 2001 exterior and interior walls, on August 31, 2001 roofing, and septic tank installed, and on October 31, 2001 the completion of the interior walls, electrical wiring and plumbing, none of which were accomplished. He indicated that the Division felt a specific action should be taken on the individual leases rather than having just a general reference.

Ms. Lena Soliven, Vice-President of the Kahana Valley Community Association, testified that the association feels due process has been given, has been fairly done and just, and would like things to progress.

Ms. Valerie Barruga explained her confusion in the closing of the mortgage, that the pre-approval for a mortgage loan was good for 60 days from July 10, 2001, of which the date of the pre-approval letter was July 25, 2001, and that she wrote a follow-up letter dated September 24, 2001 questioning this and asking for clarification on some of the pre-approval conditions.

The Board's main concern was whether or not the lessee had the mortgage. The Board decided that the lessee's letter of September 24, 2001, did not function as an approval of the mortgage, or accept the offer for pre-approval of July 25, 2001.

The Board approved staff's recommendation with the amendment to delete all references to Revocable Permit No. S-7248.

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

**ITEM E-2: FORFEITURE OF GL NO. S-5288, MR. KEITH KEALOHA GEORGE, LESSEE, KAHANA VALLEY STATE PARK, KOOLAULOA, OAHU, TMK: 5-2-02: 52**

Mr. Quinn briefed the Board and recommended that the Board authorize the cancellation of GL No. S-5288 in the manner specified by law, authorize the retention of all sums heretofore paid under GL No. S-5288 as liquidated damages, terminate all rights and obligations of the lessee effective immediately, authorize the removal of the lessee from the property as prescribed by law, and authorize the Attorney General's Office and/or the Department's private collection agency to collect all monies due the State under GL No. S-5288.

Ms. Soliven indicated that the association's position would be the same as Item E-1.

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

**ITEM J-1: REQUEST FOR APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES, SECTIONS 13-231-4, 13-251-59, 13-231-67, 13-256-71, 13-256-72, 13-256-73, 13-256-77, AND REQUEST APPROVAL TO ADOPT NEW HAWAII ADMINISTRATIVE RULES, 13-256-72.1, 13-256-73.1, 13-256-73.2, 13-256-73.3, 13-256-73.4, 13-256-73.5, 13-256-73.6, 13-256-73.7, 13-256-73.8, 13-256-73.9, 13-256-73.10, 13-256-73.11, 13-256-73.12, AS THEY RELATE TO HEEIA KEA SMALL BOAT HARBOR AND KANEOHE BAY**

Mr. W. Mason Young, Acting Administrator of DOBOR, indicated that the purpose of DOBOR's request to the Land Board is for authorization to request the Governor for approval to conduct a public hearing on the proposed amendment to DOBOR administrative rules for Heeia Kea Harbor and Kaneohe Bay. The purpose of the amendments to the administrative rules are: a) make the administrative rules conform with the law; b) establish in rule current commercial permit conditions based upon previous Land Board action; c) establish in rule selected boating recommendations from the Kaneohe Bay Regional Council; d) establish in rule selected boating related recommendations of the 1992 Kaneohe Bay Master Plan; e) establish in rule selected boating recommendations of the 1999 Kaneohe Bay Master Plan Review Report; f) establish in rule departmental recommendation to improve public health and safety; and g) establish in rule departmental recommendations for better management of the Heeia Kea Small Boat Harbor and Kaneohe Bay. The pertinent factors pertain to Section 200-39, HRS, Kaneohe Bay, Section 200D HRS, Kaneohe Bay Regional Council, 1997 Attorney General Opinion on Section 200-39 and DOBOR administration of commercial permits as authorized by the Chairperson and Land Board, and 1992 Kaneohe Bay Master Plan and its 1999 Review Report.

Mr. Steve Thompson, Oahu District Manager for the Division of Boating and Ocean Recreation, went through the specifics of a summary sheet that was distributed to the Board, and recommended some changes to the staff submittal as follows:

1. Correct a typographical error in the title of the submittal by replacing Section 13-251-59, with Section 13-231-59.

2. Amendment to the Draft Rules, Exhibit 1. The same correction was made for each permit type:

Page 4, Kualoa Full Service, 13-256-72.1 (a) (7)  
Page 14, Large Full Service, 13-256-73.2 (j)  
Page 16, Small Full Service, 13-256-73.3 (i)

The recommended change for each permit type was as follows:

Education and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time except for educational tours for school-aged Hawaii residents or environmental monitoring by an accredited college or university. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

Per the Attorney General delete “except for educational tours for school-aged Hawaii residents or environmental monitoring by an accredited college or university”.

Replace with:

“Education and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.”

3. Amendment to the Draft Rules, Exhibit 1. The same correction was made for each permit type:

Page 17, Small Full Service without thrill craft, watersledding and high speed towing activities, 13-256-73.4 (i)  
Page 18, Large Snorkel Tour, 13-256-73.5 (h)  
Page 19, Small Sail/Snorkel Tour, 13-256-73.6 (g)  
Page 20, Glass Bottom Boat Tour, 13-256-73.7 (e)

The recommended change for each permit type was as follows:

Education and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time except for educational tours for school-aged Hawaii residents or environmental monitoring by an accredited college or university.

Per the Attorney General delete “except for educational tours for school-aged Hawaii residents or environmental monitoring by an accredited college or university”.

Replace with:

"Education and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time."

Mr. Thompson gave some background information on Mooring Area "B" and indicated that there is no language in the packet on Mooring Area "B" because they are not proposing to delete it.

There was some discussion about the correction to the title by replacing Section 13-251-59, with Section 13-231-59, which is also noticed on the agenda. The Board was concerned about compliance with the sunshine law and after consulting with Deputy Attorney General Matsukawa, decided to defer this particular section and have it come back to the Board.

Member Johns questioned written testimony that was received from the Small Business Regulatory Review Board, proposing that the Board, (1) defer sections in the proposed rules dealing with snorkel tour capacity, (2) defer sections dealing with fee increases and the implementation of the flat fee structure, (3) defer recreational fee increases, (4) delete the automatic revocation of permits, (5) defer sections dealing with business transfer fees, and (6) delete the restriction on the sale of businesses to only family members. Mr. Thompson commented that, (1) the law says the capacity for snorkel tours shall be set by rule. The statute indicates a legislative intent for the department in the processing of the rules, to depart from the master plan. The numbers being proposed exceed the master plan's recommendation but create no growth, and at the same time, they do not create a penalty for someone with a full service that would want to convert to snorkel, (2) and (3) does not apply to this Kaneohe Bay rules package, there are no fee increases and it is not related to the flat fee percentage issue, (4) the language in the Kaneohe Bay rules package is to make it conform with existing rule. The idea of whether or not an automatic revocation remains pertinent to the program is in the fee packet, (5) business transfer fee exists for everyone in the existing rule. If the business transfer fee was deferred in this packet and it was adopted, Kaneohe would be the only one without the business transfer fee, and (6) the statute says no thrill craft permit may be transferred after June 21, 1998, provided that the transfer of permit maybe made at any time between family members.

Mr. Jim Bassett, representing Kamehameha Schools, owner of the Heeia Fishpond, located directly mauka of Mooring Area "B", explained that there is a new mandate at the school to do education and preservation on practices of Hawaiian Culture, and in doing things outside of the classroom. Several years ago the fishpond was very useful in working with the Oceanic Institute in helping to populate the Kaneohe Bay with mullet and other fishes, serving as a nursery area, and releasing them into the ocean in the Kaneohe Bay when the fishes get large enough. He indicated that there is concern about the boats being moored right in front or directly outside of the fishpond, as it may cause some kind change in the fishes natural way of finding their way towards the pond. One of their greatest fear is that, should any fuel leak from these vessels, it would go right into the pond and kill everything, seaweed, as well as fishes and crabs. He asked that the Board take into consideration that there is a living and thriving fishpond, and that the area in front of the pond be kept open, to allow the fishes to propagate and utilize the pond.

Mr. John Reppun, agreed with Mr. Basset, and felt that Mooring Area "B" should be deleted. He felt there should be some kind of constraint on large vessels that just sit and have the potential of leaking fuel. He supported the idea of taking the administrative rules, flawed or not, out to public

hearing. He requested that the Land Board assign a hearings officer, separate from DOBOR, that has a good background of the master plan and understands the "big picture", so that a fair hearing could be conducted. He also felt that discussions should be conveyed to look at what is being put forward in the way of rules, that comports with the public trust doctrine.

Ms. Pat Pettigrew, representing the Ocean Users Coalition of Hawaii, endorsed the rules going out to public hearing. She asked that an amendment be made to Section 13-256-77 Kaneohe recreational thrill craft zone, by deleting the restriction on the proposed new area for access from only the Heeia Kea Harbor, and adding in via the Ship Channel, besides via the Sampan Channel, because they are both federal navigable waterways. She commented on Mooring Area "B", that at the request of the council they were asked to put together a group to look at a list of complaints. They looked at various issues and came out with a report, clarifying that there is no documented evidence that the boats in that area were harmful to the fish in the pond. Since the mooring areas have been there for more than 11 years, they recommended that it not be moved until somebody comes up with some evidence that there is some kind of damage. She offered to provide copies of their report to the Board.

Member McCrory questioned the reason for the Kaneohe Bay Regional Council's elimination of the Ship Channel area. Mr. Thompson's recollection was that the council was going to support the master plan and ban the recreational jet skis, but there was a concern that because there were federal monies used in the construction and repair of the Heeia Kea Harbor, they had to allow them to launch from there. The council wanted to minimize their presence within the bay because of the master plans recommendation, the harbor is closer to the Sampan Channel, and the most direct route to the operating area was selected, which is being proposed in the rules. Ms. Pettigrew indicated that keeping them from going in or out of the Ship Channel would still come within the liability issue of the federal money being used for the harbor. She felt a simple solution would be to say that they could go in and out of the Ship Channel but the speed limits need to be obeyed. Member McCrory asked for comment from the council. Mr. Curt Mench, Kahaluu Neighborhood Board Representative to the Kaneohe Bay Regional Council, agreed with Ms. Pettigrew, and indicated that a number of people have voiced their opinions to him about having to go to Heeia Kea to launch, and that they want a bigger riding area.

Mr. Mench commented on Mooring Area "B", that he would like to see some parameters on the moorings that go in the area, because it sits right in front of a historic site, the fishpond. He commented on Section 13-231-4, Use Permits; part-time or intermittent occupancy, where commercial operations are allowed to come in from the outside mooring areas and take over a mooring area that is actually designated for the people. He understood that there is a waiting list and that people are always asking to get in. Mr. Thompson indicated that it's a provision that only allows the department flexibility to temporarily allow a commercial operator in there if there is no recreational applicant, recreational operators have first priority. At the time this was written there was no waiting list, there is now, but should there be a time when it is vacant, the commercial operators may use it, and the department will get the extra revenues. Mr. Mench commented that the rules have a lot of good things, it made a lot of things legal and put a cap on what is happening now, but hasn't taken away the congestion or the conflict issues.

Mr. White, on behalf of Senator Meyer, concurred with Ms. Pettigrew as far as the thrill craft, and also feels that the bay belongs to everybody, not just the thrill craft people, but the water skiers, the divers, the scientist, and etc.



Member Inouye made a motion to approve staff's recommendation to send the rules out for public hearing, with the amendment as proposed by staff, and with the deletion of Section 13-231-59.

Member Johns added that when Section 13-231-59 comes back to the Board, that comments regarding Mooring Area "B" be included. He also asked that the recreational thrill craft be included, if a special meeting could be held with the Kaneohe Bay Regional Council to see whether they will take another position on recreational thrill crafts. If a special meeting is not possible the recreational thrill craft will be sent out to public hearing.

Chairperson Coloma-Agaran suggested that these items come back to the December 2001 Land Board meeting.

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

**ITEM D-7: Cдуа NO. 0A-3042B FOR PROPOSED SHORE PROTECTION AND BEACH NOURISHMENT AT MAUNA LAHILANI BEACH PARK, WAIANAE, OAHU**

Mr. Lemmo briefed the Board and recommended that the Board approve this application to construct a breakwater and sand nourishment at Mauna Lahilahi Beach Park, Waianae, Oahu, subject to standard conditions, and various special conditions regarding post-project monitoring, archeology, and including the placing of 10,000 cubic yards of sand rather than the 5,000 cubic yards as recommended by the Applicant.

Member Holschuh pointed out a typo in condition no. 14, third line from the bottom, "fro" should be changed to "for".

Mr. Ian Wasnich, Project Manager and Engineer for Oceanit, agreed with staff's recommendation.

Dr. Warren Bucher, Senior Engineer for Oceanit, also agreed with staff's recommendation and commented on his experience with similar types of breakwaters, in and outside of Hawaii.

Member Inouye made a motion to approve staff's recommendation. Member Yamamura seconded.

There was some discussion. Member Johns had some concerns about the policy statement. He was comfortable with the project based upon the additional conditions imposed, but felt that this should be avoided in the future. He understood that there are unique circumstances, and hoped that in 3 years, they will not be trying to fix this problem again. He supported the motion but still had some misgivings. Member McCrory concurred with Member Johns. Member Inouye indicated that she has been to the site 7 years ago and was concerned that in a few years the building, which houses a lot of low-income people from Waianae, would not be there. Mr. Lemmo added that the location of the building was undoubtedly one of the worst planning decisions ever made, and the difference in dealing with this project is that they are dealing with 400 low-income people.

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

**ITEM D-18: CDUA NO. KA-2941 TO RETAIN IN PLACE AND RE-USE A SUBSEA POWER CABLE AND SOUND SOURCE (INSTALLED OFFSHORE OF KAUAI, PURSUANT TO APPORVED CDUA KA-2734), TO CONTINUE FEASIBILITY RESEARCH ON THE USE OF ACOUSTIC TRANSMISSIONS TO MEASURE THE LONG-TERM TEMPERATURE TRENDS OF THE GLOBAL OCEANS**

(Continuation from page 8.)

Mr. Lemmo indicated that Mr. Walters has been talking to the Applicant and has come up with some additional conditions, and strengthening up of an existing condition, that would satisfy DAR's main concerns.

Mr. Walters indicated that any lingering concerns that DAR has is now adequately addressed in the additional conditions and the revised condition. The first additional condition provides a very rapid report on the survey results within 4 weeks of completion, the timeframe has been made tighter to get a real quick look at the findings in terms of possible impacts. The second condition expands the survey analysis to include the other animals concerned about. The third condition ensures that the Applicant will work with the Department and the Division to help the public understand how the project is preceding, they will provide technical information, and also join in on any public events, public meetings, or community meetings, if needed. The revised condition no. 11, makes the role of the Board and Department more explicit in the shut down procedures, and who should be notified during that process.

Member McCrory withdrew her previous motion to defer this item. Member Holschuh withdrew his second.

Member McCrory still had concerns on the NRC report and added an additional condition no.17. Staff's recommendation was amended as follows:

- "7. All mitigation measures set forth in the application materials and in the Final Environmental Impact Statement [Assessment] for this..."
- "11. The Board has the right to amend these conditions and the right to stop the project should any unanticipated and/or unreasonable adverse ecological results occur. Unanticipated and/or unreasonable adverse ecological results will be determined in accordance with the "shut-down procedures" described in the FEIS for the project. In carrying out the procedures outlined in Section 5.2 of the FEIS for the project, the Applicant shall notify the DLNR in addition to the other parties specified."
- "14. In addition to the Marine Mammal Monitoring Studies reports outlined in the FEIS for the project, the Applicant shall prepare and submit a preliminary "quick look" report within 4 weeks of completion of the survey period."
- "15. In addition to the Marine Mammal Monitoring Studies analysis outlined in the FIES for the project, the Applicant shall perform expanded analysis to include all marine mammals and turtles observed during the monitoring period."

“16. The Applicant shall continue to coordinate and cooperate with the Department’s Division of Aquatic Resources to ensure that the public is adequately informed about the project, including participating in up to two (2) public forums per year;

“17. The applicant shall provide to the Department’s Division of Aquatic Resources, the report from the Ocean Studies Board of the National Research Council, assessing ambient noise in the ocean with regard to the potential impacts on marine mammals. If the Division of Aquatic Resources reports to the Chairman of the Board of Land and Natural Resources that the NPAL/ATOC project shows any harm to marine mammals, the Chairman shall stop the project.”

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

**ITEM D-13: RE-SUBMITTAL - 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 approval of September 10, 1993, by deleting recommendation no. 2.

Ms. Connie Kita, Homeless Program Specialist for the Housing and Community Development Corporation of Hawaii, concurred with the staff’s recommendation.

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

**ITEM B-1: REQUEST FOR APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES CHAPTER 13-49, HANAMAULA BAY AND AHUKINI RECREATIONAL PIER, 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 HAWAII ADMINISTRATIVE RULES, CHAPTER 13-49.5, PORT ALLEN, KAUAI AND CHAPTER 13-49.6, NAWILIWILI HARBOR, MAUI**

Mr. Alton Miyasaka, Aquatic Biologist IV for DAR, briefed the Board and recommended that the Board approve the amendments to 3 rules, and adopt 2 rules, primarily regarding akule fishing, both on Kauai and Statewide.

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

**ITEM C-1: PUUWAAWAA FIREBREAK PROJECT**

Mr. Yada presented the submittal. Recommendation is that the Board approve the bid of Matsuyama Construction of \$29,250.09 to install the fenceline in the Puuwaawaa Game Management Area.

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

**ITEM D-1: CONSENT TO ASSIGN GL NO. S-3595, MR. HARRY HIROO NISHIMURA, DBA HARRY'S REFRIGERATION SERVICE, ASSIGNOR, TO MS. MERLE M. LAM, SUCCESSOR TRUSTEE OF THAT CERTAIN UNRECORDED HARRY H. NISHIMURA REVOCABLE LIVING TRUST AND THAT CERTAIN UNRECORDED ELLEN M. NISHIMURA REVOCABLE LIVING TRUST, ASSIGNEE, AND MS. MERLE M. LAM, SUCCESSOR TRUSTEE OF THAT CERTAIN UNRECORDED HARRY H. NISHIMURA REVOCABLE LIVING TRUST AND THAT CERTAIN UNRECORDED ELLEN M. NISHIMURA REVOCABLE LIVING TRUST, ASSIGNOR, TO MR. RICHARD ALISTER WILSON AND MRS. PAMELA JEAN WILSON, HUSBAND AND WIFE, ASSIGNEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-2-50: 86**

Mr. Yada briefed the Board and recommended that the Board approve the consent to assignment of GL No. S-3595, in accordance with terms and conditions.

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

**ITEM D-2: CONSENT TO ASSIGN GL NO. S-3598, MR. DARYL F. AND MRS. ESTHER L. KAYL, ASSIGNOR, TO MAUNA KEA INFRARED, L.L.C., ASSIGNEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-2-50: 84**

Mr. Yada briefed the Board and recommended that the Board approve the consent to assignment of GL No. S-3598, in accordance with terms and conditions.

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

**ITEM D-9: TIME EXTENSION REQUEST-CONSERVATION DISTRICT USE PERMIT NO. HA-2865 FOR A SINGLE FAMILY RESIDENCE IN PUNA, HAWAII, TMK: (3) 1-3-08: 03**

Mr. Lemmo briefed the Board and recommended that the Board approve the time extension request, so that the completion deadline is October 31, 2002.

Member McCrory added a condition to read: "3. That no other time extension shall be granted to this permit."

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

**ITEM D-14: AFTER-THE-FACT REQUEST TO ENTER INTO A LICENSE WITH UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY ON BEHALF OF THE DEPARTMENT OF EDUCATION AT PEARL CITY, OAHU, TMK: (1) 9-7-16: PORTION 1**

Mr. Yada briefed the Board and recommended that the Board authorize DLNR to enter into a license on behalf of the Department of Education, in accordance with terms and conditions.

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

**ITEM D-15: AFTER-THE-FACT REQUEST TO EXTEND A RIGHT-OF-ENTRY PERMIT WITH UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY ON BEHALF OF THE DEPARTMENT OF EDUCATION AT HALAWA, OAHU, TMK: (1) 9-9-1: PORTION**

Mr. Yada briefed the Board and recommended that the Board authorize the DLNR to extend the right-of-entry with the Department of Navy on behalf of the Department of Education, in accordance with terms and conditions.

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

**ITEM D-16: CONSENT TO ASSIGN, EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, GL NO. S-3761, WINDWARD PLANTS INCORPORATED, ASSIGNOR; PAREDES RANCH, LLC, A HAWAII LIMITED LIABILITY COMPANY, ASSIGNEE; MORTGAGELINE FUNDING CORPORATION, FIRST MORTGAGEE; BANK OF HAWAII, SECOND MORTGAGEE; WAIAMANALO, KOOLAUPOKO, OAHU, TMK: (1) 4-1-010: 044**

Mr. Yada requested that this item be withdrawn at the request of the Applicant.

**Withdrawn (Inouye/Holschuh).**

**ITEM D-17: ISSUANCE OF REVOCABLE PERMIT FOR PASTURE PURPOSES TO KULANA FOODS, LTD., KAWAINUI, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-7-07: 05**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a revocable permit for pasture purposes to Kulana Foods, Ltd., subject to terms and conditions. He indicated that written testimony was received from Mauna Kea Agribusiness Company, Inc., supporting the request.

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

**ITEM K-1: ISSUANCE OF LEASE TO DOUGLAS AIRCRAFT, INC. TO CONSTRUCT A FUELING FACILITY AT HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK (1)-1-1-03**

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, briefed the Board and recommended that the Board approve the lease, subject to the review and approval of the Department of the Attorney General.

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

**ITEM K-2: RESUBMITTAL OF AUTOMOBILE PARKING FACILITIES CONTRACT AT HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK (1)-1-1-03**

Mr. Garcia requested 2 amendment to the submittal, both on page 2, changing the Upset Fee section from \$3,250,000.00, to \$5,750,000.00, and the Remarks section by deleting "Projections for the future show that for the upcoming year, gross receipts just go over \$5.0 million." Recommendation is that the Board approve to continue the sealed bids from parking facility operators.

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

**ITEM K-3: ISSUANCE OF LEASE TO FEDERAL AVIATION ADMINISTRATION FOR A KAUAI SYSTEM SUPPORT CENTER OFFICE AT LIHUE AIRPORT, KAUAI, TMK (4)-3-5-01-8P**

Mr. Garcia briefed the Board and recommended that the Board approve the lease, subject to review and approval of the Department of the Attorney General.

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

**ITEM K-4: HOLDOVER AND EXTENSION OF HARBOR LEASE NO. H-90-10 TO MARISCO, LIMITED, KALAELOA BARBERS POINT HARBOR, OAHU, TMK (1)-9-1-14-25**

Mr. Garcia briefed the Board and recommended that the Board authorize and approve the holdover and extension of Harbor Lease No. H-90-10, subject to terms and conditions.

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

**ITEM K-5: ISSUANCE OF A CONSTRUCTION RIGHT-OF-ENTRY AGREEMENT AND AMENDMENT OF HARBOR LEASE NO. H-92-22 FOR THE INSTALLATION OF REFRIGERATED OUTLETS, CSX LINES, L.L.C., PIER 51A, SAND ISLAND CONTAINER FACILITY, HONOLULU HARBOR, OAHU, TMK (1)-1-5-41-111P**

Mr. Garcia briefed the Board and recommended that the Board authorize the Department of Transportation to issue the Applicant a construction right-of-entry agreement and subsequent amendment to Harbor Lease No. H-92-22, subject to terms and conditions.

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

**ITEM K-6: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES**

Mr. Garcia indicated that this is a report, there is no action required by the Board.

**No action.**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 3:50 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. Keliioomaluu

Approved for submittal:

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

