

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

DATE: FRIDAY, DECEMBER 14, 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 9:05 a.m. The following were in attendance:

**MEMBERS:**

Mr. Gilbert Coloma-Agaran  
Ms. Lynn McCrory  
Dr. Fred Holschuh

Mr. Timothy Johns  
Ms. Kathryn Inouye  
Mr. Ted Yamamura

**STAFF:**

Mr. Harry Yada, Land Division  
Mr. Sam Lemmo, Land Division  
Mr. Dan Quinn, Division of State Parks  
Mr. Steve Thompson, DOBOR  
Ms. Athline Clark, Division of Aquatic Resources

Mr. Keith Chun, Land Division  
Ms. Dede Mamiya, Land Division  
Mr. Mason Young, Division of Boating and  
Ocean Recreation (DOBOR)  
Mr. Dave Parsons, DOBOR

**OTHERS:**

Ms. Pam Matsukawa, Department of the  
Attorney General  
Mayor Harry Kim, D-17, D-35  
Mr. Roy Takemoto, D-17  
Mr. Alan Okamoto, D-30  
Mr. Dave Gedeon, D-37  
Mr. Wayne Boteilho, D-37  
Mr. David Barrett, D-31  
Mr. Alan Oshima, D-10  
Rep. Colleen Meyer, D-40, J-2, J-1  
Mr. Anthony Locricchio, D-11  
Mr. Alex Colby, E-3  
Mr. Walton Hong, D-24

Mr. Peter Garcia, Department of  
Transportation  
Ms. Sharon Miyashiro, D-17  
Mr. Newton Chu, D-35  
Ms. Myoung Park, D-30  
Mr. George Wood, D-37  
Mr. Jason Moniz, D-37  
Mr. Tim Lui-Kwan, D-25  
Mr. Rex Johnson, D-40  
Mr. Kevin Andrews, D-40, D-27  
Mr. Doug Hoffman, E-3  
Ms. Ipolani Tano, E-2  
Ms. Pat Pettigrew, J-2, J-1

Mr. Charles Brown, J-1  
Mr. Bruce Middleton, J-1  
Mr. Chris Armstrong, J-1  
Mr. Reg White, J-1  
Ms. Janet Mandrell, J-1  
Ms. Linda Vargo, J-1

Ms. Zelei Abordo, J-1  
Mr. William Mossman, J-1  
Mr. Dick Stephenson, J-1  
Mr. Fred Madlener, J-1  
Mr. John Haig, J-1  
Mr. Gary O'Donnell, J-1

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

**ITEM A-1: APPROVAL OF THE OCTOBER 12, 2001 MINUTES**

Unanimously approved as submitted (Johns/McCrory).

**ITEM D-38: CONSENT TO GENERAL LEASE (GL) NO. S-4101, SOUTHERN FOODS GROUP, L.P. DBA MEADOW GOLD DAIRIES, ASSIGNOR, TO UNIVERSITY OF HAWAII, ASSIGNEE, WAIMANALO, OAHU, TMKs: (1) 4-1-8: 80 AND 4-1-26: 4**

**ITEM D-39: CANCELLATION OF REVOCABLE PERMIT NO. S-7137, ISSUANCE OF REVOCABLE PERMIT TO UNIVERSITY OF HAWAII, WAIMANALO, OAHU, TMK: (1) 4-1-8: 5**

Mr. Harry Yada, Administrator of the Land Division, indicated that communication was received from Meadow Gold Dairies, requesting that Items D-38 and D-39 be withdrawn.

Withdrawn (Inouye/Holschuh).

**ITEM D-17: REQUEST APPROVAL OF 1) TRANSFER AGREEMENT, BETWEEN THE HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, THE COUNTY OF HAWAII AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES, SETTING ASIDE STATE LAND TO THE COUNTY OF HAWAII AS THE SITE FOR THE WEST HAWAII COUNTY OFFICE BUILDING, AND 2) RIGHT-OF-ENTRY TO COUNTY OF HAWAII FOR PROPERTY INVESTIGATION AND CONSTRUCTION PURPOSES, PORTION OF VILLAGE 8 OF THE VILLAGES OF LAIOPUA, KEALAKEHE, NORTH KONA, HAWAII, TMK: 7-4-20: POR. 3**

Mr. Yada briefed the Board and recommended that the Board, approve the proposed Village 8 Transfer Agreement, approve of and recommend to the Governor issuance of an executive order setting aside approximately 7+ acres of Village 8 of the Villages of Laiopua to the County of Hawaii for offices and related uses, and authorize the issuance of a right-of-entry for the purposes of investigation and construction, subject to terms and conditions.

Mayor Harry Kim, County of Hawaii, addressed the need and suitability for the facility, and asked for the Board's favorable approval of the project.

Ms. Sharon Miyashiro, Executive Director of the Housing and Community Development Corporation of Hawaii, testified in full support of the project.

Mr. Roy Takemoto, Deputy Planning Director for the County of Hawaii, accompanying Mayor Kim, testified in favor of staff's recommendation.

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

**ITEM D-35: CONSENT TO ASSIGN GL NOS. 2480, 2481, 2610, 3268, S-4253, AND S-4316, AND TRANSFER OF AN ESTATE OF YEARS FROM NAKANO CO., LTD., ASSIGNOR, TO HAWAII NANILOA RESORT, LLC, ASSIGNEE; APPROVAL OF DLNR'S PROPOSED PROCESS FOR HAWAII NANILOA HOTEL'S APPLICATION UNDER ACT 55, SENATE BILL NO. 2205 (2000); APPROVAL OF FAIR MARKET VALUE OF THE TENANT-OWNED IMPROVEMENTS OF THE HAWAII NANILOA HOTEL UNDER SAID ACT 55; SALE OF LEASE AT PUBLIC AUCTION FOR RESORT AND GOLF COURSE PURPOSES, ON STATE LANDS AT WAIAKEA, SOUTH HILO, HAWAII, TMKs: (3) 2-1-01: 12 & 2-1-05: 13, 16, 17, 27, 32, & 46**

Mr. Keith Chun, Planning and Development Manager for the Land Division, briefed the Board and requested that the Board, consent to the assignment of the leases and reservation of an estate of years from the current lessee to a new entity, find that the proposed process attached to the staff submittal as Exhibit C is in compliance with the requirements of Act 55, find that the agreed upon fair market value of \$6,100,000.00 for the tenant-owned improvements of the Hawaii Naniloa Hotel under Act 55 is reasonable and appropriate, and authorize the sale of one lease at public auction covering the subject area for hotel and resort purposes (including a golf course), subject to terms and conditions.

Mr. Chun requested amendments to the staff submittal. Staff recommendation no. 9.b., and Exhibit C, step 6.e., amend by requiring that a tax certificate be submitted before execution of the new lease. Staff recommendation no. 9.c, in which the successful bidder be required to pay the Applicant the sum of \$6,100,000.00, be amended to clarify that if the Applicant is not the successful bidder, any outstanding tax amount be deducted from the \$6,100,000.00, and the withheld amount be remitted to the appropriate government agencies toward payments. Exhibit C, step 5 "Obtain BLNR authority to auction new lease." should be included in step 2, then renumber steps 6.a. through 6.g., to steps 5.a. through 5.g., and step 7 to step 6.

Mayor Kim commented that he first became aware of the problems on the east side of Hawaii, through his involvement in working out a tax delinquency payment plan for the Hawaii Naniloa Hotel, but it was obvious that there was much more than a tax delinquency problem, the hotel industry and the economy on the east side of Hawaii is struggling. He felt it fortunate that an

investor was found, willing to make a commitment to the hotel industry by investing in a long-term lease. He asked for the Board's favorable approval of staff's recommendation.

Mr. Newton Chu, Attorney for the Hawaii Naniloa Hotel, explained the purpose of Act 55, and gave some background information on his work with the legislature and the department to get this law passed. He requested, on the requirements for third party consent or termination of the existing leases, that if they are not the successful bidder, that the new lease be issued subject to any of the 5 existing subleases.

The Board amended the staff submittal as follows:

1. Amend staff recommendation no. 9.b. to read as follows:

"Applicant shall not be permitted to bid on the new lease at public auction unless Applicant submits tax clearance certificates to DLNR (or such other documents as may be requested by the Chairperson) evidencing payment in full of all taxes, fees, assessments, penalties and interest owed to governmental agencies; provided, however, that in the event Applicant is the sole entity eligible to bid on the new lease, a public auction would not be required and Applicant shall pay all taxes, fees and assessments (including penalties and interest) in full, and shall submit tax clearance certificates to DLNR before execution of the new lease. Applicant shall also cure all defaults under the existing leases (including payment in full of all delinquent lease rents, penalties and interest) before execution of the new lease."

2. Amend staff recommendation no. 9.c. to read as follows:

"The successful bidder at the public auction shall be required to pay Applicant the sum of \$6,100,000.00 in full on or before the date the new lease is executed, which sum represents the fair market value of the tenant-owned improvements, provided, however, that escrow (or such other party responsible for closing the transaction) shall withhold the amount of any taxes, fees, assessments, lease rents, penalties and interest owed to governmental agencies from the sum payable to Applicant, and the withheld amounts shall be remitted to the appropriate governmental agencies as applied towards payments of the outstanding amounts owed to such agencies. Any amounts withheld shall not be deemed to reduce the fair market value of the tenant-owned improvements."

3. Amend Exhibit C, step 2 to read as follows:

"Obtain Board of Land and Natural Resources' (BLNR) approval of the proposed process and the negotiated fair market value, and BLNR's authorization to auction a new lease."

4. Amend Exhibit C, by deleting step 5, and renumbering remaining paragraphs from steps 6.a. through 6.g., to steps 5.a. through 5.g., and step 7 to step 6.

5. Amend Exhibit C, renumbered step 5.e. (previously step 6.e.), regarding the memorandum of agreement, to read as follows:

"Applicant agrees to pay all delinquent taxes, fees, assessments, penalties and interest owed to any governmental agencies (collectively referred to as "Taxes") and cure all defaults under the existing leases (including payment of any delinquent rent). Applicant will not be permitted to bid on the new lease at public auction unless Applicant submits [it provides] tax clearance certificates to DLNR (or such other documents as may be requested by the Chairperson) evidencing payment in full of all Taxes; provided, [however,] however, that in the event Applicant is the sole entity eligible to bid on the new lease, a public auction will not be required and Applicant shall pay all Taxes in full, and shall submit tax clearance certificates to DLNR, before execution of the new lease. Applicant shall also cure all defaults under the existing leases (including payment in full of all delinquent lease rents, penalties and interest) before execution of the new lease;"

6. Amend Exhibit C, renumbered step 5.f., 5<sup>th</sup> bullet point, (previously step 6.f.), regarding third party consents, to read as follows:

"Applicant has obtained all required third party consents from parties with interests in the existing leases (e.g., sublessees, secured parties, etc.) to apply for a new lease under Act 55, and Applicant releases and indemnifies the State from all claims, lawsuits, damages, etc. resulting from the Act 55 process and the early termination of the existing leases. Notwithstanding the foregoing, the Chairperson of BLNR, in its sole discretion, may waive the consent requirement for certain existing sublessees."

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

Member Johns had some concern over the Applicants non-performance under its contractual obligations including delinquencies under the existing leases and the payment of county taxes and charges. He asked that staff report back to the Board, before the auction of the new lease, as to the status of the third party agreements including collective bargaining agreements.

The Board recommended with respect to the requirement that the Applicant obtain all third party consents, that the Applicant work with staff to determine whether the new lease may be issued subject to any of the 5 existing subleases, and that staff be assured that the states interests would be protected in such an event.

**ITEM D-30: CONSENT TO VARIOUS SUB-LEASES, CONSENT TO ASSIGN AND CONSENT TO MORTGAGE OF GL NO. S-4668, YASUO KUWAYE, TRUSTEE UNDER THE REVOCABLE TRUST AGREEMENT OF MR. YASUO KUWAYE, ASSIGNOR AND MORTGAGEE, TO MS. MYOUNG NAN PARK, ASSIGNEE AND MORTGAGOR, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-2-58: 39**

Mr. Yada briefed the Board and recommended that the Board consent to the various subleases, and authorize the consent to assignment and consent to mortgage of GL No. S-4668, in accordance with terms and conditions.

Mr. Alan Okamoto, Attorney for Yasuo Kuwaye Trust, and Ms. Myoung Park, Assignee, were both present to answer question.

Unanimously approved as submitted (Holschuh/Johns).

**ITEM D-37: GRANT OF TERM, NON-EXCLUSIVE EASEMENT TO THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION IN CONNECTION WITH THE SADDLE ROAD IMPROVEMENTS PROJECT FOR PALILA CRITICAL HABITAT MITIGATION PURPOSES AFFECTING PORTIONS OF GL NOS. S-4471, S-4475, S-4477 AND S-4478; IMPLEMENT ACT 236 SLH 2001 MANDATES; AND ISSUANCE OF RIGHT-OF-ENTRY FOR MANAGEMENT PURPOSES; KAOHE 2<sup>ND</sup> AND 3<sup>RD</sup> AND KALOPA, HAMAKUA, NORTH HILO, HAWAII, TMKs: 4-3-10: POR. 2 & 6; 4-4-14: POR. 2 & 3; AND 4-4-15: POR. 2**

Mr. Yada requested an amendment to page 2, Current Use Status, the expiration of GL No. S-4471 should be February 28, ~~2011~~, instead of February 28, 2001. Staff's recommendation is that the Board authorize the issuance of an easement covering the subject Palila Critical Habitat Mitigation Lands as required by the Biological Opinion and as described in the Record of Decision for the Saddle Road improvement project, authorize an amendment to the four subject leases reflecting a reduction of rent in proportion to the amount of leased area being impacted by the easement as described in Act 236 passed by the Legislature, authorize an amendment to the four subject leases permitting the lessees to utilize 10% of the remaining leased area for alternative agriculture use with no increase in rent as specified by Act 236, agree in principal to the extension of the terms of the four subject leases in connection with a mortgage consistent with Section 171-36(b), Hawaii Revised Statutes (HRS) as amended; and authorize the issuance of an immediate right-of-entry to the Applicant, for the purposes of construction and management of the mitigation area, in accordance with terms and conditions.

In response to a question raised by Member Johns regarding the Division of Forestry and Wildlife's involvement, Mr. Yada indicated that his understanding was that the Federal Highways Administration, Department of Transportation, U.S. Fish and Wildlife, and the Division of Forestry and Wildlife, will be working on a Memorandum of Agreement on how mitigation will be implemented.

Member Holschuh, with regard to written testimony received from KK Ranch Inc., asked whether a condition could be added, that the ranchers have first right-of-refusal to graze for fire mitigation.

Mr. Dave Gedeon, Saddle Road Project Manager for the Federal Highways Administration, responded to questions raised by the Board. In regards to KK Ranch's testimony, he indicated that it may be possible that the U.S. Fish and Wildlife Service will consider grazing as a management tool for fire control, but at the moment that is not one of the initial options agreed

to under the Palila Memorandum of Understanding. In regards to a Fire Control Plan, he read through one of the commitments that DLNR had agreed to in the Palila Memorandum of Understanding: "Coordinate fire prevention and suppression activities and planning with the fire ecologist, and cooperatively, the development of a comprehensive interagency fire plan."

Mr. George Wood, Manager of Schuman Carriage Company (GL No. S-4477), was concerned that the Biological Opinion was slanted against using ungulates, grazing even as a fire management tool. He suggested that the Board consider the Department of Transportation having an independent biologist experienced in some grazing to monitor the success of the mitigation program.

Mr. Wayne Boteilho, Boteilho Hawaii Enterprises, Inc. (GL No. S-4478), concurred with Mr. Wood's testimony.

Mr. Jason Moniz, KK Ranch Inc. (GL No. S-4475), provided written and verbal testimony. He was concerned with the overall negative impact that this and other proposed reductions to grazing land would eventually cause to the cattle industry.

The Board amended the staff submittal as follows:

1. Amend page 2, by correcting the expiration of GL No. S-4471, Parker Ranch, to "February 28, 2011."
2. The following additional conditions were added to staff's recommendation:
  - "F. The Board requested reports on the Fire Plan as it is developed."
  - "G. The Board requested that a report be brought back to the Board on the terms and conditions of the Memorandum of Agreement as soon as possible."
  - "H. In the event that cattle grazing is used as a fire mitigation method, the existing lessees shall have the first right-of-refusal to utilize their cattle for that purpose."

Unanimously approved as amended (Holschuh/Johns).

**ITEM D-36: DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION REQUESTS 1) PARTIAL WITHDRAWAL OF LAND FROM GL NO. S-3849 AND GOVERNOR'S EXECUTIVE ORDER NOS. 1288, 1398, 1719 AND 1746; 2) SET ASIDE THE SAME FOR HIGHWAY RIGHT-OF-WAY PURPOSES; AND 3) ISSUANCE OF RIGHT-OF-ENTRY FOR CONSTRUCTION PURPOSES, HUMUULA, KAOHE, HAMAKUA, NORTH HILO, HAWAII, TMKs: 3-8-01: POR. 1 & 13; 4-4-15: POR. 4 & 8; AND 4-4-16: POR. 3, 5, 6 & 10**

Mr. Yada briefed the Board and recommended that the Board approve of and recommend to the Governor the issuance of an executive order withdrawing the lands required for the Saddle Road Improvements Project, Section 2 rights-of-way from Governor's Executive Order nos. 1288, 1398, 1719, and 1746, in accordance with terms and conditions.

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

**ITEM D-31: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO KAHUI PONO, LLC FOR ACCESS AND UTILITY PURPOSES, HOOLAWA, MAKAWAO, MAUI, TMK: (2) 2-9-002: POR. 017**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of perpetual non-exclusive easement for access and utility purposes; and authorize the issuance of a construction right-of-entry, in accordance with terms and conditions.

Mr. David Barrett, Kahui Pono, LLC, was present to answer questions.

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

**ITEM D-25: PETITION TO AMEND TITLE 13, CHAPTER 5, HAWAII ADMINISTRATIVE RULES, TO CHANGE 18.769 ACRES OF THE STATE LAND USE CONSERVATION DISTRICT LIMITED SUBZONE TO THE GENERAL SUBZONE AT KAAWALOA, SOUTH KONA, ISLAND OF HAWAII, TMK: (3) 8-1-10: 05**

Mr. Sam Lemmo, Senior Staff Planner for the Land Division, briefed the Board and recommended that the Board approve the petition to amend the boundary of an existing Subzone within the Conservation District at Kaawaloa, South Kona, Hawaii, subject to conditions.

Mr. Tim Lui-Kwan, Attorney for Pali-K Ranch, LLC, was present to answer questions.

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

**ITEM D-23: REQUEST FOR PUBLIC HEARING AND SMALL BUSINESS IMPACT DETERMINATION: PETITION TO AMEND TITLE 13, CHAPTER 5, HAWAII ADMINISTRATIVE RULES**

Mr. Lemmo briefed the Board and recommended that the Board approve the request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules, determine that the proposed rule amendment will not impact or affect small businesses, authorize the forwarding



of a request for public hearings to the Governor on the proposed rule amendments, upon executive approval publish public hearing notices and appoint a representative of the Board as public hearing master for the proposed rule amendment's public hearing.

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

**ITEM D-10: TIME EXTENSION REQUEST – CONSERVATION DISTRICT USE PERMIT NO. 0A-2670 FOR A MARINA ENTRANCE CHANNEL AT HONOULIULI, EWA, HAWAII**

Member McCrory recused herself from this item.

Mr. Lemmo briefed the Board and recommended that the Board approve an extension of 10-years to complete the marina channel entrance, that all work or construction be completed by December 31, 2020, and all other conditions imposed under permit remain in effect.

Mr. Alan Oshima, representing Haseko Inc., explained that they are asking for a time extension to be concurrent with the Army Corps of Engineers permit that was extended until December 31, 2020, and also when financing is sought for lowering of the outfall, the lenders may look to see if all the permits coincide.

In response to a question raised by Member Inouye, Mr. Oshima explained that the Army Corps of Engineers, based upon their experience with projects of this magnitude and complexity, thought that December 31, 2020 would be a more reasonable deadline. His main concern was how the lenders will view this work, the Army Corps permit extended until December 31, 2020, and that the concept of the Conservation District Use Permit should extend beyond the Army Corps permit. Member Inouye was concerned in extending the permit until 2020, because the deadline to initiate work on the original Conservation District Use Permit was April 26, 2005, the deadline to complete work was April 26, 2010, and construction has already begun. She was not against the granting of an extension, but felt more comfortable extending the permit until December 31, 2015, and at some future time between now and then, if the Applicant finds the time to be insufficient, then come back to the Board for an extension until December 31, 2020.

Member Inouye made a motion, for discussion, to approve staff's recommendation with the amendment that the extension be until December 31, 2015. Member Johns seconded, and indicated that he was supportive of the December 31, 2015 deadline, going until December 31, 2020 if needed, but wasn't sure if this will create an impediment for the financing as they get closer to the time frame

Vote: In favor of the motion (Inouye/Johns/Coloma-Agaran).  
Against the motion (Holschuh/Yamamura)

Motion failed to pass.

Member Inouye made a second motion to approve staff's recommendation as submitted, with a deadline of December 31, 2020.

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

**ITEM D-40: AMEND PRIOR BOARD ACTION OF DECEMBER 18, 1992, AGENDA ITEM F-11 (SET ASIDE OF LAND TO DEPARTMENT OF TRANSPORTATION), FEE CONVEYANCE OF LAND TO THE UNIVERSITY OF HAWAII, AND ISSUANCE OF A MANAGEMENT AND CONSTRUCTION RIGHT-OF-ENTRY, KALIHI-KAI, HONOLULU, OAHU, TMK: (1) 1-2-25: PORTION 11, 46, 54, 58**

Member Johns recused himself from this item.

Ms. Dede Mamiya, Assistant Administrator for the Land Division, briefed the Board and recommended that the Board authorize the fee simple conveyance of the subject lands to the University of Hawaii, and authorize the issuance of a management and construction right-of-entry to the University of Hawaii, subject to terms and conditions.

Member Holschuh commented that he was in favor of the new medical complex being built, but was concerned that funds will be used from the State's \$1.2 billion tobacco settlement.

Mr. Rex Johnson, University of Hawaii, representing the development of the medical complex, testified in support of staff's recommendation.

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, indicated that in conversations with their Harbors Division there is space available in the Kapalama Military Reservation to accommodate tenants that are going to be displaced, though it may not be equivalent, there is space available for tenants that indicate a need for it.

Representative Colleen Meyer, recalled this matter coming up in a bill last year in the legislature, that the present tenants being extremely worried and upset of the short time period given to move out. She requested that the tenants be given a little more time to relocate.

Mr. Kevin Andrews suggested for consideration, instead of the existing tenants at Kakaako having to relocate, that the University of Hawaii build their new medical complex at Kapalama, since the University of Hawaii is getting the fee title for that area.

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

**ITEM D-11: RECONSIDERATION OF WITHDRAWAL ACTION TO FORFEIT GL NO. S-5097, MR. ANTHONY & MRS. BARBARA LOCICCHIO AND**

**MS. PATRICIA EWING, LOT 82, PUU KA PELE LOTS, WAIMEA  
(KONA), KAUAI, HAWAII TMK: 1-4-2: 79**

Mr. Yada briefed the Board and recommended that the Board authorize the cancellation of GL No. S-5097, in accordance with terms and conditions.

Mr. Anthony Locricchio testified that previous default notices were not sent to the other lessee, Ms. Ewing, and that the usual practice of the department has been to send out notices when rent is due. He also indicated that Mr. Thomas Lavigne (existing unsecured surety bond), who has left the State, is still willing to continue as the second surety.

The Board informed Mr. Locricchio that lessees are suppose to know when rental payments are due, and notices of default should not be sent in order for the State to receive payment.

In reconsideration of the forfeiture, and based on the Applicant not submitting a cash performance bond as requested by the Board's first action of August 10, 2001, Member McCrory made a motion to approve staff's recommendation to forfeit the lease.

Vote: In favor of the motion (McCrory/Inouye/Yamamura/Johns/Coloma-Agaran)  
Against the motion (Holschuh)

**Approved as submitted (McCrory/Inouye).**

**ITEM E-3: REQUEST FOR A PERMIT TO LAUNCH AND LAND HANG GLIDERS  
AND PARAGLIDERS AT KAHANA VALLEY STATE PARK**

Mr. Dan Quinn, Administrator for the Division of State Parks, briefed the Board and recommended that the Board approve a permit for paragliding to the Hawaiian Hang Gliders Association at Kahana Valley State Park for a period of 90-days with terms and conditions, and any future extension, to be approved by the Chairperson.

Mr. Doug Hoffman, and Mr. Alex Colby, Hawaiian Hang Gliders Association, were both present to answer questions.

In response to a concern raised by Member Holschuh, Mr. Hoffman indicated that the zone in which the paragliders will be landing is in between the campground and the day use area which is a less heavily used area, very few people if any.

In response to questions raised by Member McCrory regarding commercial activities and DOCARE enforcement, Mr. Hoffman indicated that both the State and the club feel that Kahana Bay is not an appropriate place for commercial paragliding activities. Mr. Quinn explained that part of the reason they are asking for just an initial 3-month permit is to make sure the activities could be managed adequately. The conditions will be worked out at staff level with the approval of the Chairperson.

Unanimously approved as submitted (McCrorry/Yamamura)

**ITEM E-2: APPROVAL TO EXTEND GL NO. S-94-01 TO THE LANIHULI COMMUNITY DEVELOPMENT CORPORATION (FORMERLY KNOWN AS FRIENDS OF MALAEKAHANA) ON A MONTH-TO-MONTH PERMIT**

Mr. Quinn briefed the Board and recommended that the Board approve a month-to-month permit to the Lanihuli Community Development Corporation, subject to the same terms and conditions in GL No. S-94-01 and to authorize the Chairperson to approve subsequent month-to-month extension until such time as the Development Plan for the park is approved and the Department is ready to move forward with implementation of the plan. In addition, that the Board approve the use of the two vending machines subject to the added condition that the vending machines are to be removed by the lessee upon the cancellation/termination of the permit.

Member McCrorry commented on a copy of a brochure that she received within the last year, indicating that the group was looking at doing some type of troubled youth program at the park. Her concern was that the type of activity did not seem to fit the activities of the lease. She wanted to make sure that the list of activities that are allowed on the site within the lease program, be incorporated or written into the month-to-month permit.

Ms. Ipolani Tano, Chairperson of the Lanihuli Community Development Corporation, gave examples of some of their programs and projects, and indicated that the name change to Lanihuli Community Development Corporation was to broaden the scope of what their management team focuses on.

Unanimously approved as submitted (Inouye/Johns).

**ITEM E-1: SPECIAL USE PERMIT EXTENSION FOR MR. MICHAEL A. MEIERDIERCKS FOR RESIDENTIAL PURPOSES, KALIHI, OAHU**

Mr. Quinn briefed the Board and recommended that the Board extend the permit to Mr. Meierdiercks for a period ending December 31, 2002, subject to conditions.

Unanimously approved as submitted (Inouye/Yamamura).

**ITEM D-24: REQUEST FOR PUBLIC HEARING AND SMALL BUSINESS IMPACT DETERMINATION: PETITION TO AMEND TITLE 13, CHAPTER 5, HAWAII ADMINISTRATIVE RULES, TO DESIGNATE A PORTION OF THE STATE LAND USE CONSERVATION DISTRICT INTO THE**

**LIMITED SUBZONE IN HANAMAULU, KAUAI, TMK: (4) 3-7-03: POR.  
01**

Mr. Lemmo briefed the Board and recommended that the Board approve the petitioner's request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules, determine that the proposed rule amendment will not impact or affect small businesses, authorize the forwarding of a request for public hearing to the Governor on the proposed rule amendment, upon executive approval publish public hearing notice and appoint a representative of the Board as public hearing master for the proposed rule amendment's public hearing.

Mr. Walton Hong, representing EWM Kauai, LLC, testified in favor of staff's recommendation.

Member McCrory, after clarifying the location of the subject area with Mr. Hong, recused herself from this item.

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

**ITEM D-32: AFTER-THE-FACT GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF MANAGEMENT RIGHT-OF-ENTRY TO HAWAIIAN ELECTRIC COMPANY, INC. FOR UTILITY PURPOSES, KAPOLEI, EWA, OAHU, TMK: 9-1-88: POR. 05**

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

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

**ITEM K-2: ISSUANCE OF LEASE TO HAWAIIAN ELECTRIC COMPANY, INC. FOR ELECTRICAL POWER DISTRIBUTION SYSTEM SUBSTATION FACILITIES, HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK: (1)-1-1-03-1P**

Mr. Garcia briefed the Board and recommended that the Board, authorize the Department of Transportation to enter into and issue an Electrical Power Distribution System Substation Facilities Lease, together with a non-exclusive Electrical Power Transmission Line Easement, to Hawaiian Electric Company, Inc., subject to terms and conditions.

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

**ITEM D-27: CONSENT TO ASSIGN GL NO. S-3774, MR. CALVIN K. SUMIDA, COMMISSIONER, ASSIGNOR, TO 41-672 CORP., ASSIGNEE, WAIMANALO, KOOLAUPOKO, OAHU, TMK: (1) 4-1-027: 010**

Mr. Yada amended the staff submittal by adding a condition: “That the consent be subject to payment of irrigation water fees to the Department of Agriculture since the effective date of the assignment, October 3, 2001.” Staff’s recommendation is that the Board consent to the assignment, as amended, in accordance with terms and conditions.

Mr. Kevin Andrews, 41-672 CORP, was present to answer questions.

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

**ITEM D-18: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO MR. MASAHARU EDAMURA FOR ACCESS AND UTILITY PURPOSES, SITUATED AT GOVERNMENT (CROWN) LAND OF WAIMANALO, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-013: PORS. 18, 21, & 22**

Mr. Yada amended the staff submittal by adding a condition: “That the consideration be deleted subject to confirmation by staff abstractors of the property’s Kuleana status.” Staff’s recommendation is that the Board authorize the issuance of a perpetual non-exclusive easement, as amended, in accordance with terms and conditions.

A representative, on behalf of the Applicant, was present to answer questions.

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

**ITEM J-2: REQUEST FOR APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES, SECTIONS 13-231-59, 13-235-35, 13-256-17, 13-256-73, AS THEY RELATE TO HEEIA KEA SMALL BOAT HARBOR AND KANEOHE BAY COMMERCIAL PERMITS, AND KANEOHE BAY OFFSHORE MOORING AREAS, RECREATIONAL THRILL CRAFT OPERATION AT HEEIA KEA SMALL BOAT HARBOR AND KANEOHE BAY**

Mr. Mason Young, Acting Administrator of DOBOR, recalled, that at the October 26, 2001 meeting of the Board, Item J-1, there were 3 things that needed to be addressed, 1) a typographical error on the section of the rule, 2) that the Division go back to the Kaneohe Bay Regional Council (KBRC) and solicit comments with respect to mooring area “B”, and 3) that the Division obtain comments from KBRC regarding amending the proposed access to the proposed relocated Kaneohe Bay recreational thrill craft operating area to also include access from the Kaneohe Bay Ship Channel.

Mr. Steve Thompson, Oahu District Manager for DOBOR, indicated that on November 28, 2001 the KBRC met and discussed the Kaneohe Bay offshore mooring area “B”, and the matter of recreational thrill craft access. The KBRC unanimously recommended that offshore mooring area “B” remain where it is currently located, and recommended against authorizing recreational thrill craft access to the proposed new operating area via the Kaneohe Bay Ship Channel. Staff’s

recommendation is that the Board: 1. Grant preliminary approval to conduct a public hearing on the proposed amendments and proposed new Hawaii Administrative Rules, including further revisions as may be recommended by the Attorney General.; 2. Grant approval to combine the proposed amendments and proposed new Hawaii Administrative Rules included herein with those approved from agenda Item J-1 from the October 26, 2001 meeting of the Board of Land and Natural Resources for the purposes of having a comprehensive public hearing covering Heeia Kea Small Boat Harbor and Kaneohe Bay subject matter; 3. Affirm to the Department to schedule the public hearing on these rules as expeditiously as possible following the Governor's approval to conduct a public hearing.; and 4. Authorize the Chairperson to appoint a hearing master to conduct a public hearing to receive written and verbal testimony concerning the proposed amendments and proposed new Hawaii Administrative Rules.

Representative Meyer, provided written and oral testimony as a resident of Kahaluu, and long time recreational boating enthusiast, in opposition to the proposed rule changes dealing with personal watercrafts. She felt that a more appropriate rule change would be one that requires personal watercraft owners and operators to be licensed and required to pass a safe operating test.

Ms. Pat Pettigrew, representing Kaneohe Bay Association Mariners, Member of Boats Hawaii, testified against the proposed rule change regarding restrictions on personal watercraft operators. She felt that KBRC is not voting the way the groups they represent want them to vote and is not supported by the community.

The Board amended the staff submittal as follows:

1. Amend page 1, under Remarks, by changing October 25, 2001, to October 26, 2001.
2. Amend page 3 of the proposed rules to read: "(3) Skiff and other small craft less than 25 feet in length ....".

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

**ITEM K-1: ISSUANCE OF A LEASE TO THE FEDERAL AVIATION ADMINISTRATION FOR A MEDIUM INTENSITY APPROACH LIGHTING SYSTEM WITH RUNWAY ALIGNMENT INDICATOR LIGHTS AND MIDDLE MARKER, KONA INTERNATIONAL AIRPORT AT KEAHOLE, ISLAND OF HAWAII**

Mr. Garcia briefed the Board and recommended that the Board approve the issuance of a lease to the Federal Aviation Administration.

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

**ITEM K-3: ISSUANCE OF A LEASE TO THE FEDERAL AVIATION ADMINISTRATION FOR AN AIR TRAFFIC CONTROL TOWER AT HILO INTERNATIONAL AIRPORT, ISLAND OF HAWAII**

Mr. Garcia briefed the Board and recommended that the Board approve the issuance of a lease to the Federal Aviation Administration.

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

**ITEM K-4: ISSUANCE OF A REVOCABLE PERMIT TO MR. RONALD P. WEIDENBACH DBA HAWAII FISH COMPANY FOR AQUACULTURE USE AT DILLINGHAM AIRFIELD, OAHU, TMK: (1)-1-6-8-02**

Mr. Garcia briefed the Board and recommended that the Board approve the issuance of a revocable permit to Mr. Ronald Weidenbach.

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

**ITEM K-5: ISSUANCE OF LEASE BY DIRECT NEGOTIATION TO EQUILON ENTERPRISES LLC FOR A PETROLEUM BULK STORAGE AND DISTRIBUTION FACILITY AT NAWILIWILI HARBOR, KAUAI, TMK: 3-2-04-17 AND 40**

Mr. Garcia briefed the Board and recommended that the Board approve the lease by direct negotiation to Equilon Enterprises LLC, subject to terms and conditions.

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

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

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

**No action.**

**ITEM K-7: SECOND AMENDMENT TO HARBOR LEASE NO. H-67-1 TO AKANA PETROLEUM, INC. FOR PETROLEUM BULK STORAGE AND DISTRIBUTION FACILITIES AT KAWAIIHAE HARBOR, ISLAND OF HAWAII, TMK: (3)-6-1-3-32**

Mr. Garcia briefed the Board and recommended that the Board approve the Second Amendment to Harbor Lease No. H-67-1 to Akana Petroleum, subject to terms and conditions.

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



**ITEM K-8: ISSUANCE OF LEASE BY NEGOTIATION TOGETHER WITH A CONSTRUCTION RIGHT-OF-ENTRY TO YOUNG BROTHERS, LTD FOR A WASH DOWN FACILITY AT KAHULUI HARBOR, MAUI, TMK: (2)-3-7-08-04**

Mr. Garcia briefed the Board and recommended that the Board authorize the issuance of a lease and construction right-of-entry to Young Brothers, Ltd., subject to terms and conditions.

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

**ITEM K-9: ISSUANCE OF REVOCABLE PERMIT TO DUCK TOURS, LLC, FOR PARKING OF AMPHIBIOUS VEHICLES, ETC. AT HONOLULU HARBOR, OAHU, TMK: (1)-1-5-39-6P**

Member Yamamura recused himself from this item.

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

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

**ITEM K-10: ISSUANCE OF REVOCABLE PERMIT TO BIG ISLAND TOPSOIL LLC TO PARK SEMI-TRAILERS AND TRACTORS AT 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 to Big Island Topsoil LLC, subject to terms and conditions.

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

**ITEM K-11: AUTHORIZATION FOR THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, TO NEGOTIATE FOR THE ACQUISITION OF PRIVATELY OWNED LANDS AND A COUNTY OWNED PARCEL, INCLUDING THE EXERCISE OF EMINENT DOMAIN, FOR THE HALEAKALA HIGHWAY WIDENING, HANA HIGHWAY TO PUKALANI BYPASS, PROJECT NO. 37BB-03-94, AT WAILUKU AND KAILUA, MAKAWAO, MAUI**

Mr. Garcia briefed the Board and recommended that the Board authorize the Department of Transportation to negotiate the acquisition of privately owned lands and a County owned parcel, and authorize the Department of Transportation to obtain rights-of-entry from the land owners

for site inspection, engineering and design studies, topographic, test boring and land boundary surveys, appraisal, construction and other related purposes.

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

**ITEM K-12: REPORT ON REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION, FOR CONSISTENT USES**

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

**No action.**

**ITEM F-1: REQUEST FOR APPROVAL TO ENTER INTO THREE CONTRACTS WITH THE UNIVERSITY OF HAWAII**

Ms. Athline Clark, Planner VI for the Division of Aquatic Resources, briefed the Board and recommended that the Board authorize the Chairperson to negotiate and, subject to necessary approvals, enter into three contracts for Coral Initiative projects with the University of Hawaii.

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

The Board recessed at 12:40 p.m. The meeting was reconvened at 1:10 p.m.

**ITEM J-1: AUTHORIZATION, SUBJECT TO THE CHAIRPERSON'S DETERMINATION THAT MANAGEMENT AND OPERATION OF THE ALA WAI SMALL BOAT HARBOR MAY BE PRIVATIZED UNDER ACT 90, SLH 2001, TO (1) LEASE CERTAIN LAND AT/ADJACENT TO THE ALA WAI BOAT HARBOR BY NEGOTIATION, (2) PUBLISH NOTICE OF INTENTION TO LEASE LAND THROUGH NEGOTIATION IN FORM FINALLY REVIEWED AND APPROVED BY CHAIRPERSON, AND (3) PRELIMINARILY DETERMINE WHICH APPLICANTS MEET CRITERIA FOR SELECTION AS LESSEE, PURSUANT TO ACT 299, SLH, AND SECTION 171-59(a), HRS**

Mr. Young explained that the subject area is approximately 10-acres of fast and reclaimed lands of the Ala Wai Small Boat Harbor (Premesis), that include part of the Ala Wai Marina, Inc., but excludes 3 different parcels within the same harbor, the Waikiki Yacht Club, the Hawaii Yacht Club, and Seibu, Inc. - Hawaii Prince Hotel. The intent of the staff submittal is to solicit Applicants interested in negotiating a long-term lease for the development of the Premises, excluding the submerged lands, and for non-maritime related purposes to complement and support the maritime activities of the harbor, and for the purpose of the management and operation of the harbor facilities. Staff's recommendation is that the Board:

1. Concur with DOBOR's conclusions, and find that the public interest demands that a lease issued for the Premises (the fast lands at/adjacent to the Harbor) be disposed of through negotiation.
2. Authorize the Chairperson to (a) approve the final notice incorporating the terms and conditions and other terms and conditions as may be required by the Board or the Chairperson following legal review; and (b) publish notice soliciting Applicants interested in negotiating a long-term lease for development of the Premises and management and operation of Harbor.
3. Authorize the Chairperson to appoint a Selection Committee to review the qualifications of interested Applicants, which committee could include representatives from the Department of Budget and Finance and the Department of Business Economic Development and Tourism, and disinterested individual from the community experienced in the areas of development, design, finance, and construction, who are willing to assist in assessing both the financial capability and the development qualifications of Applicants.
4. Authorize the Chairperson, if the Selection Committee determines that there is only one qualified Applicant, to recommend to the Board for approval the disposition of the lease by negotiation to the sole qualified Applicant.
5. If the Selection Committee determines that more than one Applicant is qualified, authorize the Chairperson to (a) notify qualified Applicants to submit their final sealed bids, (b) establish a final date for receipt of those bids, (c) receive the bids, and (d) recommend the Applicant that submitted the highest bid to the Board for approval and disposition of the lease of the Premises to that Applicant, pursuant to HRS, Section 171-59(a).
6. Amend the executive orders covering Ala Wai Small Boat Harbor (Governor's Executive Order Nos. 1795, 2170, and 2575) to the extent necessary to reflect the enactment of Act 299, authorizing the Board to use fast land in or adjacent to state boating facilities for non-maritime-related purposes to "complement or support" the maritime-related activities of the Harbor.
7. Authorize the Chairperson to rely upon a performance bond of sufficient amount rather than the provisions described in Items 5B (10), to protect the State's interest in the event the lessee materially breaches the lease, including without limitation, by failing to properly perform its obligation to manage and operate the Harbor for the State.

There were some concerns raised by the Board:

In reference to page 6, that describes conditions of the lease, Member McCrory asked that the lease include an Annual Report back to the Board from DOBOR and the Lessee. Member Johns was concerned about public input from the users of the harbor. He commented that there may be a need for a Citizens Advisory Committee, and suggested that the Annual Report, as described by Member McCrory, include a report from this committee.

In reference to page 7, prior experience of managing marinas at 2,000 berths, Mr. Dave Parsons, Special Projects Administrator for DOBOR, indicated that there are 799 berths at the Ala Wai Boat Harbor that are under direct State control. Member Inouye suggested, that the requirement for prior experience of managing marinas be reduced to 1,000 berths.

In reference to page 9, setting a percentage on the minimum slip and mooring occupancy rate and minimum monthly accounts receivable delinquency rate, Member McCrory asked that staff re-look at this issue, to see if using percentages will be an applicable requirement.

In reference to page 10, (6) Annual rent, that recommends the use of a staff appraisal, Member McCrory requested instead, because of the size of the project, that an independent appraisal be used.

In reference to page 11, regarding assignment of the lease, Member Inouye was concerned about the lessee being able to assign the lease of the Premises in its entirety, including the obligation to manage and operate the Harbor. Member McCrory added, that the Board would be authorizing the appointment of a Selection Committee to review the qualifications of interested Applicants, by allowing the lessee to assign the lease, the lessee becomes the Selection Committee without the prior expertise that was assigned to this committee. Mr. Young explained, anything that deals with the lease, with the selection of the lessee, or any successor, as a standard format including law, requires the prior consent of the Board. The reason this was included was to be sure that the standard form of any lease with respect to a request for assignment still needs prior consent of the Board. He understood the Boards concern, that the assignee is not part of the Selection Committee and should such a committee be revisited to determine whether the assignment being considered is viable.

In reference to staff recommendation no. 3., regarding the appointment of a Selection Committee, Member McCrory commented on the word "community", that if it's defined as meaning only within the State, this may be truncating some of the other options that allow the use of looking at a broader picture, perhaps some expertise on the mainland or another country that operates harbors. Member Inouye requested that the word "individual" be made plural to read: "...disinterested individuals from the community...".

In reference to staff recommendation no. 7, Member Inouye asked that consideration be made for payment, as well as the performance bond.

Member Inouye requested that a report on other municipalities be provided to the Board with more quantitative data, particularly on harbors that have been converted from public to private management. Member Yamamura, in addition, asked that staff obtain responses from the users, the actual boaters, to see what their reactions are.

Mr. Charles Brown, representing Westrec Marinas, an interested party in leasing the subject land, submitted written and verbal testimony in support of staff's recommendation. In response to a question raised by the Board, he offered to provide the Board with information on increased revenues received, pre and post transition, and boater relations in the City of Chicago, as well as any other facilities they have the data on. He indicated that their approach and perspective on

this is that it is in the best interest of the public, the boaters, and the State, to maximize services, amenity, and potential.

In response to questions raised by Member Inouye, Mr. Brown indicated that they have over 2500 berths under their operation, and that they have a financing partner, willing to finance the project provided that the authority is there to do the deal.

Ms. Zelei Abordo, representing We The People, submitted written testimony and a petition, against staff's recommendation to privatize the Ala Wai Small Boat Harbor. Her main concern was the lack of public input for this major public beach and recreational venue.

Mr. Bruce Middleton, Vice-Chairperson of the Ala Wai Marina Board, a body elected to represent the users of the Ala Wai Marina Small Boat Harbor, testified in opposition to the privatization of the Ala Wai Marina Small Boat Harbor. Some concerns raised were that the issue of submerged lands are unresolved, that it's premature, and that there is no support for this. He requested that the Board defer this matter until the problems, as outlined, are considered on a rational basis.

In response to a question raised by Member Johns regarding the contract not being supported by anyone, Mr. Middleton indicated that when Senate Bill 752, the legislative precursor of Act 299, was passed, it was represented as being a tool for enhancing harbor revenue by way of leasing out parcels within the harbor, but not an entire harbor facility, and they supported it because they thought it would help to enhance revenue flow.

Mr. William Mossman, Hawaii Boaters Political Action Association, testified against staff's recommendation. His main concerns were, lack of information on privatization, no hard numbers on the cost to the State and the boaters, the State Auditor's recommendations ignored, and public boaters directly affected have been excluded.

Mr. Chris Armstrong, Vice-President of Honokohau Marina Partners, another company involved with the privatization of State harbors, testified in support of the privatization package, as the State well admits that they have no money to rebuild and fix up the State facilities, and the real alternative is to go to private enterprise. The harbors are in disarray and they feel they can help the State in their economic time of need.

Mr. Dick Stephenson, Resident of the Ala Wai Marina, testified in opposition to staff's recommendation. He urged the Board to put this matter on hold, because of the confusion, complexity, unanswered question, economically the timing is not right, and the need to involve the community at several levels.

Mr. Reg White, Tenant and Resident of Ala Wai Boat Harbor, and Vice-President of Operations for Paradise Cruise, Ltd., provided written and verbal testimony, indicating that this matter requires much more thought and planning, that a proper request-for-proposal is needed to find the best plan for using the surrounding lands and facilities, that the Board should require a plan be made by DOBOR and worked out with the affected citizenry, and then carried to it's proper and successful conclusion.

Mr. Fred Madlener, representing Hawaii's 1000 Friends, believed that under the Public Trust Doctrine, this matter lacks justification for going through the drastic change that is being contemplated, to take something that is public and essentially give it to a private entity. He requested deferral of this matter until clarification can be obtained on how all this is going to work.

Ms. Janet Mandrell, The Makai Society, testified in opposition to staff's recommendation. She indicated that the privatization justification appears to be a revenue producing mechanism for the State, the divestiture of public land for private profit is in disregard of the State's public stewardship responsibility and public law associated with dedicating special funds, such as the Boating Special Fund. She requested an Environmental Impact Statement or Environmental Assessment to consider the divestiture of public land by long-term lease for private development, and a State Comprehensive Ocean Recreation Plan that talks about the ocean recreation uses that are supported. She asked that this matter be deferred until the hard data could be obtained.

Mr. John Haig, Resident of the Ala Wai Boat Harbor, testified against staff's recommendation. His main concern was that this matter should be decided by the legislature rather than the Land Board.

Ms. Linda Vargo, Member of the Ala Wai Boating Community, provided written and verbal testimony, requesting that the Board defer this item.

Mr. Gary O'Donnell, Resident of the Ala Wai Harbor, provided written and verbal testimony, requesting that the Board reject or defer the proposal to privatize the Ala Wai Small Boat Harbor. Some concerns raised were, the timing due to poor economic conditions nationwide, and the proposal that states the lessee must operate the harbor at an equal or less cost than the current State operation when the State Auditor was unable to pin down an exact figure.

Ms. Pat Pettigrew, Chairperson of the Ocean Users Coalition of Hawaii (OUCH), a statewide coalition representing boaters, and boating and water use organizations, testified against staff's recommendation. Some concerns raised were that the management timeline still hasn't been presented and costs of operating the harbor is unknown, the lease is proposed to be negotiated without input from the public that will be effected, and the criteria, structured for development not management operations, has been structured in such a restrictive way that the people of Hawaii may not get the best deal. She requested that this measure be deferred, and indicated that the coalition is ready, willing, and able to assist the Land Board in any way, whether it be researching, feedback from other harbors, or helping on a committee.

Representative Meyer concurred with Mr. Middleton's testimony that when Senate Bill 752 was passed it was understood that different parties would come in and lease various parcels of property, but not the entire harbor facility. In response to a question raised by the Board, Representative Meyer clarified that she voted in favor of Senate Bill 752 and the privatization bill.

Mr. Mossman, presented written testimony on behalf of Mr. William Aila Jr., employee of DLNR, however, testifying as an individual, a boater, and a fisherman, in opposition to staff's recommendation. Some concerns raised were, the improper mix of Act 90 and Act 299, and that

the Land Board is in essence entering into a defacto lease of the submerged lands in violation of Section 171-59(c), HRS.

**Motion made at 3:25 p.m. to move into executive session to consult with legal counsel (Holschuh/Inouye). The meeting was reconvened at 3:50 p.m.**

Member Inouye, in response to an issue raised regarding the Board entering into a defacto lease of the submerged lands, indicated that the Attorney General's Office has looked at this issue in helping prepare the staff submittal, and their view is that it is legal, based on the fact that the property will be managed by a private entity, but the leases would be directly with the user and the State.

There was some discussion by the Board. Member Inouye concurred in concept with the intent of the staff submittal, "To improve the operation, management, and capital facilities of the Ala Wai Small Boat Harbor, as well as maximize the revenue available for deposit into the Boating Special Fund, by making the Premises available under long term lease or private development and non-maritime use and activities to complement and support the maritime activities of the Ala Wai Small Boat Harbor, and making the lessee responsible for performing all of the maritime-related functions and activities the State, the DLNR and DOBOR presently perform at the Ala Wai Small Boat Harbor." She raised a concern, that in going out for an entertainment of proposals for development, that there should be minimum development criteria and minimum standards that are set forth before this goes out to bid, that are reviewed by the users and the community, that includes, besides the boaters of the Ala Wai Harbor, the existing neighborhood. She pointed out some of the issues that were raised earlier, specific standards such as a boatyard, a dry dock facility, accommodations for cruise lines, and accommodations for public parking. Member Johns stated that the intent of forming a Citizens Advisory Committee is to have a group participate in the redevelopment vision before the State solicits Applicants interested in negotiating a long-term lease. Member Inouye indicated that the committee would assist the department in defining the minimum requirements for the development plan. Member McCrory recommended that a timeline be set. Member Inouye suggested that the development plan be brought to the Board within 6-months.

The Board amended the staff submittal as follows:

1. Amend page 6, under Lease, by including a requirement that an Annual Report be provided to the Board from the Lessee and DOBOR.
2. Amend page 7, under F. Prior experience, to read: "...the aggregate contain more than 1,000 [2,000] berths...".
3. Amend page 10, under (6) Annual rent, to read: "...by independent [staff] appraisal, or the rent...".
4. Amend pages 11 and 12, by renumbering nos. 6 through 10, with nos. 7 through 11. (No. 6 was mistakenly listed twice.)

5. Amend staff recommendation nos. 2 through 7, by renumbering them to nos. 3 through 8, in addition, add/amend staff's recommendation as follows:

- "2. Citizens Advisory Committee is to be formed to consist of: The Ilikai AOA, The Ilikai Marina Association, Hawaii Yacht Club, Waikiki Yacht Club, Hawaii Prince Hotel, Ala Moana Neighborhood Board, Ala Wai Marina Board, a representative from the surfers, a representative of the paddlers, OUCH, DOBOR, and any other entity that the Chairperson feels should be represented on the committee. The purpose of the committee is to assist the department in defining the minimum requirements of the development plan, which is to be presented to the Board within 6-months or sooner. The services of an independent facilitator shall be used."
- "4. Authorize the Chairperson to appoint a Selection Committee...and disinterested individuals from the..."
- "8. Authorize the Chairperson to rely upon a payment and performance bond of sufficient amount rather than the provisions described in Items 5B(11)[5B(10)], to protect..."
- "9. The Lessee shall be in full compliance with Chapter 343."
- "10. A report on other municipalities shall be provided to the Board with more quantitative data, particularly on harbors that have been converted from public to private management."

Unanimously approved as amended (Inouye/Johns).

**ITEM D-1 GRANT OF PERPUAL, NON-EXCLUSIVE EASEMENT TO MAUI ELECTRIC COMPANY, LIMITED AND VERIZON HAWAII INC. FOR UTILITY PURPOSES, KAHAKULOA VALLEY, WAILUKU, MAUI, TMK: 3-1-004: 106 & 119**

Mr. Yada briefed the Board and recommended that the Board, subject to the Applicants fulfilling the Applicant requirements, grant the perpetual non-exclusive easement, in accordance with terms and conditions.

Unanimously approved as submitted (Yamamura/Johns).

**ITEM D-2: CANCELLATION OF REVOCABLE PERMIT NOS. S-1494 & S-6820 AND ISSUANCE OF REVOCABLE PERMIT TO MR. NORMAN D. MARTIN, JR., WAILUA, HANA, MAUI, TMK: (2) 1-1-006: 041 AND 043**



Mr. Yada briefed the Board and recommended that the Board authorize the cancellation of revocable permit to Mr. Samuel Akina, and authorize the issuance of a new revocable permit to Mr. Norman Martin.

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

**ITEM D-3: CONSENT TO ASSIGN GL NO. S-5322, MR. PETER H. AND MRS. HELEN H. SOUZA, ASSIGNORS, TO MR. WILBERT L. AND MRS. MELODY A. PIGAO, ASSIGNEES, PARCEL A, PORTION OF THE GOVERNMENT (CROWN) LAND OF KAPAA, KAWAIIHAU, KAUAI, HAWAII, TMK: 4-5-15: 8**

Mr. Yada briefed the Board and recommended that the Board consent to the assignment of GL No. S-5322, in accordance with terms and conditions.

Member McCrory amended staff's recommendation by adding a condition: "That the consent is subject to there being an acceptable performance bond, preferably cash, in place."

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

**ITEM D-4: APPOINTMENT AND SELECTION OF A HEARING OFFICER TO CONDUCT ALL HEARINGS FOR A CONTESTED CASE HEARING RE: DOCKET NO. 02-03-MA – APPEAL OF DENIAL OF CONSERVATION DISTRICT USE APPLICATION MA-3035B FOR CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE AT TMK: (2) 4-1-02: 008, HONOKOHAU, KAA NAPALI, LAHAINA, MAUI**

Mr. Lemmo briefed the Board and recommended that the Board authorize the appointment of a Hearing Officer to conduct all the hearings.

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

**ITEM D-19: REQUEST FOR TIME EXTENSION OF PROJECT INITIATION FOR CONSERVATION DISTRICT USE PERMIT FOR McBEATH SINGLE-FAMILY RESIDENCE AT HAENA, KAUAI, TMK: (4) 5-9-02: 66 & 68**

Mr. Lemmo briefed the Board and recommended that the Board provide the permittee until January 17, 2002 to initiate construction of the approved single-family residence.

Member McCrory amended staff's recommendation by granting the permittee until April 17, 2002 to initiate construction.

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

**ITEM D-5: SET ASIDE TO DEPARTMENT OF TRANSPORTATION FOR AIRPORT RELATED PURPOSES, A MANAGEMENT AND CONSTRUCTION RIGHT-OF-ENTRY, HONOLULU, OAHU, TMK: (1) 1-5-35: 10**

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

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

**ITEM D-6: AFTER-THE-FACT GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII FOR ACCESS AND UTILITY PURPOSES, MANAGEMENT AND CONSTRUCTION RIGHT-OF-ENTRY AT WAIAHOLE, OAHU, TMK: (1) 4-8-13: PORTION 1**

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a perpetual non-exclusive easement, and authorize the issuance of a management and construction right-of-entry, to the Housing and Community Development Corporation of Hawaii, in accordance with terms and conditions.

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

**ITEM D-7: RESCIND PRIOR BOARD ACTION OF APRIL 25, 1986 (AGENDA ITEM F-5), ACQUISITION OF ROADWAY EASEMENT FOR KIHEI ELEMENTARY AND INTERMEDIATE SCHOOL AT KIHEI, MAUI, TMK: (2) 2-2-2: 42**

Mr. Yada briefed the Board and recommended that the Board rescind prior Board action of April 25, 1986, in accordance with terms and conditions.

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

**ITEM D-8: AMENDMENT TO PRIOR BOARD ACTION OF MARCH 24, 1994 (AGENDA ITEM NO. F-7), FOR DIRECT ISSUANCE OF NON-EXCLUSIVE, TERM, UTILITY EASEMENT TO GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED (NOW VERIZON HAWAII INC.), AUWAIOLIMU DRIVE, KEWALO, HONOLULU, TMK: 2-4-32: 02**

Mr. Yada briefed the Board and recommended that the Board amend prior Board action of March 24, 1994, in accordance with terms and conditions.

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

**ITEM D-9: RESCIND PRIOR BOARD APPROVAL OF ISSUANCE OF REVOCABLE PERMIT TO MS. VALERIE BARRUGA, KAHANA VALLEY STATE PARK, OAHU, TMK: 5-2-02: POR. 01**

Mr. Yada briefed the Board and recommended that the Board amend its action of June 23, 2000 by rescinding its authorization to issue a new revocable permit and terminate Revocable Permit No. S-6266, in accordance with terms and conditions.

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

**ITEM D-12: TERMINATION OF REVOCABLE PERMIT NO. S-6659 AND ISSUANCE OF REVOCABLE PERMIT TO MR. LINCOLN Y.T. CHING, PORTION OF GOVERNMENT LANDS OF KAPAA RICE AND KULA LOTS, KAWAIHAU, KAPAA, KAUAI, TMK: 4-5-15: 29**

Mr. Yada briefed the Board and recommended that the Board authorize the cancellation of revocable permit and authorize the issuance of a new revocable permit to Mr. Lincoln Ching, in accordance with terms and conditions.

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

**ITEM D-13: AMEND PRIOR BOARD ACTION OF DECEMBER 10, 1999, AGENDA ITEM D-8, EXTENSION OF LEASE TERM, CONSENT TO MORTGAGE, AND ASSIGNMENT OF LEASE, GL NO. S-3993, PORTION OF GOVERNMENT LANDS OF KAPAA HOMESTEADS, KAWAIHAU, KAUAI, HAWAII, TMK: 4-6-5: 9**

Mr. Yada briefed the Board and recommended that the Board amend the Board action of December 10, 1999, in accordance with terms and conditions.

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

**ITEM D-14: RESCIND PRIOR BOARD ACTION OF MARCH 10, 1978 (AGENDA ITEM F-8), PUBLIC AUCTION OR DIRECT SALE OF EASEMENT TO MR. AND MRS. MICHAEL HANCHETT AT KEANAE, MAUI, TMK: (2) 1-1-4: PORTION 34**

Mr. Yada briefed the Board and recommended that the Board rescind the prior Board action of March 19, 1978, in accordance with terms and conditions.

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

**ITEM D-15: CONSENT TO A REVOCABLE PERMIT BETWEEN DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, AND BEACH ORCHID FILM PRODUCTIONS, INC., A SUBSIDIARY OF UNIVERSAL CITY STUDIOS, INC., FOR LANDS UNDER GOVERNOR'S EXECUTIVE ORDER NO. 3450, KAPAHULU, WAIKIKI, HONOLULU, OAHU, TMK: (1) 3-1-042: 009 POR.**

Member McCrory recused herself from this item.

Mr. Yada briefed the Board and recommended that the Board consent to the revocable permit between the Department of Business Economic Development and Tourism, and Beach Orchid Film Production, Inc., subject to terms and conditions.

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

**ITEM D-16: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO THE BOARD OF WATER SUPPLY FOR WATER METER PURPOSES AT NANAKULI, OAHU, TMK: (1) 8-9-2: POR. 1**

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

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

**ITEM D-20: FORFEITURE OF GL NO. S-3160, MS. PATRICIA SUSAN NIELSEN, LESSEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-1-07: 26**

Mr. Yada briefed the Board and recommended that the Board authorize the cancellation of GL No. S-3160, in accordance with terms and conditions.

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

**ITEM D-21: ISSUANCE OF REVOCABLE PERMIT TO GEORGE FREITAS DAIRY, INC., HUALUA, NORTH KOHALA, HAWAII, TMK: 3<sup>RD</sup>/5-5-07: 11**

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

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

**ITEM D-22: MUTUAL CANCELLATION OF GENERAL LEASE OF EASEMENT NO. S-5000 AND ISSUANCE OF A PERPETUAL, NON-EXCLUSIVE ACCESS**

**AND UTILITY EASEMENT TO MS. IDA I. PERKINS, SITUATE AT  
WAIMEA, SOUTH KOHALA, ISLAND OF HAWAII – TMK: (3) 6-5-04:  
PORTION OF 15**

Mr. Yada amended the staff submittal by adding a condition: "That the consideration be deleted subject to confirmation by staff abstractors of the property's Kuleana status." Staff's recommendation is that the Board approve the mutual cancellation, and authorize issuance of a perpetual non-exclusive easement, as amended, in accordance with terms and conditions.

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

**ITEM D-26: RESCIND PRIOR BOARD ACTION OF APRIL 13, 1984 (AGENDA ITEM  
F-7), DIRECT SALE OF EASEMENT TO MR. RICHARD DAN; GRANT  
OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO MR. SUMNER  
ERDMAN FOR ACCESS PURPOSES AT HONUULA, MAUI, TMK: (2)  
2-1-4: PORTION 49**

Mr. Yada briefed the Board and recommended that the Board rescind prior Board action of April 13, 1984, and authorize the issuance of a perpetual, non-exclusive easement for access purposes, in accordance with terms and conditions.

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

**ITEM D-28: REQUEST TO WRITE OFF UNCOLLECTIBLE ACCOUNTS, HAWAII,  
MAUI AND OAHU**

Mr. Yada briefed the Board and recommended that the Board approve of and recommend to the Attorney General that the uncollectible accounts be deleted from the DLNR accounts receivable and placed in a special record and that, should any account so listed become collectible, that such account be transferred back to the current accounts receivable.

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

**ITEM D-29: REPORT ON STATE PARCEL AT KAMAOLE HOMESTEADS,  
WAILUKU, MAUI, TMK: (2) 3-9-004: POR. 061**

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

**No action.**

**ITEM D-33: RESUBMITTAL: CONSENT TO ASSIGN GL NO. S-4524, MS. HAZEL  
OLIVEIRA AND MR. LOUIS J. ABREU (DECEASED), ASSIGNOR, TO**

**MS. ETHEL K. ABREU AND MR. LLOYD F. ABREU, ASSIGNEE,  
KAWAIPAPA AND WAKIU, HANA, MAUI, TMK: (2) 1-3-006: 007**

Member Yamamura recused himself from this item.

Mr. Yada amended the staff submittal by adding a condition: “That the action is conditioned upon the delinquent rent being paid within 7 days of the Board action.”

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

**ITEM D-34: RESUBMITTAL: CONSENT TO MORTGAGE AND EXTENSION OF  
LEASE TERM, GL NO. S-4524, MS. ETHEL K. ABREU AND MR. LLOYD  
F. ABREU, LESSEE, KAWAIPAPA AND WAKIU, HANA, MAUI, TMK:  
(2) 1-3-006: 007**

Member Yamamura recused himself from this item.

Mr. Yada amended the staff submittal by adding a condition: “That the action is conditioned upon the delinquent rent being paid within 7 days of the Board action.”

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

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 4:35 p.m.

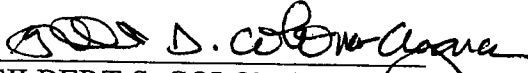
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

*Kimberly C. Kelihoomalau*

Kimberly C. Kelihoomalau

Approved for submittal:

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