

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

DATE: Friday, July 12, 2002  
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 9:06.m. The following were in attendance:

**MEMBERS:**

Mr. Gilbert Coloma-Agaran	Mr. Timothy Johns
Ms. Lynn McCrory	Mr. Ted Yamamura
Ms. Kathryn Inouye	Mr. Toby Martyn (arrived at 10:03 a.m.)
Mr. Gerald DeMello	

**STAFF:**

Ms. Dede Mamiya, Land Division	Mr. Sam Lemmo, Land Division
Mr. Mason Young, Division of Boating and Ocean Recreation (DOBOR)	Mr. Steve Thompson, DOBOR
Ms. Dawn Hegger, Land Division	Mr. Dan Quinn, Division of State Parks
	Mr. Andrew Monden, Land Division

**OTHERS:**

Mr. Ray Enos, Department of the Attorney General	Ms. Yvonne Izu, Department of the Attorney General
Mr. Bob Schneider, D-14	Mr. Tim Williams, D-13
Mr. George Atta, D-13	Ms. Donna Leong, Cades Schutte, D-1
Mr. Chris Emerson, D-1	Ms. Doreen Emerson, D-1
Ms. Naomi Kuwaye, Imanaka Kudo & Fujimoto, D-2	Mr. James Hogg, D-2
Mr. Henry Curtis, Life of the Land, D-12	Ms. Lisa Hogg, D-2
Mr. Noa Napoleon, J-1	Ms. Lynn Wong, D-9
Mr. Al Bento, Hawaii Yacht Club, J-1	Mr. Tony Agao, J-1
Mr. Hardy Spoehr, J-1	Mr. Randy Suen, J-1
Ms. Janet Mandrell, J-1	Mr. Nappy Napoleon, J-1
Mr. Fred Madlener, J-1	Mr. Bill Littell, J-1
Mr. Charles Brown, Westrec, J-1	Ms. Layne Davie, J-1
	Mr. Gary Kahanui, J-1

Mr. George Downing, Save Our Surf, J-1  
Mr. William Mossman, J-1  
Ms. Zelei Abordo, J-1

Rep. Mindy Jaffe, J-1  
Mr. Bruce Middleton, J-1

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

Chairperson Agaran entertained a motion to add Item D-14 to the board agenda. Member Johns recused himself from any action on Item D-14. By a unanimous vote of the five members remaining, Item D-14 was added to the agenda (Yamamura/McCrory).

**ITEM A-1 Approval of the Minutes of April 26, 2002**

Member Yamamura recused himself, as he had not been present at the April 26, 2002 meeting.

**The minutes of April 26, 2002 were unanimously approved by the members remaining (McCrory/Inouye).**

**ITEM A-2 Approval of the Minutes of May 24, 2002**

**The minutes of May 24, 2002 were unanimously approved as submitted (McCrory/Inouye).**

**ITEM D-14 Resubmittal: Amend Prior Board Action of February 14, 1997, Item D-20, Direct Sale of Perpetual, Non-Exclusive Easement to Frances Damon Holt, Trustee under Self-Trusted Trust, for Access and Utility Purposes at Puuwaawaa, North Kona, Hawaii, TMK: 3rd/7-1-02: 08.**

Member Johns recused himself.

Ms. Dede Mamiya, Land Division Administrator, briefed the board and recommended that the prior board action be amended by correcting the tax map key; replacing the names of the trustees; and changing the alignment of the easement.

Mr. Bob Schneider, representing the Holt Trust, was present to answer any questions.

**Item D-14 was unanimously approved, as submitted, by the members remaining (DeMello/Yamamura).**

**ITEM D-13 Appointment and Selection of a Hearing Officer to Conduct Hearings for Petitions for a Contested Case Hearing (Docket No. 02-07-OA: Petition Contesting the BLNR's Decision Regarding Mr. David Haig's Application for a New Residential Addition and Other Site Improvements at TMK: (1) 3-3-36: 30, Located on Wilhelmina Rise, Honolulu).**

Member Johns recused himself.

Mr. Sam Lemmo, Land Division Senior Planner, noted that the item had been deferred at the last board meeting. Mr. Lemmo requested that the board authorize the Chairperson to select a Hearings Officer to conduct hearings on a petition contesting the board's decision on an application for a new residential addition and site improvements. Mr. Lemmo informed the board that the applicant, David Haig, petitioned to contest, in part, the board's decision on his request for various residential site improvements. Mr. Lemmo also informed the board that Mr. Haig's neighbor, Mr. Tim Williams, had petitioned to participate in the contested case proceedings.

Mr. Williams stated that he was in favor of authorizing the Chairperson to appoint an officer, however, reiterated his opinion that the board should not change its original decision.

**Item D-13 was unanimously approved, as submitted, by the members remaining (Inouye/McCrory).**

**ITEM D-9 Grant of a 55-year Non-Exclusive Easement for Seawall to Tsugio Ueyama, as Trustee of the Tsugio Ueyama Revocable Living Trust dated July 10, 2001, Jane N. Ueyama, as Trustee of the Jane N. Ueyama Revocable Living Trust dated July 10, 2001 and Lynn Wong, Wailupe, Honolulu, Oahu, TMK: (1) 3-6-003: 015 seaward.**

Ms. Mamiya recommended that the board grant the subject seawall easement, subject to the payment of a \$500 fine. Ms. Mamiya informed the board that the seawall seemed to be a long-standing one and that staff could not determine whether it had been intentionally placed on public lands. Ms. Mamiya also requested that the board accept a deposit from the applicant to allow the applicant to move forward on their shoreline certification. She noted that although the department does not usually allow someone to process a shoreline certification until documents are fully executed, the deposit would provide the department some insurance that the applicants would fulfill all requirements.

Member McCrory asked whether staff would be using deposits for other matters; Ms. Mamiya responded that staff would be willing to consider it, but that it may add to the workload of the staff appraiser.

Lynn Wong, applicant, was present.

**Item D-9 was unanimously approved as submitted (Inouye/McCrory).**

**ITEM D-1 Conservation District Enforcement File No. OA-02-09: Unauthorized Construction of Driveway and Parking Area, 45-644 B Kionaole Road, Kaneohe, Koolauloa, Hawaii, TMK: (1) 4-5-042: 016.**

Mr. Sam Lemmo provided members with some history on the subject parcel. He informed members that the owners (the Emersons) had purchased the property in 2000. He noted that several dwelling structures were already present on the property, however, these structures were in severe disrepair and, for all intent and purposes, abandoned. Mr. Lemmo stated that, after purchasing the property, the Emersons began working on one of the structures. Following a complaint, staff spoke to the Emersons and authorized the work already done, but informed them that any further work on the land would require them to check with the staff to see if any permits from the department were necessary. In following up on a separate complaint, staff discovered that the Emersons had constructed a driveway and parking area without permits from the department. Mr. Lemmo also noted that lumber located on the premises indicated that the Emersons were planning further improvements. Mr. Lemmo stated that it was staff's opinion that the violations were flagrant in nature and recommended that the board require the removal of the driveway, impose a fine of \$2000 plus administrative costs, and impose other standard conditions.

In response to Member Johns question regarding nonconforming status, Mr. Lemmo replied that one structure was determined to be a nonconforming residential structure. Member Johns questioned whether a driveway would have also been already present if the structure had been used as a residence. Mr. Lemmo responded that constructing a paved "structure" would still possibly require a permit from the department.

Referencing a letter from applicant's attorney requesting deferral, Member McCrory asked staff to confirm that the present enforcement issue dealt only with the driveway and parking area and not with any of the dwelling structures present on the property; Mr. Lemmo answered in the affirmative.

Chairperson Agaran inquired about the first permit. Mr. Lemmo stated that the Emersons began making improvements through a city building permit. He noted that, because the city had never informed the Emersons that a state permit might be necessary, staff felt that the improvements were superficial enough to allow without a permit. There was some discussion regarding the nonconforming status of the dwelling structures. Member Johns and Chairperson Agaran noted their reservations about staff findings regarding the dwelling structures.

Ms. Donna Leong, attorney for the Emersons, testified that she had requested a deferral because the staff report received three days prior to the board meeting contained allegations and findings that were beyond the scope of the notices received earlier.

In response to Chairperson Agaran's question regarding whether the Emersons had acquired a permit from the department prior to constructing the driveway and parking area, Ms. Leong stated that the Emerson's were told by the city's Department of Planning and Permitting (DPP) that a permit was not necessary. Ms. Leong stated that her clients had seen a copy of a neighbor's grading permit which did not require a "sign-off" from the DLNR, and was verbally informed by DPP that approval from DLNR was not required.

Ms. Leong also requested that the board not consider the issue of nonconforming structures. She stated that her clients had not known that the issue of nonconformance was to be addressed at the present board meeting and that she had not had the time to discuss the issue with them.

Ms. Leong further testified that a driveway had been in existence prior to the Emerson's purchase of the property and should be treated as a nonconforming use. Ms. Leong produced photographs of the driveway and stated that the earlier driveway was of asphalt/concrete composition and of identical width as the improved driveway.

Member Johns noted that non-conforming uses would have to exist before the regulations governing them were enacted; thus, the driveway would have to have been in existence prior to the enactment of the conservation district rules. Ms. Leong provided a photo which she stated showed a portion of the former driveway with evidence that it had been poured in 1959.

Member Inouye requested a response to staff's remaining recommendations if the findings section dealing with nonconforming uses were deleted; Ms. Leong replied that her clients also wished to retain the driveway and requested that the fine be reduced to a nominal fine. Ms. Leong reiterated that the Emerson's had not known that a permit from DLNR was required, and that they were not allowed to apply for a permit once they discovered that one was necessary.

Chairperson Agaran noted that this was not the first time that the Emerson's had been in violation of conservation district rules, and stated that, regardless of what the city's [Department of Planning and Permitting] had told them, they should have known to contact DLNR before doing any further work.

Member Johns asked staff if the improvements would be considered "repair and maintenance" if the driveway had already been present. Mr. Lemmo stated that the department could possibly have considered the improvements "repair and maintenance" or an "alteration," but in order for such a determination to be made, prior review by staff was necessary.

Member Johns noted that regardless of what the Emerson's may have been told by any other agency, the letter from the department stated that a permit was needed before any further improvements were made.

Ms. Doreen Emerson testified that she and her husband had assumed that driveways did not need a permit when their neighbors were able to grade a new driveway without permits. She further testified that they had been informed by the DPP that a permit was not needed.

Member Inouye asked staff if the division was aware that a previous driveway existed on the property; Mr. Lemmo responded that staff had been unaware that a previous driveway existed. Member Inouye then asked if staff would have recommended differently if it had been known that there had been a previous driveway; Mr. Lemmo answered in the negative. Mr. Lemmo stated that it has been standard practice to request removal if staff believed that the violation had been flagrant. He noted that the Emerson's had been told to talk to staff before doing any improvements on the

land, so staff should have been consulted even if a previous driveway existed.

Chairperson Agaran noted the attorney's letter raised due process issues that should be discussed with legal counsel.

Motion was made and seconded to enter into executive session to consult with legal counsel (Johns/McCrory). Meeting dissolved into executive session at 9:45 a.m.

Chairperson Agaran reconvened the meeting at 10:00 a.m. Member Martyn entered the meeting at this time.

Member Inouye amended staff submittal by:

1. Deleting paragraph 1 in the Findings Section, and
2. Amending the Recommendation Section by deleting paragraph 1, and amending recommendations 4 and 5 as follows:
  4. The alleged shall pay all fines and file a Conservation District Use Application (CDUA) within 30 days of the Board's action;
  5. No work shall be conducted in the Conservation District except under an approved CDUA[, except for removal of the driveway and parking area];...

Member Martyn recused himself.

**Item D-1 was unanimously approved, as amended, by the members remaining (Inouye/McCrory).**

**ITEM D-2 Conservation District Enforcement File No. OA-02-08: Unauthorized Grading at 45-654 Kionaole Road, Kaneohe, Koolauloa, Hawaii, TMK: (1) 4-5-042: 008.**

Mr. Lemmo informed the board that the subject parcel is located immediately adjacent to the parcel discussed in Item D-1 and provided a brief history. Mr. Lemmo stated that in November, 2001, the owners (the Hoggs) applied for a site plan approval to clear 10,000-sq. ft. of land area. In response to a complaint, staff discovered that a much greater land area -- as much as 2 acres -- had been cleared. Staff also discovered that an after-the-fact Grading and Grubbing Permit issued by the city after a notice of violation encompassed a land area of 40,000 sq. ft. Staff further discovered that mature trees had been felled in violation of the site plan approval. Mr. Lemmo stated that staff felt that the violations were flagrant and recommended that the board impose a fine of \$4,795.00 and require the Hoggs to submit and implement a site restoration plan.

Member Johns questioned what authority the department had in requiring the removal of hazardous waste from private property; Mr. Lemmo responded that any material -- hazardous waste included

-- placed on the property for longer than 14 days constitutes a land use regulated through the CDUA process.

Ms. Naomi Kuwaye, attorney for the Hoggs, testified that objections were submitted on behalf of the Hoggs with regards to staff's determination that the violations were flagrant and willful, and with regards to the amount of fines imposed. Ms. Kuwaye testified that the Hoggs were unaware of the requirements of different levels of government, and thought that a city permit "covered" the requirements of the state, and vice versa. The Hoggs, she said, only recently understood the various jurisdictions covering their property. Ms. Kuwaye further testified that the contractor hired to clear the land exceeded the 10,000-sq. ft. allowed under the DLNR permit without the Hoggs' knowledge. She stated that all work on the property ceased after the notice of violation, and, additionally, that the contractor had worked the land only for a half a day before staff issued the violation.

Member McCrory questioned the intent of the Hoggs; she commented that the Hoggs knew enough to get the original DLNR permit, so, should have known to amend the terms of the permit when it was discovered that the contractor had cleared more land area than permitted. Member McCrory also noted that mature trees had been cut in direct violation of the terms of the permit. Member Inouye also questioned the intent; she stated that it was difficult to believe that a professional contractor would either go beyond the scope of his contract, or misjudge the land area being cleared.

In response to Member Yamamura's question regarding the land area cleared, Mr. Lemmo stated that staff had, following an inspection of the area, estimated the land area cleared to be approximately two to two-and-a-half acres. Member Yamamura noted that photographs taken during inspection depicted a cleared area greater than the 40,000-sq. ft. allowed by the county's permit.

Ms. Doreen Emerson testified that the work on the Hogg's property went on for approximately 5 hours a day, six days a week, for a period of six weeks. She further testified that, in her estimation, the land area graded and grubbed far exceeded 40,000-sq. ft.

In response to Member McCrory's question regarding the amount of time that the contractor had worked on the land, Mr. Jim Hogg, the landowner, stated that it had been approximately one week.

Mr. Hogg testified that a large land area looks "cleared" only because Hawaiian Electric (HECO) owns a utility easement which runs directly over his property. In response to questioning by Member Inouye, Mr. Hogg testified that the contractor had been working for a week to ten days prior to the city's inspection. Mr. Hogg conceded that more than the 10,000-sq. ft. allowed by the state permit had been cleared, but insisted that the work encompassed less than the 40,000-sq. ft. allowed by the city.

**Item D-2 was unanimously approved as submitted (Inouye/McCrory).**

**ITEM D-12 Request for Public Hearing on a Petition to Compile and Amend Title 13, Chapter 1, Hawaii Administrative Rules (Contested Case Proceedings).**

Mr. Lemmo informed the board that Item D-12 had been deferred at the June 28, 2002 meeting. He again requested the board's concurrence to compile and amend Title 13, Chapter 1, HAR.

Ms. Yvonne Izu, Deputy Attorney General, cited 4 significant changes being made to the rules:

1. A request for a contested case must be made prior to the decision of the board. Ms. Izu noted that currently, a request may be made prior to the end of the board meeting at which the item was heard...even if the board had already issued a decision on the item. The amended rules would specify that the request must be made prior to the board's disposal of the item.

2. Streamlining the intervention period. Ms. Izu stated that currently, an intervenor had two opportunities to request participation in a contested case -- following the request for the contested case, and following the publication notice of a contested case. Ms. Izu noted that neither the law nor due process required this "double opportunity" to intervene. The amended rules would require anyone wishing to participate to make his/her request, in writing, within 10 days of the request for a contested case hearing.

3. Fee. Ms. Izu noted that the fee would apply only to CDUAs, because, under current statutes, administrative costs can be recouped only for CDUAs. Mr. Lemmo briefly went over the proposed fees and noted that staff would be considering the testimony received at public hearings.

4. One party contested cases. The amended rules would no longer require staff to act as "opposing" party to proceedings in which no other person or group has come forward in opposition.

Members and Ms. Izu discussed the difference between Chapter 92 (public) hearings and Chapter 91 (contested case) hearings.

Ms. Izu briefly discussed the less significant amendments to the rules as outlined in staff's submittal. Ms. Izu also offered an amendment to the list of information required in filing a request for a contest case. She noted that the department had considered Life of the Land's June 28th testimony and concurred that the original requirements were confusing and often redundant.

Mr. Henry Curtis, Executive Director of Life of the Land, discussed his concerns regarding cross examinations of intervenors, ex parte communication, and proposed fees. He noted that the amendment regarding the information required to file a request was a move in the right direction.

Member Johns moved to amend the draft rules, section 13-1-29(b), to read as follows:

(b) The formal written request for a contested case hearing shall contain concise statements of:

(1) The nature and extent of the requestor's interest that may be affected by the



- application that entitles the requestor to participate in a contested case;
- (2) The disagreement the requestor has with the application;
  - (3) The relief the requestor seeks or to which the requestor deems itself entitled;
  - (4) How the requestor's participation would serve the public interest; and
  - (5) Any other information that may assist the board in determining whether the requestor meets the criteria to be a party pursuant to section 13-1-31.

**Item D-12 was unanimously approved as amended (Johns/Yamamura).**

Chairperson Agaran recessed the meeting at 11:20 a.m. The meeting was reconvened at 11:30 a.m.

**ITEM J-1 Amendment of Prior Board Action - Revision of Notice of Intention to Lease the Ala Wai Boat Harbor Premises through Negotiation in Form Finally Reviewed and Approved by Chairperson.**

(Note: Boating Division staff and members of the Ala Wai Ad Hoc Committee conducted a site visit of the harbor for board members on Thursday, July 11, 2002. Comments by testifiers regarding the site visit have been omitted).

Chairperson Agaran advised the public that Item J-1 did not deal with the issue of privatization. Chair Agaran stated that the board had made its decision regarding privatization in December, 2001, and that the issue currently before the board dealt only with the question of including, in the Request for Proposals, the recommendations of the Ala Wai Harbor Ad Hoc Committee.

Mr. Mason Young, Division of Boating and Ocean Recreation Administrator, stated that, on December 14, 2001, the board authorized the lease of lands at Ala Wai Harbor by negotiation, authorized the publication of the notice of intent to lease, amended the qualifications of the applicants, and requested that staff set up the Ala Wai Ad Hoc Committee.

Member Inouye noted that Recommendation 1.a) had been approved at the December 14th meeting and should be deleted from the current submittal.

Member Johns thanked staff for the site visit and noted, for the record, that he would not be in support of any development at the harbor that would deny or impede public access to the beach.

Member McCrory clarified that Item 7 of the Selection Criteria requested that the applicant consider the recommendations of the Ad Hoc Committee in its proposal, but that implementation of all of the Committee's recommendations was not a requirement. She requested that the submittal include the term "advisory" before or after "Ala Wai Ad Hoc Committee," and noted that Exhibit B, page 14, should be amended to reflect the selection criteria in the Notice of Solicitation. Member McCrory also noted that certain conditions and terms in the prior board submittal had been left blank and asked staff to comment. Mr. Young stated that, should the board approve Item J-1 and incorporate the recommendations of the Ad Hoc Committee, staff would be able to "fill in the blanks." Member McCrory asked if the issue would need to be

brought back to the board; Member Johns responded that the board could delegate such authority to the chairperson.

Mr. Noa Napoleon testified that Exhibit B, page 4, Item 4 understates the recreational opportunities available at the harbor. He noted that only one surf spot is mentioned when, in fact, as many as six other spots are accessed through the harbor. He stated that all potential developers should be aware that more than one important surf spot exists in the area. Mr. Napoleon also testified that the public often had to compete for space (parking, etc.) in the area, and that any proposed increase in density in the area would affect public access.

Chairperson Agaran noted that one of the Ad Hoc Committee's recommendations called for increased park space in the area, but that such an increase may, in fact, decrease parking in the area. Mr. Napoleon stated that he was in favor of increased "green" space, but not at the expense of parking.

Mr. Tony Agao, a long-time surfer in the area, stated his concern that public lands would be taken away. He testified that he had been unaware that the decision to privatize had already been made, and had merely wished to make members aware that many in the public were opposed to privatization.

Member Johns informed Mr. Agao that the board, in December, had authorized staff to move forward with the Request for Proposal process, and formed the Ad Hoc Committee to receive input from the community. He stated that, following the receipt of proposals from prospective bidders, the contract will eventually be brought back to the board for final approval. Member Johns advised Mr. Agao to stay aware of the process and other opportunities to provide input.

Member Johns further noted that, following legislative approval to move forward with privatization, the board, by its December 14th action, stated its intent, then specifically waited through another legislative session to allow lawmakers to amend or rescind its prior directive. The board, he said, was merely following the legislature's directive.

Member Inouye also stressed that several members of the board, and their families, often use the harbor area for recreational activities. She reiterated that it was never the board's intention, nor would the board allow, for access to be taken away.

Mr. Al Bento, Commodore of the Hawaii Yacht Club, provided a brief history of the Yacht Club, stated the Club's request for additional slips under its lease, and testified in support of the Ala Wai Ad Hoc Committee's recommendations. (Written testimony submitted).

In response to members' comments, Mr. Bento stated that the slips under the Yacht Club's control would be handled in accordance with state rules. Responding to Member Johns' question regarding access, Mr. Bento stated that the general public is always allowed access to the ocean waters through the club, however, city ordinances (liquor laws) precludes public use of the restrooms.

Mr. Randy Suen, provided testimony for Mr. Ruben Camello, stating the latter's concern regarding privatization, in general, and privatization's potential impact on public parking.

Mr. Nappy Napoleon voiced his concerns regarding public parking (he stressed that public parking should be preserved) and canoe access through the harbor. Mr. Napoleon also inquired about future plans for the heliport area; Member Johns responded that plans currently require the area to remain as open space.

Mr. Hardy Spoehr, Anuenue Canoe Club, requested that members incorporate "real" guidelines in its request for proposals, so as to provide safeguards for the public users of the area.

Ms. Janet Mandrell, Makai Society, testified that the Ad Hoc Committee's plan did not allow for "proper public participation," and recommended that the board maximize public participation and input by a comprehensive, masterplanning effort. Ms. Mandrell stated that, although she was not opposed to the inclusion of the Ad Hoc Committee's recommendations in the RFP, it should be only part of a comprehensive plan. (Written testimony submitted).

Mr. Bill Littel, a marine consultant, testified in support of including the Ad Hoc Committee's recommendations and moving forward with the RFP process.

Mr. Fred Madlener, Hawaii's Thousand Friends and Life of the Land, testified that the Ad Hoc Committee's recommendations were limited because the Committee was not allowed to consider certain subjects. Mr. Madlener stated that the Ala Wai should be considered a "harbor park" because of the types of activities done, and the types of users of, the area. Mr. Madlener testified that the Ad Hoc Committee did not consider the possible restrictions on "park-type" uses, did not address the issue of the harbor as public trust lands, and did not take a position on privatization itself.

Member Johns noted that it was the Ad Hoc Committee's aim to attempt to provide the board with constructive guidelines, regardless of , and in spite of , individual opinions regarding privatization.

Ms. Layne Davie, stated her concern that the rights of surfers are overlooked by government and that privatization of the Ala Wai would take away access and parking for surfers. Member Inouye reiterated that the protection of access rights to the water and parking at the harbor is, and has always been a requirement placed by the board on any potential developer.

Ms. Davie submitted written testimony for Gary Kahanui.

Mr. Charles Brown, attorney for Westrec Marinas, testified in support of including the Ad Hoc Committee's recommendations. He noted that at least 90% of the recommendations were consistent with Westrec's proposal for the harbor. Mr. Brown, however, noted three areas of concern:

1. Concern regarding multiple lessees for the harbor area. Mr. Brown stated Westrec's belief that allowing multiple lessees would raise problems with the provisions of Act 90.
2. Heliport area park and transfer to the City and County of Honolulu. Mr. Brown stated that Westrec's vision planned for open space at the heliport area because a deed restriction prohibits building in the area. In response to Member Johns regarding transfer to the city, Mr. Brown admitted that Westrec wished to retain control over the area for possible commercial use.
3. Manager's Office. Mr. Brown requested that the manager's office remain under the same zoning and building laws currently in effect.

In response to Member Johns' question regarding possible uses of the fuel dock and boatyard, Mr. Brown stated that Westrec had no current plans for the areas because the dock and boatyard are currently encumbered, respectively, by a license and lease. He noted that a restaurant might be a possible future use of the boatyard area.

Mr. George Downing, Save Our Surf, testified that the harbor area was the only non-commercialized stretch of Waikiki shoreline remaining, and that the state should not be offering any long-term lease for the area. He voiced his concern regarding possible fees for parking, and privatization, in general. Mr. Downing further voiced his feelings that advisory boards were a "waste of time," and biased towards certain positions.

In response to Member Johns' question as to whether commercialization or privatization was a bigger concern, Mr. Downing stated that privatization was a concern because a large piece of public property would be "locked up" for a long time; he stated that too much commercialization would present management problems for the state, and probably not allow the state to receive the greatest return for the use of public lands. (Written testimony submitted).

Representative Mindy Jaffe, testified that the legislature had taken up the issue of privatization of the Ala Wai Harbor several times and that the issue was an important one to legislators. Member Johns inquired as to whether the legislature, after the board's December decision noticing its intent, had, in fact, passed any legislation directing the board not to move forward with privatization; Representative Jaffe responded in the negative.

Ms. Jaffe further testified that her constituents often felt that their concerns are not heard and that commercialization of the area was inevitable regardless of public sentiment. She voiced her feeling that the drive to privatize was political in nature. Chairperson Agaran, concurring with Member Johns, stated that members of the legislature who felt that privatization should not occur had ample opportunity to amend or repeal earlier laws.

Member Inouye noted that regardless of the administration's wishes, the board has recognized privatization as one way of streamlining and reducing the cost of government. In response to Representative Jaffe's question regarding the income generated by Ala Wai Harbor, Member Johns noted that the department manages a statewide system, and that monies generated by the more profitable harbors such as the Ala Wai, must often go to support smaller, unprofitable harbors.

Mr. William Mossman, Ocean Users Coalition of Hawaii, testified that the state had had no definition of privatization or a specific privatization plan prior to December. He stated his opinion that [the Division of Boating and Ocean Recreation] had combined two separate pieces of legislation (Act 299(01), and Act 90(01)) to push forward on privatization of the Ala Wai. Member Johns reminded Mr. Mossman that the board had acted in the open, stating publicly that the board's interpretation of the laws authorized it to move forward with privatization. He noted again that the legislature did nothing to amend the laws.

Mr. Mossman also voiced his concern with a provision of the plan that provides for a single lessee to manage the fast lands and also act as contractor for the small boat harbor. He noted that the plan allowed the lessee to write off losses on the harbor to the lease rent on the fast lands. He stated that such a provision may reduce revenue to the Boating Special Fund. Member Johns made note of, and concurred with, Mr. Mossman's statement in his written testimony that the revenue provided to the state, from the lessee, should be no less than the revenue currently being generated by the harbor. He noted that such a requirement should be included in the RFP. (Written testimony submitted).

Mr. Les Parsons, member of the Ala Wai Marina board, requested that the board defer Item J-1, and revisit its decision of December, 2001. He stated that the Ala Wai Marina community has been consistently opposed to privatization of the harbor, and that few slip owners had the opportunity to participate in the Ad Hoc Committee's work.

Mr. Bruce Middleton, member of the Ala Wai Ad Hoc Committee, testified that the legislature did consider and reject several bills dealing with privatization. Chairperson Agaran asked if the legislature had passed any legislation stopping the department from moving forward with privatization; Mr. Middleton replied that it had not.

Mr. Middleton stated his concern that the Ad Hoc Committee's recommendations would merely be advisory to the prospective lessee. He stated that, because privatization seemed inevitable, the Committee had worked to put safeguards in place to protect the public interest. He testified that it was extremely important for the board to make the recommendations a meaningful part of the RFP. Mr. Middleton requested that the board defer Item J-1 until members had had the time to go through all of the recommendations made by the Committee.

Ms. Zelei Abordo, member of the Ad Hoc Committee, testified that, because of prior actions and statements by [the Division of Boating and Ocean Recreation], very little trust exist between the harbor users and boating administration. Because of this distrust, she testified, the harbor users need to be certain that guidelines are set, and prospective lessees are restricted in what they can do to the harbor area.

Members discussed the various amendments to staff's recommendation. Motion was made to accept staff's recommendation with the following amendments:

1. Amend all instances of Ala Wai Ad Hoc Committee to Ala Wai Ad Hoc (Advisory) Committee.
2. The RECOMMENDATION section, paragraph 1, is amended by:
  - a. Deleting 1.a) and 1.b) in their entirety.
  - b. Amending paragraph 1 to read as follows:

1. Incorporate the Ala Wai Ad Hoc (Advisory) Committee Minimum Development Guidelines for the Ala Wai Harbor and [A]approve the revised notice of intent to lease public land through negotiation [to include]with the following amendments:

#### SELECTION CRITERIA

...All applications will be reviewed for completeness and sufficiency as to the following:...(7) the extent of the applicant's understanding of the State's objectives and needs relating to the development and operation of the Premises; and (8) the extent to which the applicant incorporates the recommendations of the Ala Wai Ad Hoc (Advisory) Committee's minimum development guidelines. Applicants shall identify any and all deviations from the Committee's guidelines, explain the nature of any and all deviations, and provide the reasoning for any and all deviations...

3. Exhibit B, page 4, paragraph 4, is amended as follows:

...It provides public access to both Duke Kahanamoku Beach, a popular swimming area, [and]"Ala Moana Bowls," a premier surfing site on Oahu's south shore, and other surfing sites.

4. Exhibit B, page 10, paragraph (6), Annual Rent, is amended to reflect that the annual rent will be, at a minimum, maintained at the level of net revenue currently received by the Boating Special Fund. (Exact language to be added shall be determined in consultation with the Department of the Attorney General).
5. Exhibit B, page 13-14, SELECTION CRITERIA, is amended to add criteria (8):

(8) The extent to which the applicant incorporates the recommendations of the Ala Wai Ad Hoc (Advisory) Committee's minimum development guidelines. Applicants shall identify any and all deviations from the Committee's guidelines, explain the nature of any and all deviations, and provide the reasoning for any and all deviations.

6. Authorize the Chairperson to approve amendments to pages 6, 7 and 9, to provide information necessary to complete Exhibit B.

**Item J-1 was unanimously approved as amended (Inouye/McCrory).**

Chairperson Agaran recessed the meeting at 1:50 p.m. The meeting was reconvened at 1:55 p.m.

**ITEM D-3 Withdrawal from Governor's Executive Order Nos. 3560 and 3665; Set Aside and Issuance of Construction Right-of-Entry to the Department of Transportation, Highways Division, for its Queen Kaahumanu Highway Widening Project, Situate Kealakehe to Keahuolu, North Kona, Hawaii, TMK: 3<sup>rd</sup>/7-4-08: Portions of Kealakehe Parkway; 7-4-08: Portions of 03 & 58, 7-4-15: Road, and 7-4-20: Portions of 02 & 07.**

Ms. Mamiya briefed the board and recommended approval; Ms. Mamiya informed the board that the County of Hawaii, Department of Public Works, to whom the E.O.s are issued, had submitted written concurrence with staff recommendation.

Chairperson Agaran, and members Martyn and De Mello were not present for the vote.

**Item D-3 was unanimously approved, as submitted, by the members remaining (Inouye/Johns).**

**ITEM D-4 Sale of Remnant to the County of Hawaii, Kailua-Kona, North Kona, Hawaii, TMK: 3<sup>rd</sup>/7-5-04:25.**

Ms. Mamiya informed the board that the dated of the submittal should be changed from July 26, 2002 to July 12, 2002.

Member De Mello was not present for the vote.

**Item D-4 was unanimously approved, as submitted, by the members remaining (Yamamura/McCrory).**

**ITEM D-5 Grant of Term, Non-Exclusive Easement to George H. Tanji, Trustee, for Waterline Purposes, Keokea, Makawao, Maui, TMK: (2) 2-2-003: Por. 052.**

Ms. Mamiya briefed the board and recommended approval of the easement.

Member Yamamura amended the RECOMMENDATION section as follows:

[3]2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to [Linda Kay Goy] George H. Tanji, Trustee of the George H. Tanji Revocable Trust covering the subject...

**Item D-5 was unanimously approved as submitted (Yamamura/Johns).**

**ITEM D-6 Grant of Term, Non-Exclusive Easement (After-the-Fact) to Jeffrey and Judi White for Waterline Purposes, Kailua, Makawao, Maui, TMK: (2) 2-9-011: Por. 008.**

Ms. Mamiya briefed the board and recommended approval.

**Item D-6 was unanimously approved as submitted (Yamamura/Inouye).**

**ITEM D-10 Certification of Election and Appointment of Soil and Water Conservation District Directors (West Kauai and Kona).**

Ms. Mamiya briefed the board and recommended approval.

**Item D-10 was unanimously approved as submitted (McCrorry/Inouye).**

**ITEM E-1 Request for Permission to Enter into a Consultant Agreement to Update the Statewide Comprehensive Outdoor Recreation Plan.**

Mr. Daniel Quinn, Administrator for the Division of State Parks, briefed the board and recommended approval.

**Item E-1 was unanimously approved as submitted (Johns/Yamamura).**

**ITEM D-7 Approval for Award of Construction Contract -- Job No. H09-C-F32-A, Iao Valley State Park, Site Improvements, Wailuku, Maui, Hawaii.**

Mr. Andrew Monden, Engineering Branch, Land Division, briefed the board and recommended approval of Item D-7. In response to Member Yamamura's question regarding the winning bidder (Site Engineering, Inc.), Mr. Monden stated that the department currently has three other contracts with the company.

**Item D-7 was unanimously approved as submitted (Yamamura/Inouye).**

**ITEM D-8 Approval for Award of Construction Contract -- Job No. H09-C-F30-A, Nuuanu Pali State Wayside, ADA Improvements and Parking, Oahu, Hawaii.**

Mr. Monden briefed the board and recommended approval.

**Item D-8 was unanimously approved as submitted (Inouye/McCrory).**



**ITEM D-11 Permission to Hire Consultants for DLNR CIP Projects.**

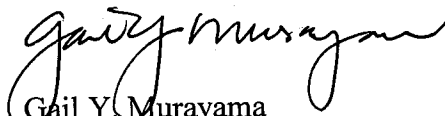
Mr. Monden briefed the board and recommended approval.

**Item D-11 was unanimously approved as submitted (Johns/Yamamura).**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 2:05 p.m.

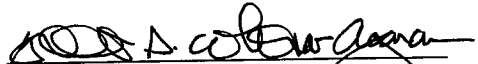
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Gail Y. Murayama

Approved for submittal:



GILBERT S. COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources

