

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

DATE: FRIDAY, NOVEMBER 15, 2002
TIME: 9:00 A.M.
PLACE: J. WALTER CAMERON CENTER
ROOMS 1 & 2
95 MAHALANI STREET
WAILUKU, HAWAII 96793

Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS:

Mr. Gilbert Coloma-Agaran	Ms. Lynn McCrory
Mr. Timothy Johns	Ms. Kathryn Inouye
Mr. Ted Yamamura	Mr. Gerald DeMello
Mr. Toby Martyn (arrived at 11:00 a.m.)	

STAFF

Ms. Dede Mamiya, Land Division	Mr. Sam Lemmo, Land Division
Mr. Dan Quinn, State Parks	Mr. Michael Buck, DOFAW
Mr. Don Hibbard, HP	Mr. Peter Garcia, Department of Transportation
Mr. Mason Young, DOBOR	Mr. Dave Parsons, DOBOR
Mr. James Shoocraft, DOBOR	

OTHERS

Ms. Linda Chow, Department of the Attorney General	
Mr. Avery Chumbley, D-25	Ms. Debra Dunn, E-1
Rev. John Hoover, D-3	Ms. Naomi Kuwaye, D-22
Mr. Richard Bento, D-22	Ms. Pauline Sato, C-1
Mr. Trae Menard, C-1	Mr. Tom Lueteneker, D-1
Mr. Moses Haia, D-1	Mr. Norman Ogasawara, D-18
Mr. Ken Ishizaki, D-13	Mr. Tom Witten, D-11
Mr. Gerald Shim, D-11	Mr. Warren Suzuki, D-11
Ms. Lucien DeNaie, D-11	Mr. Ryan Churchill, D-11
Ms. Leinaala Enos, D-23	Mr. Bill Moore, D-19

Mr. Ben Lee, D-21
Mr. Alan Murakami, J-1
Mr. Brian Hayashida, D-26
Mr. Michael Krochina, D-26
Mr. Keith Avery, D-26
Mr. Richard Horn, D-26
Mr. Gino Gabrio, D-26
Mr. Buck Joyner, D-26
Mr. James Coon, J-1
Dr. Ted Vaughn, J-1

Mr. Rob Hommon, J-1
Mr. Chang, D-26
Mr. James Brodie, D-26
Mr. Tim Derrick, D-26
Mr. David Kirkpatrick, D-26
Mr. Warren Gomeier, D-26
Mr. Craig Nakanishi, D-26
Mr. Ed Lindsey, D-26
Ms. Teri Kondo, J-1
Mr. Greg Collins, J-1

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

Motion made to add item C-1 (Inouye/Johns).

Unanimously approved to add item C-1.

Item A-1 & Item A-2:

Motion to defer (McCrory/Johns)

Unanimously approved to defer.

Item D-25: General Lease No. S-4323, Consent to Assign, C. Brewer & Company, Ltd., Assignor, to Tri-K Investments, LLC, Assignee, Consent to Sublease, Tri-K Investments, LLC, Sublessor to HT & T Company, Sublessee, and Consent to Mortgage, Central Pacific Bank, Mortgagor, to Tri-K Investments, LLC, Mortgagee; Construction Plan Approval, Waiakea, South Hilo, Hawaii, TMK: 3rd/2-1-10:23.

Ms. Dede Mamiya, Administrator of the Land Division informed the Board this assignment is a result of a sale of the major assets of the assignor's subsidiary HT & T Company's Big Island operations to Tri-K Investments. Ms. Mamiya noted this would have been a routine consent to assignment and sublease but there was a complaint made by Mr. Russell Mauga on August 30, 2002. Mr. Mauga complained that the fumes from the fueling station were causing respiratory problems for his son. She noted Mr. Mauga has since vacated the property. The County of Hawaii, Planning Department is considering requiring C. Brewer to re-establish a large tree buffer along the eastern boundary. Ms. Mamiya recommended the Board consent to the assignment, sublease and mortgage of the lease, authorize the after-the-fact approval of the above ground diesel fuel tank and fueling station and require the lessee to re-establish a tree/vegetation buffer along its boundaries.

Member Inouye questioned the importance to the new lessee of having the fueling station included as a part of the lease.

Chairperson Coloma-Agaran noted the character of use for this land is industrial therefore he questioned why the lessee is being told they cannot use the land for industrial purposes.

Mr. Avery Chumbley was on hand to represent C. Brewer and Company. He informed the Board the property is zoned industrial and the above ground diesel fueling tanks are critical to their operation. Mr. Chumbley noted that Aloha Petroleum, a fueling operation and Hawaii Bituminals are both located contiguous to the area. He stated their tanks are filled once a month and this would be the only time significant amounts of fumes would be discharged. He mentioned C. Brewer has some concerns regarding reestablishing a buffer along its boundaries. Mr. Chumbley asked the Board to remove section a, b, c, d & e of recommendation number four.

The Board amended the Recommendation Section by deleting subparagraphs 4(a), 4(b), 4(c), 4(d) and 4(e)

Unanimously approved as amended (DeMello/Inouye).

Item H-1: Approval of Amendments to Chapter 13-95, 13-104, 13-130, 13-146, 13-209 and 13-221, Hawaii Administrative Rules.

Ms. Linnel Nishioka, Deputy Director briefed the Board and summarized the testimony by stating there were six people in support of the amendments. Those individuals felt the new rules would lead to better protection of the lands from abuse and overuse. The testimonies against the rules sited three points: the rules should have been developed based on meeting with user groups; the implementation of the rules – some divisions had no experience with permits; and not enough analysis was given as to the impact the rules would have on small businesses. In addressing the second issue, Ms. Nishioka felt that staff training might be needed in some divisions before the implementation of the rules. She noted the Department of Business, Economic Development and Tourism (DBEDT) reviewed and approved these rules for public hearings. Ms. Nishioka recommended the Board approve the amendments to HAR Chapters 13-95, 13-104, 13-130, 13-146, 13-209 and 13-221.

Unanimously approved as submitted (Johns/McCrory).

Item E-1: Approval of CIP Grant-in-Aid to Friends of Iolani Palace.

Dan Quinn, Administrator for State Parks told the Board the legislature has appropriated \$1.5 million for a Capital Improvement Project Grant-in-Aid. The project will consist of the installation of security and hurricane protection systems and the restoration and repair of Iolani Palace. Mr. Quinn recommended the Board authorize the Chairperson to enter into a contract for the Grant-in-Aid.

Debra Dunn, Executive Director for the Friends of Iolani Palace was present.

Member McCrory question Ms. Dunn as to what type of security equipment they would be using.

Ms. Dunn answered they would be installing cameras inside and outside of the palace.

Unanimously approved as submitted (Inouye/Johns).

Item D-3: Cancellation of Revocable Permit No. S-4350 and Issuance of Revocable Permit to Hawai'i Conference Foundation, Lalamilo, Puako, South Kohala, Hawaii Tax Map Key: 3rd/6-9-002: 7, 8, 9, 10.

Ms. Mamiya informed the Board the revocable permit was issued to the Hoku Loa Church in 1969 for the restoration and reconstruction of the church. On October 4, 2001 the department received word that the Hawaii Conference Foundation was the successor to the Hoku Loa Church and therefore wanted the permit changed into their name. The Hawaii Conference Foundation has also requested that three parcels adjacent to the church property be added to the permit. Ms. Mamiya recommended the new permit area exclude Puako Road and the remnant across the street and the condition that, "the permitted shall not preclude free public use and enjoyment of the Premises", be included in the new revocable permit.

Member McCrory voiced her concern as to why the State was not charging a monthly rent for the lessee. She noted the original permit was for the restoration of the church but now they have an active congregation who will be using the land.

Reverend John P. Hoover was present. Chairperson Coloma-Agaran asked Reverend Hoover if they would be able to pay rent. To which Reverend Hoover replied they would be able to pay minimal rent.

The Board recognized that, while Hawaii Conference Foundation is using this as one of their churches, they also are providing a service in maintaining the historical building. The Board asked staff to look at the financial records of the church to ascertain the value the church is providing the State in maintaining the historic site and calculate a reasonable rent that will be approved by the Chairperson. The Board changed the Monthly Rental from "Gratis" to "To be determined by the Chairperson."

Unanimously approved as amended (DeMello/Yamamura)

Item D-22: Issuance of Direct Lease to Hawaii Baptist Academy for School and Related Purposes and Cancellation of General Lease No. S-5173 to Hawaii Baptist Academy, Nuuanu Valley, Honolulu, Oahu, Tax Map Key: 2-2-22: 19.

Ms. Mamiya briefed the Board and noted the original lease was for parking and recreational purposes. Hawaii Baptist Academy (HBA) is asking the State to change the character of use to accommodate the school's expansion plans. The proposed expansion would replace the present parking lot and tennis courts. The estimated cost of the expansion is \$5.2 million therefore HBA is asking the Board to terminate their current lease and replace it with a 55-year lease in order to allow full amortization of the new facilities. Ms. Mamiya recommended the Board authorize the cancellation of General Lease S-5173 and authorize the issuance of a 55-year direct lease to Hawaii Baptist Academy.

Member McCrory questioned how the Board could terminate this lease and not Mr. Akama's. She also asked why this lease was not going out to public auction prior to it being reissued to HBA.

Ms. Mamiya stated that according to the Attorney General they were unsure as to whether the State can extend a non-profit lease. So she would like to cancel the lease and authorize a new lease. Ms. Mamiya stated under the law the State has the authority to do so.

Member Inouye asked for a breakdown of the zoning of the property.

Naomi Kuwaye and Richard Bento of HBA were present to answer any questions. Ms. Kuwaye told the Board the portion of the land encompassing the stream is zoned P1 while the remainder of the property was zoned R-10.

Unanimously approved as submitted (Inouye/McCrory).

Item C-1: Request Approval of Contract with the Nature Conservancy of Hawaii to Participate in the Forest Stewardship Program.

Mr. Michael Buck, Administrator of the Division of Forestry and Wildlife (DOFAW) told the Board the Nature Conservancy proposes to restore and manage the native forest within the Honouliuli Forest Preserve approximately 550 acres. Mr. Buck noted the Conservancy has a strong community based approach, which in turn would allow the training of volunteers that could help the State in other areas. Mr. Buck recommended the Board approve the contract with the Nature Conservancy of Hawaii.

Pauline Sato, director of the Nature Conservancy and Trae Menard, Natural Resources Manager were present to answer questions. Ms. Sato informed the Board presently they were actively trying to inform the public of the threats of wild fires through public awareness programs. Through a grant from the U.S. Forest Service, The Nature Conservancy is working with Waianae High School to develop public service announcements.

Chairperson Coloma-Agaran questioned whether the funding for this contract was contingent upon available funds. Mr. Buck answered yes it would be contingent on available funds and that the contract would be on a year-to-year basis.

Unanimously approved as submitted (Inouye/McCrory).

Item C-2: Issuance of Revocable Permit to Martin and May Knott, Diamond “K” Ranch, Kuaokala Game Management Area, Waialua, Oahu, Tax Map Key: (1) 6-9-3 portion 2.

Mr. Buck noted the permit would be for controlled grazing, prevention of wildfires and game bird habitat improvements. He stated the conditions are similar to other Revocable Permits. Mr. Buck recommended the Board approve the authorization of a revocable permit to Martin and May Knott, Diamond “K” Ranch.

Unanimously approved as submitted (Inouye/Johns).

Item D-1: Acceptance of Land Settlement in Connection with Quiet Title Case, Surety Kohala Corporation (fka Chalon International of Hawaii, Inc.) vs Helen Rickard, et al., Civil No. 001-0474; Authorization of Quitclaim Deed; Acceptance of Deed at Mookini Heiau; Puuepa 1st & 2nd, Kokoiki, North Kohala, Hawaii, Tax Map Key: 3rd/5-5-05: Various (Exhibit A).

Ms. Mamiya noted this was a proposed settlement of a one acre lot reservation contained in the original grant, Royal Patent Grant 2508. She proposes the State quitclaim its interest in the one acre school lot reservation in return the applicant will transfer its interest in a one acre site adjacent to the Mookini Heiau to the State of Hawaii. Ms. Mamiya recommended the Board authorize the quitclaim deed and the acceptance of a deed for a one-acre site at Mookini Heiau.

Member Johns asked Ms. Mamiya what the status of negotiations regarding the larger parcel around the heiau were. Ms. Mamiya noted negotiations were at a stand still because Momi Lum was asking for a configuration of land that Chalon was not in agreement with.

Tom Lueteneker representing Chalon International of Hawaii, Inc. told the Board at the present time Chalon is not willing to donate additional lands. He stated Chalon is negotiating with Ms. Lum, who is being represented by the Native Hawaiian Legal Corporation. He revealed the only agreement they have with Ms. Lum is to grant an easement to a private parcel mauka of the heiau. Chalon has also agreed to an easement, which would provide public access to the heiau and the birth site of Kamehameha I. He informed the Board as soon as State Parks notifies Chalon of the one acre site they would like, Chalon will have that area surveyed and apply to the County of Hawaii to have it included as part of the heiau site.

Mr. Moses Haia an attorney with the Native Hawaiian Legal Cooperation spoke to the Board. He made it known his company is representing Momi Lum. His presence today

was to ensure the one-acre lot would provide parking for the people who come to the heiau for educational activities.

The Board informed Mr. Haia that his client, Ms. Lum would need to work with State Parks as to the configuration of the one-acre parcel.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-2: Cancellation of Easement and Direct Sale of Perpetual, Non-Exclusive Easement to The Association of Apartment Owners of the Whale's Tail for Access and Utility Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/6-9-02: 9 & 10.

Ms. Mamiya informed the Board this action is a result of a complaint regarding a dying kiawe tree. Upon inspection of the tree, DLNR staff realized the existing driveway for the Whale's Tail property was built beyond their easement. As a result the Board imposed a \$500 fine. After consulting the Department of Accounting and General Services, Survey Division they indicated it would be inappropriate to amend an easement map. Therefore Ms. Mamiya recommended the Board authorize the cancellation of easement and issue a new perpetual non-exclusive easement to the applicant.

Unanimously approved as submitted (DeMello/Inouye).

Item D-18: Conservation District Use Application (CDUA) HA-3105 for the Installation of a Civil Defense Warning Siren at Kahena, Hawaii.

Mr. Sam Lemmo, planner for the Land Division informed the Board due to their remote location the residents of this new development as well as shoreline users must rely on either AM/FM radio's or their televisions to receive civil defense broadcasts. He noted the greatest impact to the community would be the monthly testing of the sirens but this small inconvenience would far out way possible dangers. Mr. Lemmo recommended the Board approve the installation of a civil defense warning siren.

Norman Ogasawara assistant telecommunication officer of the State Civil Defense answered questions. Mr. Ogasawara gave the Board a copy of a petition that indicated 21 individuals were in favor of the installation of sirens, 3 people opposed it and 1 person remained undecided.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-13: Conservation District Use Application (CDUA) HA-3101 for the Seismic Retrofit of Kolekole Bridge at Pepeekeo, Hawaii.

Mr. Lemmo briefed the Board and stated the Department of Transportation (DOT) plans to retrofit the Kolekole Bridge to comply with seismic stability criteria and in doing so they will need to construct two temporary roads on the makai side of the bridge and install a cable system with rock anchors. DOT plans to excavate 400 cubic yards of materials including trees and other vegetation. Upon completion of the project DOT will hydro-mulch the access road to encourage re-growth of the vegetation. Mr. Lemmo recommended the Board approve the seismic retrofit of the Kolekole Bridge.

Member DeMello questioned how long the project would take to which Mr. Lemmo replied 12 months.

Mr. Ken Ishizaki showed the Board a picture of the area they would be excavating. Mr. Ishizaki told the Board he plans to hydro-mulch the area upon completion of the project so the natural vegetation could take over.

Member McCrory told Mr. Ishizaki she felt if they would be removing trees, the Board would like DOT to replace the trees to prevent soil erosion.

The Board amended the Recommendation Section by:

1) Amending paragraph 10 to read as follows:

“10. The applicant shall replant or cover bare areas as soon as grading or construction are completed, including replanting native trees that had been present in the area;”

2) Renumbering paragraph 12 to 11 and paragraph 13 to 12.

Unanimously approved as amended (DeMello/Yamamura).

Item D-11: Conservation District Use Application (CDUA) MA-3095 Proposed Subdivision near Honolua Bay, Lahaina, Maui.

Mr. Lemmo informed the Board Maui Land and Pineapple Company, Inc. is proposing to subdivide a 20-acre piece of land into 3 parcels. The first parcel (4.3 acres) would be donated to the State or a conservation organization. The second parcel (6.5 acres) will be kept by the applicant while the third parcel (9.5 acres) would be left as is with no development. Because the subdivision does not involve any development, construction activity or change in land use, Mr. Lemmo recommended the Board approve the subdivision of the land.

Tom Witten of Maui Land and Pineapple Company told the Board his long-term plan for the third parcel would be to develop some type of coastal improvements for Honolua Bay. He mentioned the need for lighting, restrooms and interpretive facilities, similar to a park.

Mr. Witten noted his company is in negotiations with Kapalua Land Company and a coastal trust with regards to accepting the Coastal Reserve parcel.

Gerald Shim, representing the Ali Kahai group with interest in two kuleanas, told the Board at the public hearing on August 12, Maui Land and Pineapple Company told the public with regard to accessing the 2 kuleana lands they would have “variable” access to the property. Mr. Shim told the Board he is here today to acquire an easement to gain access to the kuleana lands.

Warren Suzuki of Maui Land and Pineapple Company gave some background information. He informed the Board that some time ago he received a call from a relative of Mr. Shim asking Maui Land and Pineapple to erect a gate at the beginning of the road to prevent large groups of people from traveling on the road due to its deteriorating conditions. His company obliged and provided the family with a key so they would be able to get to the kuleana lands. With regards to defining where the original road was, Mr. Suzuki would work with Mr. Shim to resolve those issues.

Lucien DeNaie who is on the Board of the Maui Coastal Land Trust came forward to acknowledge her group is participating in ongoing discussions with the Kapalua Land Company regarding the land and they are indeed interested in acquiring parcel one. She noted because of the issues regarding public access, maintenance and restrooms the Trust still needs to work out those details. Ms. DeNaie told the Board they would be looking towards an endowment from Maui Land and Pineapple Company for funding to conduct stewardship programs.

Ryan Churchill of Kapalua Land Company informed the Board that a preservation and burial plan for the eight historic sites identified on the property is being prepared and will be submitted for approval.

The Board amended the Recommendation Section by adding a new paragraph to read as follows:

“12. The applicant shall comply with the requirements of Chapter 6E, HRS.”

Unanimously approved as amended (Yamamura/Johns).

Item D-23: Re-Submittal – Forfeiture of General Lease No. S-5606, Hana Laulima Lahui O Ka’u, Inc., Lessee, Wailau, Kau, Hawaii, Tax Map Key: 3rd/9-5-019:34.

Ms. Mamiya briefed the Board on the events that have transpired in relation to the applicant obtaining a general lease. Ms. Mamiya informed the Board the lessee has a rental delinquency of \$2431.50 and they would like to use their performance bond to pay off this debt. Ms. Mamiya noted the applicant has not utilized the property within the past year so technically they are in default of the abandonment clause. Because of funding concerns the

lessee is requesting the Board consider a mutual cancellation in lieu of forfeiture so they can reapply in the near future. Ms. Mamiya recommended the Board authorize the cancellation of General Lease No. S-5606.

Leinala Enos of Queen Liliuokalani Trust appeared before the Board and asked the Board to authorize a mutual cancellation of the lease.

Member McCrory stated she was not comfortable granting a mutual cancellation. She noted that after 5 years Hana Laulima has not been able to “get their act together.” They have not acquired the necessary funding and community support for their project and now they are asking the Board for a mutual cancellation so they can apply for a lease in a couple of years.

The Board amended the Recommendation Section by amending paragraphs 1 and 2 to read as follows:

- “1. Authorize the mutual cancellation of General Lease No. S-5606 in the manner specified by law.**
- 2. Authorize the retention of [all] sums heretofore paid or pledged under General Lease No. S-5606 [~~as liquidated damages~~] to the extent amounts are owed.”**

Unanimously approved as amended (DeMello/Johns).

The Board recessed at 11:00 a.m. for oral Arguments on a Contested Case

The meeting reconvened at 12:40 p.m.

Item D-24: Rescind Prior Board Action of March 12, 1999, Agenda Item D-4 (Set Aside of Lands to the Department of Accounting and General Services for a Sports Complex and Recreational Complex) for the Purpose of Conveying Fee to the Department of Hawaiian Home Lands; Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-16: por. 108.

Ms. Mamiya informed the Board the Department of Hawaiian Home Lands (DHHL) is requesting lands around the 500 acre proposed UH west Oahu campus. DHHL believes by securing this area they could save on future development cost. Ms. Mamiya noted there was a high concentration of abutilon Menziesii in the area, therefore DHHL will need to work with the Division of Forestry and Wildlife (DOFAW) to address this issue. Ms. Mamiya recommended the Board rescind its prior action, cancel the right-of-entry issued to the Housing and Community Development Corporation of Hawaii and authorize the issuance of a right-of-entry to DHHL.

Unanimously approved as submitted (Inouye/McCrory).

Item D-16: Consent to lease of Lands under Governor's Executive Order Nos. 535 and 1429 to the Washington Place Foundation, Honolulu, Oahu, Tax Map Key: 2-1-18: 1.

Ms. Mamiya noted the Washington Place Foundation previously had a revocable permit and now it was being converted to a lease to allow them greater land tenure security. The lease would be between the Department of Accounting and General Services (DAGS) and the Washington Place Foundation. She recommended the Board consent to the lease with DAGS and the Washington Place Foundation.

Unanimously approved as submitted (Inouye/McCrory).

Item D-19: Amend Prior Board Action of December 14, 2001 Regarding; 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 (PCH) Mitigation Purposes Affecting Portions of General Lease (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 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, Tax Map Keys: 4-3-10: Por.2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2.

Ms. Mamiya noted this item was to amend a prior Board action. She pointed out the changes involved the following items: the "Legal Reference" and "Consideration" section, amending the "Applicant's Requirements" section and changing the expiration date of the right-of-entry to the execution of the easement documents. Ms. Mamiya recommended the Board amend its prior Board action of December 14, 2001.

Bill Moore of Okuhara and Associates who are the consultants told the Board they would work with the staff appraisers to set the terms rather than going to an outside appraiser.

Unanimously approved as submitted (DeMello/Johns).

Item D-20: Amendment of Prior Board Action; Department of Transportation, Highways Division Requests 1) partial Withdrawal of Land from General Lease (GL) No. S-3849 and Governor's Executive Order (GEO) No. 1398; 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, Tax Map Keys: 3-8-13; 4-4-15: Por. of 8; and 4-4-16: Por. 3 & 5.

Ms. Mamiya asked the Board to amend its prior action and delete TMKs 3rd/3-8-01: 01, 3rd/4-4-16: 06 and 3rd/4-4-16: 10 and withdraw the right-of-entry from General Lease No. S-3849.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-21: Issuance of Revocable Permit to Sun Industries, Inc., Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-12: por. 4.

Member Johns recused himself

Ms. Mamiya informed the Board that Sun Industries who is a sub-contractor of Jas. W. Glover was given permission by Glover to store their equipment and vehicles on the property. On February 2001 Glover's license expired and the company decided to withdraw from the area Sun Industries was utilizing. Thus Ms. Mamiya is recommending the Board authorize the issuance of a revocable permit to Sun Industries covering the subject area.

Ben Lee representing Sun Industries told the Board his company was not aware Glover's lease commenced on February 2001. He noted Sun Industries was not notified until February 2002 that Glover's permit expired and at that point they've been working with staff to obtain a permit for the area. Mr. Lee stated if at any time it was made known to Sun Industries they would be responsible for the retroactive rent, they would have vacated the area. Therefore Mr. Lee asked the Board to reconsider payment of the retroactive rent and make their rent effective either October or November 2002.

Member McCrory confirmed with Mr. Lee, his company, Sun Industries were storing their equipment on the premises from Feb 2001 and was not paying rent to anyone. Mr. Lee told the Board Glover did not notify his company until February 2002 they would be vacating the site. At that point, they began working with staff on a lease for the area they were utilizing.

Member McCrory noted the State couldn't forgive rent therefore the only option afford to the Board is to deny the issuance of a permit to Sun Industries.

Chairperson Coloma-Agaran questioned the timing of the events that have transpired and who owes the state money for the area Sun Industries was using. The Board suggested deferring the item so staff can check into these matters.

Motion to defer (DeMello/McCrory).

Unanimously approved to defer.

Item K-9: Authorization to Request Sealed Bids for Taxi Management Concession Lease at Honolulu International Airport.

Peter Garcia from the Department of Transportation (DOT) told the Board the current Taxi Management Concession lease will expire on January 31, 2003 and he would like the new lease to be effective February 1, 2003 til January 31, 2007. Mr. Garcia noted with written approval, the winning bidder will have the option of selling automotive gasoline from the premises.

Member Inouye questioned Mr. Garcia why the State is only allowing one company to operate at the airport. Mr. Garcia explained the lease would be given to a management company who in turn would be able to allow independent taxi owners to apply to operate at the airport. Mr. Garcia also pointed out the concessionaire will take responsibility for assuring all taxi drives adhere to a code of conduct. Member Inouye also asked Mr. Garcia if the concessionaire would be audited on the monthly report they turned in with regards to the number of trips taken. Mr. Garcia answered yes to the question.

Unanimously approved as submitted (Inouye/Johns).

Member Yamamura recused himself from Items K-1, K-2, K-4, K-5, and K-6

Item K-1: Issuance of Revocable Permit to Great Enterprise, Ltd., Near Pier 32, Iwilei, Honolulu Harbor, Hawaii, Tax Map Key No. 1st/1-5-36:1.

Mr. Garcia noted the permit would be for refrigerated food container storage. He recommended the Board authorize DOT to issue a revocable permit to Great Enterprise Ltd.

Unanimously approved as submitted by the remaining members (Inouye/Johns).

Item K-2: Issuance of Revocable Permit to TBC, LLC, Near Pier 42, Kalihi Kai, Honolulu Harbor, Hawaii, Tax Map Key No. 1st/1-2-25:12 (Portion).

Mr. Garcia informed the Board the permit would be for storage of vintage mahogany boat and vintage automobiles. He recommended the Board authorize DOT to issue a revocable permit to TBC, LLC.

Unanimously approved as submitted by the remaining members (Inouye/Johns).

Item K-3: Issuance of a Revocable Permit to Island Recycling, Inc., Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu.

Mr. Garcia told the Board this permit would be for storage of Equipment and Supplies, together with an Office Trailer. He recommended the Board authorize DOT, Harbors Division to issue this revocable permit.

Unanimously approved as submitted (Inouye/Johns).

Item K-4: Issuance of a Revocable Permit to E Noa Corporation at Iwilei, Honolulu, Oahu.

Mr. Garcia told the Board the applicant would be using the space for employee parking. He asked the Board to authorize DOT, Harbors Division to issue a revocable permit to E Noa Corporation.

Unanimously approved as submitted by the remaining members (Inouye/Johns).

Item K-5: Issuance of Revocable Permit to Monique Thi Dang, dba California Seafoods, Near Pier 32, Iwilei, Honolulu Harbor, Hawaii, Tax Map Key No. 1st/1-5-36: 1 (Portion).

Mr. Garcia informed the Board the applicant would be using the area to store refrigerated food containers, a forklift and a truck. He asked the Board to authorize DOT to issue the applicant a revocable permit.

Unanimously approved as submitted by the remaining members (Inouye/Johns).

Item K-6: Amendment to Revocable Permit No. H-01-2288 Issued to Dennis and Abby Sullivan, dba Natural Hawaiian Home, Garden and Import, Near Pier 32, Iwilei, Honolulu, Hawaii, Tax Map Key No. 1st/1-5-37: 7 (Portion).

Mr. Garcia noted the applicant would use the area for storage of portable engineering building and pallets holding rock veneers, containers with stone carvings and gazebos imported from Asia. Mr. Garcia recommended the Board authorize DOT to issue this amendment to the revocable permit.

Unanimously approved as submitted by the remaining members (Inouye/Johns).

Item K-7: Conveyance of Portion of Ala Moana Boulevard, from Kalia Road to 66 feet before the Bridge crossing the Ala Wai Canal, parcel B, Honolulu-Pearl Harbor Road, Kalia Section, Federal Aid Project No. U-44(9), to the City & County of Honolulu, Tax Map Keys: (1) 2-6-9, 10, 11, 12: ROAD.

Mr. Garcia briefed the Board and noted the Governor approved the conveyance of the land to the City and County of Honolulu for the purpose of constructing pedestrian and landscaping improvements to enhance the gateway into Waikiki. Mr. Garcia recommended the Board authorize the conveyance of the land.

Unanimously approved as submitted (Inouye/Johns).

Item K-8: Authorization for Sale in Fee Simple, Portion of Old Kamehameha Road, Portion of Exclusion 19 of L.C. Award 8241 to the Abutting Property Owner. Property Situate at Waipahu, Hawaii, TMK: (1) 9-4-06-05 (Portion of Parcel e) and (1) 9-4-06 Por. 2 (Parcel A-2).

Mr. Garcia briefed the Board and added that the sale price for the two parcels would be \$138,400. He recommended the Board authorize DOT to dispose of the portion of Old Kamehameha Road and sell it a fair market value for the reimbursement of the Federal Aid Project.

Unanimously approved as submitted (Inouye/Johns).

Item K-10: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses.

Mr. Garcia noted the report on the revocable permits is for the Harbors Division for the months of May, June and November 2002.

No Action.

Item I-1: Adoption of Title 13, Chapters 275-284, Hawaii Administrative Rules. Rules Relating to the Historic Preservation Program.

Mr. Don Hibbard, administrator of Historic Preservation told the Board he has met with the Land Use Research Foundation and the Hawaii Leeward Planning Conference to address any concerns regarding the new rules. Due to their input changes were made to the proposed rules. Mr. Hibbard went on to read a statement pertaining to a settlement agreement with the plaintiffs of Oceanside 1250 case dealing with rule 13-284. In the statement Mr. Hibbard explained that the proposal would be to abolish the use of interim preservation plans.

Rob Hommon, President of the Society for Hawaiian Archaeology stood before the Board and said they've attempted to get a regulation in the rules that would require an inventory plan for every archaeological inventory survey conducted in Hawaii.

When questioned by the Board about what the plan would consist of Mr. Hommon responded it would include the area surveyed, the techniques used, the level of intensity of the survey, requirements for dating and any special considerations that would be needed. Mr. Hommon believes by requiring an inventory plan, it would serve as a contract between the archeologist, the developer and SHPD. That way if something wasn't completed or was done incorrectly, the State could go back the developer and have it redone.

Member Inouye question the fact if SHPD incorporated these changes it would be viewed as "significant" changes.

Member McCrory addressed Mr. Hommon saying she believes his issues are with the developer and the archaeological firm not SHPD. She stated it seemed to be more of a marketing issue because a firm could charge less than another firm because they could look at the plans from a different point of view.

Member Inouye informed the Board she spoke to an archeologist who stated that Mr. Hommon's suggestion would streamline the process for SHPD. Her concern was if the Board added Mr. Hommon's suggestion to the rules the rules should also establish how long the approval process would take.

Mr. Hibbard addressed Mr. Hommon's issues by telling the Board the current rules allow SHPD the flexibility to ask for plans if they think it is necessary. By requiring the plans it would add unnecessary work for SHPD and take more time to review. It would probably add an additional 45 days for the approval process.

Alan Murakami spoke in support of the rule changes. He noted presently there are two set of rules, one governing the archeology branch of SHPD and another set of rules for the burial sites. Mr. Murakami told the Board he would like SHPD to acknowledge that the burial treatment plans must precede any construction act and any approvals given by SHPD.

The Board amended the Recommendation Section by directing staff to come back to the Board in six (6) months with information regarding inventory plans and incorporating the ideas raised by Alan Murakami and also amended the following:

13-284-1 lines 14

"mitigate adverse effects to the significant historic [and cultural] properties in the public interest."

Unanimously approved as amended (Johns/Yamamura).

Member Inouye was excused from the meeting at 1:45 p.m.

Item D-26: Preliminary Determination of Lease Disposition Method and Approval in Principle of a Direct Lease for Commercial Wind Farm Purposes to General Electric Wind Energy and Hawi Renewable Development, Inc., Olowalu-Ukumehame, Lahaina, Maui, Tax Map Key: (2) 4-8-01: por 1.

Ms. Mamiya went over the applicant's history. She told the Board in April 2000, Zond applied for a CDUA for the operation of a wind farm. In December of 2000 the Board authorized the sale of a lease at public auction. In 1997 Zond was acquired by Enron Corporation and in August 2001 processing of the lease ceased. In May 2002, General Electric Power Systems acquired Enron Wind Corporations and called the company General Electric Wind Energy (GE). In 2002 both GE and Hawaii Wind Energy, LLC expressed their interest to complete the same wind farm project. Ms. Mamiya expressed both applicants eagerness to expedite the process because of the expiration of State and federal tax credits in 2003. Act 102, SLH 2002 was discussed because GE Wind Energy has already spent a great deal of money versus Hawaii Wind Energy. Ms. Mamiya also described the results of her inquiries regarding financing for the competing proposals, including a letter from Clipper Wind Power, Inc. Ms. Mamiya recommended the Board approve in principle the issuance of a direct lease to General Electric Wind Energy and Hawi Renewable Development.

Mr. Chang of Maui Electric Company told the Board his company does not have a signed power purchase agreement with either company. But they do have a signed interconnection study letter agreement and a supplemental Interconnection Requirement study with GE Wind Energy and Hawi Wind Energy.

Brian Hayashida of Hawaii Wind Energy introduced other members of his company, James Brodie and Michael Krochina. The Board asked Mr. Hayashida to explain to the Board how they would undertake this project. Mr. Hayashida said even though his company does not have an agreement with Maui Electric because their company is based locally they would have better access and the opportunity for face-to-face meetings with the electric company. He told the Board the letter they received from Clipper Wind Power Inc., stated they are not doing any development in Hawaii as opposed to Hawaii Wind Energy stating that Clipper would be financing their project. The letter is a result of Clipper learning GE already had a CDUP and an agreement with the utility company and they felt GE would stall the lease process thereby jeopardizing the time line set forth by Clipper and Hawaii Wind Energy. Mr. Hayashida voiced his concern over staff's recommendation of Hawi Renewable Energy since the company has not gone through the qualification process for the CDUP application. With regards to Act 102, which states the Board may issue leases to "renewable energy producers," Mr. Hayashida stated GE is not producing the power therefore Act 102 does not apply to GE and that makes Hawaii Energy the only qualified company.

James Brodie of Hawaii Wind Energy spoke about his companies meeting with HELCO.

The Board asked Mr. Hayashida what would happen if his company did not meet the deadline to receive tax credits. He answered it will kill the deal in terms of their financial

structure but they could still go forth with the deal. Mr. Hayashida told the Board that Clipper would get involved in the deal if they received word that the state denied the request to negotiate with only GE.

Tim Derrick of General Electric Wind Energy introduced members of the company- Keith Avery, David Kirkpatrick, Richard Horn (of Hawi), Warren Gomeier, Gino Gabrio and Craig Nakanishi(attorney). When questioned by the Board if GE would have a problem with the State negotiating with both companies, Mr. Derrick replied no. Mr. Derrick told the Board his company would like the Board to make a decision as to which company would get the lease, as soon as possible as both companies are spending lots of money. Mr. Derrick made 3 points: 1) GE represents the same interest as Enron Wind and Zond Wind; 2)GE decided not to produce power in Hawaii because the turbine they had was too big for Hawaii therefore they looked at Hawi Renewable Development as a partner; 3)Direct Lease - Mr. Derrick believes they have invested a substantial amount of money in this project and to have another company come in and reap the benefits of their labor is just not right.

Lucien DeNaie was the conservation chair of the Sierra Club Maui group when this project was brought to the communities attention. The Sierra Club was asked to give their input into this matter. She spoke in favor of the work GE is and has been doing in working with the community on this project.

Buck Joyner, a retired licensed professional engineer who lives in Maui has been looking at the development of alternate sources of energy for his home. He feels the attempt by Hawaii Wind Energy to take over the project of GE is inappropriate. He stated the people of Maui are in support of GE continuing the project. He noted his frustration with the State in getting this project off the ground.

Ed Lindsey representing the kupuna's on Maui stated they were impressed with the approach of Keith Avery of General Electric because he asked the kupuna's for their input into the project.

Member McCrory said she was uncomfortable with having both companies continue with the application process. She felt by continuing the process both companies would be spending money in hopes of only one company receiving final approval.

The Board amended the Recommendation Section to read as follows:

“That the Board approve, in principle the issuance of a direct lease [~~to General Electric Wind Energy and Hawi Renewable Development, Inc.~~] for the subject site and subject to the following:

- 1. This approval in principle shall not constitute the Board's endorsement or approval of the proposed land use under the Conservation District Use Application now being processed by the Department; and**

2. ~~[This approval in principle shall not be deemed to be an approval of a lease to General Electric Wind Energy and Hawi Renewable Development, Inc., and staff shall return to the aboard for approval of the lease with the terms and conditions, provided that the Board approves the Conservation District Use Application.] The Conservation District Use Application process shall continue.”~~

Approved as amended (Yamamura/Johns).
Member McCrory voted no.

Item D-15: Request for Public Hearing and Small Business Impact Determination: Petition to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap 13-5 HAR), to redesignate a portion of the State Land Use Conservation District Limited Subzone to the General Subzone in Maulili, Kipahulu, Maui.

Mr. Lemmo briefed the Board and stated the applicant is in agreement with moving the old home, Argonauta to Haleakala National Park as long as she is able to replace it with a new house. This action would first require the Board to change the land from a Limited to General Subzone. Therefore Mr. Lemmo recommended the Board approve the petitioner’s request and authorize the forwarding of a request for public hearings to the Governor.

Unanimously approved as submitted by the remaining members (Yamamura/McCrory).

Member DeMello was excused at 2:10 p.m.

Item J-1: Requesting Adoption of Amendments to Chapters 13-230, 13-231, 13-232, 13-233, 13-234, 13-241, 13-242, 13-244, 13-250, 13-251, 13-252, 13-253,, 13-255, 13-256, Hawaii Administrative Rules.

Mr. Mason Young, Administrator of Boating and Ocean Recreation (DOBOR) briefed the Board on the events that have transpired with regards to this issue. He noted 10 public hearings were held across the State and they have taken people’s comments and incorporated it into the rule changes. At today’s meeting Mr. Young presented the Board with an amendments to the proposed rules. In the amendment DOBOR proposes to: reduce the level of fee increase at the Ala Wai from 185% to 100%, re-draft Sections 13-231-61 and 13-231-62 to include substantive amendments, include a new definition of “cruise vessel,” and lastly to include a requirement for a certificate of insurance for anyone wishing to repair a vessel within a state boating facility. Mr. Young recommended the Board approve the non-substantive amendments to the draft rules and authorize the recompilation of the rules following adoption.

Member Martyn asked Mr. Young where the revenue bond to fix the facilities would come from. Mr. Dave Parsons, administrator for DOBOR special projects noted that with legislative approval DOBOR would issue revenue bonds themselves or they work with DOT to piggyback on them.

Member McCrory question Mr. Young and Mr. Parson about the increase in commercial permits. She noted at no time did DOBOR state there would be any type of increase in the number of permits aside from mooring fees. She also pointed out some errors in the rules.

James Coon founder of Maui's oldest sailboat company and having served on the Small Business Regulatory Review Board (SBRRB) addressed the Board. He told the Board the small business boating community agreed to support a fee increase by DOBOR if: there were some "expectations of renewal" of their boat slips and commercial permits, there be an informal review process or administrative review before a full contested case hearing, the fee be capped at 3% of gross, the slip % increase be equally for all harbors, a person would have more than 120 days to replace a sunk or lost vessel, the State would look more favorably on business transfers, the boat launch ramps be available for larger vessel haul-out, commercial vessels could get special permits to access harbors where they didn't have a permit more than eight times a year, if an operator "incorporated" his business, he still could be both the major stockholder and the captain of his vessel, there be no "special conditions" put on permits, gross receipts do not include non-boating revenue and that the rules be clarified and made uniform. Mr. Coon also felt the fee increases at Lahaina and the Ala Wai Harbors should have been spread out over the whole state.

Teri Kondo an attorney representing Hawaii Prince Hotel Waikiki submitted written testimony and told the Board the hotel has one problem with the proposed rules. Her client, the hotel opposes the yearly fee being imposed by DOBOR on the transportation companies that service hotels near a state boating facility. She stated currently the Hotel has a lease with the State to use the area between the Hotel and the Ala Wai Boat Harbor while at the same time maintaining and up keeping the area. She believes the fees are unnecessary and unfair since the Hotel already leases the area between the Hotel and the Ala Wai from the State and pays an annual rent of \$379,844.00 to DLNR.

Dr. Ted Vaughn, a commercial boat owner echoed the same sentiments as Mr. Coon's.

Greg Collin, president of the Ocean Tourism Coalition spoke before the Board. He testified he was retracting his support of the proposed boating rules fee packet. His decision was based on the following; DOBOR changed the rules from the October 2002 version, the charges for Lahaina and the Ala Wai are excessive, the "due process" clause has been removed and the deletion of sections 13-231-32(b)(6) and 13-231-61 & 62. He informed the Board the website had multiple versions of the rules and the public was not able to tell which was the current version. He asked the Board to defer action on this matter until DOBOR has the opportunity to make changes to the rules and the public has the opportunity to look at the new rules and weigh in with their comments.

The Board asked DOBOR to post the new rules to the website at least two weeks ahead of time so the public will have the chance to view the changes and submit their comments.

**Motion to defer (Martyn/McCrory).
Unanimously approved to defer.**

Due to time constraints the following items were deferred: D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-12, D-14, D-17 and J-2.

**Motion to defer above items (Johns/McCrory)
Unanimously approved to defer by the remaining members.**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 3:35 pm

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

Respectfully submitted,

Terry Crowell

Approved for submittal:

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