

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

DATE: FRIDAY, JULY 25, 2003
TIME: 10:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Ted Yamamura

Ms. Lynn McCrory
Ms. Kathryn Inouye

STAFF

Ms. Dede Mamiya, Land Division
Mr. Michael Buck, DOFAW
Lisa Hadway, DOFAW
Ms. Holly McEldowney, HP

Mr. Sam Lemmo, Land Division
Mr. Michael Constantinides, DOFAW
Mr. Dan Quinn, State Parks
Mr. Peter Garcia, DOT

OTHER

Ms. Danetie Metiler, D7, D-8
Ms. Vera Kihe, D-3
Mr. Don Clegg, D-11
Mr. Tim Tunison, D-1
Ms. Majorie Ziegler, C-1
Mr. Steve Montgomery, C-1

Ms. Lynn Wells, D-12
Mr. Sam Kihe, D-3
Ms. Linell Nishioka, D-1
Mr. Chris Yuen, C-1
Mr. Jerry King, C-1

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

Item A-1: Minutes of July 11, 2003

The Board made the following changes:

Page 1, under section "Other" eight line second column

Mr. Russell [~~Inrim~~] Watari, D-11

Page 6, second paragraph, sixth line

"directed Meller to first try to establish the State land portion of the easement. In [~~1988~~] 1998 the Board denied his next access/utility easement."

Page 6, last paragraph

"The Board asked Mr. Kratovil if his client is agreeable to provide [~~and Environmental impact Survey (EIS)] an Environmental Assessment (EA) so the Board could understand it in a more structural way the effects of the proposed alignment. Mr. Kratovil believes his client is not required to provide an [~~EIS~~] EA."~~

Page 7, sixth paragraph, tenth line

"Objections, but not as much. Mr. Wilson believes Mr. Miller intends to convert his..."

Page 7, last paragraph

"The Board asked Mr. Wilson if the applicant provided [~~and~~] an Environmental Assessment which mitigated most of Waioli's concerns would he go along with the easement."

Page 8, fifth paragraph

"Mr. Russell [~~Inrim~~] Watari spoke on behalf of the taro farmers in Hanalei Valley. He provided the Board with a petition from the taro farmers asking the Board to deny Michael Miller's request. Mr. [~~Inrim~~] Watari told the Board the taro farmers are concerned with the impact the easement..."

Page 8, ninth paragraph

~~"[Ms. Mamiya noted she would recommend against an Environmental Assessment. Looking down the road she feels there will be certain conditions imposed on the applicant that he will feel is unsatisfactory and this matter will be brought back to the courts and this process will continue with the State being caught in the middle of this situation. She strongly believes this is a zoning issue that needs to be handled by the County of Kauai.]"~~

Page 9, first paragraph

“The Board directed the applicant to provide [and] an environmental assessment addressing the potential and cumulative effects[, which is to be provided for the Board’s review before any alignment issue is determined] for any requested easements to his property.”

Unanimously approved as submitted (Johns/McCrory).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Radio and Communications Site Within General Lease No. S-4473, Kaohe VI, Hamakua, Hawaii, TMK: 3rd/4-1-006: portion of 007.

Ms. Mamiya informed the Board the area in question is encumbered by General Lease No. S-4473. In 1994 the Division of Forestry and Wildlife established a radio/communication tower. Currently the County of Hawaii, Police Department operates the site. The County of Hawaii performed an environmental assessment in connection with the upgrade of the system. She recommended the Board authorize the issuance of a perpetual non-exclusive easement to the County of Hawaii covering the subject area.

Danetie Metiler was present on behalf of the applicant.

Unanimously approved as submitted (Johns/Yamamura).

Item D-8: Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Radio and Communications Site and Access Purposes, Manuka, Kau, Hawaii, TMK: 3rd/9-1-001: portion of 003.

Ms. Mamiya made in known this submittal was similar to the prior submittal. She briefed the Board and recommended the Board authorize the issuance of a perpetual, non-exclusive easement to the County of Hawaii covering the subject area.

Danetie Metiler was present to answer any questions.

Unanimously approved as submitted (Johns/Yamamura).

Item D-12: Grant of 55-year Term, Non-Exclusive Easement to Cho Gilger, for Seawall Purposes, Haleaha, Koolauloa, Oahu, TMK: 5-3-06: seaward of 21.

Ms. Mamiya indicated during the preparation of shoreline certification maps it showed the applicant’s seawall was encroaching about 26 square feet onto the State lands. Staff has conferred with the Coastal Land Program staff and they have no objections to the issuance of this easement. Mr. Cho Gilger has requested an estimated easement calculation to assist in the negotiations for the closing of escrow in July. Ms. Mamiya recommended the Board

authorize the issuance of a 55-year term non-exclusive easement to Cho Gilger covering the subject area for seawall purposes.

Lynn Wells realtor of this transaction asked the Board if they could wave the condition of requiring an appraisal.

Ms. Mamiya told Ms. Wells staff is working on a recommended formula to deal with shoreline encroachment, similar to the Kaneohe Bay Piers formula. This formula would eliminate the need for an appraiser.

Unanimously approved as submitted (Inouye/Johns).

Item D-3: CDUA No. 3120 to Demolish Existing Single Family Residence (SFR) and Construct Kehi SFR (Kuleana Use), Landowner: Vera Kehi, at Keei, South Kona, Hawaii, TMK: (3) 8-3-006: 011.

Sam Lemmo of the Office of Conservation and Coastal Lands communicated that the subject parcel is 5,663 and is located in a rural area that has an established residential neighborhood. The applicant proposes to demolish the existing storage shed and Single Family Residence (SFR), take down the canopy structure, and construct a two-story 2,800 square foot wood frame SFR and install wastewater treatment system. Mr. Lemmo noted that no grading would occur. Also the applicant will transport their waste to the Keei Transfer Station as the County of Hawaii will not collect solid waste. Mr. Lemmo also brought up the issue of Kuleana Land Use and explained how it applied to the applicant. Mr. Lemmo recommended the Board approve this application.

Member McCrory was not comfortable with recommending a septic tank as long as its potential effects on the bay where not known.

Mr. Lemmo made it known that cesspools were not allowed so the preferred treatment system would be a septic tank. He also informed the Board the Department of Health, which is the agency that oversees wastewater treatment system would need to give approval on the applicants permit before construction can begin.

Vera Kihe, the applicant testified before the Board. She told the Board she would like to build a house on the lot. In response as to what is being built downstairs, Ms. Kihe said the area would be used as a gathering place for guest.

Sam Kihe also came before the Board to testify. He told the Board there is a bathroom and shower on the bottom floor of the structure, but there was no kitchen. He told the Board he understands that he cannot rent out the bottom floor of the house.

Motion made at 9:50 a.m. to move into executive session to discuss with the Deputy Attorney General the interpretation of kuleana laws and regulations.

Motion to move into Executive Session.

Unanimously approved to move into Executive Session (Johns/McCrory).

The meeting reconvened at 10:01 a.m.

The Board amended the Recommendation Section by:

- 1) **Amending the opening paragraph of the Recommendation Section to read as follows:**

“Based on the proceeding analysis, staff recommends that the [Department] Board of Land and Natural Resources APPROVE this application to demolish the existing SFR and storage shed, and to construct the proposed SFR and install the wastewater treatment system, subject to the following terms and conditions:”

- 2) **Adding paragraph 13) to read as follows:**

“13) The property shall not be used commercially or rented out;”

- 3) **Adding paragraph 14) to read as follows:**

“14) The first floor of the house shall not be enclosed except for the bathroom.

Unanimously approved as amended (Johns/McCrory).

Item D-11: After-The-Fact CUDA No. OA-3125 for a Loose Rock Retention, Applicant: David and Karen Stoutemyer, at Kaneohe, Oahu, TMK: (1) 4-4-021: 036.

Mr. Lemmo conveyed the applicant is seeking approval for an after-the-fact Conservation District Use permit for a 100 square foot loose rock retention, which was constructed in 1991 along Kaneohe Bay, a portion of which was built in the Conservation District. He made it known on July 10, 2001 the new landowners purchased the reclaimed lands from the State. During the process of a County Shoreline Setback it was revealed that the retention did not follow the 1991 certified shoreline. Mr. Lemmo recommended the Board approve this application for an after-the-fact loose rock retention.

Don Clegg of Analytical Planning Consultant, Inc. an agent for the applicant appeared before the Board.

Unanimously approved as submitted (Inouye/McCrory).

Item D-1: Habitat and Reforestation Plan for Areas Impacted by Unauthorized Timber Harvesting, Landowner: The National Park Service, at Kau, Hawaii, TMK: 3rd/9-2-1:2 (por).

Member Johns recused himself.

Mr. Lemmo noted this was a follow up to an enforcement action involving unauthorized timber harvesting. He told the Board Damon was fined \$466,800 plus administrative costs of \$13,535. In lieu of the fine Damon had the option of restoring the lands under a habitat and forest restoration plan. Damon has decided to restore the Land. Due to the sale of the land to the National Park Service (NPS), Damon and NPS have entered into a Memorandum of Agreement for the restoration of certain portions of the land. Mr. Lemmo went over the agreement. He noted the Division of Forestry and Wildlife's concern with the location of the fencing and requested the alignment of the fence be agreed upon prior to its placement. Mr. Lemmo recommended the Board approve the proposed Plan for the Restoration of the Habitat and Forest within the areas impacted by the Harvesting of Koa.

Linnel Nishioka counsel for Damon Estates appeared before the Board. She introduced some of the people that came with her today; Kris Shimabukuro, Assistant Operating Officer of Damon Estates, Charles Wakida, consultant and members of the National Park Services Jim Martin, Tim Tunison and Gary Barbano. Ms. Nishioka noted there were some issues unresolved regarding the proposed fencing route.

Tim Tunison of the National Park Service came forward to explain the proposed fencing. There will be two fencing increments proposed. The first would be along the boundary of the park. The second increment will be determined by the information gathered from the monitoring of the mouflon. Mr. Tunison noted they were flexible with the first increment and it could be anywhere from four to six miles long. He also spoke about a long term hunting effort to eradicate the mouflon population. Currently they are working on a plan to get the hunters safely through the hunting area without disturbing the ranching operations.

Ms. Nishioka asked the Board if their bond requirement could be reduced on a sliding scale based on performance on a dollar for dollar basis. She noted Damon would turn in receipts of payments made. She informed the Board after Damon has completed the restoration plan there would be \$212,000 remaining as part of the bond obligation. And if for any reason the restoration plan does not work the State would be entitled to the remainder of the performance bond.

Member Inouye voiced her concern as to when the two-year monitoring period would begin. She feels any monitoring activity taking place prior to the installation of the fencing (the first year) should be considered as a baseline monitoring and should not count towards the two year monitoring plan.

Michael Buck administrator for the Division of Forestry and Wildlife (DOFAW) addressed the Board. He told the Board a potential solution (after the two years of joint monitoring effort between DOFAW and NPS) would be to have DOFAW and NPS return to the Board with a report on the status of the area. Mr. Buck feels that it is not necessary to go into the park and plant huge trees. He feels the koa trees will come back on its own. He also

noted their concern with the location of the fencing. Mr. Buck would like to propose a condition that the fencing location and length would need the mutual agreement of DOFAW and NPS.

The Board amended the Recommendation to read as follows:

"Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources approve the proposed Plan for the Restoration of the Habitat and Forest within the Areas Impacted by the Harvesting of Koa, subject to all conditions imposed by the Board's April 11, 2003 action, and subject to the following additional terms and conditions:

- 1) Completion of semi-annual briefings of the Board for the first year of the MOA and an annual briefing after the second year, conducted by HVNP;**
- 2) A report of feral ungulate control measures implemented during the first year of the MOA filed with the DLNR no later than 30 days after the first year the MOA is completed;**
- 3) Payment of \$13,535 in administrative expenses within 10 days of the approval of the Habitat and Forest Restoration Plan by the Board; and**
- ~~3) Damon shall be released from the Bond obligation upon complete and satisfactory implementation of the Habitat and Reforestation Plan (including fencing, feral ungulate control and biological monitoring), completion of items one (1) and (2), and provided that restoration generally satisfies the requirements imposed by the Board of Land and Natural Resources for the restoration of habitat and forest areas within the affected kipukas at Kahuku Ranch.]~~**
- 4) Upon proof of payment to the Department, Damon shall be incrementally released from the bond obligation on a dollar for dollar basis as Damon makes payments due under the proposed habitat and forest restoration plan. The Division of Forestry and Wildlife (DOFAW) shall report to the Board on the status of the restoration for release of the bond after two years. If DOFAW reports that the restoration is satisfactory, then the bond will be released as such.**
- 5) Fencing location and length under the restoration plan shall require mutual agreement between DOFAW and the National Park Service within 30 days."**

Unanimously approved as amended by the remaining members. (McCrorry/Inouye).

Item D-10: Petitioner's Oral and Written Request for Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Hearing. Docket No. HA-04-01 Petition from Counsel Representing Steve's Ag Services, Ltd. And Contract Milling, Contesting the Board of Land and Natural Resources June 27, 2003 Decision to Assess a Fine of \$1,372,650 for an Enforcement Action Involving the Removal of Koa Timber on State Unencumbered Lands, South Kona, Hawaii, TMK: (3) 8-8-01: 08.

Member Johns recused himself.

Mr. Lemmo indicated this is a request to appoint and select a hearing officer with regards to a June 27, 2003 Board of Land and Natural Resources decision to assess a fine for Enforcement action involving the removal of Koa Timber on State Unencumbered Lands in South Kona. Mr. Lemmo recommended the Board authorize the appointment and selection of a Hearing Officer to conduct all the hearings relevant to the subject petition.

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

Item D-4: Consent to Assign General Lease No. S-3624, GECH Holdings, Inc., Assignor, to 69 Railroad, LLC, Assignee, Waiakea, South Hilo, Hawaii, TMK: 3rd/2-1-12: 26.

Ms. Mamiya informed the Board this lease went into foreclosure and GECH Holdings is the Mortgagee. She also indicated GECH would like to sign the lease over to 69 Railroad, LLC. Ms. Mamiya recommended the Board consent to the assignment of General Lease No. S-3624 from GECH Holdings, Inc., to 69 Railroad, LLC.

Michael Cox representing the applicant was on hand to answer any questions.

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

Item D-2: Petitioner's Oral and Written Request for Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Hearing. Docket No. HA-03-04 Petitions from James Sogi and K. Angel Pilago for Contested Case Hearing on Conservation District Use Application (CDUA) No. HA-3124 (Board Permit) for Access and Utility Easement Across a 9,000 Square Foot State-Owned Right of Way Parcel.

Ms. Mamiya requested the Board authorize the appointment and selection of a Hearing Officer to conduct all hearings relevant to the subject petition.

Unanimously approved as submitted (Inouye/McCrory).

Item D-5: Issuance of Revocable Permit to Todd Lum, Waiakea, South Hilo, Hawaii, TMK: 3rd/2-4-05:12.

Ms. Mamiya briefed the Board and recommended the Board authorize the issuance of a revocable permit to Todd Lum covering the subject area for pasture purposes.

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

Item D-6: Issuance of Revocable Permit to Norman Medeiros, Sr, for Pasture Purposes, Kamaee, Homesteads, North Hilo, Hawaii, TMK: 3rd/3-1-04: 01.

Ms. Mamiya communicated to the Board Norman Medeiros, Sr. submitted written testimony asking the Board to delete the request of fencing of the two sides of the trail. Ms. Mamiya noted her agreement with Mr. Medeiros' request. She recommended the Board authorize the issuance of a revocable permit to Norman Medeiros, Sr. covering the subject area for pasture purposes.

The Board amended the Recommendation Section by deleting subparagraph 2.b. (requirement to fence public trail) and renumbering the subparagraphs following 2.b.

Unanimously approved as amended by the remaining members (Yamamura/Inouye).

Item D-9: Set Aside to Department of Transportation, Highways Division together with Immediate Right of Entry for Management and Control for Roadway Purposes, and Construction Right of Entry to the Department of Hawaiian Home Lands for Waterline Installation, Hoolehua and Palaau, Molokai TMK: (2) 5-2-007 (Parcels 1 thru 29 of Farrington Avenue).

Ms. Mamiya made in known the jurisdiction of this parcel of land was never transferred from the Department of Land and Natural Resources to the Department of Transportation (DOT). The oversight was discovered when the Department of Hawaiian Homelands approached DOT for use of the lands. Ms. Mamiya recommended the Board approve and recommend to the Governor the issuance of a executive order settings aside the subject lands to DOT.

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

Item D-13: Grant of Term, Non-Exclusive Easement to Thomas and Gladys Tanaka, for Seawall, Fill Land, Portion of Beach House and Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-18: 76.

Ms. Mamiya disclosed the applicant is participating in the Kaneohe Piers Amnesty Program. Staff is recommending a fine of \$500 for the encroachment upon public lands. Ms. Mamiya recommended the Board authorize the issuance of a 55-year term non-exclusive easement to the applicants.

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

Item D-14: Amend Prior Board Action of June 28, 2002 under Agenda Item D-22, for Grant of 55-year Non-Exclusive Easement for Seawall and Reclaimed (Fill) Land to Richard Van Horn, as Trustee of the Richard Hunt Van Horn Revocable Living Trust dated September 14, 1981 and Noreen Mau Van Horn as Trustee of the Noreen Mau Van Horn Revocable Living Trust dated September 14, 1981, Kaneohe, Oahu, TMK: (1) 4-6-01: 09 seaward.

Ms. Mamiya noted this action involves an amendment to a prior Board action. She notes the deck in question should be included in the grant of the easement and included in the survey map. Ms. Mamiya recommended the Board amend its action of June 28, 2003 under Agenda item D-22.

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

Item D-15: Sale of Remnant to Clifford K. Helenihi and Channa Helenihi, Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, TMK: 4-5-077: 59 (Portion).

Ms. Mamiya pointed out this is a sale of a remnant. The abandoned ditch right-of-way is located on the applicant's lot. She recommended the Board authorize the sale, subdivision and consolidation of the subject remnant by the applicant.

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

Item D-16: Cancellation of General Lease No. S-3951, S-4102 and S-4128 with the Boy Scouts of America; Continuation of Nominal Lease Rents; Authorization to Subdivide Camp Alan Faye on Kauai; and, Withdrawal of Portion of Waimea Canyon Park, Governor's Executive Order No. 2209, dated June 15, 1965 (Camp Alan Faye).

Ms. Mamiya briefed the Board and recommended the cancellation of General Lease No. S-3951, S-4102 and S-4128; continuation of existing nominal lease rents under each of the above referenced leases through the consummation of the exchange; authorize the subdivision of Camp Alan Faye; authorize the Chairperson to sign any necessary documents to complete the subdivision and approve and recommend to the Governor

issuance of an executive order withdrawing the 29.0 acres comprising Camp Alan Faye from the Governor's Executive Order No. 2209.

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

Item I-1: Awarding of Historic Preservation Federal Grant-In-Aid.

Member Johns returned at 11:33 a.m.

Holly McEldowney acting administrator for the State Historic Preservation Division recommended the Board authorize the Chairperson and another member of the Board to negotiate and execute a contract agreement with the County of Kauai to undertake the projects mentioned.

Unanimously approved as submitted (McCrary/Johns).

The Board took a break at 11:34 a.m. and resumed the meeting at 11:47 a.m.

A motion was made at 11:48 a.m. to move into executive session to consult with the attorney general's office on a contested case action (Stephens Brescia case) before the Board in which a decision needs to be made today.

Motion to move into Executive Session

Unanimously approved to move into Executive Session (McCrary/Yamamura).

The Board reconvened at 12:10 p.m.

Item C-1: Approval of Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu.

Michael Buck administrator for the Division of Forestry and Wildlife appeared before the Board and thanked the members for attending a briefing on Pu'u Wa'awa'a yesterday. He recommended the Board approve the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the makai lands of Pu'u Anahulu covering a period of ten years, approve the implementation strategy drafted and require annual reports from staff that identify progress and the effectiveness in implementing the Management Plan.

The Board discussed the implementation of HRS 343 into the Management Plan. Members Johns asked Mr. Buck to have available as public record the management plan submitted several years ago by the Hui as a means of comparison so the public can see how the plan has evolved.

Christopher Yuen testified both as an individual and as Vice President of Ka'ahui O Pu'u Wa'awa'a. He noted his organization supports the management plan before the Board today. He believes the plan does a good job in setting objectives and an overall vision.

While at the same time identifying specific things that need to be done, the plan does not have a firm plan for funding and accomplishing many of their goals. Mr. Yuen made it known his organization is interested in raising money and volunteers to try and implement certain areas of the management plan. He believes the State has a responsibility to the land and he feels the State has not done its share in putting money into its natural resources. Mr. Yuen also went on to explain the differences in their plan for Pu'u Wa'awa'a and those proposed by the State.

Marjorie Ziegler of Conservation Council of Hawaii appeared before the Board. She noted her organization is comprised of 4,000 members and has non-profit status. Their organization supports many parts of the plan but notes this is a conceptual plan and things are not set in stone. She believes a conceptual plan shows the Board's commitment in conserving the area. Ms. Ziegler went on to point out the differences in the plan submitted previously with the plan submitted today. The differences pointed out in the previous plan are: 1) there was more funding to protect the resources; 2) there was a commitment from groups regarding certain implementation of the area; and 3) if there were commercial use in the area the money generated from these activities would go back into supporting the area. Ms. Ziegler was uncomfortable with the current plan because it did not address the full spectrum of public use (i.e. bird watching, botanizing and other non-commercial uses). Her recommendation would be to ensure that Chapter 343 was applied to this agreement.

Jerry King came forward to testify before the Board on this issue. Mr. King noted the differences in the previous plan: 1) it had a community based board; 2) a council for stakeholders; 3) decisions would be made by the community and 4) there were safeguards for access to the area. Mr. King felt the plan before the Board today does not establish an order of priority for things to be completed; it is a free for all for groups to push forward with their agendas. He believes if Chapter 343 is applied to this plan it would require the State to address the public's concerns. Lastly he feels the Advisory Council is not balance, it does not represent the people of the community.

Member Yamamura left the meeting at 12:45 p.m.

Steve Montgomery representing Ahupuhi Malama Kawakahi appeared before the Board to provide testimony. He noted his group is comprised of biologists, botanists, geologists, environmentalists, native practitioners and science teachers. The members of their group are active in wetland restoration and are actively involved in Kawainui. Mr. Montgomery is excited with the plans potential and asked the Board to approve the plan before them today.

Marjorie Ziegler came forward to read written testimony submitted by Rick Warshauer.

The Board thanked everyone (staff and the public) associated with this project in helping to protect this area. The Board encouraged staff to be adaptive and flexible in implementing this plan especially with regards to the management of the Conservation units. Lastly the Board encouraged staff to incorporate community based management decisions.

The Board amended Recommendation 1):

- “1) In Concept, approve the attached Management Plan for the Ahupua’a of Pu’u Wa’awa’a and the maki lands of Pu’u Anahulu, covering a period of 10 years and direct Staff to implement HRS 343 process as necessary. The stated priorities and objectives are meant to be guidelines that can be amended or supplemented by future Board action as required.”**

Unanimously approved as amended by the remaining members (Johns/McCrory).

- Item M-1: Consent to Assignment of Lease No. DOT-A-87-33, Century Aviation, Inc. (Assignor) to Aris, Inc. (Assignee), Kahului Airport, Maui, TMK: (2) 3-8-01: 19.**

Peter Garcia representing the Department of Transportation recommended the Board Consent to the assignment of Lease No. DOT-A-87-33.

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

- Item M-2: Second Restated and Fifteenth Amendment to Harbor Lease No. H-79-5, Sand Island Container Handling Facility, Honolulu Harbor, Oahu, TMK (1) 1-5-41-111P.**

Mr. Garcia briefed the Board and recommended the Board approve the Fifteenth Amendment document submitted.

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

- Item M-3: Issuance of Concession Agreement for the In-Bond (Duty Free) Concession at State Airports in the State of Hawaii.**

Mr. Garcia went over the terms of the agreement for the Concession Stands at all State Airports. He also submitted an amendment to Page 5, item one of the submittal. Mr. Garcia recommended the Board authorize the Department of Transportation (DOT) to perform the execution of a withdrawal agreement with Duty Free Service (DFS), satisfactory to the DOT, to withdraw and terminate early the In-Bond Lease, to call for sealed bid tenders and the issuance of a new Concession Agreement and to issue a revocable permit to DFS, if necessary under the terms of the withdrawal agreement between the DOT and DFS covering the In-Bond Lease.

The Board noted they have been briefed by the Attorney General’s office regarding pending litigation between the State and DFS.

The Board made the following changes to page 5, item one of staff's submittal:

"1. First eight (8). The following percentage rent shall be added to the MAG for the period from the commencement of the Agreement (expected to be October 1, 2003) to and including May 31, 2004:

If the total amount of the Concession gross receipts is between ONE HUNDRED ~~[FIFTY]~~ MILLION DOLLARS (~~[\$150,000,000.00]~~ 100,000,000.00) and ~~[TWO]~~ ONE HUNDRED THIRTY THREE MILLION DOLLARS (~~[\$200,000,000.00]~~ 133,000,000.00), the following percentage rent shall be assessed to the Concessionaire by the STATE on that amount over ~~[\$150,000,000.00]~~ 100,000,000.00:

Unanimously approved as amended by the remaining members (Inouye/McCrory).

There being no further business, Chairperson Young adjourned the meeting at 1:20 p.m.


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

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources