

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

DATE: FRIDAY, AUGUST 8, 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 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Gerald DeMello

Ms. Lynn McCrory
Mr. Ted Yamamura
Mr. Toby Martyn (arrived at
10:17 a.m.)

STAFF

Ms. Dede Mamiya, Land Division
Mr. Scott Whitting, Land Division
Mr. Dan Quinn, State Parks

Mr. Sam Lemmo, Land Division
Mr. Mason Young, DOBOR
Mr. Emiliano Manuel, DOBOR

OTHER

Ms. Linda Chow, Deputy Attorney General
Mr. William Moore, D-5
Mr. Randy Cates, D-14
Mr. John Corbin, D-14

Mr. Neil Anthony Sims, D-14
Ms. Virginia Enos, D-14
Ms. Candy Lake, D-13

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

Item A-1: Minutes of July 25, 2003:

The Board made the following changes:

Page 9, Item D-9

“Ms. Mamiya made [in] it known the jurisdiction of this parcel of land was never transferred...”

Page 9, Item D-9, last sentence

“Ms. Mamiya recommended the Board approve and recommend to the Governor the issuance of [a] an executive order setting[s] aside the subject lands to DOT.”

Unanimously approved as amended (Yamamura/McCrory).

Item F-1: Request for Approval to Conduct Public Meetings and a Public Hearing to Establish a New Hawaii Administrative Rule, Chapter 60.7, Niihau and Lehua Islands Subsistence Fishing Area.

Motion to Defer

Unanimously approved to defer (McCrory/Demello).

Item D-16: Acceptance of Land from the Robinson Estate or HRT, Ltd, in Satisfaction of Land Use Commission Decision and Order dated October 1, 1996, and Set Aside to Department of Agriculture for Agricultural Park Purposes, Hoaeae, Ewa, Oahu; TMK: (1) 9-4-02: por. 1 and por. 52.

Motion to Defer

Unanimously approved to defer (Inouye/Yamamura).

Item D-5: Final Approval of Land Exchange between the State of Hawaii and Parker Ranch Land Trust for State-Owned Land at Waimea, Hawaii, TMK: (3) 6-7-2: portion 15 and Privately-Owned Land at Waimea, Hawaii, TMK: (3) 6-7-2: portion 17; Withdrawal from Governor’s Executive Order No. 3454; and Set aside to Department of Education for Addition to Waimea Elementary and Intermediate School.

Ms. Mamiya administrator of the Land Division informed the Board they are seeking final approval of a land exchange with Parker Ranch. The Department of Education (DOE) plans to expand the Waimea Elementary and Intermediate School. This would allow the creation of separate campuses for the Elementary and Intermediate School. Parker Ranch would be using the land they acquire to improve the design of the proposed extension of Lindsey Road. This action would provide an alternate route around the center of Waimea. The .780 acres of State land has been appraised at \$71,700 and the

4.988 acres of Parker Ranch land has been appraised at \$366,400. Ms. Mamiya conveyed that Parker Ranch is agreeing to the exchange despite the significant difference in land values. Ms. Mamiya recommended the Board authorize final approval of the land exchange, approve the withdrawal of Governor's Executive Order No. 3454 and approve and executive order setting aside the subject lands to the Department of Education.

William Moore of Parker Ranch was on hand to answer any questions.

Unanimously approved as submitted (DeMello/McCrory).

Item D-14: Conservation District Use Application No. HA-3118 and Request for a Lease of State Marine Waters for Marine Activities for Kona Blue Water Farms In Offshore Waters of the Natural Energy Laboratory of Hawaii Authority, Ulualoha Point, North Kona, Hawaii.

Sam Lemmo with the Office of Conservation and Coastal Lands briefed the Board on the request before them. He noted the applicant plans to establish a 90-acre ocean fish farm, 2,600 feet offshore off of the Natural Energy Laboratory of Hawaii Authority. The proposed area of the fish farm is located in the Hawaii Islands Humpback Whale National Marine Sanctuary (HIHWNMS). The applicant intends to culture only hatchery-reared fish that are native to Hawaii. Mr. Lemmo went over the construction, operation and production plan of Kona Blue Water Farms (KBWF). He also noted the different public concerns regarding this project and how Kona Blue Water Farms addressed these concerns. With respect to the impacts on spinner dolphins, Jan Ostman-Lind submitted comments on the adverse impact this project would create. In response to his comments, the applicant moved the cages 600 feet further offshore but Mr. Ostman-Lind feels that the farm should be moved one nautical mile offshore rather than 2,600 feet. In response to Mr. Ostman-Lind's concern the applicant has extended an offer to him to help KBWF design a dolphin monitoring program. The National Marine Fishery Service (NMFS) also voiced their concern with the potential impacts this project could have on the whale population. Staff notes the project may move forward with specific provisions for marine mammal monitoring. Mr. Lemmo made it known that not all comments were negative; there were a number of written and verbal comments expressing support for the project. The Division of Aquatic Resources made it known the project could reduce fishing pressure on wild fish stocks. In closing Mr. Lemmo recommended the Board approve the application by Kona Blue Water Inc., for a submerged fish farm.

Jeffrey Walters coomanager of the Hawaiian Islands Humpback Whales National Marine Sanctuary appeared before the Board. He informed the Board the applicant was very diligent in working with their organization to address their concerns and modifying their plans to minimize possible impacts on humpback whales. Mr. Walters looks forward to working with KBWF in developing a monitoring and reporting program.

Neil Anthony Sims Vice President of Black Pearls Inc. and Dr. Dale Sarver President of Black Pearls Inc. appeared before the Board. Mr. Sims noted Black Pearl Inc. is the parent company of Kona Blue Water Farms. He went on to clarify the issue of public

access. Their original draft requested to restrict public access to the area but due to public comments they have decided to submerge all of their cages therefore they are no longer requesting restricted public access to the area of the farm operation. Mr. Sims noted they would like to have some restrictions in the lease area due to liability issues. Mr. Sims went over a handout listing suggested corrections and comments to staff's report.

The Board had some concerns with the safety lights being used with the surface cages. The Board felt the public was not fully informed of the use of flashing lights.

Randy Cates of Cates International and Virginia Enos Vice President of Cates International testified before the Board. Mr. Cates made it known he has followed this issue from the beginning and has attended the public meetings. Mr. Cates noted at the public meetings he spoke against this permit mainly because DBWF requested exclusive use of an area and the use of surface cages. Due to the changes made by KBWF, Mr. Cates now supports their permit request. He also informed the Board he does not believe KBWF will have any problems with the whales or dolphins.

Ms. Enos spoke in favor of submerged cages and some of the problems encountered by surface cages. With regards to the placing lighting in the ocean, Ms. Enos felt the public would be against it.

John Corbin informed the Board KBWF has done an outstanding job working with the community. Mr. Corbin is in full support of this project.

The Board Amended:

- 1) **Page 3, top of page, first full paragraph:**
"The project is [also] not located in one of the Big Island spinner dolphin resting areas but is nearby. On a daily basis. . ."
- 2) **Page 11, third paragraph:**
"~~[The displacement of the dolphins from their habitual resting areas in Kealakekua Bay may occur. However, a]~~ A study noted that the dolphins in Kealakekua Bay reacted to foreign objects. . ."
- 3) **Page 21, last paragraph:**
"The applicant explains that the project is now positioned [~~on the edge of~~] beyond where the dolphins rest in deeper water. Staff feels that it is impossible to know. . ."
- 4) **Page 31, third paragraph:**
"Mr. [~~Osterman-Lind~~] Ostman-Lind notes there is not enough information about the potential impact of the project on spinner dolphins to move ahead, and would have liked the applicant to prepare an EIS. The applicant notes

that the project area is [only one] beyond the perimeter of the dolphin resting area. Staff feels that this matter . . .”

5) **The Staff Recommendation to read as follows:**

“A. **That the Board of Land and Natural Resources APPROVE the application by Kona Blue Water Inc., for a submerged fish farm located offshore off of Keahole Point, North Kona, Hawaii, and subject to the following terms and conditions:**

1. **The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state and county governments, and applicable parts of Chapter 13-5, Hawaii Administrative Rules;**
2. **The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit to relating to or connected with the granting of this permit;**
3. **The applicant shall obtain appropriate authorization from the department for the occupancy of the state lands, if applicable.**
4. **The applicant shall comply with all applicable Department of Health administrative rules;**
5. **Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the chairperson does not constitute approval required from other agencies;**
6. **Any work or construction to be done shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;**
7. **All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;**

8. **The applicant understands and agrees that the permit does not convey any vested rights or exclusive privilege;**
9. **In issuing the permit, the department and Board have relied on the information and data, which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;**
10. **Where any interference, nuisance, or harm maybe caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminated the interference, nuisance, harm, or hazard;**
11. **The offshore fish farm shall operate six submerged cages at least twenty (20) feet below the ocean surface, but may be raised for repair, transport or other maintenance and two surface cages not to exceed 45 feet in diameter;**
12. **The use of feeds containing supplemental hormones [~~or antibodies~~] shall not be allowed;**
13. **The culture of fish species (kahala, ulua and mahi-mahi) is approved. No other species is approved. Any further culture of fish species must be approved by the Chairperson of the Department of Land and Natural Resources;**
14. **Signs or other markings of the site shall be regulated by site plan approval. The applicant shall immediately report any ocean use conflicts, such as [~~net fouling~~] entanglement of fishing nets on the farm facility, to both the boating and land divisions. Buoys, signs or other markings shall be provided on the ocean surface when required by the Chairperson;**
15. **The applicant shall forward details of all monitoring efforts to the DLNR and water quality results to the Department of Health, two weeks after receipts of the results. The department shall be immediately notified of the failure of the mooring system, a disease outbreak, theft or vandalism;**
16. **The applicants, at their own expense, shall develop and conduct a water quality, benthic and coral reef monitoring protocol [~~acceptable to~~] approved by the Chairperson. Such environmental monitoring shall continue indefinitely as specified by the Chairperson unless authorization for its suspension or reinstatement is specified by the Chairperson:**

17. The applicant shall periodically sample ocean-farmed fish, and when necessary, fish in the area of the farm, and examine the sampled fish for parasites or other disease. Unless the Chairperson specifies other methods of sampling and analysis, sampling shall occur not less than once per year;

18. The applicant shall submit all research, data, results or other publications, papers or reports concerning the fish farm and its surrounding environment to the department and shall use objective, independent third [party experts] parties to collect water quality samples ~~[and marine mammal data]~~. The data shall be analyzed by independent agencies or laboratories. The applicant shall place copies of all Federal or State-mandated environmental quality reports at local repositories, such as the DLNR, Division of Aquatic Resources office at Honokohau, so that local residence may review the data. The applicant shall provide reasonable access to Federal, State and County officials for monitoring and oversight purposes[;]. The applicant need not submit information related to farm operations which is not necessary to evaluate the quality of the environment at the submerged fish farm and surrounding areas;

~~[19. The applicant need not submit information related to farm operations which is not necessary to evaluate the quality of the environment at the submerged fish farm and surrounding areas;~~

~~20. When submitting information to the department, copies of all information shall be supplied to both the Land and Aquatics Divisions;~~

~~21. The applicant shall obtain the approval of the Chairperson before increasing to four submerged fish cages from the initial two submerged fish cages;]~~

~~[22.]~~ 19. The applicant shall monitor the condition of the submerged fish farm on a daily basis. When weather and surf conditions do not permit physical monitoring, visual monitoring shall be conducted;

~~[23.]~~ 20. The lease shall be in compliance with Chapter 190D, HRS. The applicant shall implement mitigative measures approved by the Chairperson to alleviate environmental or use concerns, when the need is apparent or when required by the Chairperson. Such mitigative measures may include the partial or complete removal of the fish farm facility;

~~[24.]~~ 21. Cages, anchors, lines and other fish farm facilities shall be removed at the conclusion of the use;

~~[25.]~~ 22. Any nets or other debris that foul on the cages or other part of the farm facility shall be disposed of as required by federal, state and city and

county regulations and shall not be set free in the marine environment;

[25.] 23. The applicant shall work with NOAA to develop and implement a marine protected species monitoring and reporting program in coordination with, and subject to the approval of the Division of Aquatic Resources. The program will ensure to the maximum practicable extent that all close approaches and direct physical interactions of marine protected species with the project's structure(s) are recorded, described and reported to state and federal marine protected species agencies in an effective and timely manner. Direct physical interactions will include, but not be limited to collision, entanglement, grazing, or any other direct physical contact between any part of the structure (cages, mooring lines, buoys, etc.) and any marine protected species (all species of cetaceans and sea turtles.) This program must be completed prior to commencement of operations;

[26.] 24. The applicant shall work with NOAA to develop a project activity modification protocol in coordination with, and subject to the approval of the Division of Aquatic Resources. The protocol will describe conditions and criteria related to adverse impacts on marine protected species that would trigger associated mandatory modification of project activity. The criteria and conditions will include, but not be limited to direct physical contact between marine protected species and any part of the structure. Associated mandatory project activity modifications will range from increased monitoring to immediate project shut-down and removal of the entire structure, depending on the severity of the impact(s). This protocol must be completed prior to commencement of operations;

~~[28.] In the event of any negative impact to marine mammals and/or the marine environment, the Board of Land and Natural Resources has the unilateral right to revoke the permit and stop the operations;~~

[29.] 25. Dead fish shall not be disposed of in the surrounding waters but shall be removed from the site and disposed of at a County approved site;

[30.] 26. Other terms and conditions as prescribed by the Chairperson; and

[31.] 27. Failure to comply with any of these conditions shall render the permit void;

B. That the Board of Land And Natural Resources finds that:

1. The applicant's lease shall be subjected to section 171-53 HRS, and to the concurrence of the Director of Transportation;
2. The Applicant's lease is for commercial purposes;

3. **The Applicant's lease will not adversely impact existing programs of the Department;**
4. **The Applicant's lease is clearly in the public interest upon consideration of the overall economic, social and environmental impacts and is consistent with other State policy goals and objectives; and**
5. **The Applicant has complied with all applicable Federal, State and County statutes, ordinances and rules.**

~~[C. That the Board of Land and Natural Resources authorizes the direct negotiation of a lease with the Applicant, provided that approval for this disposition, including presentation of the negotiated terms and conditions of the lease, shall be obtained at a future Board meeting.]~~

C. The applicant understands that if an appeal to the Environmental Assessment (FEA) is filed within the thirty (30) day appeal period for the FEA, the Board's approval becomes null and void."

Unanimously approved as amended (McCrorry/Inouye).

The Board took a break at 11:33 a.m. and resumed the meeting at 11:49 a.m.

Item D-13: Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu TMK: (1) 4-1-27: 16.

Ms. Mamiya informed the Board in 1999 Christian and Candy Meunier acquired this lease through foreclosure proceedings. Later in accordance with the divorce settlement, the lessees became Ms. Candy Lake (the former Candy Meunier) and Ms. Tiffany Fortin (her daughter). Ms. Lake currently resides on the property and operates a sanctuary for homeless animals. Ms. Fortin is living on the mainland. The lease will expire on August 9, 2004. Ms. Mamiya made it known their normal policy upon an expiration of a lease would be to bring it to public auction. Staff discussed possible options with Ms. Lake with regards to extending her lease. Ms. Mamiya believes due to the high demand for Waimanalo leases and its generation of revenue, a new lease should be auctioned to the highest bidder. Also by going out to public auction it would ensure the state has qualified bidders who must meet certain criteria and the lands would go out to the highest bidder ensuring the highest value for the lands. Ms. Mamiya recommended the Board deny the request from Sylvester Foundation to lease the subject lands and authorize the sale of a lease at public auction covering the subject area for intensive agriculture purposes.

Candy Lake the current lessee was present at the meeting.

The Board explained to Ms. Lake the action before the Board would not affect her lease but would determine what would happen to the land after the lease expires. The Board also told Ms. Lake of possible options (extending the lease or the public auction process). It was made known to Ms. Lake if the lease goes to public auction or if she requests an extension of her lease, ultimately the outcome is uncertain.

The Board amended the Recommendation Section by amending paragraph 5 to read as follows:

- “5. Authorize the sale of a lease at public auction covering the subject area for intensive agriculture and pasture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:**
- a. The standard terms and conditions of the most current intensive agriculture and pasture general lease form, as may be amended from time to time;**
 - b. Within the first three years of the lease term, the land under lease shall be utilized for the purposes for which the lease is sold, all in accordance with a conservation plan approved by the Chairperson;**
 - c. The lessee is prohibited from using the property as his/her primary residence;**
 - d. The Lessee shall not place or construct any dwelling unit in excess of one employee dwelling unit on the premises; provided, further that the employee dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson’**
 - e. Review and approval by the Department of the Attorney General; and**
 - f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.”**

Unanimously approved as amended (Inouye/McCrory).

Item J-1: Issuance of Revocable Permit to Maalaea Slip 69, Inc., d.b.a. Rascal Charters, located at the Maalaea Small Boat Harbor, Island of Maui.

Item J-2: Issuance of Revocable Permit to Koa Kai Fishing Corporation, located at the Maalaea Small Boat Harbor, Island of Maui.

Item J-3: Issuance of Revocable Permit to Apple Annie’s Charters, Inc., located at the Maalaea Small Boat Harbor, Island of Maui.

Mason Young, acting administrator for the Division of Boating and Ocean Recreation appeared before the Board. Mr. Young communicated to the Board, the applicants in the above submittal plan to build a dock to provide a waiting area for their customers. He recommended the Board approve the above three items.

The Board amended the recommendation section of items J-1, J-2 and J-3 to add the following:

“6. Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval.”

Unanimously approved as amended (Yamamura/DeMello).

Item J-4: Approval of Award of Construction Contract Job No. 40-HB-25 at Keauhou Boat Harbor.

Mr. Young disclosed the bids received for the replacement to the Keauhou Boat Harbor Pier which was damaged by a storm. Manuel Emiliano Engineering Branch Chief explained a new type of structural framing the Division of Ocean and Boating Recreation would be using for the construction the dock. Mr. Emiliano noted the new frame would be made from fiberglass material, which is non-skid and non-corrosive. He believes the entire process would take approximately six months for completion. Mr. Young recommended the Board authorize the Chairperson to proceed with awarding the contract for Job No. 40-HB-25 to Sea Engineering, Inc for their low bid of \$137,330.

Unanimously approved as submitted (DeMello/Inouye).

Item E-1: Request from the Good News Jail and Prison Ministry to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for a Fundraiser Luau.

Item E-2: Request from the Good News and Prison Ministry to use the Old Kona Airport State Recreation Area in Kailua-Kona, Hawaii, for a Fundraiser Luau.

Dan Quinn administrator for State Parks indicated the request for items E-1 and E-2 are basically the same request except for different locations on different days. The request is made by the Good News Jail and Prison Ministry to use the areas described to hold a fundraising luau in order to provide qualified chaplains to Hawaii's jails and prisons. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the Good News and Prison Ministry to hold their "Ministry Fundraiser 2003 Luau at the above locations.

The Board amended the Recommendation Section by deleting recommendation 1 of item E-1 and E-2.

Unanimously approved as amended (DeMello/Yamamura).

Item D-12: Request Approval to Conduct Public Hearing to Amend Title 13, Chapter 221, Hawaii Administrative Rules (Unencumbered Public Lands), Including Additions Relating to Commercial Activities.

Ms. Mamiya let the Board know this is an amendment to the rules involving unencumbered lands. After reviewing their rules it was determined more rules were needed to develop a permitting system for commercial activities. She pointed out the proposed amendments to the rules does not include exclusive use of an area which would still be handled through a right of entry. Film permits and engineering surveys and testing would be exempt from this rule. It was noted staff asked for comments from other divisions within the Department of Land & Natural Resources, the Attorney General's office and vendors the State deals with.

Scott Whitting Special Projects coordinator told the Board there is a real need to put this permit process into place.

Member McCrory asked that in addition to the public notice for the public hearing, Staff also issue a press release to seek community input on the rule amendments.

The Board made amendments to the draft rules as follows:

- 1) Page 3, §13-221-2:
The Board asked staff to compare the definition of camping with other divisions' rules to ensure consistency.
- 2) Page 17, §13-221-51(f):
"(f) Any application submitted to the department pursuant to this chapter shall be reviewed for completeness by the department in a timely manner. If the application is found to be incomplete, the applicant shall be notified in writing stating the reasons for the [rejection] determination of incompleteness."
- 3) Page 17, §13-221-52(b)(4):
"(4) If relevant to the commercial activity as determined by the department, [be] utilize staff currently certified by the American Red Cross .
.."
- 4) Page 22, §13-221-53(16):
"(16) Permits are not automatically renewable. Granting of a permit does not entitle the permit holder to re-issuance of the permit."

Unanimously approved as amended (Martyn/Inouye).

Item D-3: Forfeiture of General Lease No. S-5085, Brian and Sherrice Souza, Lessee, Waimea, Kauai, TMK: (4) 1-4-2: 60.

Ms. Mamiya briefed the Board and recommended the Board authorize the cancellation of General Lease S-5085 in the manner specified by law.

Unanimously approved as submitted (McCroory/Inouye).

Item D-7: Authorize the Quitclaim of Land from the Federal Aviation Administration United States of America; Cancellation of Governor's Executive Order No. 1832; Set Aside to Division of State Parks for Addition to Diamond Head State Monument Purposes; Set Aside to Civil Defense Division, Department of Defense for Communication Facilities Purpose; Issuance of Construction Management Right-of-Entry to Civil Defense Division, Department of Defense; Honolulu, Oahu, TMK: (1) 3-1-42: 15 & 16.

Ms. Mamiya informed the Board the subjects lands were returned by the Federal Government. One of the parcels returned would be going to State Parks as an addition to Diamond Head State Monument. The other parcel would be going to the Civil Defense for communication purposes. Ms. Mamiya recommended the Board: accept the quitclaim deed; approve and recommend to the Governor the issuance of an executive order canceling Governor's Executive Order No. 1832; approve and recommend to the Governor an executive order setting asked the subject land to the Division of State Parks and to Civil Defense Division respectively.

The Board amended the Recommendation Section by amending paragraph 4.B. to read as follows:

"4.B. Civil Defense Division shall ~~[be allowed to enter individual agreements with other government entities regarding the use of the facilities]~~ ensure that until and unless otherwise permitted by the Department of the Army, the subject lands shall be used for National Guard, Air National Guard or civil defense purposes only;"

Unanimously approved as amended (Inouye/Martyn).

Item D-10: Rescind Prior Board Actions of April 22, 1977 (Item F-2), Set Aside to the County of Hawaii, Department of Parks & Recreation; Issuance of Revocable Permit to Olu Kai, Ltd., at Onea Bay, Kailua, North Kona, Hawaii, TMK: 3rd/7-5-09: 26.

Motion to defer

Unanimously approved to defer (Inouye/Yamamura).

Item D-15: Certification of Election and Appointment of Soil and Water Conservation District Directors.

Mr. Lemmo noted there were some problems with the nominating petitions so staff sent it back to the district and had it redone. After the petitions were returned staff looked it over. Mr. Lemmo recommended the Board affirm the appointment of Lincoln Ching and certify the election of Ms. Aileen Yeh.

The Board amended:

- 1) Page 2, paragraphs one and two to read as follows:

~~"[For the Board's information, invalid nomination petitions were received for Francis Pacheco, Thomas Crabb, and Millicent Kim of the Hamakua District. Invalid petitions were also received for Mr. Tony Durso and Randall Moore of the Central Maui District.] Mr. Pacheco's nomination is invalid because it is staff's understanding that Mr. Pacheco already serves as a District Director on another Soil and Water Conservation District. The Department of the Attorney General has advised the DLNR that District Directors cannot serve on two (2) districts simultaneously. [The nomination of Ms. Kim and the others is invalid because of the misuse of nomination votes, which potentially tainted the process. Chapter 180, Hawaii Revised Statutes states "Nominating petitions may be filed with the department to nominate candidates for directors.....and must be subscribed by occupiers of lands representing a total of twenty-five or more votes within the proposed district." One of the land occupiers in the Hamakua District is entitled to twenty-five votes, but distributed seventy-five votes among three candidates, including Ms. Kim, Mr. Crabb, and Mr. Pacheco. Without the twenty-five votes from this land occupier, Ms. Kim does not have sufficient votes to validate her nomination. In the Central Maui District, a landowner appears to have distributed more than the allotted votes to two nominees.~~

~~Because a redistribution of these votes could change the outcome of the nominations, staff believes that all nomination forms must be re-filed with the correct number of votes distributed to the candidates by the landowners or land occupiers. Staff has notified these parties of the voting discrepancy.]"~~

- 2) The Recommendation Section to read as follows:

"That the Board affirm the appointment of Mr. Lincoln Ching to serve as a District Director of the East Kauai Soil and Water Conservation District for the term ending June 30, 2006. That the Board certify the elections of Ms. Aileen Yeh of Puna, Mr. Thomas Crabb, Mr. Thomas Young and Ms.

Millicent Kim of Hamakua and Mr. Tony Durso and Mr. Randall Moore of Central Maui for the term ending June 30, 2006."

Unanimously approved as amended (Martyn/McCrory).

- Item D-1:** Amend Prior Board Action of December 10, 1999 (Item D-7), Resubmittal-Cancellation of Easement A (Waterline) and Modification of Easement B (Water Tank Site); Grant of Perpetual Non-Exclusive Access and Utility Easement, Hanalei-Kalihikai & Kalihiwai, Hanalei, Kauai, TMK: (4) 5-3-1.
- Item D-2:** Rescind Prior Board Action of April 13, 1995 (Item F-9), Department of Accounting & General Services on Behalf of the County of Kauai, Department of Water Supply Requests Perpetual, Non-Exclusive Easement for Water Pipeline Purposes, Eleele Elementary School, Koloa, Kauai, TMK: (4) 2-1-1: 6.
- Item D-4:** Rescind Prior Board Action of May 11, 2001 (Item D-14), Consent to License Between State of Hawaii, Department of Land & Natural Resources and United States of America by and Through the U.S. Geological Survey, Water Resources Division, U.S. Department of the Interior; Issuance of Direct Lease to United States of America for Streamgaging Station, Two Observation Wells and Access Easement Purposes, Wailua, Kauai, TMK: (4) 3-9-2: portion 20.
- Item D-6:** Amend Prior Board Action of April 13, 1993 (Agenda Item F-6): Cancellation of Governor's Executive Order No. 2723 and Reset Aside as the Kailua Wharf Site to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, Together with the Kailua Boat Harbor and the Kailua-Kona Harbor, Lanihau 2, Kailua and Kailua Bay, North Kona, Hawaii, TMK: 7-5-06: 39 and 7-5-05 to 09: Filled and Submerged Lands.
- Item D-8:** Amendment to Prior Board Action of June 8, 1979, Agenda Item F-8, Department of Hawaiian Home Lands (DHHL) Request for Grant of Easement for Drainage Purposes, at Waimanalo, Oahu.
- Item D-9:** Rescind All Prior Board Actions of November 19, 1999, August 24, 2001 and October 25, 2002, Set Aside to the County of Hawaii for a Combined Veterans Center, Veterans Housing and other Related Purposes and a Management Right-Of Entry; Waiakea, South Hilo, Hawaii, TMK: 3rd/2-4-57: por. 01.
- Item D-11:** Issuance of Revocable Permit to Derwin Ignacio, Kapehu Mauka, North Hilo, Hawaii, TMK: 3rd/3-5-01: 01.

Ms. Mamiya briefed the Board on the above items and recommended the Board approve staff recommendation.

Unanimously approved as submitted (McCrorry/Martyn).

There being no further business, Chairperson Young adjourned the meeting at 12:52 p.m.

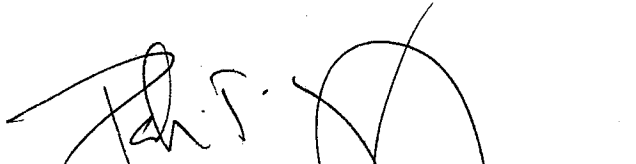
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources