

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

DATE: FRIDAY, AUGUST 22, 2003  
TIME: 9:00 A.M.  
PLACE: KAUAI WAR MEMORIAL CONVENTION HALL  
4191 HARDY STREET  
LIHUE, HI 96766

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  
Mr. Gerald DeMello (arrived at 9:42 a.m.)

Ms. Lynn McCrory  
Ms. Kathryn Inouye  
Mr. Toby Martyn

STAFF

Ms. Dede Mamiya, Land Division  
Mr. Keith Chun, Land Division  
  
Mr. David Gulko, Aquatic Resources  
Mr. Jim Schoocraft, DOBOR  
Ms. Nancy McMahan, HP

Mr. Sam Lemmo, Land Division  
Mr. William Walsh, Aquatic  
Resources  
Mr. Peter Garcia, DOT  
Mr. Steve Molmen, DOBOR

OTHER

Ms. Yvonne Izu, Deputy Attorney General  
Mr. Randy Teruya, D-22  
Ms. Kari Wilhem, D-11  
Ms. Faith Caplan, D-12  
Ms. Wendy Wilsy, D-12  
Mr. Bumpy Kanahale, D-14, D-19  
Ms. LaFrance Kapaka, D-14  
Mr. Doug Coite, D-19  
Mr. Eric Carlo, D-19

Ms. Karen Diamond, D-15, D-19  
Mr. Manabu Tagomori, D-13  
Ms. Linda Harmon, D-12  
Ms. Kelly Schaeffer, D-14  
Ms. Linda Sproat, D-14  
Mr. Bill Tam, D-19  
Mr. Steven Dollar, D-19  
Ms. Noel Wise, D-19

Ms. Heidi Huddy Yamamoto, D-19  
Ms. Marge Freeman, D-19  
Mr. Mark Boiser, D-19  
Mr. David Henkin, D-19  
Ms. Makaala Kaaumoana, D-19  
Ms. Linda Sproat, D-19  
Mr. Marshall Rosa, D-19  
Mr. Leonard Vierra, D-19

Mrs. Huddy, D-19  
Ms. Cheryl Obayake, D-19  
Ms. Nani Rogers, D-19  
Mr. Don Heacock, D-19  
Ms. Amy Marvin, D-19  
Ms. Karen Diamond, D-19  
Mr. Richard Marvin, D-19

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

**Item A-1: Minutes of July 24, 2003**

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

**Item A-2: Minutes of August 7, 2003**

Member Johns and Inouye recused themselves.

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

**Item A-3: Minutes of August 8, 2003**

Member Johns recused himself.

**The Board made the following changes:**

Page 3, Item D-14, third line

**“2,600 feet offshore [øff] of the Natural Energy Laboratory of Hawaii Authority. . .”**

Page 3, Item D-14, second paragraph

**Jeffrey Walters [eoomanager] co-manager of the Hawaiian Islands Humpback Whales National Marine. . .”**

Page 4, third paragraph

**“Mr. Cates noted at the public meetings he spoke against this permit mainly because [DBWF] KBWF requested exclusive use of an area and the use of surface cages.”**

Page 4 fourth paragraph

**“But Ms. Enos did note just off the site of the fish farm is Keahole Airport which is lit.”**

Page 4, fifth paragraph

**“John Corbin informed the Board KBWF has done [~~and~~] an outstanding job . . .”**

Page 5 letter A

**“A. That the board of Land and Natural Resources APPROVE . . . for a submerged fish farm located offshore [~~off~~] of Keahole Point . . .”**

Page 6 recommendation 10

**“10. Where any interference, nuisance, or harm [~~maybe~~] may be caused, or hazard established . . . take measures to minimize or eliminate[~~d~~] the interference, nuisance, harm, or hazard;”**

Page 10 recommendation 5 d, last line

**“specifications approved by the Chairperson[~~’~~].”**

Page 13, item D-7

**“Ms. Mamiya informed the board the subject[s] lands were returned by the Federal Government.”**

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

**Item D-22: RESUBMITTAL: Acceptance of Land from the Robinson Estate or HRT, Ltd. in Connection with Land Use Commission Decision and Order dated October 1, 1996 and Set Aside to Department of Agriculture for Agriculture Park Purposes, Hoaeae, Ewa, Oahu; TMK: (1) 9-4-02: por 1 and por. 52.**

Dede Mamiya administrator for the Land Division indicated this item was a resubmittal from the last board meeting. Ms. Mamiya made it known the land acquisition would come from Robinson Estate or HRT, Ltd as part of a 1996 Land Use Commission decision. As background information she referenced the 1996 decision Condition 19 which required the petitioner to convey 150 acres of land to the State of Hawaii to be used for agricultural park purposes. At that time the petitioner did not own the land and intended to purchase the land from the Robinson Estate. Due to lack of action by the petitioner, the Office of Planning filed a motion to rescind the 1996 decision. The petitioner later filed for bankruptcy. HRT, Ltd has since agreed to partially fulfill Condition 19 by purchasing the 150 acres from the Robinson Estate and conveying the land to the Sate for use as an ag park. Ms. Mamiya did note the Office of Planning had three major concerns: 1)

Completion of the title report; 2) Completion of the Phase I Environmental Assessment report; and 3) Completion of the off-site infrastructure. Ms. Mamiya recommended the Board approve the acquisition of the subject land and issuance of an executive order setting aside the subject lands subject to the Board of Agriculture for approval and authorize the issuance of a management right-of-entry.

Randy Teruya of the Department of Agriculture was present to answer any questions.

**The Board amended the Recommendation Section by amending paragraph 1.C. to read as follows:**

**“1.C. Such other terms and conditions as may be prescribed or negotiated by the Chairperson to best serve the interests of the State.”**

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

**Item D-15: Issuance of Revocable Permit to Monsanto Company, Lot 10-A and 10-B, Hanapepe Rice and Kula Lots, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-002:013 and 045.**

Ms. Mamiya informed the Board the subject lands were previously encumbered by a general lease to McBryde Sugar Company, which expired on May 2, 2003. Monsanto Company previously subleased two parcels from McBryde Sugar Company. Monsanto Company would like to continue their operation by producing crops of corn, soybeans and sunflower for their seeds. Ms. Mamiya recommended the board authorize the issuance of a revocable permit to Monsanto Company covering the subject lands.

Randy Yokoyama representing Monsanto Company was present.

Karen Diamond came forward to testify. She asked the Board if Monsanto was leasing this parcel of State land to grow and test genetically engineered crops. She voiced her concern with regards to contamination of the soil and other crops located nearby the parcel in question. She asked if there were any regulations in place to protect the land.

The Board informed the Ms. Diamond the work being done by Monsanto Company is regulated by a federal agency. The agency made a finding saying there was no cross contamination occurring.

The Board requested staff to ask the lessee for a letter addressing the issue of cross contamination of crops.

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

- Item J-1: Consent to Grant of Easement from Alexander & Baldwin Inc., “Grantor”, to State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation, “Grantee”, for “Easement 3”, located at the Maliko Boat Ramp, Island of Maui.**

Jim Schoocraft Program Manager for the Division of Boating and Ocean Recreation (DOBOR) and Steve Molmen Property Manager for DOBOR stated that this is an existing boat ramp. The last easement ended in 1997 and DOBOR would like to start the new easement on January 1, 2001 through December 31, 2011. Mr. Schoocraft recommended the Board consent to a Grant of Easement from Alexander & Baldwin, Inc., to State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation.

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

- Item J-2: Approval of Award of Construction Contract, Job No. 40-OB-45 Floating Dock “F” Replacement, Ala Wai Small Boat Harbor, Oahu.**

Mr. Schoocraft briefed the Board and recommended the Board authorize the Chairperson to proceed with awarding the contract for Job No. 40-OB-45 to Hawaiian Dredging Construction Company.

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

- Item D-11: Request to Extend the Processing Period for an Additional 120-days for Conservation District Use Application (CDUA) HA-3065 for the Keck Outrigger Telescopes Project at Mauna Kea Science Reserve, District of Hamakua, Island of Hawaii, Applicant: University of Hawaii at Manoa, Institute for Astronomy.**

Sam Lemmo of the Office of Conservation and Coastal Lands (OCCL) requested an extension to Conservation District Use Application (CDUA) HA-3065. He informed the Board an extension was needed due to the fact that the Contested Case process has not been completed. He asked for an extension until September 13, 2003. Mr. Lemmo recommended the Board approve the extension request.

Kari Wilhelm representing the University of Hawaii came forward to express their support for the extension of the CDUA.

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

- Item D-13: Conservation District Use Application (CDUA) for OA-3123 for the Helemano Watershed Management Project (Hand Clearing of a Corridor, Fence Line and Fence Construction), Applicant: Kamehameha Schools, TMK: (1) 6-3-001:001.**

Mr. Lemmo indicated Kamehameha Schools in conjunction with the Division of Forestry and Wildlife, the U.S. Army Garrison, Hawaii and the U.S. Fish and Wildlife Service proposes the construction of an ungulate exclosure fence encircling the upper reaches of the Helemano Stream Drainage. The area of the exclosure would be approximately 200 acres. Mr. Lemmo recommended the Board approve the fence construction and hand clearing for the Helemano Watershed Protection Project subject to the conditions listed in the submittal.

The Board had concerns the fencing would interfere with the trails in the area. Mr. Lemmo noted Kamehameha has said they would construct a walkover above the areas where the fence crosses the trails.

Manabu Tagomori representing Kamehameha Schools voiced his support of staff's recommendation. With regards to the alignment of the fence, Mr. Tagomori told the board they have been working with the Hawaiian Trails Mountain Club.

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

**Item D-12: Conservation District Use Application (CDUA) for OA-3126 to Construct Kawai Nui Gateway Park, Applicant: Helber, Hastert & Fee Planners, Inc. for the City and County of Honolulu, Department of Design and Construction, Honolulu, Hawaii, TMK (1) 4-2-017: 020 State owned, (1) 4-2-016: 001 City Owned.**

Mr. Lemmo made it known the site proposed for the Kawai Nui Gateway Park lie within the Protective subzone of the Conservation District. The land is made up of two parcels; 1) the 5.1 acre Mokapu site and 2) the 8.2 acre Coconut Grove site. The applicant has proposed to construct a bridge that would connect the two sites. Mr. Lemmo feels the park would serve as a buffer between the urban areas and the wetland areas while at the same time providing environmental education so the public can appreciate the importance of the marsh. Mr. Lemmo recommended the Board approve the application to construct the Kawai Nui Gateway Park subject to the conditions listed in the submittal.

Since the appeal process has not ended, the Board wanted to know if staff included a provision in the recommendation section that would address that issue. Mr. Lemmo informed the Board if someone files an appeal on the Environmental Assessment (EA) the court would rule if the EA was inadequate or the court could ask the Board to revisit the matter of the CDUA. He feels the applicant has meet all of the requirements and that's why he issued a FONSI. The Board asked if the Friends of Kawai Nui Marsh was part of the planning process. Mr. Lemmo deferred that question to the applicant.

Faith Caplan of Helber, Hastert & Fee Planners told the Board they are the environmental planners contracted to do the environmental planning for Kawai Nui Marsh. Ms. Caplan noted they concur with staff's recommendations. She informed the Board the Friends of Kawai Nui Marsh were involved in the planning process. As background information, she noted for over thirty years the community and the Department of Land & Natural

Resources have been working to establish a master plan for this area. A master plan, which included resource management, has been developed. The primary purpose of the marsh is to serve as a flood control basin. Whenever money is made available the Friends of Kawai Nui Marsh together with the Thousand Friends have tried to implement some aspect of the master plan. This particular proposal before the Board today has been proposed by the Kailua Visioning Team approximately two years ago. Within that time various meetings were held to acquire community as well as government agency input.

Linda Harmon came forward to note her concern with the creatures that inhabit the wetland. She conveyed she was against anything that would endanger the life of the animals in the wetlands.

Wendy Wilsy who lives next to Kawai Nui Marsh testified before the Board. She made it known she has participated in the vision planning and the local meetings held. Ms. Wilsy informed the Board the project has community support but there is some concern with lighting from the comfort station and motorized vehicles making lots of noise. Ms. Wilsy asked the Board to defer this item in order for her community to address some of their concerns.

The Board asked staff the next time they appear before the Board to include letters from Friends of Kawai Nui Marsh and the neighborhood association stating their support of this project.

#### **Motion to Defer**

**Unanimously approved to defer (Inouye/McCrory).**

#### **Item D-14: Conservation District Use Application (CDUA) KA-3128 for the Construction of a Single-Family Residence, Applicant: Robert Bothman, TMK: (4) 5-3-03: 014.**

Mr. Lemmo pointed out the applicant proposes to build a 3,468 square foot Single-Family Residence on a 10,022 square foot parcel of land. This single-family residence will be built in the Limited subzone therefore staff has reservations particularly because the objective of this subzone is to limit uses. Because precedence has been established with homes constructed on both sides of this parcel, staff feels the applicant's request should be approved with certain provisions. Mr. Lemmo feels the size of the proposed house is excessive and recommends the landowner reduce the size of the single-family residence to 2,500 square feet. There were also concerns by the State Historic Preservation Division(SHPD) regarding the unearthing of bones on the subject site. Staff feels the applicant has successfully addressed this issue. In closing Mr. Lemmo recommended the Board approve the construction of the Bothman Single Family Residence subject the conditions listed in the staff report.

The Board had concerns with the reduction of the size of the structure and would have liked to have seen the plans for the proposed residence.

Kelly Schaeffer of Landmark Consultants pointed out the burial treatment plan was reviewed by SHPD and a reburial ceremony was held. If more bones are found there is a stipulation in the plans that an archeologist will be called in. She asked the Board not to deny the entire application but allow her clients to provide alternative solutions. Ms. Schaeffer told the Board her clients do not oppose the size reduction to their proposed residence.

Bumpy Kanahale a member of Hui Malama and The Nation of Hawaii appeared before the Board and noted his involvement in other State owned lands that involve the recovery of human remains.

Linda Sproat a resident of Kalihiwai informed the Board she was present during the reburial ceremony that took place. She recommended before the applicants come before the County of Kauai and the neighborhood board they speak to the Kilauea Association and inform them of their plans.

The item was deferred to a later part in the meeting.

**Item M-1: Issuance of a Construction Right-of-Entry and Subsequent Lease to the U.S. Federal Aviation Administration for an F-420 Centerfield Wind Tower, Molokai Airport, Mau, TMK: (2) 5-2-04-8P.**

Peter Garcia representing the Department of Transportation indicated the current tower is aging and needs to be replaced. The tower was previously owned by the National Weather Service. Mr. Garcia recommended the Board approve the Construction Right-of-Entry and the subsequent thirty-five year lease to the Federal Aviation Administration.

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

**Item M-2: Amendment to Prior Land Board Action of June 13, 2003, under Agenda Item M-2, Regarding the Issuance of a Perpetual, Non-Exclusive Easement, together with a Construction Right-of-Entry, to the Department of Water Supply, County of Hawaii, for Water Meter Purposes at Kawaihae Harbor, Island of Hawaii.**

Mr. Garcia noted that at its June 13, 2003 meeting the Board approved the issuance of a perpetual non-exclusive easement and right-of-entry to the Department of Water Supply, County of Hawaii. In this request before the board the County of Hawaii is requesting a name change from the Department of Water Supply to the Water Board of the County of Hawaii. Mr. Garcia recommended the Board amend its June 13, 2003 action and change the name of the applicant to read the Water Board of the County of Hawaii.

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



**Item M-3: Conveyance of Pele Street Parcel, Interstate Highway, Federal Aid Project No. I-H1-1 (23), Formerly Lunalilo Freeway, Federal Aid Project No. F-59 (9), Pele Street to Keeaumoku Street Section, to the City & County of Honolulu, Honolulu, Oahu, TMK: (1) 2-1-21-25.**

Mr. Garcia pointed out due to a lack of park space the State would like to transfer a 5,583 square foot parcel on Pele Street to the City and County of Honolulu for use as a mini-park. The community is densely populated with heavy traffic and would therefore like to have a safe haven for its children. Mr. Garcia recommended the Board authorize the conveyance of the remainder of parcel K-4 to the City & County of Honolulu for use as a mini-park.

The Board noted they received a number of letters in support of this item.

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

**Item M-4: Consent to a Temporary Facility Permit for Special Events under Harbor Lease No. H-87-30 at Pier 7, Honolulu Harbor, Oahu, TMK: (1) 2-1-01-58P.**

Mr. Garcia told the Board the Hawaii Maritime Center is requesting a permit to use a portion of Pier 7 Restaurant to hold special events. The facility permit agreement is for every Thursday through Monday, which is currently, scheduled from August 31, 2003 up to and including February 28, 2004. The agreement may be altered to commence at a later date in September 2003 and terminated in the first or second week of March 2004. Mr. Garcia recommended the Board consent to the subject Facility Permit Agreement.

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

**Item D-14: Conservation District Use Application (CDUA) KA-3128 for the Construction of a Single-Family Residence, Applicant: Robert Bothman, TMK: (4) 5-3-03: 014.**

(continuation)

LaFrance Kapaka a member of the burial council felt the job done with regards to the burials is the best job that could be done in this situation. In the future Ms. Kapaka feels if burials are found the landowner should submit a title search document to the State Historic Preservation Division (SHPD) so the State can find its descendants.

Member McCrory asked staff to include a condition that would require the applicant to submit to a title document to SHPD two days after bones are found.

Nancy McMahan with State Historic Preservation Division indicated she would like the applicant to submit a title document to SHPD 2 days after burials are found.

**The Board had concerns on what the smaller, 2,500 square feet residence would look like and asked that the applicant submit plans at the next meeting.**

**Motion to defer**

**Unanimously approved to defer (McCrorry/Inouye).**

**Item D-10: Report to the Board on Results of the Public Meeting on the Proposed Development at Kealakehe, North Kona, Island of Hawaii, Hawaii.  
TMK: (3) 7-4-08: 3, 40, 41,42, 46, 50 and 71.**

Ms. Mamiya noted that no action was required by the Board. Staff was reporting the results of a public meeting held in Kealakehe. She noted the community was very appreciative that the Department decided to hold this meeting. She explained to the Board the process used at the public hearing. She pointed out a lot of the people at the meeting requested additional boat slips at the harbor and she felt this should be included as part of the permit.

Keith Chun told the Board the findings made by the community will become part of the RFP.

**No Action**

The Board took a break at 10:39 a.m. and resumed the meeting at 11:00 a.m.

**Item D-19: Alleged Unauthorized Grading, Grubbing, Filling, Road Construction, Landscaping, Drainage Improvements, and Damages to State Land and Natural Resources due to Excessive Sedimentation at Pilaa, District of Hanalei, Island of Kauai, by Mr. James Pfluefer, Pflueger Properties, TMK: 5-1-4:8 (por.) and submerged land.**

Mr. Lemmo did a slide presentation summarizing his submittal. He went over the alleged unauthorized land uses and damages to State lands in Pilaa, Kauai. In his presentation, Mr. Lemmo discussed the following topics: location of the events, source of the pollution, emergency response actions, the environmental assessment conducted, the methods used in coral reef valuations, the penalties assessed and other required actions. In summary the Department of Land & Natural Resources has conducted a comprehensive ecological assessment of Pilaa and have found abnormally high levels of sediments that entered Pilaa Bay due to unauthorized grading on the subject property. Mr. Lemmo noted the two indicator's used in deriving to the amount of the fines were to determine the value of the corals destroyed and secondly to determine the cost of restoration of the coral. Mr. Lemmo recommended the Board find the landowner, James Pflueger in violation of Chapter 183C, Hawaii Revised Statutes for unauthorized land uses and damages to state land and natural resources at Pilaa, Island of Kauai

The Board asked Mr. Lemmo if comments by Earth Tech, Inc. were incorporated into the remediation plan. He replied that to an extent some comments of Earth Tech, Inc. were

incorporated into the Belt Collins remediation plan. With regards to the remediation plan Earth Tech, Inc. had some concerns with slope stability.

Commenting on recommendation 8) the Board questioned as to when the 10 years of monitoring would begin. Mr. Lemmo felt the ten years of monitoring should begin immediately because we would need to establish a baseline. Also on recommendation 9) the Board requested staff require annual progress reports for ten years instead of the three years stated in the submittal.

William Walsh and David Gulko Aquatic Biologists for the Division of Aquatic Resources (DAR) came forward to testify. When posed the question by the Board if the referenced site was similar to the impacted site Dr. Walsh replied that the findings made by Dr. Jokiel indicated by the low Power Value for the zone comparison indicates that both zones are similar in total number of corals if we include recently killed colonies. He went on to say the findings suggest that both the impact zone and the control zone coral communities were very similar prior to the events leading to the massive and ongoing mortality of the coral.

Mr. Gulko noted that Dr. Jokiel's reference to dead coral was primarily based on his ability to detect dead coral under algae and sediments in the impacted area. The coral he viewed as dead coral were primarily three-dimensional corals, corals that stood above the bottom of the surface. However eleven out of the sixteen coral's sampled were encrusted coral, which grow flat on the surface bottom. So they would be quite difficult to detect with the methods employed by Dr. Jokiel. Therefore, Mr. Gulko feels the number of dead corals detected in the impacted area by Dr. Jokiel is conservative. Mr. Gulko also spoke on research work involving transplanting of algae.

**Motion made at 12:20 p.m. to move into Executive Session to discuss with the attorney general the basis for the proposed fine.**

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

The meeting resumed at 1:07 p.m.

**Item D-18: Modification of Board Imposed Condition on Conservation District Use Application (CDUA) No. HA-3118 and Request for a Lease of State Marine Waters for Marine Activities – Submerged Offshore Fish Farm: Kahala and Mahimahi, Open Ocean, Cage Aquaculture Facility, Applicant: Kona Blue Water Farms.**

Mr. Lemmo mentioned on August 8, 2003, the Board of Land and Natural Resources issued a permit to the applicant for an open ocean fish farm. At this point, Mr. Lemmo would like to amend the permit conditions by deleting Condition C. He recommended the Board delete Condition C of permit HA-3118.

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

- Item D-1:** Consent to Assign General Lease No. S-3759, Kawahara Nursery and Landscaping Co., Ltd., Assignor, to Ultimate Innovations, Inc., Assignee, Consent to Mortgage and Extension of Lease Term, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-010: 042.
- Item D-2:** Grant of Perpetual, Non-Exclusive Easement and Construction Right-of-Entry to the City and County of Honolulu for Access Purpose, Nanakuli, Waianae, Oahu, TMK: (1) 8-9-01: por. 02 and 8-9-06: por. 01.
- Item D-3:** Amend Prior Board Action of December 13, 2002 (Agenda Item D-50); Revocable Permit No. 7108, New Kapahulu Business Association, Permittee, situated at Waikiki, Honolulu, Oahu, TMK: 2-7-036:4.
- Item D-4:** Grant of Perpetual, Non-Exclusive Easement and Issuance of Maintenance Right-of-Entry to Hawaiian Electric Company, Inc. (HECO) for Access Purposes, Waiiau, Pearl City, Ewa, Oahu, TMK: 9-8-20:71.
- Item D-5:** Cancellation of Revocable Permit No. S-7051 to Hawaiian Dredging Construction Company and Issuance of a Revocable Permit to Hawaiian Dredging Construction Company, Inc., Waikiki, Honolulu, Oahu, TMK: (1) 2-7-036: por. 016.
- Item D-6:** Mutual Termination of General Lease No. S-3888, Hawaiian Telephone/Verizon Hawaii, Lessee; Issuance of Revocable Permit to The Terminix International Company, L.P., Lots 15 & 16, Block 39, Waiakea House Lots, Waiakea, South Hilo, Hawaii, TMK: 3<sup>rd</sup>/2-2-037: 063.
- Item D-7:** Issuance of Revocable Permit to BK Livestock Company, Inc., for Pasture Purposes at Wailau, Kau, Hawaii, TMK: (3) 9-5-19: 01.
- Item D-8:** Amend Grant of Easement [LOD S-28,319] to Edward M. and Laurie Landa Auswacks for Access and Utility Purposes, Kamaole, Makawao, Maui, TMK: (2) 2-2-001: por. 051.
- Item D-9:** Approval of Water System Transfer Agreement and Issuance of Revocable Permit for Access and Utility Purposes to City and County of Honolulu, Board of Water Supply on lands encumbered by Executive Order 1020, Waimano, Ewa, Oahu, TMK: (1) 9-7-25: por. 1.
- Item D-16:** Consent to Sublease General Lease No. S-3852, United States of America, Department of the Navy, Sublessor, to Cellco Partnership,

**Delaware general partnership dba Verizon Wireless, sublessee, Waimea, Kekaha, Kauai, TMK: (4) 1-2-01: por. 6.**

**Item D-17: Consent to the Extension of Sublease Between USA, Department of the Navy, the Licensor/Sublessor and Cybertel Corporation the Licensee/Sublessee, Portion General Lease No. S-3952, Makaha Ridge, Waimea, Kauai, TMK: (4) 1-2-01: por. 6.**

**Item D-20: Amend Prior Board Action at its meeting of October 11, 2002 (agenda Item D-21) Cancellation of Governor's Executive Order No. 1530, Kaena, Waialua, Oahu, TMK: (1) 6-9-14: 01 por. and (1) 6-9-01: 29.**

**Item D-21: Consent to Assign General Lease No. S-5033, Smith-Waterhouse Family of Koloa-A Partnership, Assignor, to Smith-Waterhouse Family of Koloa-Beach Homes L.L.C., Assingee, Lot 67, Kokee Camp Site Lots, Waimea, Kauai, TMK: (4) 1-4-004: 041.**

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

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

The Board resumed testimony on Item D-19:

Bill Tam attorney with the law firm Alston, Hunt, Floyd and Ing appeared on behalf of the applicant. Mr. Tam went on to introduce other members of his team, Doug Cotica, Noel Weiss, Max Graham (who will arrive shortly), Steven Dollar, Eric Carlo and Paul Rabenstein. Mr. Tam informed the Board they received staff's report about a week ago and was stunned with the amount of the fine. He felt he did not have sufficient time to prepare his client's case. He invited the Board to come out to the subject site for a site visit. Mr. Tam also made it known, Dr. Richard Grigg, who submitted a report on behalf of James Pflueger on the "Ecology of the Reef System off Pilaa, Kauai and Analysis of Alleged Environmental Impacts Associated with Recent Sediment Run-off," was currently hospitalized and would be unable to provide testimony or explain his report. He asked the Board to approve today the concept of a land based remediation plan his client has come up with. Mr. Tam questions the choice of the control site chosen. He noted Mr. Dollar will discuss water issues and its effect on the coral (i.e. water temperature, UV, depth and current). With regards to the death of coral, Mr. Tam feels the state needs to determine which corals died from natural circumstances and which corals died as a result of man induced impacts. He believes one of the problems with Dr. Jokiel's report is his tendency to assume that a single event on November 2001, is responsible for everything. Discussing the issue of fines, Mr. Tam believes the Florida statue cited by staff in determining a fine is based on the assumption the area is a high tourist area (based on its recreational use). In contrast Pilaa is an isolated area with no tourist coming to see the coral. He also notes Florida's statue was based on ships crushing coral. Mr. Tam knows of no statue passed

were its fines were based on the destruction of coral due to surface water run-off into the ocean.

Mr. Dollar an Oceanographer with the University of Hawaii who specializes in the study of different kinds of stresses on coral reefs conducted a slide presentation. He addressed two points: 1) the impacts to the reef; and 2) factors in Dr. Jokiel's report – primarily the selection of the controlled site. He feels the Jokiel report is based on the difference between the coral cover at the controlled site. In his slide presentation, Mr. Dollar indicated reef flats are not an ideal place for coral to grow due to the wave action, which can break and scour the corals also the shallow water leads to high temperatures, ultraviolet light and poor water circulation for the corals. With reference to Dr. Joikel's report, Mr. Dollar disagrees the controlled site was similar to that of Pilaa. Various differences include the mouth of the reef, the shoreline (sandy vs. boulders), a sand cover bottom, water depth and water circulation.

Mr. Rabinstein told the Board they have communicated with Earth Tech, Inc. with regards to their remediation plan. He noted there has been on going dialogue between themselves and Earth Tech, Inc.

In closing Mr. Tam asked the Board to defer this item to allow himself more time to go over staff's submittal and to allow time for the Board to go out to the subject site.

Heidi Huddy Yamamoto representing the Huddy' kuleana testified before the Board. She requested the installation of a road down to her kuleana land. Currently she has been working with the County of Kauai to gain foot access but because of the age of her mother a foot access to their kuleana is unacceptable. She noted previously they had road access to their parcel but due to the temporary remedial actions (construction of a rock dam with detention basin) ordered by the State their access has been blocked.

Mrs. Huddy noted in 1958 they had a road from the highway to their house. Ms. Huddy went on to explain even though they do not have an access road to their property they are still required to pay the taxes. She hopes some day she will have road access to her property.

Bumpy Kanahale representing the Huddy family testified. He recommended the Board go out and see the subject site. Mr. Kanahale made it known his clients previously applied for permits with the County of Kauai to use Mr. Pflueger's property to build an access road for them. This permit was denied by the County of Kauai. He also questioned why his client could not build off of the access road used by the Marvin family.

Marge Freeman a member of the Kauai group of the Sierra Club appeared before the Board. Ms. Freeman feels that the Department of Land and Natural Resources (DLNR) should have acted sooner to stop the illegal activities going on at Pilaa. She suggested the department process complaints/violations promptly, initiate investigations, proceed with any punitive actions to protect the natural resources affected, coordinate with the County SMA and the departments Conservation District, delineate responsibility between the

various offices and branches of government and include serious violations on DLNR's agenda for immediate attention.

Cheryl Lovell Obatake spoke in support of the Huddy family regarding access to their property. She was concerned with the baseline data and the methodology of the remediation plan. She spoke of the barter system used in the past with regards to the residents of Moloaa and Pilaa. She expressed her concern that the Board makes a wise decision that would address the issue of the water at Pilaa.

Mark Boiser believes the State should go out and see the site before they make a decision on this item. Mr. Boiser feels the protection of the federal shoreline is a federal issue and should be enforced. He questioned the lack of enforcement regarding halting the alleged unauthorized action by Pflueger.

Nani Rogers stepped forward to testify. Ms. Rogers conveyed to the Board her feeling about what has happened to Pilaa as being disastrous. She feels the issue of public access that was available in the past should be made available to the public today. She noted her support for the Huddy family.

David Henkin an attorney with Earth Justice who represents the Limu Coalition and the Kilauea Neighborhood Association informed the Board they have filed a federal lawsuit against Mr. Pflueger under the Federal Clean Water Act. He believes the Board should send out a strong message that we will not tolerate activities that will destroy our reef, subsistence for the people, recreational use and people who act outside of the law. Mr. Henkin went on to explain the formula used by the federal government in its assessment of fines. He also questioned the Board as to why staff did not assess a penalty for the damage to the channel and on-going damage to the reef. In summary Mr. Henkin feels staff is headed in the right direction and the Board should stand firm in accessing a high penalty.

When questioned by the Board as to the remediation plan submitted by Mr. Pflueger, Mr. Henkin noted he supports the plan in concept. He feels the State needs to move quickly on the remediation plan.

Tom Schaffer a fisherman in the area told the Board he feels the fishing in this area is the same as previous years.

Richard Zelber a resident of Kauai testified. What has happened to Pilaa is disgusting. The action of the landowner has resulted in mudflow into the ocean and death of coral. He went on to say this type of action could possibly happen again because the State has nothing in place to prevent it.

Don Heacock an aquatic biologist testifying as a private citizen addressed the issue of sediment. He tells the Board the sediments have been coming out of the stream. He feels if we do not restore the stream the coral reefs will never recover.

Member Yamamura and DeMello left the meeting at 3:06 p.m.

Makaala Kaaumoana spoke as a member of the Limu Coalition in support of the remediation plan to restore the environment. Ms. Kaaumoana went on to read her written testimony.

Amy Marvin a resident of the area commended the State for its prompt action in coming out to Pilaa when they were made aware of this alleged violation. Ms. Marvin supports property access by the Huddy family and feels Mr. Pflueger should provide this access. She notes Pilaa is a recreational area where local families can enjoy this unique place. Ms. Marvin does not feel Mr. Pflueger should be able to oversee the remediation plan for Pilaa.

Linda Sproat a resident of Kalihiwai spoke of her association with Pilaa. She talked about fishing in Pilaa. She informed the Board she is a witness to the destruction that has occurred and is still occurring in Pilaa. She is concerned with access to Pilaa. In the past there were five different access and she feels these accesses should be maintained. With regards to the restoration of the reefs, Ms. Sproat believes an independent company should be in charge of this activity. As far as penalties she feels the Board should assess a fine to Mr. Pflueger and the amount of the fine should not be deducted by the cost of the restoration activities.

Karen Diamond appeared before the Board. Ms. Diamond urged the Board to impose a fine and also the cost of remediation. She asked that Mr. Pflueger not be able to oversee the remediation effort but instead have it done by someone independent.

Marshall Rosa addressed the Board and indicated the Board should visit the site before they make a decision on this matter. He asked the Board to take all factors into consideration before rendering a decision.

Richard Marvin a resident of Pilaa spoke of when he was a child he would sit under the ironwood tree watching the albatross nesting. Today there are no trees and no birds. He also mentioned in years past there were six feet high coral heads out in front of his home; today it is not there. Mr. Marvin told the Board they have never denied the Huddy family access to their property. In closing he asked the Board to restore Pilaa.

Leonard Vierra a personal friend of James Pflueger testified. He told the Board at the reefs in Pilaa there are big schools of oama, kala and palani. He indicated the water at Pilaa is clean but it has some siltation. He feels nature will take care of itself we just need to sit back watch it happen and monitor the situation.

Richard Marvin testified a second time to say the ironwood tree the albatross nested on was mowed down by Mr. Pflueger for his subdivision. The clean, pristine, perfect reef he dived off, as a child is today just rubble.

David Henkin appeared before the Board a second time. He noted in staff's recommendation they did not take into account resource damage for the area mauka of the



shoreline. They are severe visual impacts in Pilaa and the shoreline. Mr. Henkin does not agree with staff's recommendation that the amount of the penalty be reduced by the cost of remediation efforts. The State should assess a penalty plus the cost of remediation. The public needs to be compensated for the loss of use of the area.

A second appearance to testify was made by Cheryl Lovell Obatake. She asked the Board if a certified shoreline would be implemented in this area.

The Board asked Mr. Lemmo to address the issue of coral seeding and the estimated cost of this type of endeavor. Mr. Lemmo indicated it would cost about \$500,000 a year for the first three years and \$250,000 for the next 7 years. Adding additional information to the Board's question, Mr. Walsh said he is unsure as to how long it would take to restore the coral and the reefs.

The Board questioned Mr. Tam with regards to their proposed remediation plan.

Noel Wise co-counsel for Pflueger provided testimony. Prior to entering private practice, for the last ten years she has been doing environmental enforcement work as an attorney for the Department of Justice. She touched on three subjects: 1) community concerns; 2) need for deterrence and 3) penalties. Ms. Wise made it known that Mr. Pflueger has taken responsibility for his actions and has implemented every emergency action asked of him and has paid for all of it (over a million dollars).

Mr. Tam came before the Board and made some closing comments. He asked the Board for a deferral of this item in order to provide the Board the opportunity to go out to the site and to also possibly come up with a solution by narrowing the difference between the State and Mr. Pflueger. Mr. Tam asked the Board if possible he would appreciate approval of the remediation plan. He noted if the Board decides to make a decision today he would ask for a contested case hearing.

**The Board amended the following:**

**"That the Board of Land and Natural Resources find the landowner (James Pflueger) in violation of Chapter 183C, Hawaii Revised Statutes for unauthorized land uses and damages to state land [~~and natural resources~~] at Pilaa, Island of Kauai, subject to the following:"**

- "1. The landowner (James Pflueger) violated the provisions of Chapter 183 C, Hawaii Revised Statutes, and Chapter 13-5, Hawaii Administrative Rules (HAR), by failing to obtain the appropriate approvals for road construction, grading, filling, and storm drain construction in [~~six (6)~~] four (4) instances within the conservation district, for a penalty of [~~\$12,000~~] \$8,000;"**

**"10. "Mr. Pflueger shall [~~the proposed~~] a remediation for the Conservation District land areas, subject to detailed plan review by the DLNR as each project element is implemented. . ."**

**Motion to approve recommendation 1, 3, 10, 11 and 12.**

**Unanimously approved to amend recommendation 1, 3, 10, 11 and 12 by the remaining Board members (Inouye/McCrory).**

Bill Tam, attorney for the alleged, requested a contested case hearing for all other matters.

Chairperson Young explained to the public the process of a contested case hearing.

There being no further business, Chairperson Young adjourned the meeting at 5:06 p.m.

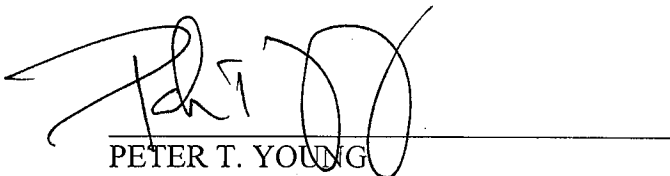
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources