

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

DATE: FRIDAY, SEPTEMBER 12, 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 9:08 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young	Mr. Timothy Johns
Mr. Toby Martyn	Mr. Gerald DeMello
Ms. Kathryn Inouye (Arrived at 11:20 a.m.)	

STAFF

Ms. Dede Mamiya, Land Division	Mr. Sam Lemmo, Land Division
Mr. Keith Chun, Land Division	Mr. Dennis Takahashi, Fiscal
Mr. Dan Quinn, State Parks	Mr. Peter Garcia, DOT
Ms. Athline Clark, Aquatic Resources	

OTHER

Ms. Pamela Matsukawa, Deputy Attorney General	
Ms. Martha Laxson, D-19	Mr. Koji Okamura, D-16
Mr. Phil Hauret, D-6	Mr. Ben Welborn, D-22
Mr. William Tam, D-23	Mr. Randy Sing, D-1
Mr. Tom Robertson, D-7	Mr. Ronald Yee, D-8
Mr. Erik Wong, D-3	Mr. Patrick Vahey, D-17
Mr. Alex Colby, E-2	Mr. David Kulber, D-1
Mr. David Smith, D-15	Ms. Wendy Wiltse, D-15
Mr. Muriel Seto, D-15	Mr. Isabel Figel, D-15
Mr. Charlie Clove, D-15	Mr. Charles Burrows, D-15
Ms. Cindy Turner, D-15	Mr. John Jubrinski, D-21
Mr. Harry Kim, D-21	Ms. Pua Au, D-15

Mr. Alan Murakami, D-21
Mr. Mervin Napeahi, D-21

Mr. Moses Haia, D-21

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

Item A-1: Minutes of August 22, 2003

Unanimously approved as submitted (Johns/DeMello).

Item D-19: Consent to Assign Term, Non-Exclusive Seawall Easement, Identified as General Lease No. S-5612, Martha B. Laxon, Assignor, to Gary E. Borman and Anne H. Borman, Trustees, Assignee, Lalamilo, South Kohala, Hawaii, TMK: 3rd/6-9-03:seaward of 12.

Ms. Dede Mamiya administrator of the Land Division informed the Board before them is a request for a term seawall easement in Lalamilo. She noted the applicant was in compliance with all the terms and conditions. Ms. Mamiya recommended the Board consent to the assignment of General Lease No. S-5612.

Martha Laxson, the applicant was present.

The Board amended the entire submittal by amending the Assignor's name from "Martha B. Laxon" to "Martha B. Laxson."

Unanimously approved as amended (DeMello/Johns).

Item D-16: Issuance of Revocable Permit to Diamond Head Papaya Co., Inc., Kamaili, Puna, Hawaii, TMK: 3rd/1-3-02:99 & por. 12.

Ms. Mamiya conveyed these lands were previously encumbered to the applicant, Diamond Head Papaya Company, Ltd. but due to the infestation of Papaya Ringspot Virus their crops were destroyed. Working together with other papaya growers and the Department of Agriculture, the applicant has developed a quarantine program and is therefore requesting a month-to-month permit to test this method. Ms. Mamiya recommended the Board authorize the issuance of a revocable permit to Diamond Head Papaya Co., Ltd covering the subject area for agricultural purposes.

Koji Okamura of Diamond Head Papaya Co., Ltd was present to answer any questions.

Unanimously approved as submitted (DeMello/Johns).

Item D-6: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Verizon Hawaii Inc. for Utility Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-5-23:09.

Ms. Mamiya briefed the Board and recommended the Board authorize the issuance of a perpetual, non-exclusive easement to Hawaiian Electric Company, Inc and Verizon Hawaii, Inc covering the subject area for utility purposes.

Phil Hauret of Hawaiian Electric Company was present to answer any questions.

Unanimously approved as submitted (Johns/Martyn).

Item H-1: Approval to Proceed with the Single Audit of the Department's Federal Aid Programs.

Dennis Takahashi, acting Fiscal Management Officer explained the Department of Land and Natural Resources (DLNR) is subject to the provisions of the Single Audit Act of 1984. The Act calls for a single coordinated audit for the next three fiscal years. Mr. Takahashi recommended the Board authorize the Chairperson to obtain the assistance of the State Comptroller to proceed with the Single Audits of DLNR for fiscal years ending June 30, 2004, 2005 and 2006.

Unanimously approved as submitted (Johns/DeMello).

Item D-22: Conservation District Use Application No. KA-3128 for the Construction of a Single-Family Residence; Applicant: Robert A. Bothman; Hanalei, Kauai; TMK: (4) 5-3-03:014.

Sam Lemmo of the Office of Conservation and Coastal Lands indicated the subject parcel on Kalihiwai Road is currently vacant and undeveloped. The applicant proposes to construct a (3) bedroom Single-Family Residence of approximately 2,500 square feet on the subject 10,022 square foot parcel. The structure will be constructed on piers, elevated off of the existing grade to conform to applicable County regulations regarding the National Flood Insurance Program. The 2,500 square feet of development area will be comprised of approximately 2,386 square feet of interior living spaces (including decks/exterior lanai) and 114 square feet ground floor storage. Mr. Lemmo noted this item was deferred at the last board meeting because the applicant did not have detailed conceptual floor plans for the proposed residence. Mr. Lemmo recommended the Board approve the construction of the Single-Family residence.

Ben Welborn of Landmark Consulting appeared before the Board. The Board asked Mr. Welborn if a presentation was made to the community with regards to the construction of this Single-Family residence. Mr. Welborn indicated no formal presentation was made to the Kilauea Neighborhood Board but a pre-assessment letter was sent to them and no response was received.

Unanimously approved as submitted (Johns/DeMello).

Item D-23: 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. KA-04-02 Petition from Counsel Representing James Pflueger, Pflueger Properties and Pilaa 400 LLC, Contesting the Department of Land and Natural Resources, Office of Conservation and Coastal Lands August 22, 2003 Recommendations; Regarding an Enforcement Action Involving the Alleged Damages to State Land(s) and Natural Resources due to Excessive Sedimentation at Pilaa, District of Hanalei, Island of Kauai, Seaward of TMK: 5-1-4:8 (por.).

Ms. Mamiya pointed out at the last Board meeting the attorney for James Pflueger and Pilaa 400 LLC requested a Contested Case Hearing on the enforcement action involving the alleged damages to State lands at Pilaa. On September 2, 2003, a petition was received from Counsel representing James Pflueger. Ms. Mamiya recommended the Board authorized the appointment of a Hearing Officer to this case and let the hearing officer conduct all hearings relevant to the subject petition for a Contested Case Hearing and that the Board delegate the authority for selection of a hearing officer to the Chairperson.

William Tam attorney representing Pflueger Properties told the Board he supports staff's recommendations but suggested the hearing officer be someone of unquestioned impartiality, experience, intelligence and integrity. Mr. Tam further recommended the Board consider using the services, processes, and/or select a hearing officer from the panel of experienced attorneys and retired judges employed by Dispute Prevention and Resolution or some similar organization.

Unanimously approved as submitted (Johns/DeMello).

Item D-1: Cancellation of Revocable Permit No. 5612; Issuance of Revocable Permit to Association of Apartment Owners of Kemoo by the Lake for Parking Purposes, Wahiawa, Oahu, TMK: (1) 7-3-12: 11 portion.

Ms. Mamiya made it known after the clean up of Parcel 11, staff noticed the Association of Apartment Owners (AOAO) was not using the area noted in revocable permit 5612. Instead the AOAO was using a portion of parcel 11 for parking purposes. To correct the record the AOAO is requesting revocable permit 5612 be cancelled and a new permit be issued for the current parking area. Ms. Mamiya recommended the Board authorized the cancellation of Revocable Permit No. 5612 and authorize the issuance of a revocable permit to Association of Apartment Owners of Kemoo by the Lake covering the subject area for parking purposes.

Randy Sing representing the Association of Apartment Owners was present.

Unanimously approved as submitted (Johns/DeMello).

Item D-7: Amend Prior Board Action of December 13, 2002 under Agenda Item D-7, for Grant of a 55-year Non-Exclusive Easement for House Decks Overhand and Seawall Extension Overhang to Thomas Robertson, Kaneohe, Oahu, TMK: (1) 4-6-01:09 seaward.

Ms. Mamiya mentioned she would like to amend a prior board action to allow collection of the estimated total deposit of \$6,655.00 to allow the applicant to proceed with shoreline certification and other necessary permits. Ms. Mamiya noted there is a new condition added to this and all other shoreline encroachment easement that makes the easement subject to any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Tom Robertson the applicant was present to answer any questions.

Unanimously approved as submitted (Johns/DeMello).

Item D-8: Grant of 55-year term, Non-Exclusive Easement to Ronald Yee for Seawall Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-18:105 seaward.

Ms. Mamiya informed the Board the applicant is one of the pier owners participating in the Kaneohe Bay Piers Amnesty Program. His seawall was shown to be encroaching about 62 square feet onto state lands. Staff does not recommend imposing a fine because the encroachment is less than 100 square feet. Ms. Mamiya recommended the Board authorized the issuance of a 55-year term, non-exclusive easement for the subject area for seawall purposes.

Ronald Yee, the applicant informed the Board that information pertaining to his marital status and address was incorrect.

Mr. Yee was instructed to provide the correct information to the land agent.

Unanimously approved as submitted (John/Martyn).

Item D-3: Grant of 55-year term, Non-Exclusive Easement to Alvin Lum, Jane Lum, Wallace Lum and Sheila Lum as Trustees for Seawall and Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-7-30:20 seaward.

Ms. Mamiya indicated upon preparation of the map for the subject pier, staff noted a portion of the seawall and a boat ramp were encroaching 285 square feet onto the state lands. Staff is recommending imposing a fine of \$500.00 for the seawall and concrete boat ramp encroachment. Ms. Mamiya recommended the Board authorized the issuance of a 55-year term, non-exclusive easement covering the subject area for seawall and boat ramp purposes.

Erik Wong was present

Unanimously approved as submitted (Johns/DeMello).

Item D-17: Forfeiture of General Lease No. S-5643, Patrick Vahey, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-018: 51.

Ms. Mamiya briefed the Board and informed them Patrick Vahey has been having trouble paying the rent. She noted he is current in his insurance and performance bond requirement. It was made known to the Board as of yesterday the applicant has paid all of his delinquency but another payment will be due in October.

Patrick Vahey apologized for any inconvenience he has caused. He told the Board he is awaiting some loans and grants based on his disability and the aquaculture work he is doing. He assured the Board he would be able to pay October's rent on time.

The Board amended the Recommendation by adding a paragraph 6 to read as follows:

"6. Provided that if the Lessee pays the October billing by October 31, 2003, forfeiture action shall be automatically rescinded."

Unanimously approved as amended (Johns/Martyn).

Item D-15: Conservation District Use Application for No. OA-3126 to Construct Kawai Nui Gateway Park; Applicant: Helber, Hastert & Fee Planners, Inc. for the City & County of Honolulu, Department of Design and Construction; Abutting Kawai Nui March, Kailua Town, Koolaupoko District, Oahu; TMK: (1) 4-2-017:020 State Owned, (1) 4-2-016:001 City Owned.

Mr. Lemmo started off by noting this action was deferred from the last board meeting because the Board had concerns regarding the consultant's consultation with the Friends of Kawai Nui Marsh and the Neighborhood Board. As background information Mr. Lemmo indicated the project encompasses two non-contiguous areas, the Mokapu Site and the Coconut Grove Site. Also other Single-Family Residence's abut the northern and eastern ends of the Coconut Grove Site and the eastern end of the Mokapu Site. The park will serve to educate visitors and the community about Kawai Nui Marsh's cultural history and significance. Mr. Lemmo went over the various improvements proposed for the Mokapu and Coconut Grove Site. Staff's report stated, to date Historic Preservation Division has not received for their review and acceptance the requested archeological survey report for the paleoenvironmental survey conducted at the Coconut Grove Site. With regards to the Board's request for consultation with Friends of Kawai Nui Marsh, staff notes the consultant was not able to contact them but there were able to contact the Kawai Nui Heritage Foundation, Kawai Nui Thousand Friends and the Kailua Neighborhood Board, Recreation Sub-committee. The consultant noted these community groups had no objections to the proposed project. The consultants contacted the general public regarding the proposed project with mail out letters and publications in Honolulu's Mid Week. Although the consultant was not able to contact the Friends of Kawai Nui Marsh, staff feels they made a good faith effort to contact the surrounding communities regarding this project. Based on the proceeding analysis, Mr. Lemmo recommended the Board approve this application to construct the Kawai Nui Gateway Park subject to the terms and conditions listed in the submittal.

The Board questioned why the applicant proposed the installation of overhead electrical lines in an area envisioned with a nature like setting.

David Curry representing Helber, Hastert and Fee Planners, Inc. appeared before the Board. Mr. Curry assured the Board he spoke with the neighborhood board and they were in agreement with the proposed project and had no objections. He informed the Board the overhead electrical line is a single line, which would bring electricity to the comfort station.

David Smith, District Wildlife Manager with the Division of Forestry and Wildlife (DOFAW) appeared before the Board to discuss the Master Plan for Kawai Nui Marsh. He communicated the marsh area has been identified as a park and what is currently proposed today is similar to what DOFAW envisioned for the area. Mr. Smith informed the Board they have placed design features to address the communities concerns.

Wendy Wiltse a landowner who lives adjacent to Kaha park testified before the Board. Ms. Wiltse went on to read her written testimony recommending changes to staff recommendations regarding lighting, dust control and placing restrictions on park usage.

Muriel Seto representing Hawaii's Thousand Friends conveyed she was taken aback to see Kawai Nui Stream re-named "Kaelepulu Channel." She felt the name of the stream should not be changed. In terms of the construction of buildings in the park, Ms. Seto believes care should be taken to ensure the buildings are culturally compatible with the setting. She also questioned the Board as to why Kawai Nui Marsh is not listed in the National Register of Historic Places.

Isabel Figel a homeowner in Kainui Estates located directly across from the proposed park testified in opposition of the construction of Kawai Nui Gateway Park. Ms. Figel went on to read her written testimony. She felt staff's report does not address the impact of this project on residents and the community. There is inadequate concern for the noise and traffic, the restriction of motorized vehicles, boats and jet skis, necessary lighting restrictions and restricted park hours. Staff also does not address possible pollution and dumping problems into the canal and police enforcement issues. She strongly asked the Department not to approve the proposal before them today.

Charlie Clove a resident of the area testified in opposition of the proposed Kawai Nui Gateway Park. He noted his concern with children from the high school gathering at the park before the start of school. Also he noted the existence of a bridge 100 yards away from the proposed bridge therefore he does not feel there is a need for another bridge.

Charles Burrows president of Ahau Malama I Ka Lokahi testified in support of the proposal before the Board. His organization is a native Hawaiian conservation organization that works to ensure the preservation of our native ecosystems and Hawaiian traditions through education, research and stewardship. Mr. Burrows went on to read a written statement. In closing Mr. Burrows believes it is important for the Department to take a leading role in coordinating the various groups to adopt and implement the 1994 State Master Plan for Kawai Nui Marsh.

Cindy Turner a member of the Kailua Visioning Team came forward to testify. Ms. Turner urged the Board to move ahead and approve the construction plan for the Kawai Nui Gateway Project.

The Board asked Mr. Curry if they had any objections to the electrical wires being placed underground. Mr. Curry responded no. The Board also asked Mr. Curry if they would agree to the condition that the applicant work with the Division of Forestry and Wildlife for appropriate restrictions as to the design/use of the proposed park to mitigate impact on the adjacent wildlife areas. Mr. Curry noted he is in agreement. He also suggested the park be closed at night and not opened in the morning until after the high school is in session. Addressing the issue of constructing a bridge, Mr. Curry felt it was an important element for the area. He felt the bridge would be a nice way for the high school students to walk to school instead of walking through the highway.

The Board amended the Recommendation to read as follows:

- 6. The applicant will minimize visual impacts to Oneawa Canal, Kawai Nui Marsh, to the surrounding Single Family Residences, and its public users by using appropriate lighting, building and color schemes, and landscaping. The Office of Conservation and Coastal Lands, prior to work being undertaken on the proposed project; shall approve lighting, color scheme, and landscaping, prior to construction. Lighting will only be allowed in the comfort station.**
- 10. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly. Stockpiles of soil shall be covered at all times. The site shall be stabilized and vegetated within 30 days after grading is completed. Landscaping shall be properly maintained.**
- 16. All power lines shall be installed underground.**
- 17. The applicant shall work with staff from the Division of Forestry and Wildlife for appropriate restrictions on the use and design in order to mitigate the impact on adjacent wildlife areas.**
- 18. The applicant shall work with DNLR staff and the community for appropriate screening to mitigate the impact on adjacent residence.**

19. The City and County of Honolulu shall, upon receiving transfer of the property and responsibility for operations and maintenance, implement the following restrictions and display corresponding signage:

- **Use of the park and restrooms shall be limited to the hours between 7 AM and 7PM. Access to the park shall be prohibited after these hours. The City and County of Honolulu shall ensure that the park is adequately gated and the restrooms locked to prevent access after hours. Vehicles left within the park or on Mokapu Blvd outside the park shall be towed**
- **Consumption of alcoholic beverages shall be prohibited**
- **Overnight camping shall be prohibited**
- **Use of motorized vehicles, boats, and airplanes shall be prohibited**
- **Feeding of ducks shall be prohibited.**
- **Organized sports, other than canoe paddling, shall be prohibited**
- **Dogs shall be required to be on leash. Owners must bag and dispose of pet waste**
- **Use of Firearms and fireworks shall be prohibited**
- **Graffiti is prohibited and perpetrators shall be prosecuted**
- **A gate shall be installed on both ends of the foot bridge to prevent public access to the maintenance right-of-way on each side of the canal.**

Unanimously approved as amended (Johns/DeMello).

Item E-1: Permission to Solicit for Bids for Vending Machine Contractors at State Parks

Dan Quinn Administrator for State Parks reminded the Board at its December 10, 1999, meeting they gave approval to a pilot program to provide vending machines at selected parks. At this time Mr. Quinn would like to expand upon this program to allow vending machines at other state parks. Except for the costs of electricity used to run the vending machines, the state should not incur other costs. He recommended the Board approve the request to solicit bids and enter into contracts with vending machine operators for State Parks and authorize the Chairperson to execute the contract document on behalf of the Board.

Unanimously approved as submitted (DeMello/Johns).

Item E-2: Request for a New Permit to Launch and Land Paragliders at Ahupua'a 'O Kahana State Park.

Mr. Quinn came before the Board to request permission to continue launching and landing paragliders at Kahana State Park. Under the terms of the original permit the pilots will continue to launch from a hillside on the north side of the valley and land along the beach in the zone between the campgrounds and the day use area. State Parks also acknowledged receipt of a \$1,000,000 liability insurance policy listing the State of Hawaii, DLNR as

additional insured. Mr. Quinn recommended the Board approve a permit to the Hawaii Paragliding Association for a period of one year.

Alex Colby president of the Hawaiian Hang Gliding Association came forward to testify about an incident of a hang glider being rescued.

Unanimously approved as submitted (Johns/DeMello).

Item D-13: Time Extension Request – Conservation District Use Permit No. OA-3058B for Ka Iwi Scenic Shoreline Improvements; Permittee: DLNR, Division of State Parks; Landowner: DLNR, Department of Hawaiian Home Lands, and City & County of Honolulu; East Honolulu, Oahu, TMK: (1) 3-9-11: por. of 2, and 06; and (1) 4-1-014:02.

Mr. Lemmo advised the Board the Division of State Parks is requesting a time extension for the Ka Iwi Scenic Shoreline Improvements. State Parks is requesting a one-year extension due to scheduling changes encountered during the project. This time extension would give the applicant until February 8, 2004 to initiate construction and February 8, 2007 to complete construction. Mr. Lemmo recommended the Board amend Condition 5 of CDUP OA-3058B to provide that the initiation deadline is February 8, 2004 and the completion deadline is February 8, 2007.

Unanimously approved as submitted (Johns/DeMello).

Item D-20: Conservation District Use Application No. OA-3129 for the Construction of a New Pier; Applicant: Michael A. Pietsch; East Honolulu, Oahu; TMK: (1) 3-6-01:022.

Motion to Withdraw

Unanimously approved to Withdraw (Johns/Martyn).

Item F-1: Request for approval to enter into an agreement with the Department of Business, Economic Development and Tourism.

Athline Clark Planner with Aquatic Resources made it known they are seeking approval to enter into an agreement with the Hawaii Coastal Zone Management Program for \$79,474.00. The monies will be given to three community based programs: 1) the Hawaii Sea Grant-to raise awareness about the coral reef ecosystem; 2) Oceanwide Science Institute- for education and community based conservation efforts and to also continue and expand Reef Check activities on Oahu and Kauai; and 3) Hawaii Wildlife Fund-to address coral reef health. Ms. Clark also noted the federal grants covers travel cost for both the Department of Land and Natural Resources and the Coastal Zone Management Program to attend coral reef related meetings and to coordinate activities. She recommended the Board authorize the Chairperson to negotiate and subject to necessary approvals, enter into an Agreement with the Department of Business, Economic Development and Tourism.

Unanimously approved as submitted (Johns/DeMello).

Item F-2: Request for approval to amend/extend a contract with the Nature Conservancy of Hawaii (TNC).

Ms. Clark informed the Board this is a request to extend a contract with the Nature Conservancy of Hawaii. The extension is for year two of a two-phase study to design, develop and implement a Comprehensive Aquatic Alien Species Management Plan. Funding for year two was acquired from the Hawaii Community Foundation grant and State General Funds. Significant in-kind match has been provided by several agencies. Ms. Clark recommended the Board authorize the Chairperson to negotiate and subject to the necessary approvals amend/extend a Contract for Professional Services with The Nature Conservancy of Hawaii.

Unanimously approved as submitted (Johns/DeMello).

Item D-5: Consent to Assign Revetment Easement Bearing GL No. S-5341, Don Over Trust, Assignor, to Thomas Coulson, Patricia Coulson, Tracy Patrick and Cathy Patrick, Assignee, Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-20:48 seaward.

Ms. Mamiya briefed the Board and recommended the Board consent to the assignment of Grant of Easement bearing GL No. S-5341.

Tracy Manhan real estate agent for the Patrick's and Coulson's told the Board this was basically a transfer of a sea wall easement.

Unanimously approved as submitted (Johns/Martyn).

Item D-24: Rescind Prior Board Action on Issuance of Term, Non-Exclusive Easement to Kamehameha Schools; Issuance of Revocable Permit to Department of Transportation, Airports Division and its Designees, for Access Purposes, Waiakea, South Hilo, Hawaii, TMK: 3rd/2-1-12-portion of 3 and 3rd/2-1-13:portion of 10.

Ms. Mamiya mentioned in 1971 the Department of Transportation (DOT), Airports Division condemned lands owned by Kamehameha Schools (KS) for the extension of the runway at Hilo Airport. This action landlocked the remaining portion of KS lands. In 1971, Staff issued a right of entry to KS Lessee's but the issue has never been resolved. Ms. Mamiya made it known today's action is just a temporary solution until DOT can provide an appropriate access to KS. She recommended the Board authorize the issuance of a revocable permit and a management right-of-entry to the Department of Transportation, Airports Division covering the subject area for road access.

Unanimously approved as submitted (DeMello/Johns).

Item M-1: Issuance of a revocable permit to Exacta Sales, Inc., for inconsistent use, Honolulu International Airport, Oahu, TMK (1) 1-1-03-1P.

Peter Garcia representing the Department of Transportation indicated the revocable permit would be for inconsistent use and the location of the subject parcel is on Ualena Street. He recommended the Board authorize the Department of Transportation to issue a month-to-month revocable permit to Exacta Sales, Inc.

Unanimously approved as submitted (Johns/DeMello).

Item M-2: Consent to assignment of lease no. DOT-A-95-25, Nunui & Associates, LLC, Honolulu International Airport, TMK (1) 1-1-04-19.

Mr. Garcia indicated this item is merely a change in the company from a general partnership to a limited liability company. Mr. Garcia recommended the Board consent to the assignment of Lease No. DOT-A-95-25.

Unanimously approved as submitted (Johns/DeMello).

Item M-3: Authorization for the sale of old Government road remnant to Moloaa Valley One, LLC (Lee Joseph), Moloaa, Kauai, TMK (4) 4-9-08.

Mr. Garcia briefed the Board and recommend the Board authorize the Department of Transportation to dispose of the remnant government road by selling in fee to the abutting property owner, Moloaa Valley One, LLC.

Unanimously approved as submitted (Johns/DeMello).

Item M-4: Request to enter into a party wall agreement and a use and occupancy agreement with an abutting property owner, Alfred Bruce and Eiko Etherington, relating to the encroachments of a hollow tile wall and a carport rain gutter into the Etherington's property, Honolulu, Oahu, TMK (1) 3-7-92-18 and (1) 3-7-02-02.

Mr. Garcia noted this action is merely to enter into an agreement to cover the encroachment and will have no significant effect on the environment. He recommended the Board authorizes entering into a Party Wall Agreement and a Use and Occupancy Agreement between the State and Alfred Bruce and Eiko Etherington to cover the encroachments.

Unanimously approved as submitted (Johns/DeMello).

Item M-5: Consent to sublease, lease no. DOT-A-92-11, Bar-K, Inc., sublessor, to the Air Group, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.

Item M-6: Consent to sublease, lease no. DOT-A-92-11, Bar-K, Inc. sublessor, to Bradley Pacific Aviation, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.

- Item M-7:** Consent to sublease, lease no. DOT-A-92-11, Bar-K, Inc., sublessor, to Hawaii Air Ambulance, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.
- Item M-8:** Consent to sublease, lease no. DOT-A-92-11, Bar-K, Inc., sublessor, to Air Support Group, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.
- Item M-9:** Consent to sublease, lease no. DOT-A-92-11, Bar, Inc., sublessor, to Aloha Island Air, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.

Mr. Garcia briefed the Board on the above items and recommended the Board approve these items as stated in the submittal.

Unanimously approved as submitted (Johns/DeMello).

- Item M-10:** Consent to sublease, lease no. DOT-A-92-11, Bar-K, Inc., sublessor, to Heli USA Airways, Inc., sublessee, Honolulu International Airport, Oahu, TMK (1) 1-1-72-12.

Motion to Withdraw

Unanimously approved to Withdraw (Johns/Martyn).

- Item D-2:** Amend Prior Board Action at its Meeting of November 17, 2000 (Agenda Item D-4) Sale of Remnant to Robert Shimokawa, Wayne Shimokawa, Vicki Tsuchiko, Sidney Shimokawa, Karen Kobayashi, Audrey Yoneshige and Withdrawal from Governor's Executive Order No. 1598, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-025:036 portion.

Ms. Mamiya informed the Board she would like to amend a prior Board action to eliminate the names of certain individuals who do not wish to purchase the remnant. She recommended the Board authorize the sale of the subject remnant to Robert Shimokawa and Wayne Shimokawa.

Unanimously approved as submitted (Johns/DeMello).

- Item D-4:** Grant of 55-year term, Non-Exclusive Easement to Victor and Ann Fagerroos Trusts for Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-5-47:83, seaward.

Ms. Mamiya informed the Board the applicants are participating in the Kaneohe Bay Piers Amnesty Program. Upon preparation of the map for the pier it was revealed a submerged concrete boat ramp was encroaching onto State lands. Because the encroachment is less than 100 square feet, staff is not recommending a fine be imposed. Ms. Mamiya recommended the

Board authorize the issuance of a 55-year term, non-exclusive easement covering the subject area.

Unanimously approved as submitted (Johns/DeMello).

Item D-9: Amendment to Prior Action – Set Aside and Issuance of a Management Right-of-Entry to Water Board of the County of Hawaii, for a Well and Reservoir Site Including Guy Anchor Easement, Kohanaiki, North Kona, Hawaii, TMK: 3rd/7-3-006: portion of 003.

Ms. Mamiya pointed out in its prior Board submittal the action did not include reference to a “guy anchor” easement and would therefore like to include it. Ms. Mamiya recommended the Board amend the title of the action, the area Section and the inclusion of the “guy anchor” easement.

Unanimously approved as submitted (DeMello/Johns).

Item D-10: Consent to Assign General Lease No. S-5237, Susan M. Kim, as Commissioner/Assignor, to Annie Emmalia Ka Leong, Assignee, Hoopuloa, South Kona, Hawaii, TMK: 3rd/8-9-14:51.

Ms. Mamiya communicated the lease was previously foreclosed upon. At present time the State would like to assign the lease from the foreclosure commission to Annie Leong. Ms. Mamiya recommended the Board consent to the assignment of General Lease No. S-5237.

Unanimously approved as submitted (DeMello/Martyn).

Item D-11: Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Ltd. and Verizon Hawaii Inc. and Utility Purposes, together with Immediate Right of Entry for Construction Purposes, Kihei, Wailuku, Maui, TMK: (2) 3-9-004:por. of 001 and 061.

Ms. Mamiya made it known the easement would allow for utility services to the boat house/storage facility at KIRC’s facility. She recommended the Board authorize the issuance of a perpetual non-exclusive easement covering the subject area for utility purposes.

Unanimously approved as submitted (Johns/DeMello).

Item D-12: Cancellation of General Lease No. S-5377, Brian E. Perreira, Lessee, Hanehoi, Makawao, Maui, TMK: (2) 2-9-009: 027.

Ms. Mamiya indicated the lessee has past away and his wife is requesting the cancellation of his lease. Ms. Mamiya recommended the Board authorize the cancellation of General Lease No. S-5377 and authorize the refund of the \$390.00 in cash that was deposited in lieu of a surety bond.

Unanimously approved as submitted (Johns/DeMello).

Item D-18: Issuance of Land Patent in Confirmation of Land Commission Award No. 10018 to Lolohi, situate at Waipake, District of Koolau, Kauai, TMK: (4) 5-1-03:06 (portion of).

Ms. Mamiya briefed the Board and recommended the Board consent to the issuance of a Land Patent in confirmation of Land Commission Award No. 10018 to Lolohi.

Unanimously approved as submitted (Johns/Martyn).

Item D-14: Designation of State lands as an Industrial Park at Kaholaloa, Sand Island, Honolulu, Oahu, Hawaii; Authorization to Issue Request for Proposal to Select Private Developer for the Industrial Park and Negotiate a Development Agreement and Master Lease with the Developer, TMK: (1) 1-5-41: 334 and pors. of 6, 22, and 130.

Ms. Mamiya went over background information for the subject site and why she believes an industrial park would be the highest and best use of this property. With regards to the environmental issue, she noted Phase I and Phase II sampling of the site was previously done. Ms. Mamiya mentioned there has been other inquiries into this property but they are requesting rents at nominal or gratis. Ms. Mamiya recommended the Board find the subject area to be suitable and economically feasible for industrial use, approve and authorize the extension of the attached resolution designating the subject areas as an industrial park, authorize the Chairperson to issue a request for proposal for a private entity to develop the industrial park, negotiate a development agreement and master lease with the selected applicant and authorize the Chairperson to withdraw portions of the subject area from the industrial park designation if the Chairperson determines such portions are not feasible for development as part of the industrial park.

Keith Chun, planner with Land Division, informed the Board staff is scheduled to present the proposed industrial park plan to both the Kalihi Palama Community Council and the Kalihi Palama Neighborhood. When asked by the Board if Horizon Lines, LLC was interested in leasing a portion of the subject lands, Mr. Chun replied that Horizon Lines, LLC was not ready to enter into a thirty-five year lease with the State.

Unanimously approved as submitted (Johns/Martyn).

The Board took a break at 11:17 a.m. and resumed the meeting at 11:26 a.m.

Item D-21: Issuance of Revocable Permit to Global Resort Partners for Hotel/Resort Use to Pay Interim Rent for State Lands at the Hilton Waikoloa Village, Anaeoomalu, South Kohala, Hawaii, TMK: (3) 6-9-07:portion of 14.

Chairperson recused himself.

Ms. Mamiya pointed out on June 13, 2003, the Board authorized the Department to enter into a non-binding three-person appraisal process with Lanpar and Ticor for the purpose of determining the fair market value of the State filled lands and the fair market rent for the retroactive periods back to January 1, 1996. At this meeting the Board also requested staff examine how the State might start charging Lanpar rent. Following a meeting with the State and interested parties, Ticor submitted a proposal to pay the State \$6,000 per month as rent for the disputed fast lands under the terms of a revocable permit. Ms. Mamiya went over three possible scenarios with regards to collecting rent for the use of State lands. She also reminded the Board the three-person appraisal process was moving forward as planned with the process reaching an end in January of 2004. Ms. Mamiya recommended the Board authorize the issuance of a revocable permit to Global Resort Partners covering the subject area.

The Board asked Ms. Mamiya to clarify Judge Ezra's order pertaining to what date the State could collect back rent.

Ms. Mamiya replied, "The State shall take all appropriate actions provided for under existing law to immediately seek compensation from the effective date of this Order from the occupiers of the 1.75 acres of submerged lands owned by the State for the use of these State public lands." The effective date of the order was August 15, 1997.

John Jubinski General Counsel for Ticor appeared before the Board. He informed the Board his client is proposing to pay a fair and reasonable rent of \$6,000 per month for the land in question until a fair market rent can be established. He believes the \$6,000 rent is fair because in 1997 the state's appraisal valued the land at \$31,000 per year for the submerged and fast land. Mr. Jubinski made mention of a letter from Mr. Gilbert Coloma-Agaran offering an annual lease rent of \$39,250 for the fast and submerged lands. With regards to submitting their appraisal of the lands, Mr. Jubinski did inform the Board his client would be a little late. But in terms of choosing a third appraiser by September 30, 2003, that date was okay.

The Board questioned whether \$6,000 per month as rent was fair rent. They asked Mr. Jubinski what would happen if the appraised value of the lands came in at higher amount than \$6,000 per month. Mr. Jubinski assured the Board the figure of \$6,000 per month is intended as a good faith effort to pay the current value of the revocable permit. When asked by the Board if accepting the \$6,000 per month would estop the Board from collecting additional monies if the rental payment is deemed too low. Mr. Jubinski answered by saying the offer made by his client is without prejudice, no one will give up anything.

Mayor Harry Kim came forward to address the Board. He informed the Board his initial purpose in coming to today's meeting was to see if there were additional monies available to purchase the lands of Kekelaniwahine in Kona. Mayor Kim wondered if somehow this subject matter before the Board (payment of rent) could in some way be used to purchase the special lands of Kekelaniwahine. In closing Mayor Kim made an appeal to Mr. Jubinski by saying if he is sincere in resolving this issue before the board he asks for sincere follow-up in resolving this issue.

Pua Aiu representing the Office of Hawaiian Affairs (OHA) appeared before the Board and briefly summarized their written testimony. She noted OHA does not agree with staff submittal and feels the Department of Land and Natural Resources (DLNR) has failed to obtain fair market rent for the filled submerged lands. She feels the State should charge fair market rent, as determined by Craig Leong for the filled submerged lands. Ms. Aiu believes if the State does not follow the findings of its own appraiser, the State will be in breach of its fiduciary duties. She also reiterated OHA has consistently opposed a land exchange for the filled lands. Lastly, Ms. Aiu noted that the landowners have had and currently have title insurance coverage for this situation.

The Board asked Ms. Aiu why OHA has not gone back to court for enforcement of Judge Ezra's order as seven years have elapsed. She indicated OHA still has hope that the State will resolve this issue.

Alan Murakami of the Native Hawaiian Legal Corporation communicated he was in favor of an escrow account being set up where the undisputed amounts would be placed. He urged the Board to adhere to its public trust duties and do all within its power to seek fair market rent for the subject lands. Mr. Murakami voiced his client's objection to any exchange or sale of these lands. He believes the rent amount proposed by Mr. Jubinski has no basis and he would like to see how Mr. Jubinski's client derived at a figure of \$6,000. Mr. Murakami made it know he is in the process of drafting the necessary paper work to go back to court to force DLNR to abide by Judge Ezra's order.

Mervin Napeahi came forward and asked that Mr. Jubinski's client place the undisputed amount in an escrow account to benefit the children of Hawaii.

Mayor Kim made a second appearance and asked the Board to consider a land exchange with Lanpar for the lands of Kekelaniwahine. Mayor Kim made it known he has had conversations with OHA regarding purchasing the lands of Kekelaniwahine.

Mr. Napeahi informed the Board he could not agree to Mayor Kim's above proposal because the lands of Kekelaniwahine are burial grounds therefore they can not step on the grounds or build anything on it.

A motion was made at 12:24 p.m. to move into Executive Session to discuss with the Deputy Attorney General the possible legal issues brought on by the letters from OHA and the Native Hawaiian Legal Corporation.

Unanimously approved to move into Executive Session (Martyn/DeMello).

The meeting resumed at 12:57 p.m.

The Board asked Mr. Jubinski if he discussed with his client the idea of an earnest money deposit. Mr. Jubinski noted aside from a security deposit he did not discuss any other deposit with his client. He assured the Board his client is able to pay whatever amount is agreed upon in terms of the three-person appraisal.

The Board amended the Recommendation Section by adding a paragraph 3 to read as follows:

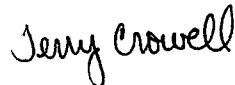
“3. The Board reiterates the three-person appraisal proves and timeframe as approved at its meeting of June 13, 2003.”

Unanimously approved as amended (DeMello/Martyn).

There being no further business, Chairperson Young adjourned the meeting at 1:10 p.m.

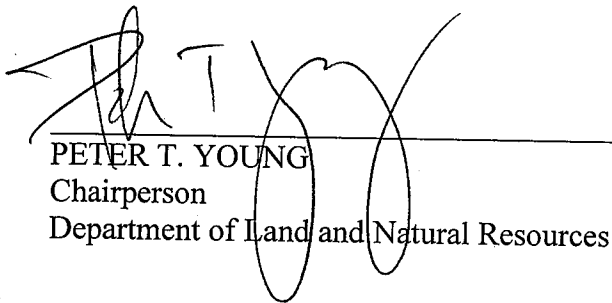
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources