

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

DATE: FRIDAY, OCTOBER 10, 2003
TIME: 9:00 A.M.
PLACE: KING KAMEHAMEHA KONA BEACH HOTEL
BALLROOM 2
75-5660 PALANI ROAD
KAILUA-KONA, HAWAII 96740

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
Mr. Timothy Johns
Mr. Toby Martyn

Ms. Lynn McCrory
Mr. Ted Yamamura
Mr. Gerald DeMello

STAFF

Mr. Harry Yada, Land Division
Mr. Dan Davidson, Deputy Director, Land
Mr. Curt Cottrell, DOFAW
Mr. Peter Garcia, DOT

Mr. Sam Lemmo, OCCL
Mr. Randy Awo, DOCARE
Mr. Dan Quinn, State Parks

OTHER

Ms. Linda Chow, Deputy Attorney General
Ms. Yvonne Izu, Deputy Attorney General
Ms. Carolyn Kahili, D-13
Mr. Paul Master John, F-1
Ms. Linda Preskitt, F-1
Mr. Dickie Nelson, F-1
Ms. Rosanne Shank, F-1
Ms. Linda Groaney, F-1
Mr. Rick Decker, F-1
Mr. Glen Enginjo, F-1
Mr. Gerry Kane, F-1
Mr. George Wilkens, F-1

Ms. Leinaala Moses Lopes, D-13
Mr. Joseph Stewart, F-1
Ms. Sarah Peck, F-1
Mr. Roger Shiverly, F-1
Mr. Robert Flack, F-1
Mr. Bob Rey, F-1
Ms. Vivian Ray, F-1
Mr. John Hopicia, F-1
Ms. Tina Owens, F-1
Mr. Robert Owens, F-1

Mr. Rob Challenberger, F-1
Mr. Peter Morimoto, D-4
Ms. Paulette Tau-a, D-6
Mr. Robert Marx, D-11
Ms. Aileen Norman, D-3
Mr. Francis Kauhani, D-3
Mr. Bill Beach, D-15

Mr. Fred Dwyer, F-1
Mr. Presley Wann, D-4
Mr. Fred Oshiro, D-5
Ms. Hannah Reeves, D-3
Ms. Ruby McDonald, D-3
Mr. Joe Spencer, D-3
Mrs. Lori Beach, D-15

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

Item A-1: Minutes of September 12, 2003

Member Yamamura and Member McCrory recused themselves

Unanimously approved as submitted (Johns/DeMello).

Item A-2: Minutes of September 26, 2003

Member Martyn recused himself.

The following changes were made:

Page 3, last paragraph

“Rescind its prior Board action of June 27, 2003 under Item D-17, approving the forfeiture of General Lease No. S-5045, to Camp Kokee Cooperation, Lessee provided that the lessee shall provide a secured performance bond of \$4800 within 30 days.”

Page 4, fourth paragraph

“The Board questioned why staff [is] has recommended to cancel the revocable permit issued to C & K Beach Services and have them bid on a new contract instead of allowing C & K to keep their existing permit and issue a contract for another area. Ms. Mamiya explained if the concession area remained in the same location as the existing concessionaire, it would preclude the Department [~~for~~] from conducting an Environmental Assessment.”

Page 7, second paragraph last line

“where commercial operators will be located.”

Page 7, fourth paragraph

“Clinton Fukushima [a] representing the Westin Maui appeared before the Board. . .”

Unanimously approved as amended (Johns/Yamamura).

Item D-13: Consent to Assign General Lease No. S-4901, Leina'ala M. Lopes, Assignor, to Leina'ala M. Lopes and Carolyn Leina'ala Kahili, Assignees, as Joint Tenants, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24: 12.

Harry Yada Hawaii District Land Agent informed the Board Ms. Lopes wishes to assign the subject lease to herself and her daughter, Carolyn Leina'ala Kahili as joint tenants. Mr. Yada recommended the Board consent to the assignment of General Lease No. S-4901.

Leina'ala Moses Lopes and Carolyn Kahili were present.

Unanimously approved as submitted (Martyn/Johns).

Item F-1: Request Approval to Hold Public Hearings to Amend Hawaii Administrative Rules, Chapter 13-60.3 West Hawaii Regional Fisheries Management Area, Hawaii; Chapter 13-58, Kona Coast, Hawaii; and Chapter 13-37, Old Kona Airport Marine Life Conservation District, Hawaii.

Dr. Bill Walsh Aquatic Biologist and Francis Oishi Program Manager appeared before the Board. Dr. Walsh made it known the proposed amendments to Chapter 13-60.3 would implement additional requirements on commercial aquarium collectors and would also establish lay net regulations. The proposed amendments to Chapter 13-58 would amend the management area boundary by indicating a seaward limit and more accurately describe the rectangular management area. The proposed amendments to Chapter 13-37 would allow the harvest of sea urchins or wana within the managed area. Dr. Walsh recommended the Board approve the holding of public hearings for the proposed amendments to the three HAR, Chapter 13-60.3, Chapter 13-58 and Chapter 13-37.

The Board asked Dr. Walsh to give some background information on how the amendments came to be. Chapter 13-37 came about as a result of the public asking if the harvesting of shoreline resources (wana, sea cucumber, etc.) would be allowed in the Kona Marine Life Conservation District area. When the rules were passed a provision allowing the harvesting of these resources was not included, therefore staff would like to include it in this amendment. In order to prevent resource depletion, staff included a provision that states "staff may at its discretion institute a temporary moratorium on the taking of sea urchins based on the best scientific data available and information from the area harvesters." With regards to the other amendments it was a result of public discussion with the West Hawaii Fisheries Council and other members of the public.

Paul Masterjohn a member of the West Hawaii Fisheries Council (WHFC) and a tropical fisherman testified before the Board. He made it known when these amendments were recommended by WHFC there were no tropical fisherman on the council. Mr.

Masterjohn spoke of the animosity between the tropical fisherman and the West Hawaii Fisheries Council. With regards to collecting fish at night, Mr. Masterjohn noted that collecting of fish does not happen at night therefore there is no need for a rule prohibiting collecting fish at night. With regards to the stiffened flag, Mr. Masterjohn feels the flag is not needed as the fisherman will have AQ numbers posted on their boat. He feels by requiring tropical fisherman to display a stiffened flag we are singling them out.

Joseph Stewart a tropical fisherman testified the proposed amendments aim at singling out all tropical fisherman. He noted in Act 306, thirty percent of the fishing area was closed off to them. In the past five years there have only been one violation involving tropical fisherman so why are they being targeted. The stiffened flag again singles them out. He spoke of the harassment received by tropical fisherman. He noted public opinion is that tropical fishermen are the "bad guys."

Linda Preskitt a resident of Waimea spoke in favor of the rules. She feels the fishing activities need to be regulated and she supports the rules going forward with public hearings.

Sarah Peck a member of the University of Hawaii Sea Grants Extension Service expressed her support of the amendments proposes. She made it known with regards to the aquarium fishing amendments, the Division of Conservation and Resource Enforcement (DOCARE) were involved in providing this text as it made it easier for them to enforce the rules.

Dickie Nelson conveyed his support of the intent of the rules before the Board.

Roger Shiverly expressed his support of bringing the rules to public hearings.

Rosanne Shank a concerned citizen spoke in support of the rules before the Board.

Robert Flack noted his support to the changes presented by staff

Linda Groaney spoke in support of the amendments going to public hearings.

Bob Rey a resident of Kona Paradise subdivision spoke in support of the rules going to public hearings.

Rick Decker a resident of the area noted his support of the proposal before the Board. He pointed out the changes will benefit all the people. The new rules will eliminate any ambiguity in the law in terms of violations.

Vivian Rey a resident of Kona Paradise subdivision and a former environmental planner in Arkansas informed the Board she supports the rules before the Board and recommends the rules go out to public hearings.

Glen Enginjo chairman of the membership committee of WHFC acknowledged his groups strives to have a diversity of input on their council. He told the Board he supports item F-1.

John Hopcia a board member of Kona Reefers Dive Club indicated he supports the passing of these rules. He informed the Board the "AQ" lettering on the boats are too small.

Gerry Kane a resident of Kona expressed his support of staff's submittal.

Tina Owens of Lost Fish Coalition confirmed her support for the rules going out for public hearings. She cleared up the notion that these rules were just recently brought up. She make it known in 2000 these proposed amendments were to be passed but for some reason it was not. As far as the stiffen flag she feels the flag would help out tropical fisherman. By displaying the flag it notes they are aquarium fishing but when the flag is not displayed they area using their boat for recreational fishing. In closing she asked the Board to support these rules going out to public hearings.

George Wilkins disclosed he supports public hearings especially if the hearings are held in Kona. He noted his support of the 100-foot buffer zone on both sides of the FRA's.

Robert Owens a member of WHFC indicated his support of item F-1.

Rob Challenberger the Hawaii Director for the Nature Conservancy and member of the WHFC came before the Board. Mr. Challenberger told the Board he supports the rules going out to public hearings.

Fred Dwer a long time resident of Kona spoke in support of all the amendments before the Board today. He feels we need to control the number of resources taken from the sea if we hope these resources will be available for future generations.

The Board made the following changes to the rules:

1) § 13-60.3-1 Definitions.

"Lay net" means a [rectangular] panel or panels of net mesh made of various materials that is suspended vertically in the water . . ."

"Natural fibers" means fibers derived wholly from plant materials such as, but not limited to, [olona] olona, linen, cotton, hemp, and sisal."

2) §13-60.3-4 Aquarium fisheries

(c) (2) ~~Be adrift, anchored, or moored within a one hundred yard buffer zone of any area closed to aquarium collecting, although collecting is permitted in the buffer zone.~~

3) §13-60.3-5 Lay nets

**(g) (4) “Nenu Point [-] (Red Hill Fisheries Management Area[~~is~~]-
Kealakekua Bay Marine Life Conservation District.”**

Unanimously approved as amended (DeMello/Johns).

Item F-2: Termination of Commercial Activity Permits No. WT-01 with respect to Water Trampoline (ORMA #2150) and No. W-09 with respect to Water Sports/Equipment Rentals/Surf Instruction.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Martyn).

Item D-4: Conservation District Use Application for the Wann Single Family Residence at Haena, Kauai, Applicant: TMK: (4) 5-9-02: 59.

Sam Lemmo of the Office of Conservation and Coastal Lands communicated the applicant proposes to build a 17,000 square feet single family residence on the subject site. He noted the Department issued a FONSI to the environment for the project on August 26, 2003. The FONSI was published in the September 8, 2003 Environmental Notice. Mr. Lemmo recommended the Board approve the application to construct the Wann Single Family Residence subject to the conditions listed in the submittal.

The Board questioned the house encroaching on the 15-foot setback. Mr. Lemmo noted the eaves were encroaching on the setback and the department does not have any rules that address this issue. He noted the eaves height is about 25 feet.

Peter Morimoto agent for the applicant and Presley Wann appeared before the Board. The Board asked Mr. Morimoto if was able to acquire responses from his neighbors with regards to the home Mr. Wann intends on building. Mr. Morimoto noted parcels 58, 60 and 62 were empty while parcel 61 has an absentee owner. He was able to obtain favorable comments from the other neighbors.

The Board asked Mr. Wann what were his intentions as to the use of this home upon completion. He informed the Board he plans to retire in about five years and move into the subject home. In the meantime he asked the Board to allow him the option of renting out this home. The Board made it clear to Mr. Wann he is unable to rent this home.

Unanimously approved as submitted (McCrary/Johns).

Item D-17: Conservation District Use Application to Construct Browning Elevated Single-Family Residence (SFR), Retain Tool and Outdoor Shower Shed, and Demolish Remaining Shed, Haena, Hanalei District, Kauai, TMK: (2) 5-9-002: 062.

Mr. Lemmo mentioned the applicant plans to build a two story, 3,093 square foot home on a 16,718 square foot parcel. Mr. Lemmo made it known the proposed single-family residence (SFR) has a maximum height of twenty-nine feet but because the applicants proposed residence is four feet, 3.5 inches too high, they are requesting a variance. Mr. Lemmo recommended the Board approve the subject application to construct a SFR, approve a four (4) foot 3.5 inch variance for the proposed SFR, retain the tool shed and outdoor shower and demolish the remaining shed.

Ben Welborn of Landmark Consulting Services, Inc. was present to represent the applicants. The Board made reference to the North Shore Plan as well as the Departments requirement that sets a twenty-five (25) foot limit for houses in the area. Mr. Welborne pointed out there were other homes in the Haena community that are over the twenty-five (25) foot limit due to flood regulations. He also confirmed that this was the only house on the street that will be over twenty-five (25) feet. Mr. Welborne conveyed he sent letters to the neighbors (parcels 57, 58, 59, 60, 61, 63, 66 and 67) informing them of the type of structure that would be built on the subject parcel and indicated they would be asking for a height variance. Lastly, Mr. Welborne indicated a cultural impact assessment was completed and noted there were no concerns by the local kupuna's.

The Board added a new paragraph 16 to read as follows:

"16. The single family residence shall not be used for rental or any other commercial purposes unless approved by the Board."

Unanimously approved as amended (McCrorry/Johns).

Item J-2: Termination of Commercial Activity Permits No. WT-01 with respect to Water Trampoline (ORMA #2150) and No. W-09 with respect to Water Sports/Equipment Rentals/Surf Instructions.

Dan Davidson Deputy Director for Land went over the two permits issued to David Flavin. Mr. Davidson communicated on August 30, 2003 the Permittee and the Permittee's employees discharged chlorine bleach into the Kaanapali ocean waters, thereby violating Hawaii Administrative Rule §13-252-6 and state water pollution laws. Mr. Davidson noted a condition of both permits states that any violation of laws or rules makes cause the permit to be terminated. Based on the above violations Mr. Davidson recommended the Board terminated the commercial activity permits pursuant to the conditions under which the permits were issued.

Randy Awo, Branch Chief for the Division of Conservation and Resource Enforcement (DOCARE) on Maui testified before the Board. Mr. Awo pointed out on August 30, 2003 their office received a complaint from a member of the public which resulted in a DOCARE officer going to Kaanapali Beach to investigate the alleged complaint. At Kaanapali Beach the DOCARE officer observed trampolines on the beach being cleaned with what appeared to be bleach, which was consistent with the complaint received. As

part of the on scene investigation officer Gordon Yen recovered a container he believed to be bleach (due to the emission of a strong odor). The container was taken to the Maui County Department of Water where it was found to contain high concentration of bleach in the container. Citations were issued to Mr. Flavin and two of his employees.

Yvonne Izu of the Deputy Attorney General's Office informed the Board the termination of these permits was brought to the Board because there was a concern as to whether allowing the boating manager to terminate this permit was within the boating rules. There was also concern with giving the permittee due process.

David Flavin permittee appeared before the Board. Mr. Flavin told the Board he did not discharge bleach in fact it was simple green. He explained he went over to a friend's home to get some simple green to clean the trampolines but the only container his friend had to put the simple green into was a bleach container. Mr. Flavin poured the bleach into a bottle and proceeded to pour simple green into the bleach container. At the beach Mr. Flavin poured the simple green into five (5) gallon buckets to use in cleaning the trampoline. He noted the simple green did have a smell somewhat like bleach. Upon completion of cleaning the trampolines Mr. Flavin took the bleach container (that was used to transport the simple green) back to his friend's home. Mr. Flavin noted the bleach container Officer Yen found was bleach his employees were using as part of cleaning the used snorkeling equipment. He adamantly denies at any time polluting the water. Mr. Flavin was disappointed the Board was making a decision on his permit before his hearing was held. Also since this is his first violation he feels the Department's actions are quite harsh.

Mr. Flavin asked for a Contested Case Hearing

Chairperson Young and Ms. Izu explained the contested case hearing process to Mr. Flavin.

Item D-6: Forfeiture of General Lease No. S-5275, John A. Kahiamoe, Lessee, Puolua, Makawao, Maui, TMK: (2) 2-9-06: 06 and 2-9-08: 13, 17, 18 and 24, and Rescind Prior Board Action of August 23, 1996, Agenda Item D-16.

Mr. Yada informed the Board the lease was being cancelled for failure to post the required liability insurance and to keep lease rental payments current. He went on to say Mr. Kahiamoe passed on December 15, 2000 but prior to that by a letter dated May 3, 1994 he requested an assignment of the lease to his grandson, Murphy Tau-a. The Board approved the assignment but the formal assignment document was never provided to the Department. In April 2000, the Board ordered that within 30-days deficiencies in rental payments, insurance must be cured, all derelict vehicles must be removed within six months and the lessee must assign the lease to a new representative/relative of the lessee. Since that time the Maui district office has received numerous complaints regarding loose cattle. Mr. Yada recommended the Board authorize the forfeiture of General Lease No. S-5275 in the manner specified by law.

Mr. Yada acknowledged a letter received from the Huelo Door of Faith Church and noted today's Board action will not impact the decision being made by the Board today.

Paulette Tau-a caregiver to John Kahiamoe came forward to testify. She acknowledge she is behind on the rental payments but informed the Board she is awaiting a monetary settlement from her employer and will be able to clear up any deficiencies in the rent. If the Board decides to forfeit the lease, Ms. Tau-a asked the Board for additional time to reroute the water line outside of state property and move out her belongings. She noted she has property located across the subject property and could move the cattle to that location.

The Board was impressed with Paulette Tau-a's attempt to make good under the lease but acknowledged that with Mr. Kahiamoe's passing there was no way to assign the lease to her. The Board suggested that she speak to Jason Koga about getting an RP on the property. The Board was concerned about re-disposition of the property. Mr. Yada suggested the District office would have to deal with the issues regarding the waterline and the church access before coming back to the Board with a request to go to auction.

The Board amended the submittal by changing the word "Forfeiture" to "Cancellation" in the title and the "PURPOSE" section.

Unanimously approved as amended (Yamamura/Johns).

Item D-5: Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Ltd. and Verizon Hawaii Inc. for Utility Purposes, together with Immediate Right of Entry for Construction Purposes, Lahaina, Maui, TMK: (2) 4-5-021: portion of 16.

Mr. Yada communicated Maui Electric Company, Ltd (MECO) and Verizon Hawaii, Inc is requesting an easement in order to upgrade services to the Lahiana Civic Center. The County needs to have the upgrade in service to the gymnasium installed before the end of October 2003 for the Maui Invitational Basketball Tournament therefore, MECO is requesting an immediate right of entry for construction purposes. Mr. Yada recommended the Board authorize the issuance of a perpetual non-exclusive easement to MECO and Verizon covering the subject area for utility purposes and also approve the issuance of a Right of Entry to MECO for construction purposes. Fred Oshiro of Maui Electric was present.

Unanimously approved as submitted (Yamamura/Johns).

Item D-11: Time Extension Request for Conservation District Use Permit HA-487A to Complete Construction of HELCO's Peaking Generation Station, TMK: (3) 7-3-49: 36.

Mr. Lemmo went over the history of this project. He reminded the Board on March 25, 2002 the Board granted Hawaiian Electric Light Company (HELCO) a time extension for three years (ending on December 31, 2003) to complete construction on improvements to the Keahole Generating Station. Construction on the project commenced on April 29, 2003, but was stopped on July 6, 2003 when the Circuit Court reversed the Board's decision. The decision is currently being appealed. In anticipation of the December 31, 2003 deadline, HELCO is requesting a time extension to complete the project should the courts permit construction to commence. Mr. Lemmo recommended the Board approve an extension of nineteen (19) months to complete project construction from the expiration of the current expiration period.

Robert Marx representing HELCO noted he concurred with staff's recommendation.

Unanimously approved as submitted (DeMello/Johns).

Item D-3: Sale of Portion of Keauhou Trail to Keauhou Resort Development Corporation, Keauhou 1st, North Kona, Hawaii, TMK: (3) 7-8-11: portion of Keauhou Trail (formerly portions of Parcels 08, 10 and 13).

Mr. Yada pointed out the land in question is part of the old Keauhou Trail that traverses Keauhou Resort Development Corporation's (KRDC) Bayview Estates at Keauhou Phase II. Although KRDC does not concede the State's ownership of the subject trail, they are willing to purchase the subject portion to clear any questions of title. KRDC has committed to connect the planned trail system with the Keauhou Trail's original historic alignment mauka of the Bayview Estates. Na Ala Hele staff together with their advisory council inspected the site and provided comments on a new trail that would be developed by KRDC around the Bayview II project. Staff is also recommending that KRDC be required to enter into a Memorandum of Agreement (MOA) with Na Ala Hele prior to conveyance of the remnant. Mr. Yada recommended the Board authorize the sale of the subject remnant to KRDC and also authorize the issuance of an immediate right-of-entry to KRDC.

Hannah Reeves spoke in opposition of a land exchange. She would like to preserve and protect old Hawaii including all of the trails. She feels the developers are destroying the trails in Hawaii.

Curt Cottrell of Na Ala Hele came forward to address the integrity of the trail. He feels the developer has been working in good faith and feels that entering into an MOA with KRDC will bind the developer to work with the Advisory Council in circumstances where the integrity of the trail is in question or any other questions relating to the trail. Mr. Cottrell noted the developer has a cultural advisory committee they have turned to for guidance. Their committee has supported the realignment of the trail.

Aileen Norman a descendant of Hokuleia and a member of Protect Keapuka Ohana came forward to testify against the sale and the purchase of the parcels involved. Ms. Norman noted her dissatisfaction with the Department devaluing the Keahou Trail making it seem

there is no value to the Hawaiian people. She told the Board she opposes the realignment, any impact or compromising of the trail in any way.

Francis Kauhani Vice President of Kamehameha Schools Investment Corporation came forward to testify that their cultural committee has given its approval to the alignment of the trail. He noted it was the idea of the committee to put in place a trail system that runs throughout Keahou.

Joe Spencer of Kamehameha Investment Corporation noted the resolution to realign the Keauhou Trail was drawn up by the Keauhou Cultural Advisory Committee.

Ruby McDonald of the Office of Hawaiian Affairs made it known she did not agree with moving the trail but after speaking with a kapuna from the area and her family who said it was okay to move the trail, she agree to the realignment. But as far as cultural integrity she cannot agree to the moving of the trail.

Unanimously approved as submitted (DeMello/Yamamura).

The Board took a break at 11:56 a.m. and resumed the meeting at 12:14 a.m.

Item D-15: Rescind Prior Board Action of March 22, 2002 (Agenda Item D-16) Amendment of Lease and Deferment of Lease Bond Requirement for General Lease Nos. S-5549, Kaunamano, Hamakua, TMK: (3) 4-4-01: 01, S-5551, Honokaia, Hamakua, TMK: (3) 4-6-03: 01, 02, 20, S-5553, Hauola, Hamakua, TMK: (3) 4-3-03: 02, 03, 04, 05, 06, 07, and S-5554, Lauka and Kulihai, Hamakua, TMK: (3) 4-6-01: 07, 08, 18, Hamakua-North Hilo Agriculture Cooperative, Lessee.

Mr. Yada informed the Board at its March 22, 2002 meeting the Board addressed the issue with regards to the loss of water at the four leases indicated above. At that meeting, the Board amended staff's recommendation to: 1) amend the leases by waiving the lease rent owned to the State for a two year period; 2) amend the lease by deleting the utilization provision in its entirety; 3) Require Mr. Bill Beach to report back to the Board within twelve months from the March 22, 2002 date on efforts to develop water contingency plans and 4) approve the deferral of the performance bond requirement to August 1, 2004. Regarding the issue of waiving lease rent, the Attorney General's Office determined the Board does not have the authority to waive lease rent therefore staff recommended amending the character of use to pasture only. This would significantly reduce the rent amount for a two-year period. Staff is also requesting the deletion of the full utilization provision in the lease. With regards to the performance bond, staff is requesting the Board maintain the requirement from the previous Board action. Mr. Yada recommended the Board rescind its prior actions of March 22, 2002, agenda item D-16 and approve the recommendations listed in staff's submittal.

Bill Beach President of the Coop testified before the Board and spoke of the endeavors the coop has taken part in. In the past year in a half the coop has worked to clarify their

objectives and move forward. They have learned to deal with their neighbors who lack the necessary resources while at the same time trying to realize their dreams. To do so the coop has provided help and the willingness to advise fellow farmers on what to do. Mr. Beach also spoke of the improvements that can be made to the water system to ensure water in drought conditions. They are encouraging individual farmers to have a reserve capacity of water for their crops. As far as the repairs on the ditch, the coop has just completed the first phase of repairs, which included repairs to seven flumes. In November they will begin work on the second phase, which calls for repairs to ten flumes. The year after, they will work on repairing about seven or eight more flumes.

Lori Beach Chairperson of the Finance committee went over changes the coop would like to make in regards to staff's recommendation: 1) In lieu of the two-year lease deferral that the Board provide a reduction in lease rents to the rate of \$8/acre effective from the date of the original deferral to July 1, 2004. This amount would be paid the DLNR no later than July 1, 2004; 2) That the 30% increase in lease rents be deferred from July 2003 to July 2004; 3) That the date for the completion of the bond requirement (equal to 2 years lease rent at the new rate of \$130/acre) be postponed until July 1, 2004; and 4) waive the late fees that have been charged during the lease deferral period.

The Board amended the Recommendation Section by:

1) **Amending Recommendation B to change the end date of the amended rent period from June 29, 2003 to June 29, 2004.**

2) **Amending last paragraph to Recommendation B:**

“Provided that within [~~two~~] twelve months of this Board date, HNHAC, specifically Mr. Beach, shall report back to the Board on efforts to develop water contingency plans and plans to become more self sufficient from impacts of droughts and problems with the Lower Hamakua Ditch, otherwise this lease amendment authorization shall be automatically rescinded.”

3) **Adding a new paragraph F to read as follows:**

“F. All late fees and interests that have accumulated due to the inability to implement the Board's last action based on the lack of statutory authority as determined by the Department of the Attorney General shall be waived.”

Unanimously approved as amended (DeMello/McCrory).

Item E-1: Request from the Helani Congregational Church to use the Old Kona Airport State Recreation Area in Kailua-Kona, Hawaii, for a Fundraiser Luau.

Dan Quinn Administrator for State Parks conveyed the Helani Congregational Church is requesting use of the Old Kona Airport Recreation Area to hold a Fundraiser Luau. The monies raised at this event will go towards repairing, renovating and installing a road and parking lot. The event is scheduled for March 20, 2004. He noted the applicant had some concerns with recommendations 1, 7 and 13. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the Helani Congregational Church to hold their fundraiser luau.

Kahu Meilani McComber representing Helani Congregational Church appeared before the Board. She informed the Board she was not able to review staff's recommendation until this morning therefore she cannot obligate the church to all of the conditions listed in the submittal.

The Board amended the Recommendation Section by:

- 1) **Deleting recommendation 1)**
- 2) **Amending recommendation 7) to read:**

“procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Special Use permit, commercial general liability insurance or alternative insurance, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii . . .”

Unanimously approved as amended (DeMello/Johns).

Item E-2: Request for Approval in Concept and Permission to Conduct Public Meetings to Discuss Camping and other Concession Agreements and/or Leases for Mauna Kea, Hapuna, and MacKenzie State Recreation Areas, Hawaii.

Mr. Quinn informed the Board in order to pursue alternatives to recreational opportunities, State Parks is exploring the possibility of expanding concession services in the parks. The proposal is to first discuss this issue with the community and if sufficient support is demonstrated a Request for Proposal will be prepared. Mr. Quinn recommended the Board approve, in concept, and grant permission to hold public meetings to discuss camping and other concession agreements and/or leases for Hapuna Beach, MacKenzie and Mauna Kea State Recreational Areas.

Unanimously approved as submitted (DeMello/Yamamura)

Item J-1: Request Approval to Rescind Prior Board Action of August 22, 2003, Agenda 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. Davidson reminded the Board approval was granted on August 22, 2003 to award a Construction Contract for Job No. 40-OB-45, Floating Dock "F" Replacement at the Ala Wai Small Boat Harbor to Hawaiian Dredging Construction Company. A low bid of \$858,000 submitted exceeded the available funding and a revised scope of work was negotiated to reduce the bid to \$750,000. Staff believes that due to significant changes to the scope of the work and changed circumstances the contract should go out to re-bid. Mr. Davidson recommended the Board rescind its prior Board action of August 22, 2003 under Item J-2 and authorize the Chairperson to re-solicit sealed proposals for the Replacement of Floating Dock "F", Ala Wai Small Boat Harbor.

Unanimously approved as submitted (Martyn/McCrory).

Item D-8: Cancellation of Revocable Permit No. S-7004, Gary Smith, Permittee, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02: 01.

Motion to Defer

Unanimously approved to Defer (McCrory/Johns).

Item D-9: Time Extension Request for Conservation District Use Application (CDUA) KA-2843 for the Construction of a Single-Family Residence, Applicant: Okada Trucking Company, Ltd. c/o Walton D.Y. Hong, Niumalu, Kauai, Hawaii, TMK: (4) 3-2-01: 01.

Motion to Defer

Unanimously approved to Defer (McCrory/Johns).

Item D-10: Request to Extend the Processing Period of an Additional 90 days for Conservation District Use Application (CDUA) HA-3124 (Board Permit) for Access and Utility Easement Across a 9,000 Square Foot State-Owned Right of Way Parcel, TMK: (3) 7-3-09: 03 and 16.

Mr. Lemmo informed the Board the applicant is currently in a contested case hearing mode and is requesting a 90-day time extension. At this point staff believes that all interests are best served by extending the CDUA processing period to allow the continuance of the Contested Case Hearing. Mr. Lemmo recommended the Board approve this request to extend the processing period for CDUA HA-3065 an additional 90-days to allow sufficient time to complete contested case hearing.

The Board amended the Recommendation Section to read as follows:

"That the Board of Land and Natural Resources approve this request to extend the processing period for CDUA HA-3065 an additional 90-days (to [January 25, 2003])"

February 25, 2004) to allow sufficient time to complete contested case hearing process.”

Unanimously approved as amended (Johns/Yamamura).

Item D-18: Issuance of Right-of-Entry Permit to the Department of Transportation, Highways Division, for its Queen Kaahumanu Highway Widening Project, Kealakehe to Keahuolu, North Kona, Hawaii, TMK: (3) 7-4-08: portion of Kealakehe Parkway; 7-4-08: portions of 03 & 58, 7-4-15: Road; and 7-4-20: portions of 02 & 07.

Mr. Yada went over the submittal and recommended the Board authorize the issuance of a right-of-entry permit to the Department of Transportation, Highways Division covering the subject area.

The Board amended the Recommendation Section by amending paragraph 2 to read as follows:

“2. The term of this right-of-entry shall [~~be for 29 months, commencing~~] commence on July 1, 2003, and [terminating on December 31, 2005, or] terminate upon execution of the set aside, whichever is sooner; [provided the Chairperson may grant additional extensions if needed;]”

Unanimously approved as amended (DeMello/Yamamura).

Item D-1: Amendment of Prior Board Action – Cancellation of Assignment and Reversion of Pipeline Easements to Mauna Kea Properties, Inc., Ouli, South Kohala, Hawaii, TMK: 3rd/6-2-13: 1, 2 & 4.

Item D-2: Grant of Perpetual, Non-Exclusive Easement to Water Board of the County of Hawaii, for Water Meter and Fire Hydrant Purposes, Konawaina Hawaiian Immersion School, Kalukalu, South Kona, Hawaii, TMK: 3rd/8-1-02: 038.

Item D-7: Amend Prior Board Action at its meeting of December 14, 2001 (Agenda Item D-6) After the Fact Grant of Perpetual, Non-Exclusive Easement to Housing and Community Development Corporation of Hawaii for Access and Utility Purposes, Management and Construction Right-of-Entry at Waiahole, Oahu, TMK: (1) 4-8-13: portion 1.

Item D-12: Consent to Assign General Lease No. S-4911, William K. and Mary K. Spencer, Assignor, to Charles Pa’u Spencer, Assignee, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24: 02.

Item D-14: Consent to Assign General Lease No. S-4896, Joseph Kahikilani Kaleikini, Sr., Assignor, to Joseph Kahikilani, Jr., Assignee,

Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24: 16.

Item D-16: Rescind Prior Board Action of June 14, 2002 (Agenda Item D-9) and Request for the Board's Approval of Amendment No. 1 to the Tri-Party Agreement, Dated November 30, 1984, Between the Department of Hawaiian Home Lands (DHHL), the Department of Transportation (DOT) and the Department of Land and Natural Resources (DLNR).

Mr. Yada briefed the Board and recommended approval on the above items as stated in staff's submittal.

Unanimously approved as submitted (Johns/DeMello).

Item L-1: Permission to Hire Consultants for State Parks TAT-Funded Projects

Mr. Quinn briefed the Board and recommended the Board authorize the hiring of consultants for the projects indicated in staff's submittal and authorize the Chairperson to sign the necessary documents pertaining to the individual projects.

Unanimously approved as submitted (Johns/DeMello).

Item M-1: Issuance of a Construction Right-of-Entry and Subsequent Direct Lease to Charles Salzberg, M.D., Upolu Airport, Island of Hawaii, TMK: (3) 5-5-06-7P.

Item M-2: Amendment No. 1 to Lease No. DOT-A-79-18, Paradise HB, Ltd., Honolulu International Airport, Oahu, TMK: (1) 1-1-72-5.

Item M-3: Consent to Sublease, Lease No DOT-A-79-18, Paradise HB, Ltd. to Pacific Air Cargo, LLC, Honolulu International Airport, Oahu, TMK: (1) 1-1-72-5P.

Item M-4: Consent to Sublease, Lease No. DOT-A-79-18, Paradise HB, Ltd. to Menlo Worldwide Forwarding Inc., Honolulu International Airport, Oahu, TMK: (1) 1-1-72-5P.

Item M-5: Consent to Sublease, Lease No. DOT-A-79-18, Paradise HB, LTD. to Bradley Pacific Aviation, Inc., Honolulu International Airport, Oahu, TMK: (1) 1-1-72-5P.

Item M-6: Issuance of Direct Lease, Together with a Construction Right-of-Entry to the Department of the Attorney General, State of Hawaii, at Pier 19, Honolulu Harbor, Oahu, TMK: (1) 1-1-03-1P.

Peter Garcia of the Department of Transportation briefed the Board and recommended the Board approve the items as stated in staff's submittal.

Unanimously approved as submitted (Johns/Martyn).

Item M-7: Consent to Sublease, Lease No. DOT-A-92-0011, Bar-K Inc., Ltd. to RTW Corporation, Honolulu International Airport, Oahu, TMK: (1) 1-1-72-12P.

Mr. Garcia briefed the Board on the item and recommended the Board authorize DOT to approve the sublease between BAR-K as Sublessor and RTW Corporation as Sublessee.

The Board amended the REMARKS Section to read:

“On February 20, 2001, by way of a Stipulated Order of Possession (SOOP), Civil Case No. 00-01361, BAR-K, Inc. was entitled to the status of lender-in-possession under Lease No. DOT-A-92-0011 (the “Lease”). The Lease was initially entered into on April 12, 1993 by and between DOT-A as Lessor and Circle Rainbow Air, Inc. (CRA) as Lessee. CRA defaulted on the Lease and Bar-K, Inc. assumed its role as lender-in-possession. The Lease is current and not in default.”

Unanimously approved as amended (Johns/Martyn).

There being no further business, Chairperson Young adjourned the meeting at 1:30 p.m.

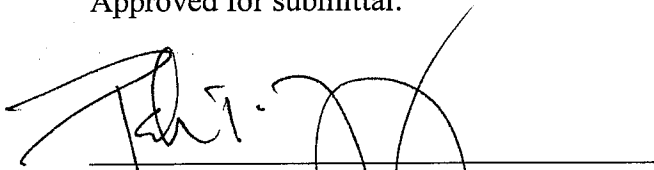
Tapes of the meeting and all written testimony submitted at the meeting is filed in the Chairperson's Office and is available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources