

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

DATE: FRIDAY, JANUARY 9, 2004
TIME: 9:00 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 9:13 a.m. The following were in attendance:

MEMBERS

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

Ms. Lynn McCrory
Ms. Kathy Inouye
Mr. Gerald DeMello

STAFF

Ms. Dede Mamiya, Land Division
Mr. Dan Quinn, State Parks
Michael Constantinides, DOFAW

Mr. Sam Lemmo, OCCL
Mr. Steve Molmen, DOBOR

OTHERS

Ms. Pamela Matsukawa, Deputy Attorney General
Mr. Sidney Fuke, D-1
Mr. Morton Bassan, D-18
Ms. Claudia Chaille, D-16
Mr. Mike Beason, D-13
Mr. Bill Chandler, D-11
Mr. David Bettencourt, D-12
Mr. Thomas Coop, D-12
Mr. Arthur Fong, D-12
Mr. Clay Goi, D-12
Mr. Aaron Rutledge, D-12
Mr. Wade Lee, D-17

Mr. Freddy Rice, D-9
Mr. Ed Boteilho, D-21
Mr. Tim Meixell, D-16
Mr. Ben Tsukazaki, D-11
Mr. Robert Slank, D-11
Mr. Clyde Aikau, D-12
Mr. Shawn Coop, D-12
Mr. Fletcher Miranda, D-12
Mr. Gary Levitin, D-12
Mr. Danton Wong, D-17

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

Item A-1: Minutes of December 12, 2003

The following changes were made:

Page 13, fifth paragraph, eight line

“closing, Mr. [~~Andrews~~] Evans asked the Board to amend staff’s submittal and grant the existing permittees a one-year extension . . .”

Unanimously approved as amended (McCrorry/Johns).

Item D-23: Conservation District Use Application for After-the Fact Improvements to a Jeep Road, Associated Tree Removal and Erosion Control, Applicant: Chandi Duke Heffner c/o Perry White, Planning Solutions, North Kohala, Hawaii, Tax Map Key: (3) 5-8-001:009 (portion).

Motion to Defer

Unanimously approved to defer (Johns/McCrorry).

Item D-1: Sale of Road Right-of-Way to County of Hawaii, Makaula-Ooma-1st, North Kona, Hawaii, Tax Map Key (3) 7-3-10:portion of 6.

Ms. Mamiya Administrator of the Land Division informed the Board Westpro Development, Inc. has proposed to develop the Lokahi Subdivision, which is a residential subdivision in North Kona. One of the proposed access roads was found to be within the adjacent State owned parcel. Westpro intends to develop the extension of the subdivision road then dedicated the right-of-way to the County of Hawaii. The sale of the land will be to the County of Hawaii but Westpro Development, Inc. will be responsible for the applicant’s requirements. Ms. Mamiya recommended the Board authorize the conveyance of a 60-foot wide road right of way to the County of Hawaii and an immediate construction right-of-entry to Westpro Development, Inc.

Sidney Fuke representing the County of Hawaii and Westpro Development was present to answer any questions.

Unanimously approved as submitted (Demello/Yamamura).

Item D-9: Consent to Assign General Lease No. S-5373, Palekoki Ranch, Inc., Assignor, to Harold F. Rice Jr., dba FR Cattle Co., Assignee, Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-6-01:02.

Ms. Mamiya made it known this was a consent of a pasture lease from Palekoki Ranch, Inc. to Harold F. Rice Jr. Currently this pasture lease expires in 2029. Mr. Harold Rice

is a fifth generation rancher who presently owns 1,100 beef-breeding cows with annual sales of \$280,000.00 therefore staff feels he is qualified to take over this lease. She recommended the Board consent to the assignment of General Lease No. S-5373 from Palekoki Ranch, Inc. to Harold F. Rice Jr.

Mr. Freddy Rice was present to answer any questions

Unanimously approved as submitted (DeMello/Johns).

Item D-18: Sale of Road Right-of-Way to County of Hawaii, Kiolakaa-Keaa Homestead Lots, at Nukakaia & Puumakaa, Kau, Hawaii, Tax Map Key: 3rd/9-4-005:001.

Ms. Mamiya pointed out there was a portion of the homestead road that existed on paper but was never fully developed. In lieu of that road alignment there is an actual road that runs along the western boundary but is not an official right-of-way. Mr. Morton Bassan, the adjacent land owner approached the Department requesting an easement over this actual road way as part of his subdivision with the county. Staff suggested the parcel be dedicated to the County of Hawaii that way Mr. Bassan would not need an easement from the state. Ms. Mamiya recommended the Board authorize the conveyance of a 50-foot wide road right-or-way, an immediate construction right-of-entry to Mr. Morton E. Bassan Jr. and acceptance of a quitclaim deed for the paper portion of the homestead road alignment.

Morton Bassan was present at the meeting.

Unanimously approved as submitted (DeMello/Johns).

Item D-21: Consent to Mortgage and Extension of Lease Term, General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., Lessee, Kaohe II, Hamakua, Hawaii, Tax Map Key: 3rd/4-3-10:02.

Ms. Mamiya reminded the Board this was one of the leases that was involved in the Saddle Road Improvement Project in which approximately 2200 acres pf the leased lands were placed into Conservation lands which limited the type of use. As a condition of the Board action, the Board agreed in principle to extend the terms of the lease in accordance with the provisions of Section 171-36(b) HRS to assist in compensating the lessee for the lands withdrawn. Mr. Boteilho is now indicating a need to construct a reservoir on the property to accommodate his cattle operation. To qualify for the financing of the reservoir, the Farm Credit Services of Hawaii is requesting a twenty-year extension of his lease. Mr. Boteilho is in compliance with all lease terms and conditions therefore Ms. Mamiya is recommending the Board consent to the mortgage between Boteilho Hawaii Enterprises, Inc, and Farm Credit Services of Hawaii and authorize the extension of General Lease No. S-4478.

Ed Boteilho representing Boteilho Hawaii Enterprises was present.

Unanimously approved as submitted (DeMello/Johns).

Item D-16: Consent to Assign General Lease No. S-3776, Claudia M. Chaille and Angela Chaille Meixell, Assignors, to Claudia M. Chaille, Angela Chaille Meixell and Timothy J. Meixell, Assignees, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-24:12.

Ms. Mamiya communicated the applicant is requesting to add Timothy J. Meixell to the lease by way of consent to assignment. Staff feels Mr. Meixell is qualified to hold this lease. The applicant is currently in compliance with the terms and conditions of this lease. Ms. Mamiya recommended the Board consent to the assignment of General Lease No. S-3776.

Claudia Chaille and Tim Meixell were present.

Unanimously approved as submitted (Inouye/DeMello).

Item D-13: Conservation District Use Application for the County of Hawaii Police Department Microwave Radio Upgrade Project, Island of Hawaii, TMK: (3) 7-2-07:01, 7-4-20:21, 9-1-01:03, 9-9-01:24.

Sam Lemmo Administrator of the Office of Conservation and Coastal Lands (OCCL) conveyed the proposed project involves improvements at four (4) existing telecommunications sites in the Conservation District on the Big Island. The proposed improvements are part of an island wide network upgrade, which includes a total of 18 sites. It was determined in 1995 after an assessment of the system was completed that there were many deficiencies and the system lacked expansion capacity for the future. The four sites in the conservation district are Moanuahea, the Kailua Police Station, Kauna Point and Kulani Cone. At the Moanuahea site the County plans to replace the existing analog system with a new digital radio equipment, install an equipment shelter, install a 80 feet lattice tower and refurbishing the existing emergency generator and install four to six propane fuel tanks. At the Kailua Police Station the County plans to replace the existing analog system with a new digital radio equipment, antennas and support structure. The Kauna Point site, which is located in Manuka State Park near Kaikekua point. The County plans for this site includes replacement of the existing analog system with a new digital radio system, replace the dish antennas and refurbish the equipment shelter, solar panels, emergency generators and lattice tower. They also plan to install four to six propane fuel tanks. The last site at Kulani Cone, the County plans to replace the existing analog radio system with a digital system, install an equipment shelter with an enclosed emergency generator, install a 250 feet lattice tower with microwave antennas and install six (6) propane fuel tanks. Due to the height of this tower, under FAA regulations the tower will be lighted. Hearings on this matter were held in Hilo and Kona and no one testified. In terms of impact to natural resources there would be some impact to birds. In the final Environmental Assessment (EA) showed the project should not impact birds since the birds do not frequent these areas. Mr. Lemmo recommended the Board approve the proposed digital microwave radio

telecommunications upgrades at the four locations subject to the conditions listed in the submittal.

Mike Beason representing Major Osorio informed the Board the tower located at Kulani will have a flashing light which will be either red or white. As far as the color of the tower the FAA does not require the tower to be painted. Mr. Beason asked the board to remove condition 17) as three of the towers are in remote areas and the fourth will be located next to galvanized structures. With regards to collocation of telecommunication equipment, Mr. Beason made it known that collocation has already taken place.

The Board amended the Recommendation Section by deleting paragraph 17 in its entirety and renumbering the remaining paragraphs.

Unanimously approved as amended (DeMello/Johns).

Item D-14: Conservation District Use Application for the Construction of a New Pier, Michael A. Pietsch, East Honolulu, Oahu, TMK: Seaward of (1) 3-6-01:22.

Mr. Lemmo indicated the project is located on the Wailupe Peninsula on the southeastern shore of Oahu. The proposed use of the project is to build a wood/fiber reinforced plastic pier and an associated concrete footing similar to that of adjacent property owners. The pier will be approximately 27 feet long and 10 feet wide, the top deck will be approximately 5.6 feet above sea level. The pier will be supported by one concrete piling on a rectangular concrete footing embedded 8 inches into the reef substrate and also by the rock seawall at the shoreward end. The total area of the proposed pier is approximately 295 square feet. The applicant indicated he would like to implement three (3) mitigation measures for the pier construction: 1) Pier footing; 2) Modification of Rock Seawall; and 3) Adjacent property owners. Comments were solicited from various agencies. The Division of Aquatic Resources (DAR) felt the proposed pier should be made available for public use and the public notified with a signed posted on the pier. Staff made inquires into this comment and found that Act 261, SLH 2000, deleted the requirement to post signs on piers to allow for public use. Lastly, Mr. Lemmo noted an anonymous letter was received from a neighbor asking the department not to grant permission to Mr. Pietsch for construction of a pier. The letter noted a pier for residence use was located not far from the Pietsch residence. In closing Mr. Lemmo has determined the proposed project is consistent with the existing residential development in the surrounding neighborhood and the Kuliouou/Kalani Iki Neighborhood Board had no objections to the pier construction. Mr. Lemmo recommended the Board approve the construction of the Pietsch recreational Pier subject to the conditions listed in the submittal.

The Board had concerns with the anonymous letter received especially since the writer was not willing to indicate his/her name. The Board questioned whether future submittals should include anonymous letters.

Unanimously approved as submitted (Inouye/McCrory).

Item D-15: Issuance of Direct Lease to Michael A. Pietsch and Judy B. Pietsch for private non-commercial pier purposes, Wailupe, Honolulu, Oahu, TMK: 3-6-1:22 seaward.

Ms. Mamiya communicated this item is related to the previous item. In this submittal the Pietsch's are requesting the Board's approval to construct a pier. At the September 12, 2003 Board meeting this item was withdrawn when it was found that the applicant's seawall encroached onto State lands. Based on the Kaneohe Bay Pier Amnesty Program methodology, the applicant has submitted the required deposit of which includes the estimated consideration, document and map fees. Ms. Mamiya recommended the Board authorize the issuance of a direct lease to Michael A. Pietsch and Judy B. Pietsch covering the subject area.

Michael Pietsch was present to answer any questions.

The Board mentioned making the seawall easement and pier lease co-terminus.

The Board thanked the applicant for making the extra effort by going to the neighborhood Board and getting their approval.

Unanimously approved as submitted (Inouye/McCrory).

Item D-11: Conservation District Enforcement File No. OA-04-11 Regarding Unauthorized Grubbing and Grading, Unauthorized Soil Extraction; and an Unauthorized Dirt Road, O. William and Joyce A Chandler, Kaneohe, Oahu, Tax Map Key: (1) 4-4-017:111 & 4-4-017:112.

Mr. Lemmo reminded the Board on June 27, 2003 the Board found the alleged in violation of three (3) instances in Enforcement case OA-03-30 for grubbing and grading, driveway and parking area construction and gravel driveway construction. The alleged was to: 1) pay a violation and administrative fine of \$7000; 2) submit a structural engineer's report to determine if the cut slope gunite wall was structurally sound; and 3) recommend a remediation/stabilization plan for all of the unauthorized improvements. On July 31, 2003 staff received a complaint of on going work at the same site. The Division of Conservation and Resource Enforcement (DOCARE) inspected the site and although no work was ongoing at the time, heavy equipment was on site and there were signs of recent grading and excavation activities. There were also clear indications a dirt road was constructed to allow heavy equipment access onto TMK 112. On August 5, 2003 DOCARE issued a Cease and Desist Notice to the alleged and counsel. Staff is particularly concerned with this case in that it appears that the violations are flagrant and willful in nature.

Pursuant to the Board's previous order the alleged submitted a remediation plan on November 24, 2003 for Enforcement Case OA-04-11 which also addressed the current

violations. Staff feels the remediation plan allows the alleged to do what they would have originally done in the Conservation District after the Single Family Residence was built. Mr. Lemmo feels the alleged did not explore other alternatives and options for remediation of the area. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C HRS and Chapter 13-5 Hawaii Administrative Rules and is subject to the recommendations in staff's submittal.

The Board had a discussion with regards to the letter written by Mr. Robert Slank (stating it was solely the contractors decision to decide where the cut in the land was made) and also the grading of the illegal dirt road.

Ben Tsukazaki attorney representing the Bill and Joyce Chandler testified before the Board. Mr. Tsukazaki told the Board he was outraged with Mr. Lemmo's presentation. He feels the information given by Mr. Lemmo is ninety (90) percent false. Mr. Tsukazaki informed the Board access for the excavator was done through the urban district on to the site where the Single Family Residence (SFR) is being built. Mr. Tsukazaki circulated a map and explained the Chandler's account of how the excavator accessed the SFR. He went on to say the tractor operator went into the conservation district to pull in earth to make the house pad. Mr. Tsukazaki assured the Board his client did not construct the dirt road with the intention of using it to access the SFR. He informed the Board his clients acknowledge the violations and intends to remediate the area and pay a fine but he feels the fine staff is recommending are way out of line and illegal. He made it known if the Board follows through will staff's recommendation the Chandler's only option would be to ask for a contested case hearing. Addressing the recent violation, Mr. Tsukazaki feels this action is a not a result of the previous Board action but a new and separate violation. He was under the impression the previous Board action did not prevent his client from doing further work on their SFR.

Addressing the issue of the Conservation District boundary, Mr. Tsukazaki told the Board his clients knew where the boundary was. He informed the Board before Mr. Chandler went on his trip he informed Mr. Slank where the Conservation District was and told him not to cross that line. Mr. Chandler also flagged the Conservation District. With these points in mind Mr. Tsukazaki feels the violation committed was not willful and flaggerent. Mr. Tsukazaki believes his client should be fined \$4000 for two days (July 30-31) of work done in the Conservation District. He also reminded the Board Mr. Chandler's intends on filing a Conservation District Use Application for the original improvements that were found to be in violation of the Department's rule.

Robert Slank a licensed contractor came forward to testify. He made it known Mr. Chandler hired him as a consultant not a contractor. Mr. Chandler is serving as his own general contractor. Mr. Slank confirmed that the Conservation District boundary was flagged. He told the Board he had a discussion with Mr. Chandler regarding using the Conservation District area to access the site of the proposed SFR. Mr. Chandler also told him he would be seeking permission from the Department to access his SFR from above (in the Conservation District). After completion of the house pad, Mr. Slank instructed the excavator operator to grade a ramp from the bottom portion of the SFR to the upper

level. With regards to grading in the Conservation District Mr. Slank notes it was the operators decision. Mr. Slank went on to tell the Board the amount of digging that took place in the Conservation District would probably not fill a pick-up truck. He told the Board the area of the violation in Conservation District was 15' x 10'.

Bill Chandler the owner builder of the SFR appeared before the Board. He informed the Board he has a soil engineer but they are currently using a older soil report. At the present time the soil engineer has not issued a new soil report. Mr. Chandler told the Board he feels the area of impact in the Conservation District was 50'-60' x 8'-9'. Mr. Chandler communicated he intended to access the new SFR from below the house. He notes this access was created before the road in the Conservation District. Mr. Chandler notes it was the equipment operators' decision to create an access road in the Conservation District.

Motion made at 11:04 a.m. by Member Johns and second by Member McCrory to move into Executive Session to discuss legal matters pertaining to the above item.

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

The meeting resumed at 11:50 a.m.

The Board amended:

1) **The Findings Section by amending paragraph 1 to read as follows:**

"1. That the alleged did in fact, authorize, cause or allow three (3) separate unauthorized land uses (grubbing activity [~~and grading~~], soil extraction, and grading of a dirt road) to occur;"

2) **The Recommendation Section to read as follows:**

"That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board find the landowner in violation of Chapter 183C HRS and Chapter 13-5 Hawaii Administrative Rules (HAR), and is subject to the following:

1. **The alleged violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR)[~~by continued unauthorized work in the Conservation District after the BLNR's June 27, 2003 action~~]. The alleged is fined \$2000 per [~~day from June 28, 2003 to August 5, 2003~~] violation for a total of [~~78,000~~] \$6,000;**
2. **The alleged is fined an additional \$2,000 for administrative costs associated with the subject violations (\$1,000 DOCARE and \$1000**

OCCL staff);

3. The alleged shall pay all fines (total [~~\$80,000~~] \$8,000) within [~~thirty (30)~~] sixty (60) days of the date of the Board's action;
- ~~[4. Conditions 3, 4, and 5 of the BLNR's June 27, 2003 action are rescinded; instead the alleged shall be subject to conditions 6, 7 & 8 of this report;]~~
- ~~[6]~~4. The alleged shall at his own expense, submit a remediation/restoration plan for both subject parcels to the OCCL, within thirty (30) days of the date of the Board's action. The alleged will [~~remove the concrete, gravel and dirt roads,~~] restore all road cuts and vegetate the land for the unauthorized improvements hillsides and roads on subject parcel TMK 111 and TMK 112, with the intent of restoring the land back to its original condition;
- ~~[7]~~5. Upon approval of the remediation/restoration plan by the Chairperson, the alleged, at his own expense, shall implement the approved remediation/restoration plan; and will restore the land within the Conservation District to a condition suitable to the chairperson within forty-five (45) days of the department's approval of the plan;
- ~~[8]~~6. DOCARE will conduct a site inspection after seventy-five (75) days to verify that Condition 7 has been met;
- ~~[9]~~7. No further work shall occur on the subject parcels within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District portions of both subject parcels without approval; the alleged will be fined an additional \$2,000 a day;
- ~~[10]~~8. That in the event of failure of the alleged to comply with any order herein, the alleged shall be fined an additional \$2,000 per day until the order is complied with; and
- ~~[11]~~9. That in the event of failure of the alleged or the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.
10. All existing violations shall be remediated before submission of a Conservation District Use Application."

Unanimously approved as amended (Inouye/McCrory).

Item D-12: RESUBMITTAL – Cancellation of Revocable Permit No. S-5501; Sale of Concession by Sealed Bids for Beach Services at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021.

Ms. Mamiya reminded the Board this submittal was presented to the Board back in September but the item was deferred. The Board instructed staff to work with the existing permittee (C & K Beach Services) on a direct concession for the purpose of preserving the beach boy tradition. Following the meeting staff met with Clyde Aikau and his attorney David Bettencourt. In December Mr. Bettencourt submitted a proposal for a new beach concession and he also informed staff they have formed a new entity, "Hawaiian Beach Boy Preservation Foundation" which is a non-profit organization. Since the last board meeting staff has received letters from other interested groups who desire to bid on the Duke Kahanamoku concession contract. One of the interested group, Star Beach Boys objected to the confusion over the Board meeting date (

Since the last meeting staff has attempted to find out the intent of the exemption in Section 102-2 HRS. Searching the archives staff could find no reference to the intent of the "beach boy tradition." Ms. Mamiya went on to describe how the County of Honolulu went about issuing permits at Kuhio Beach and the amount the concessionaires paid for the lease: Palekaiko Beach Services (non-profit) \$1750 per month, C & K Beach Services \$8150 per month and Pacific Beach Services \$12,000 per month. Ms. Mamiya recommended the Board authorize the sale of a concession contract by sealed bid within the subject area for beach services and cancel Revocable Permit No. S-5501 to C & K Beach Services upon the execution of the new beach concession contract.

The Board had concerns with the amount C & K Beach Services (C & K) was paying for the beach concession as compared to what the city concessionaires on Kuhio beach were paying. The Board asked Ms. Mamiya why couldn't the State issue 5 permits for Duke Kahanamoku Beach like it was done in the past. Ms. Mamiya informed the Board if the state were to allow more than one concession on the beach an Environmental Assessment would need to be completed.

David Bettencourt, attorney representing C & K conveyed the State started with four (4) vendors at Duke Kahanamoku Beach but for various reasons C & K was the only company that survived. Mr. Bettencourt questioned whether a bid process generated a level playing field for all companies. He feels the Department should make sure the vendors are qualified to run a beach concession. Mr. Bettencourt made it known C & K has provided medical and dental benefits for its employees. Also since they have been trying to establish a training program for Hawaiians, C & K (which is a for profit organization) has formed a new company "Hawaiian Beach boy Preservation Foundation" with the sole purpose of implementing an apprenticeship program. Mr. Bettencourt went on to say the new foundation is a 501C (3) company, which states the company must have a public purpose. Their goal is to help individuals operate their own business on the beach. Addressing the Board's concern with the amount of rent charged,

Mr. Bettencourt noted there is a lot less traffic on Duke Kahanamoku Beach as compared to Kuhio Beach and that's why their rent is lower.

Clyde Aikau owner and operator of C & K Beach services testified. He made in known in 1995 the City issued the first non-profit beach concession which opened on the beach in Waikiki the group was called the Hawaii Beach Boy Service Association. In 1995 they paid \$100 rent per month. Due to differing view points in 1998-99 another non-profit group Palikaiko applied and won the city permit. Mr. Aikau pointed this out to show it has not been an easy road for getting beach concessions. Mr. Aikau went on to say he disagrees with what Barry Cheung is saying with regards to his newly formed organization, Hawaiian Beach boy Preservation Foundation. He contends his organization is "not like other organizations." In terms of personality, character and qualifications it is like comparing apples and oranges. He informed the Board he has worked with staff and come up with a plan for his organization to continue operating on the beach. Mr. Aikau spoke of the free lifeguard services they have provided in front of the Hilton Hotel for the last twenty (20) years at no cost to the City or State. Also his company has been there for the "at risk" children of the area.

Mr. Bettencourt told the Board a lottery system for the beach concession permit would not work because individuals will be able to manipulate the system. He pointed out that different individuals from the same organization could put in a request for a permit using different names thereby increasing their chances of receiving a permit. Also placing the permit out to bid would create an unfair advantage for for-profit companies and a disadvantage for non-profit companies.

Thomas J. Coop founder and director of Palekaiko Beach Service a tax exempt organization whose purpose is to perpetuate the tradition of the Hawaiian beach boy testified. He spoke of companies that created a profit and a non-profit organization in order to take advantage of situations. Since 1998, Mr. Coop has twice turned in an application for a beach concession at Duke Kahanamoku Beach and twice he was told there was no room. At that time C & K and another vendor occupied the concession stand at Duke Kahanamoku Beach. Due to a violation in not paying taxes one of the existing permit holder's permit was terminated and Mr. Coop hoped to get that space. He approached staff regarding a permit for the subject area but was told C & K and Waikiki Beach Activities a vendor of the Hilton Hawaiian Village had the two available permits for the area. Mr. Coop claims since 1998 Waikiki Beach Activities have been using public lands for commercial purposes without compensating the State. He estimates the amount of revenue generated per year by C & K and Waikiki Beach Service is between 1.5 - 2 million dollars a year. Mr. Coop feels the Board should put out to bid the space occupied by Waikiki Beach Activities and well as C & K. Therefore one spot could go to a for profit organization while the other space would go to a non-profit organization. When asked by the Board his definition of a beach boy, Mr. Coop replied it is someone that works the beach everyday. In closing Mr. Coop told the Board he is in favor of staff's recommendation.

Shawn Coop of Palekaiko Beach Service informed the Board the ideal length of a concession permit would be 5-8 years. Given that amount of time the company would be able to recoup their investment and make some profit. In trying to define the term "beach boy," Mr. Coop communicated a beach boy encompasses a lot of things. Basically a beach boy is someone that provides the aloha spirit, the giving back to the community. The "beach boys" that work at Palekaiko are licensed by the Department, have a CPR license and be certified to provide surf lessons in Waikiki.

Arthur Fong an attorney came forward to testify. He conveyed to those present under the concession law permits must go out to bid. One exception to the rule is Section 8 that provides an exemption for "preserving the beach boy tradition." He questioned what is a beach boy and what is their tradition. No one knows. Mr. Fong went on to question the requirement in the exemption act that states the company must be "licensed or certified by law to provide the appropriate services." He notes there is no State organization that license or certifies those individuals operating on the beach. Mr. Fong informed the Board concession law allows permits to go out to the highest bidder who has the experience and the financial capabilities. He questioned Mr. Aikau's claim that his company provides health, TDI and overtime benefits to his employees. In closing Mr. Fong noted his agreement with staff recommendation. He feels the State should get the highest amount of revenue consistent with the law.

Fletcher Miranda an owner, operator and beach boy for the past twenty (20) years testified in support of staff's recommendation. In the past he has worked with C & K at both the Duke Kahanamoku Beach and Kuhio Beach. At the present time he feels the State should allow everyone interested in applying for the concession permit at Duke Kahanamoku Beach to do so. He spoke of an illegal beach operation operated by Waikiki Beach Services on the beach fronting the Hilton Hotel. When asked by the Board how long the term of a concession permit should be, Mr. Miranda replied five to eight years. Also experience and financial resources should be taken into account when issuing a permit.

Clay Goi a beach boy and captain came forward to testify in support of staff's recommendation. Mr. Goi feels the concession permit should go out to bid thereby giving everyone a fair chance. In trying to address what a beach boy is Mr. Goi went on to say he is a man that gives a lot of aloha (which is overlooked today) to people. He informed the Board he believes the term of the concession permit should be between five and eight years.

Gary Levitin appeared on behalf of Star Beach Boys and Waikiki All Star Beach Boys. He spoke in favor of staff's recommendation and told the Board he feels the permit should run for five to eight years (he prefers five over eight years). He informed the Board his company would be willing to go through the Environmental Assessment process in order to put more vendors on the beach. In closing he asked the Board to take into consideration a company's experience and financial ability when issuing the permit.

Aaron Rutledge of Star Beach Boys came forward and recommended the Board put the permit out to public bid. He feels if someone cannot come up with the agreed upon rent a restriction should be placed in their contract that allowed the State to remove the company within 30 days and replace it with the next highest bidder.

Motion made at 1:42 p.m. by Member Johns and second by Member McCrory to move into Executive Session to discuss the applicability of the “preservation of the beach boy tradition” statue.

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

The meeting was resumed at 2:14 p.m.

The Board amended paragraph 3 of the Recommendation Section to read as follows:

"3. Cancel Revocable Permit No. S-5501 to C & K Beach Services upon the execution of the new beach concession contract. The revocable permit rent shall be re-evaluated at fair market rent within 60 days."

Unanimously approved as amended (Inouye/McCrory).

Member Johns noted his concern over the “preservation of the beach boy tradition” but is confident the process established by the Department will achieve that goal.

Item D-3: Approval in Principle of Sale of Lease at Public Auction for Commercial Purposes, Waikiki, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 2-7-36:04 and 16.

Ms. Mamiya noted this Board action is merely a request to seek approval in principle to sell the subject lease at public auction. Currently the property is under two (2) revocable permits for use as parking lot purposes. The permits generate an annual rent revenue of \$15,000. Staff feels they would be able to rezone the land from R-5 (residential) to B-2 (commercial). A study of the parcel concluded that commercial use is the highest and best use of the property and project annual lease rent ranging from \$148,000 to \$156,000. DLNR has retained a consultant to prepare and process and Environmental Assessment of the area. Staff will return to the Board once the property is rezoned to a commercial zoning district. Ms. Mamiya recommended the Board approve in principle the sale of a lease at public auction covering the subject area for business or commercial purposes.

Michelle Matson a member of the Diamond Head neighborhood board told the board the only thing the area needs more than a community center is centralized parking. Parking is essential for the surrounding business. In the past business have closed due to the lack of parking area.

Unanimously approved as submitted (Inouye/McCrory).

Item D-17: Conservation District Enforcement File HA-03-34 Regarding Unauthorized Logging of 135 Koa Trees, Unauthorized Destruction of Two (2) Ohia Trees, Unauthorized Grubbing and Grading and Unauthorized Skid/Haul Road Construction, Koa Timber and Hawaii Forest Preservation, LLC., Papaikou and Paukaa Districts, Hawaii, Tax Map Key: (3) 2-7-001:001.

Mr. Lemmo indicated his office received a complaint regarding unauthorized activities on the subject parcel. On two occasions staff from the Division of Forestry and Wildlife (DOFAW) went out to the site to investigate and returned with detailed survey results. Based on those results Mr. Lemmo recommended the Board find that the alleged (landowner) is in violation of Chapter 183C, HRS and Chapter 13-5, HAR and subject to the conditions listed in staff's submittal.

Mr. Lemmo made it known the landowner has a pending Conservation District Use Permit (CDUP), which is currently held in abeyance until this matter can be resolved. The CDUP is for sustainable harvesting of koa trees (including the area in question).

Danton Wong representing Koa Timber and Hawaii Forest Preservation LLC brought out a map of the area in question and explained to the Board in Koa Timber's efforts to find the Y fork in the river (which denotes the Conservation District boundary) the mistakenly found a different Y fork in the river. Koa Timber logged the areas downward of the Y fork they found, believing everything above the fork was in the Conservation District. Mr. Wong communicated his client has a pending CDUA with the department and as part of the CDUA process his client will do a forestry management plan. He noted a final Environmental Impact Statement (EIS) was completed and filed with the department but his client choose to pull the EIS (on July 2003) due to concerns raised by DOFAW and the U.S. Fish and Wildlife Service. Mr. Wong anticipates re-filing the EIS in the next 6-9 months. Addressing the issue of the habitat restoration plan, Mr. Wong asked that it be tied in with the CDUA and that the Board allow his client nine (9) months to submit the habitat restoration plan. In closing Mr. Wong indicated his client does not contest the fines but asked the Board to allow his client to pay the fines over a period of five months.

Wade Lee a biologist working on this project came before the Board and showed pictures of the area in question. He went on to show one of the thirty regeneration plots he has started in the area where the koa trees were removed. He notes in the regeneration plots he is averaging thirty-six (36) koa trees for every one koa tree removed.

Mr. Wong told the Board his wish list today would be for the Board to allow his client to off set the amount of the habitat restoration plan against the fines. Mr. Wong had concerns with the cost of the restoration plan.

Michael Constantinides Forester with the Division of Forestry and Wildlife indicated he believed a reasonable time frame to come up with a habitat restoration plan for thirteen (13) acres of land would be two (2) months. Mr. Constantinides told the Board responsible management of the lands would dictate that individuals know their location

prior to initiating any activities. He agrees with the Board that there should be outright disincentives for any violations that can not be off set by mitigation work. To address Mr. Wong question with regards to the cost of the habitat restoration plan, Mr. Constantinides proposed placing a cap of \$20,000 for the habitat restoration plan. As part of the restoration plan he hopes to facilitate the release of koa seedlings and decrease the competition for its survival. He feels it is an unlikely scenario that they will need to plant koa seedlings.

Mr. Wong asked for a few minutes to confer with his team.

Item D-7: Rescind Land Board Approval of 2/25/00, Item D-13, Cancellation of Revocable Permit No. S-7089 and Issuance of Revocable Permit to Ross K. Fernandez, Por. of Kekaha, Waimea, Kauai, Tax Map Key (4) 1-2-02:por.32 (Lots B & C).

Motion to Withdraw

Unanimously approved to withdraw (McCrorry/DeMello).

Item D-22: Conservation District Use Application to Develop a Telecommunications Facility at the U.S. Navy Pacific Missile Range Facility, Applicant: Nextel Partner, Inc. c/o Collette Sakoda Environmental Planning Solutions, LLC, Kekaha, Waimea, Kauai, TMK: (4) 1-2-002:013 & 026.

Ms. Mamiya briefed the Board and recommended approval of the above item.

Unanimously approved as submitted (McCrorry/Inouye).

Item D-2: Cancellation of Governor's Executive Order No. 0335 and Reset Aside to City and County of Honolulu for Fire Department Headquarters, Museum, Hook and Ladder Building and Allied Purposes, Honuakaha, Honolulu, Oahu, Tax Map Key: (1) 2-1-31: por. 18.

Item D-4: Grant of Term Non-Exclusive Easement to BJ Management Corp. for Seawall Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-21:11 seaward.

Item D-5: Issuance of Land Patent in Confirmation of Land Commission Award 9556 to Kealoha, situated at Makapala, District of Kohala Island of Hawaii, Tax Map Key: (3) 5-2-01:14 portion.

Item D-6: Sale of Remnant to the Edwin A.L. Ung and Yoshie O. Ung Revocable Trust, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-17: Railroad Right-of-Way.

- Item D-8:** Grant of Perpetual, Non-Exclusive Easement to the Department of Defense, Hawaii State Civil Defense for Civil Defense Warning Siren Purposes, together with a Construction Right of Entry to the Department of Accounting and General Services for Immediate Installation, Kahakuloa, Wailuku, Maui, Tax Map Key: (2) 3-1-02:por.02.
- Item D-10:** Consent to Assign Grant to Easement Bearing GL No S-4389, Elsie Nancy Perez, Assignor, to Anderson Leroy Perry, Assignee, Lawai, Kauai, Tax Map Key: (4) 2-5-02.
- Item D-19:** Amend Prior Board Action of March 9, 2001 (Agenda Item D-1) for Issuance of Perpetual, Non-Exclusive Easement; Issuance of Management and Construction Right-of-Entry to Board of Water Supply for Water Transmission Pipeline Purposes, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-16:108.
- Item D-20:** Grant to Two Perpetual, Non-Exclusive Easements to Christine Feeter for Access and Utility Purposes, Pukoo, Molokai, Tax Map Key: (2) 5-7-007: por. 006.

Ms. Mamiya briefed the Board and recommended approval of the above items as stated in staff's submittal.

Unanimously approved as submitted (Johns/DeMello).

- Item E-1:** Request to Write-Off Uncollectible Accounts, Hawaii.
- Item E-2:** Approval to Extend Revocable Permit 02-01 to Lanihuli Community Development Corporation (formerly known as Friends of Malaekahana) on a Month-to-Month Permit.

Dan Quinn administrator for State Parks appeared before the Board and recommended they approve the above item as noted in the submittal.

Unanimously approved as submitted (McCrorry/DeMello).

- Item J-1:** Cancellation of Revocable Permit B-93-41 to Hula Dog, a Hawaii General Partnership, located at the Ala Wai Boat Harbor, Island of Oahu, Hawaii; Request for Authorization to Issue by Sealed Bid a New Revocable Permit.
- Item J-2:** Cancellation of Revocable Permit B-98-04 to Ao Shibi, Inc. and Issuance of Revocable Permit to Ao Shibi, Inc. and KCII Fishing Company, Inc., separately for dry dock storage situated at the Honokohau Small Boat Harbor, Island of Hawaii.

Item J-3: Kona Fuel and Marine, Inc. Request to Extend Cure Period on Notices of Default dated August 8, 2003 and September 10, 2003 on Harbor Lease No. H-83-2, Kealakehe, Kailua-Kona, Hawaii, TMK: (3) 7-04-08.

Steve Molmen Property Manager for the Division of Boating and Ocean Recreation came before the Board and recommended the Board approve the above items as stated in staff's submittal.

Unanimously approved as submitted (Johns/DeMello).

The Board took a break at 3:35 p.m. and resumed the meeting at 3:38 p.m. The Board resumed testimony on D-17.

Item D-17: Conservation District Enforcement File HA-03-34 Regarding Unauthorized Logging of 135 Koa Trees, Unauthorized Destruction of Two (2) Ohia Trees, Unauthorized Grubbing and Grading and Unauthorized Skid/Haul Road Construction, Koa Timber and Hawaii Forest Preservation, LLC., Papaikou and Paukaa Districts, Hawaii, Tax Map Key: (3) 2-7-001:001.

Mr. Wong made it clear his clients used GPS readings when determining the Conservation District boundary. He also told the Board he is in agreement with placing a \$20,000 cap on the habitat restoration plan. Lastly he asked the Board to allow his clients to pay the fines over a five month period with the first 5 payments being \$25,000 and the final payment the remainder.

The Board made the following changes in the Recommendation Section

3. **Koa Timber shall be fined \$141,000.00 for the harvesting and killing of [712] 137 native trees. This fine would include \$2,000.00 fine for the unauthorized skid/haul road, \$2,000.00 for the unauthorized grubbing and grading and \$137,000.00 the destruction of native trees to be paid within ~~[60-days]~~ five (5) months of the BLNR's action, at \$25,000 per month with the balance due as the final payment. The first payment is due by February 8, 2004, followed by a second payment by March 8, 2004, third payment by April 8, 2004, fourth payment by May 8, 2004, and final payment by June 8, 2004.**
4. **With two (2) months of the BLNR's decision on this matter, Koa Timber shall submit, at their own expense, a habitat restoration plan ~~[to restore the land to its original condition]~~ to be approved by the Chairperson.**

Adding a condition to 4)

"D. The Habitat Restoration Plan shall not exceed a cost of \$20,000

Unanimously approved as amended (McCrorry/DeMello).

There being no further business, Chairperson Young adjourned the meeting at 3:45 p.m.

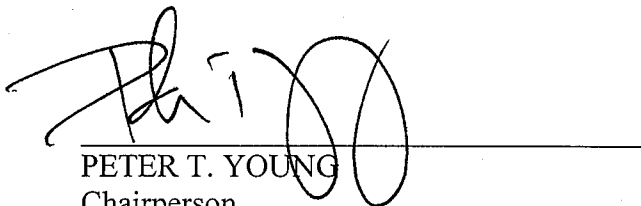
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources