

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

DATE: FRIDAY, NOVEMBER 19, 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 9:12 a.m. The following were in attendance:

MEMBERS

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

Mr. Timothy Johns
Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Ms. Dede Mamiya, Land
Mr. Richard Rice, DOBOR
Mr. Wade Ishikawa, DAR

Mr. Sam Lemmo, OCCL
Mr. Francis Oishi, DAR
Mr. Richard Rice, DOBOR

OTHER

Mr. Vince Kanemoto, Deputy Attorney General
Mr. Clayton Fujio, C-1
Mr. Derek Cabarloc, D-39
Ms. Janet Mandrell, J-1
Mr. Bob Rippel, D-30
Mr. Morris Watanabe, D-46
Dr. Isaac Maeda, D-37
Ms. Heidi Guth, D-36
Ms. Ann Yuen, D-15
Mr. Don Clegg, K-2
Mr. John Kojima, D-27
Mr. Alvin Maeda, D-44

Mr. Kaz Shigezawa, D-12
Mr. Reg White, J-1
Mr. William Mossman, J-1
Ms. Barbara Littenberg, D-35
Mr. Lloyd Komagome, D-11
Mr. Alan Murakami, D-36
Mr. Ted Middleton, D-36
Mr. Gregory Dunn, F-1
Mr. William Chandler, K-3
Mr. Patrick Vahey, D-45

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

Item A-1: Minutes of October 22, 2004

Member Inouye recused herself.

The Board amended the following

Page 13, Recommendation Section for Item E-1:

15. The event organizer will meet with the Diamond Head Citizens Advisory Committee on an as-needed basis during the event planning process to address any concerns.

16. Approval received by the event organizer is for a one-time event not for an annual event.

Approved as amended (Johns/Yamamura).

Item C-1: Establishment of the Kapapala Koa Canoe Forest Management Area in Kau, Hawaii, Approval of Corresponding Objectives, and Authorization to Develop a Management Plan to Implement the Objectives.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) and Michael Constantinides, Program Manager of DOFAW came forward to present the above item. Mr. Conry told those present the objective of this program is to restore the forest and focus on producing koa canoe logs for the future. He noted it takes up to 125 years to grow a koa tree large enough for a voyaging canoe. Mr. Conry hopes to involve our schools and the racing community in the stewardship of these lands. As background information the Board was reminded in 1989, DOFAW began managing the subject area to promote native forest protection and restoration, which was the first stage in establishing a koa forest management area. During the 1990's the Division refined its envisioned management of koa on the subject lands to focus on koa canoe logs. Mr. Conry went over the seven objectives they plan to focus on and how they plan to accomplish these goals. He noted their priority will be to focus on the growth and production of koa trees and other native plants for use in the making of traditional Hawaiian canoes. Any extra koa wood from the trees will be provided for use in educational, traditional Hawaiian cultural and commercial activities. Initially the project will focus on stakeholder involvement, education and public outreach. Mr. Conry recommended the Board approve the establishment of the Kapapala Koa Canoe Forest Management Area and authorize the Division to develop a Management Plan to implement these objectives for subsequent Board approval prior to initiating active management of the area.

Clayton Fujio, Deputy Superintendent of the Department of Education spoke in support of staff's recommendation and the positive experience it will instill in the students. He let it be known the establishment of a Koa Canoe Forest Management Area will provide the opportunity for hands on experience for students. The students will be able to apply what they are taught in the classroom to real life. Through the above process, students will experience what it takes to grow koa as well as deepen their understanding of scientific and cultural concepts. Mr. Fujio noted the Department of Education would be working closely with the Department on this project.

Unanimously approved as submitted (DeMello/Johns).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Recreational Non-Vehicular Trail Purposes; Quitclaim of State's Interests, if Any, Road Lot to County of Hawaii, Kamuela, South Kohala, Hawaii, TMK: (3) 6-6-03:07, 6-5-04:15 and 6-5-05:22.

Item D-12: Cancellation of General Lease No. S-5351 and Set Aside to County of Hawaii for Trailhead, Parking Area and Related Purposes, Lalamilo, South Kohala, Hawaii, TMK: (3) 6-6-01:10.

Dede Mamiya, Administrator for the Land Division noted the above submittals are in conjunction with the establishment of the Waimea Trails and Greenways Project. The proposed project involves a 4.5-mile long alternative transportation corridor for bicycles and pedestrian use through the town of Waimea. Currently the County of Hawaii has received funding for the initial phase therefore they are trying to secure the land rights. Ms. Mamiya noted the project runs through a parcel that is currently under lease to the Waimea Outdoor Circle. The Waimea Outdoor Circle has indicated no objection to the project and the placement of an easement over their lease. As far as General Lease No. S-5351, plans are to use the subject parcel for a trailhead and the County is requesting a set aside of the property for that purpose. Ms. Mamiya conveyed staff would like to condemn the area for the intended use and the County of Hawaii would be responsible for any compensation pursuant to the lease agreement. Ms. Mamiya recommended the Board authorize the issuance of a perpetual, non-exclusive easement to the County of Hawaii covering the subject area, authorize the quitclaim of interest in the subject roadway parcel to the County of Hawaii, authorize the condemnation/cancellation of General Lease S-5351 and approve and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited in staff's submittal.

Kaz Shigezawa representing the County of Hawaii was present.

Unanimously approved as submitted (DeMello/Johns).

Item D-39: Rescind Prior Action – Forfeiture of General Lease No. S-4665, H. Harada Contractor, Inc., Lessee; Consent to Assignment of General Lease No. S-4665, H. Harada Contractor, Inc., Assignor, to DMS

**Diesel Repair, LLC, Assignee, Waiakea, South Hilo, Hawaii, TMK:
(3) 2-2-37:98.**

Ms. Mamiya reminded the Board at its meeting in September 10, 2004, they approved a forfeiture of General Lese No. S-4665 to H. Harada Contractor, Inc. The Board amended the submittal by allowing the Lessee 60 days to provide a secure and acceptable performance bond. The Board amended the recommendation in recognition of the fact that the lessee was in talks with a potential buyer. In November staff received an executed purchase contract between the lessee and DMS Diesel Repair, LLC. Currently the lessee owes rent for the period of August 2004 to November 2004 and for the period of November 2004 to January 2005. Staff is requesting the approval for consent to assignment be conditioned upon the total rent due being withheld and paid to the State as part of the escrow closing. Staff is also requesting that a provision be added that states if the sale of this leasehold fails to close within 60 days of the Board's approval, the forfeiture action will be automatically reinstated and the Board will cancel the lease without any further action. Ms. Mamiya recommended the Board rescind its prior action for forfeiture of General Lease No. S-4665 taken at its meeting of September 10, 2004, and consent to the assignment of General Lease No. S-4665 from Harada Contractor Inc., as Assignor to DMS Diesel Repair, LLC, as Assignee subject to the conditions listed in staff's submittal.

Derek Cabarloc of DMS Diesel Repair, LLC was present at the meeting.

Unanimously approved as submitted (DeMello/Johns).

Item J-1: Approval to go out to Public Hearings to Amend Mooring Rates and other Fees, Hawaii Administrative Rules Chapters: § 13-234-3 Mooring Rates at State boating facilities; § 13-234-4 Mooring Rates, offshore & at anchor; § 13-234-5 Mooring without permission; § 13-234-25 Fees for commercial vessels; §13-234-34 Recreational ramp fees.

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) communicated his request to hold public hearings throughout the State to obtain feedback regarding DOBOR's proposal for fee increases. Mr. Rice let it be known the mooring and fee schedules for the State's small boat harbors and boating facilities have remained unchanged since March of 1995 during which time the Hawaii Consumer Price Index has gone up over 32%. He went on to explain the new proposed base fee plus two conditional 8% increases in the boating fees. Mr. Rice explained that the various boat harbors would be classified into five different groups based on the level of services available to its boaters and harbor users. He also spoke about two additional and conditional budget plans included in this fee package. These plan calls for two \$10 million reimbursable CIP-conditional general obligation bonds to be issued in the first and second year which would potentially provide an estimated \$2 million in additional revenue which would be used for added repairs and maintenance. Mr. Rice recommended the Board approve the Division of Boating and Ocean Recreation's request

to go out to public hearing to amend Hawaii Administrative Rules Chapter §13-234-3 Mooring Rates at State boating facilities, §13-234-4 Mooring Rates, offshore & at anchor, §13-234-5 Mooring without permission, §13-234-25 Fees for commercial vessels, and § 13-234-34 Recreational ramp fees and authorize the Chairperson to set dates and times for public hearings and appoint corresponding hearing masters.

Reg White, VP of Operations at Paradise Cruise, Ltd and a recreational boater testified against proceeding to public hearings on the proposed rules. He told the Board he agrees whole-heartedly that the boating fees need to be increased but he disagrees with the percentage fees. He also mentioned there are some fees that DOBOR has not looked at which should be raised (i.e. parking). Mr. White feels that the percentage fee is self-adjusting to account for inflation and an increase in business. He pointed out in a survey he conducted a commercial boater in 1994 that paid an average of \$6,535.59 per month to use the DOBOR's facilities. In 2001 that same commercial operator paid an average of \$12,620.00 per month. In this scenario although the percentage fee remained unchanged the dollar amount paid to DOBOR had self-adjusted for inflation. On the other hand, Mr. White pointed out the minimums for commercial berths are set far too low and needs to be adjusted. He pointed out someone who either under reports or who does not report revenue will have paid the same amount in minimum fees from 1994 to 2001. Mr. White is proposing DOBOR set the minimum fee at three times the recreational fee and provided automatic step-ups as inflation progress. Lastly, Mr. White communicated he feels DOBOR is being charged with cost that are not expenses incurred by boating. These expenses included the cleanup of the debris that comes down the Ala Wai Canal as well as public restrooms at our boat harbors that are used by the general public as well as the boaters.

Janet Mandrell representing The Makai Society testified in opposition of DOBOR's submittal due to the errors in the submittal as well as the fact that they would like all money issues to be brought together in one package to go out to public hearing. Ms. Mandrell feels the draft rules were not adequately disseminated. She noted in the past the rules would have been reviewed by the Small Business Regulatory Review Board, which would include any redrafts before coming before the Board. She noted the draft rules were not posted on the DLNR website to make it easily accessible to the public. Also in the past the public had the opportunity at four different times to participate in the public process the current process will only allow for the public to participate on two occasions. Lastly, Ms. Mandrell believes that the fees imposed by DOBOR should be reasonably related to the services rendered. She feels the justification DOBOR is giving for the increase in fees are invalid and some appear to be arbitrarily assigned values to services, CIP projects and the CPI in order to group the harbors. Ms. Mandrell asked that DOBOR provide a detailed report so people will know exactly what they are paying for and what the money collected will be used for.

William Mossman a member of the Hawaii Boaters Political Action Association provided testimony against DOBOR's request to take their draft rules out to public hearings. He informed the Board for the past four or five years the Department has appeared before the legislature requesting an increase in boating fees. Every year the Legislature rejected the

Department's request because they felt the increase in fees was too high. Mr. Mossman believes because the Department combined the user fee together with their CIP needs it created an increase in fee that was astronomical. He proposes DOBOR separate and properly identify the User fee portion of the fee increase and the CIP portion of the request. He also proposes the use of State non-reimbursable GO Bond funds to rebuild the deteriorated boating facilities and then charge increased slip fees for the newly rebuilt facilities. Mr. Mossman questioned the lack of a Master Plan for the State's boating facilities, which he feels, is a crucial element in improving the facilities. He made it known HAR Chapter 234 contain more than 30 different fees and charges but the proposed fees only address five conditions leaving Passenger vessel and Cruise ship fees, parking fees, live-aboard fees, business transfer fees, etc unchanged. In closing Mr. Mossman recommended the Board postpone DOBOR request to go to public hearings on the Fee Increase package and instead conduct public information meetings so many serious loose ends in the submittal can be corrected.

When asked by the Board how the public meetings would be conducted, Mr. Rice indicated the meetings would follow Sunshine Laws and he would like to have a minimum of two meetings on each island. These meetings will be recorded and public testimony will be accepted.

Written testimony was also received from Jeff Strahn, General Manager of Maui Dive Shop, James Coon, President of Ocean Tourism Coalition, Gregory Howeth, President, Lahaina Divers Inc., and Glenn Shiroma.

The Board made the following changes to the Recommendation Section

“3. The Department shall work with the different constituent groups on the remainder of the rule package that went out in 2001 and return to the Board by July 1, 2005 or sooner with a status report on the remainder of the fee package rules.”

Unanimously approved as submitted (Johns/Inouye).

Item J-2: Issuance of Revocable Permit for Temporary Office Trailers, Parking, and a Perimeter Security Fence to the Department of Land and Natural Resources, Division of Aquatic Resources, Situate at 74-381 Kealakehe Parkway, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:03 (por.).

Unanimously approved as submitted (DeMello/Johns).

Item D-30: Grant of 55-Year Term, Non-Exclusive Easement and Construction Right-of-Entry to Chevrontexaco Products Company for Gas Pipeline Purposes, Kalihi-Kai, Honolulu, Oahu, TMK: (1) 1-2-25:por. 11 & 69.

Ms. Mamiya let it be known the subject parcel is the former Kapalama Military Reservation. Currently the parcel is encumbered by a set aside to the Department of Transportation for Harbor purposes. Ms. Mamiya recommended the Board authorize the issuance of a 55-year term, non-exclusive easement covering the subject area as well as authorize the issuance of a construction right-of-entry for the portions of the subject lands, situated at (1) 1-2-25:portions 11 and 69.

Bob Rippel representing Chevrontexaco Products Company was present.

Unanimously approved as submitted (Inouye/Johns).

Item D-35: Grant of Term, Non-Exclusive Easement to Richard and Barbara Littenberg for Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-06:08 seaward.

Ms. Mamiya informed the Board the applicants are participating in the Kaneohe Bay Piers Amnesty Program and during the preparation on the maps for the pier lease, a boat ramp was shown to be encroaching onto State lands about 272 square feet. Staff is also asking to imposing a \$500 fine for the encroachment. Ms. Mamiya recommended the Board impose a \$500 fine for illegal encroachment and authorize the issuance of a term non-exclusive easement to Richard and Barbara Littenberg covering the subject area.

Barbara Littenberg was present at the meeting.

Unanimously approved as submitted (Inouye/Johns).

Item D-46: Grant of Perpetual, Non-Exclusive Easement; Issuance of Construction and Management Right-of-Entry to the City and County of Honolulu for Bus Shelter Purposes, Honolulu, Oahu, TMK: (1) 2-1-25: por.03.

Ms. Mamiya conveyed that the City and County of Honolulu is requesting to expand an existing bus shelter facility at the corner of King and Punchbowl Streets. Currently the land is encumbered by Governor's Executive Order to the State Department of Accounting and General Services-Public Works Division and they have noted they have no objections to staff's recommendations. Ms. Mamiya recommended the Board grant a Perpetual, Non-Exclusive Easement to the City and County of Honolulu covering the subject area and authorize a construction right-of-entry to expire one (1) year from the date of issuance.

Morris Watanabe of the City and County was present.

Unanimously approved as submitted (Inouye/Johns).

Item D-11: Sale of Reclaimed Land to Lloyd and Diana Komagome, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-21:33 seaward.

Ms. Mamiya indicated the applicant is one of the pier owners participating in the Kaneohe Bay Piers Amnesty Program. During the preparation of their survey map it revealed a rock seawall, covered concrete boat dock and filled land was encroaching onto the State lands. Aerial photographs determined the improvements were in place prior to January 21, 1961 therefore staff has the ability to sell the land to the applicants. Also since the applicant could not provide documentation of government authorization for these improvements staff is imposing a fine of \$500. Ms. Mamiya recommended the Board impose a \$500 fine for illegal encroachment, find that the sale of the subject-reclaimed land is not prejudicial to the best interest of the State, Community or Area in which the subject reclaimed land is located, the applicant is exempt from the preparation of an environmental assessment and authorize the sale of the subject reclaimed land to the applicant subject to terms and conditions listed in the submittal.

Lloyd Komagome one of the applicants was present at the meeting.

Unanimously approved as submitted (Inouye/Johns).

Item D-37: Amend Prior Board Action of October 13, 2000 (Agenda Item D-4), Department of Agriculture Request for Cancellation of Governor's Executive Order No. 2210 and Set Aside to Department of Agriculture for Agriculture Related Purposes, Halawa, Oahu, TMK: (1) 9-9-10: pors. 34.

Ms. Mamiya pointed out the subject Governor Executive Order was issued to the Department of Agriculture (DOA) for use in agriculture related purposes. Recently DOA requested the executive order be amended and expanded from "agriculture related" to "animal quarantine, animal welfare and agriculture related." This change would provide DOA with greater flexibility in using the subject property. Ms. Mamiya recommended the Board amend the prior Board action of October 13, 2000, under agenda item D-4 by changing the purpose of the new set aside.

Dr. Isaac Maeda from DOA was present.

Unanimously approved as submitted (Inouye/Agor).

Item D-36: Denial of Petitions for a Contested Case Hearing by the Office of Hawaiian Affairs and Mervin Napeahi; Resolution of Certain Improvements Constructed on State Land at the Hilton Waikoloa Village, Anaehoomalu, South Kohala, Hawaii, Tax Map Key: (3) 6-9-07:14.

Chairperson Young recused himself.

Ms. Mamiya reminded the Board on October 8, 2004 under Agenda Item D-18 the Board did not act on this item due to a request for a contested case hearing made in writing by

the Office of Hawaiian Affairs (OHA). At the meeting, Native Hawaiian Legal Corporation (NHLC) for Mervin Napeahi verbally requested a contested case hearing. Both parties submitted their written request in a timely manner. The Department of the Attorney General has reviewed the documents and has advised the Board to deny these petitions as the Board lacks subject-matter jurisdiction over the issues raised by OHA and NHLC. Ms. Mamiya went on to discuss the proposed resolution for the improvements constructed on State lands which includes a 65-year lease for the reclaimed lands with an arbitrated rent and fixed step-ups, an amendment to the existing perpetual easement for the submerged lands and the collection of back rent based on the court ordered date of 1997. Ms. Mamiya indicated staff's recommendation fully complies with the court's order. She addressed some issues of misunderstanding with regards to the determination of fair market rent. Ms. Mamiya let it be known there are statutory requirements under Chapter 171-17, which determine what is fair market rent for direct leases and easements. She went on to explain the requirement of Chapter 171-17. Ms. Mamiya recommended the Board deny the petitions for a contested case hearing from OHA and Mervin Napeahi and authorize the amendment of grant of easement to Lanpar/HTL Associates, authorize the issuance of a direct lease to Global Resort Partners covering the subject 1.337 acres or reclaimed lands, authorize the cancellation of Revocable Permit No. S-7380 to Global Resort Partners, authorize the Department of the Attorney General to take any action necessary to pursue retroactive compensation and direct staff to engage in good faith efforts to pursue and consummate a land exchange for the reclaimed land.

The Board questioned Ms. Mamiya as to why the submittal was not broken up into two submittals-the denial of the contested case and the disposition of the subject land.

Motion made at 10:38 a.m. by Member Inouye and second by Member DeMello to move into Executive Session pursuant to Chapter 92-5 (4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

Unanimously approved to move into Executive Session (Inouye/DeMello)

Member Johns notified those in attendance item D-36 would be broken up into two items: 1) Denial of Petitions for a Contested Case Hearing by the Office of Hawaiian Affairs and Mervin Napeahi; and 2) Resolution of Certain Improvements Constructed on State Land at the Hilton Waikoloa Village, Anaehoomalu, South Kohala, Hawaii, Tax Map Key: (3) 6-9-07:14.

The Board accepted testimony on the Denial of Petitions for a Contested Case Hearing by the Office of Hawaiian Affairs and Mervin Napeahi.

Alan Murakami, attorney for the Native Hawaiian Legal Corporation (NHLC) and Mervin Napeahi reminded the Board his client was granted full standing by the court on this matter. Mr. Murakami told the Board he is baffled as to why staff chose to deny his client's right to a contested case hearing. He believes the contested case hearings asks the Board to deem if their actions are constitutional and statutorily valid. Mr. Murakami

noted in requesting a contested case hearing he was asked to cite a constitutional and statutory basis for his request but to then have that basis turned around and used as the reason why the contested case hearing is denied is disingenuous on the Board's part.

Heidi Guth, attorney for the Office of Hawaiian Affairs (OHA) communicated that they did not agree with the Attorney General's reasoning to deny the contested case hearing. She feels the Board has the right to make a determination as to the fair market value of the rent, which it was ordered to do by the court. Ms. Guth made it known she also agrees with Mr. Murakami's assessment that the Board is disingenuous by denying their request for a contested case hearing.

**Recommendation No. 1 Approved as submitted (DeMello/Inouye).
Member Agor voted No.**

2) Resolution of Certain Improvements Constructed on State Land at the Hilton Waikoloa Village, Anaehoomalu, South Kohala, Hawaii, Tax Map Key: (3) 6-9-07:14.

Mr. Murakami asked the Board to defer action on this item and return to Kona to hear this case. He reminded the Board at the October 8, 2004 meeting in Kona there were individuals in the audience waiting to testify but were prevented from testifying due to the CCH request. If the Board were to act on this item today, Mr. Murakami feels it will be a failure of due process. Addressing staff's proposal, Mr. Murakami seriously disagrees with their proposal because of numerous violations of statutory laws that applies to this item. To say this disposition will have a minimal effect on the environment is incorrect. He believes staff's comparison should look at the effect on the land prior to the hotel's occupation and compare it to what it is today. Mr. Murakami spoke of the difference in the valuation of market rent by Craig Leong and arbitrated appraisal amount. He also pointed out that the arbitrated amount is non-binding. Mr. Murakami believes the statute allows for land dispositions to be determined by public auction except when provided by statute but staff failed to cite a justification to allow the disposition to by pass the public auction process. With regards to the disposition of the submerged lands and the fast lands, Mr. Murakami believes the Board should produce a finding that states that the disposition of these lands are within the public interest. He informed the Board his client disagrees with the Department allowing the Attorney General's office to settle the matter of back rent because in doing so it would take the matter out of the public process. Mr. Murakami told the Board he is against an exchange of land, as staff provided no justification for this scenario. In closing, Mr. Murakami asked the Board to reject staff's recommendation and reset the value of the rent at a fair market value.

Ms. Guth spoke in opposition of staff's recommendation and read from OHA's written testimony. She spoke of Judge Ezra's decision, which directed Board of Land and Natural Resources to realize a reasonable rate of earning for the rent of the subject land. She noted OHA does not feel the Board has determined a reasonable rate for the rent and therefore fails to fulfill its trust duty to Native Hawaiians. As for back rent, Ms. Guth

feels the Board has not upheld Judge Ezra's ruling because they have instead chosen to remove the matter from BLNR's agenda thereby eliminating public input and scrutiny. Ms. Guth asked the Board to return to Kona to allow the community members there to testify on this item.

Ted Middleton, Senior Vice President of Hilton Hotels Corporation spoke of Hilton's history on the land and their acquisition of 100% interest in the hotel. He spoke of Hilton's efforts in trying to resolve the ceded lands issue through meetings with the various interested groups. Their goal is to find a long-term solution that would be in compliance with the court's 1997 order, to allow for the continued peaceful operation of the hotel and to comply with Hilton's corporate policy, which is to be good neighbors and responsible corporate citizens. Mr. Middleton asked the Board to approve the recommendation in front of them today.

Member Johns noted his concern with this item being decide in Honolulu instead of Kona. Ms. Mamiya let it be know that she informed all the parties involved about three weeks ago and asked them to contact people wishing to testify. Member Johns also noted aside from NHLC and OHA only one other person submitted testimony on this item.

The Board asked Ms. Mamiya why the subject land was not put up for public auction. Ms. Mamiya stated the Attorney General's office has advised staff that HRS Chapter 171-53 (d) is available to the Board as long as they meet the requirements therefore the land would not have to be put up for auction.

Ms. Mamiya was asked by the Board why the issue of back rent was being delegated to the office of the Attorney General for collection as opposed to the Department collecting it. Ms. Mamiya communicated the parties would not agree to paying the back rent amount because they believe the State was culpable in certifying an incorrect shoreline which created the situation we have today. She also pointed out in other cases that involve back rent the Department has turned over the collections issue to the Attorney General's office.

Written testimony was received by Cathy Hamilton.

Unanimously approve staff's recommendation No. 2-7 as submitted (DeMello/Yamamura).

Item D-15: Forfeiture of Revocable Permit No. S-5965, Leon Schumaker, Permittee, Ualapue, Molokai, TMK: (2) 5-9-06: por. 34 and 01.

Ms. Mamiya disclosed this revocable permit is being used for repair of a roadway for ingress-egress purposes. Currently Mr. Schumaker is in default of his permit for failure to post the required liability insurance. Ms. Mamiya recommended the Board authorize the cancellation of Revocable Permit No. S-5965.

Ann Yuen, the ex-wife of Mr. Shumaker informed the Board she was awarded the property this permit serves and provided the Board with a copy of her insurance naming the State as an additional insured.

Motion to Withdraw

Unanimously approved to withdraw (Yamamura/DeMello).

Item F-1: Request Approval to select an organization/lessee and to negotiate terms and conditions of a lease for a multi-recreational and environmental education facility at the Wailua Reservoir, Kauai.

Member Johns recused himself.

Francis Oishi, Program Manager for Aquatic Resources and Wade Ishikawa, Kauai Information Specialist appeared before the board to go through their submittal. Mr. Oishi announced that a public meeting on the subject proposal was held in Wailua, Kauai on May 2004 in order to present the proposal and obtain feedback from the public. Subsequently a Request for Interest (RFI) was developed and disseminated on August 1, 2004. He made it known the RFI was to publicly announce the interest of the Department in providing more recreational and educational opportunities and to solicit from the public, any parties that might have an interest in working with the Department to develop those opportunities. The Department received several inquiries and one written proposal was received from Hawaii Nature Center (HNC). Mr. Oishi pointed out that HNC has an excellent track record of providing educational and outdoor awareness programs in Hawaii and together with their willingness to work with the Department to develop a mutual beneficial educational program and recreational opportunity will be an asset to the Department. Mr. Oishi recommended the Board approve the selection of the Hawaii Nature Center and to authorize the chairperson to negotiate terms and conditions of a lease with the Hawaii Nature Center to develop a multi-recreational and environmental education facility at the Wailua Reservoir, Kauai and that the lease be subject to the review and approval of the Board.

Gregory Dunn of the Hawaii Nature Center was present.

Written testimony on this item was received from Lynn McCrory and the Kauai Legislative Delegation (Senator G. Hooser, Rep W. Kanoho, Rep. B. Kawakami and Rep. M. Morita).

Approved as submitted (Agor/Inouye).

Item K-2: Conservation District Use Application (CDUA) OA-3198 Sevath Tanaka Pier Construction and Associated Improvements, 45-002 Lilipuna Road, Kaneohe Bay, Oahu, TMK: (1) 4-5-001:039.

Sam Lemmo, Administrator for the Office of Conservation and Coastal lands informed the Board the applicant proposes to replace and reconstruct a new pier. The proposed

wooden pier will be slightly L-shaped and 8 feet wide at the certified shoreline and 10 feet wide at the furthest makai point with a maximum length of 54 feet. Mr. Lemmo recommended the board approve this application for pier construction and associated improvements subject to the conditions listed in staff's submittal.

Don Clegg of Analytical Planning Consultants was present at the meeting and noted his approval of staff's recommendation.

Unanimously approved as submitted (Inouye/Johns).

Item K-1: Time Extension Request for CDUA HA-3066 Koa Timber, 91-488 Kalaeloa Boulevard, Kapolei, Hawaii 96707, for Koa Timber at Makahanaloa, Onomea, Alakahi, Puu Moi, Aleamai, Paukaa, and Papaikou South Hilo District, Hawaii, TMKs: (3) 2-7-001:001 & 2-8-001:002, c/o Chun, Chun, Kerr, Dodd, Beaman & Wong, Fort Street, 9th Floor, 745 Fort Street, Honolulu, Hawaii 96813.

Mr. Lemmo pointed out the applicant is requesting a 180-day extension in order to complete their Final Environmental Impact Statement, have it reviewed by staff and hold a public hearing on this matter. Mr. Lemmo recommended the Board approve an extension of the processing period to July 31, 2005 for the subject Conservation District Use Application.

Unanimously approved as submitted (DeMello/Johns).

Item K-4: Staff Briefing on Enforcement Case HA-04-08 Koa Timber Inc. Restoration Plan Status Report, TMK's: (3) 2-7-001:001 & 2-8-001:002, c/o Chun, Chun, Kerr, Dodd, Beaman & Wong, Fort Street, 9th Floor, 745 Fort Street, Honolulu, Hawaii 96813.

No action.

Item K-3: Staff Briefing on Enforcement Case OA-04-11 Regarding William and Joyce Chandler Land Restoration Plan, Kaneohe, Oahu, Subject Parcel TMK's: (1) 4-4-017:111 and (1) 4-4-017:112.

Mr. Lemmo reminded the Board at its September 10, 2004 meeting Mr. Chandler, the landowner was given an ninety-day time extension to complete the restoration/remediation plan. At that meeting the Board imposed a condition, which stated that Mr. Chandler was to implement an intermediate remediation plan within two weeks of the board's action, with the OCCL's approval. Staff went out to the subject site to review the work that was completed and feels the work done was not adequate and in compliance with the Board's decision.

William Chandler went over the work he has done with regards to the remediation plan.

No Action.

Item E-1: Request to amend Board Submittal of June 18, 2004 (Item E-4); To Publish and Award Concession lease via sealed bid process to the highest bidder, Wailua Marina Restaurant, Wailua State Park, Kauai.

Dan Quinn, Administrator for State Parks informed the Board on a previous meeting the Board set the minimum amount of \$600,000 for the capital improvement budget to be completed by the winning bidder. Since that time he is now asking that the minimum amount for capital improvements be reduced to \$400,000 to encourage more bidders for this concession lease. Mr. Quinn recommended the Board approve lowering the capital improvement requirement to be completed by the winning bidder from \$600,000 to \$400,000.

Unanimously approved as submitted (Agor/Johns).

Item M-1: Issuance of Lease by Direct Negotiation, Diamond Head seafood Wholesale, Inc., Pier 38, Honolulu Harbor, Island of Oahu, Tax Map Key No. 1st/1-5-42.

Item M-2: Issuance of Revocable Permits to the Applicants Awarded Contracts by the Iwilei District Participating Parties for Environmental Investigation and Remediation at Piers 18 to 38, Honolulu Harbor, Oahu.

Item M-3: Issuance of a Direct Lease, Douglas Aircraft, Inc., Kona International Airport.

Item M-4: Issuance of Direct Lease – Air Molokai, Inc. Honolulu International Airport.

Unanimously approved as submitted (Johns/Inouye).

Item L-1: Certification of Election of Mauna Kea Soil and Water Conservation District Directors.

Item L-2: Certification of Appointment of Mauna Kea Soil and Water Conservation District Director.

Unanimously approved as submitted (Johns/Agor).

Item D-27: Mutual Termination of Non-Exclusive, Term Easement S-5363 to Atlantis Submarines Hawaii, L.P., Offshore Water, Kailua-Kona, North Kona, Hawaii, TMK: (3) 7-5: Offshore Waters.

Ms. Mamiya let it be known in 1987 the Board approved a Conservation District Use Application for a steel ketch to act as an artificial reef. In informal discussions with the Attorney General's Office, staff learned that a non-exclusive easement for submerged lands is required only when structures are placed on the seafloor. If submarine companies merely run their tours without installing improvements, no easement is needed. Ms. Mamiya also indicated that the applicant did not move ahead with its plans to sink the steel ketch and the CDUA lapsed although they continued running tours along the area and paying rent for the easement. Due to an upcoming rental reopening in 2005, some flags were raised with regards to paying percentage rents. The applicant provided staff with records of gross proceeds and staff estimated the additional rent owing would amount to over \$47,000. The grantee has now taken the position that the easement was tied to the sinking of an artificial reef and should have been declared abandoned as of January 12, 2001. Ms. Mamiya recommended the Board authorize a mutual termination or cancellation of the Lease of Non-Exclusive Easement S-5363, subject to the conditions listed in staff's submittal.

John Kojima, Chief Financial Officer of Atlantis Submarines since 1995 agree with staff request for a mutual termination but they questioned the termination date of the easement. After review of the terms of the easement, Mr. Kojima noted there was no provision for termination except for non-use or abandonment. He let it be known it is Atlantis Submarines position that since they never used the easement, the easement rights terminated and since the CDUA lapsed the State is now requiring them to pay for something they received no value for. He informed the Board they are in agreement with a mutual cancellation of the easement and they are willing to reimburse the State the cost incurred to complete an appraisal but they feel the termination date of the easement should be one year from the day the CDUA was issued or one year from the day the CDUA was amended.

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

“1.b. The effective date of the termination or cancellation shall be the date of the Board meeting and Atlantis Submarines Hawaii, L.P. shall be responsible for rent including any and all additional rent that is due pursuant to the 1% percentage rent requirement of the agreement that commenced on January 12, 2000. The actual amount due the State shall be determined upon the receipt of updated gross proceeds report up to and including the date of the Board meeting. Collection shall be referred to the Department of the Attorney General;”

Unanimously approved as amended (DeMello/Yamamura).

Item D-45: Forfeiture of General Lease No. S-5643, Patrick Vahey, Lessee, Waimanalo, Koolaupoko. Oahu, TMK: (1) 4-1-18:51.

Ms. Mamiya indicated staff received a complaint alleging the lessee was raising cockfighting chickens. Staff conducted an inspection and noticed an number of roosters

housed in separate quarters similar to how fighting chickens are raised. Ms. Mamiya reminded the Board Mr. Vahey's lease allows the premises to be used for aquaculture purposes, which is "The propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research purposes, commercial purposes, or stocking purposes." It was also brought to the Board's attention that a prior notice of default was issued to the lessee for the same violation. Mr. Vahey explained that the chickens were utilized for their manure to cultivate microorganisms (worms) as a special fish food supplement related to aquaculture. Ms. Mamiya recommended the Board find the lessee in default and authorize the cancellation of General Lease No. S-5643 subject to the conditions listed in staff's submittal.

Patrick Vahey showed the Board pictures of the types of fishes he was growing on the subject property. He explained the chickens are a part of a tool that he needs to use to be cost effective to produce live food for his stock. He told the Board if he has to buy artificial food it would cost him a lot more money. He indicated the chickens he uses depends on their color as their genetic structure with regards to color will be evident as to the color of the fish. Mr. Vahey explains that the manure from the chickens are dried and used as a fertilizer to produce green water. The green water is then used to produce a type of algae, which supports the phytoplankton, which the worms eat. The worms are then fed to the fish. He told the Board if he has to do away with these chickens the food for his fish stock will cost him approximately \$200 per month.

Ms. Mamiya revealed Mr. Vahey's lease is for aquaculture and should he want the character of use to be changed to agriculture this lease would need to go out to public auction.

The Board amended the Recommendation Section by adding the following:

"The Lessee shall have 60 days to remove all chickens and non-aquaculture uses. If this condition is not complied with, the lease shall be automatically terminated. The Board requests staff to come back to the Board on whether residence is a permitted use."

Unanimously approved as amended (Inouye/Johns).

Item D-44: Sale of Reclaimed Lands to Alvin and Anne Maeda Revocable Trust and Confirmation of Kaneohe Bay Piers Amnesty Program Regarding the Issuance of a Pier Lease, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-58: seaward of 17.

Ms. Mamiya conveyed that during the preparation of a survey map for the subject area, an encroachment of filled land and seawall was discovered with an area of 686 square feet. The Office of Conservation and Coastal Lands has determined that allowing the encroachments to remain would have no adverse impacts on the natural resources. She also made it known that Mr. Maeda refuses to accept the Board-approved rent methodology and other aspects of the Kaneohe Bay Piers Amnesty Program. Ms.

Mamiya recommended the Board impose a \$500 fine for the illegal encroachment, authorize the sale of the subject reclaimed land to the applicant, authorize the subdivision and consolidation of the subject remnant by the applicant and confirm the Kaneohe Bay Pier Amnesty Program rent methodology approved at its meeting of February 23, 2001; confirm that if an applicant refuses to accept the formula, the applicant shall pay for the cost of an independent appraisal which shall be the first appraisal.

Alvin Maeda, the applicant came forward and testified against staff's recommendation. Mr. Maeda provided the Board with a map from 1928, which showed the existence of a seawall and a 1954 City and County Residential Appraisal Card showing the value of the property at that time. He argued his belief that the subject parcel should be sold to him based on the fair market value in 1954 and be sold to him for \$1,989.40. Mr. Maeda went on to point out that the subject parcel is inaccessible and well hidden therefore it would make more sense to sell the property to him then to issue an easement. With regards to the Kaneohe Bay Piers Amnesty Program, Mr. Maeda discussed why he does not agree with the rent methodology.

The Board amended the Recommendation Section by adding new paragraphs 7 and 8 to read as follows:

- 7. Impose deadlines from this Board date for the Applicant to either: 1) submit payment for the cost of an independent appraisal for the pier lease within 30 days or 2) accept the pier lease formula and submit payment of \$21,055 which represents the pier lease one-time payment and document fees within 60 days, otherwise the Board's approval for the issuance of the pier lease to the Applicant shall be automatically rescinded."**
- 8. Impose a 30-day deadline from this Board date for the Applicant to submit payment for the cost of an independent appraisal for the sale of reclaimed land, otherwise the Board's approval for the sale of reclaimed land to the Applicant shall be automatically rescinded."**

Unanimously approved as amended (Inouye/Johns).

Item D-40: Grant of Term, Non-Exclusive Easement to ATS 1998 Trust for Seawall, Portlock, Honolulu, Oahu, TMK: (1) 3-9-26:05 seaward.

Ms. Mamiya addressed the Board and let it be known that the applicant wishes to repair an existing concrete masonry unit seawall. At a prior board meeting the applicant received approval of a conservation district use application for the repair of the existing seawall. Ms. Mamiya recommended the Board authorize the issuance of a term, non-exclusive easement to ATS 1998 Trust covering the subject area for seawall purposes.

Unanimously approved as submitted (Inouye/Agor).

Item D-9: Forfeiture of Revocable Permit No. S-4701, Randolph Castro, Permittee, Kaupo, Maui, TMK: (2) 1-7-02: por. of 15.

Motion to Withdraw

Unanimously approved to withdraw (Yamamura/Johns).

Item D-38: Consent to Transfer of Ownership; Consent to Mortgage and Extension of Lease Term, General Lease No. S-4016, Mahealani Farms, Inc., Lessee, Hana, Maui, TMK: (2) 1-3-04:06 and 20.

The Board amended the Rental Reopenings Section to read as follows:

“Reopenings in the original term were at the end of the 15th and 25th years of the term, or on October 17, 1981. The last rental reopening occurred on August 1, 2001.

“Reopenings for the extended term shall be on ~~[April 17, 2007 and April 17, 2017]~~ November 19, 2004 (immediate) and November 19, 2014.”

Unanimously approved as amended (Yamamura/Johns).

Item D-1: Issuance of Land Patent in Confirmation of Apana 2 of Land Commission Award No. 5216 to Penopeno situate at Kumimi, Molokai, TMK: (2) 5-8-01:09.

Item D-2: Grant of Term, Non-Exclusive Easement to Nahoahana O’Huelani LLC, for Access Purposes, Kaneohe, Oahu, TMK: (1) 4-6-01:08 seaward.

Item D-3: Grant of Term, Non-Exclusive Easement to Joseph & Janet Chun for Seawall and Fill Land Purposes, Kaneohe, Koolaupoko. Oahu, TMK: (1) 4-5-47:119 seaward.

Item D-4: Grant of Term, Non-Exclusive Easement to Patricia Watanabe for Seawall Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-18:82 seaward.

Item D-5: Sale of Reclaimed Lands to Gordon Imata, Trustee, Kahaluu, Koolaupoko, Oahu, TMK: (1) 4-7-19:22 seaward.

Item D-6: Grant of Term, Non-Exclusive Easement to Kathleen Brizuela and Brian Hoff for Seawall Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-37:35 seaward.

Item D-8: Amend Prior Board Actions of July 13, 2001, Agenda Item D-7, and January 24, 1986, Item F-2, Direct Sale of Perpetual, Non-Exclusive Easement, to the Hawaii Electric Light Company and Verizon Hawaii

- at Kaumana to Keaumuku, Hawaii, TMK: (3) 2-5-01:2, 6 & 8; 2-5-02:1 & 14; 2-5-05:80 & 86; 2-6-18:1 & 4; 4-4-15:8 and 4-4-16: 3 & 5.
- Item D-10:** Forfeiture of Revocable Permit No. S-5193, Henry Baldwin, Permittee, Makawao, Maui, TMK: (2) 2-7-08:16.
- Item D-13:** Set Aside to the County of Hawaii for Addition to a Combined Veterans Center, Veterans Housing and other Related Purposes; Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: por. 01.
- Item D-14:** Forfeiture of Revocable Permit No. S-5278, Kula Sanitorium Maintenance Department, Permittee, Kula, Maui, TMK: (2) 2-2-04:76 and 77.
- Item D-16:** Sale of Lease at Public Auction for General Industrial Purposes, Lots 15 & 16, Block 39, Waiakea House Lots, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:63.
- Item D-17:** Sale of Road Reservation to Big Island Country Club Estates Limited Partnership, Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-05:31 & 32.
- Item D-18:** Rescind Land Board Approval 5/11/01, Item D-5: Sale of Abandoned Ditch Remnant to Laurel Baldrige, Por. Kapaa Homesteads, 1st & 3rd Series, Kawaihua, Kauai; TMK: 4-6-08: por.39.
- Item D-19:** Withdrawal from General Lease S-5245 to Lincoln Ching for Pasture and Set Aside to the Housing and Community Development Corporation of Hawaii for Tenant Activities and Maintenance Storage Purposes, Kapaa, Kawaihau, Kauai, TMK: (4) 4-5-15:28.
- Item D-20:** Sale of Remnant State Land to Nicolas Myrianthis, Trustee of the Nicolas Myrianthis Revocable Living Trust, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-07:58.
- Item D-21:** Sale of Lease at Public Auction for Agriculture Purposes, Hionaa-Kaala Iki, Kau, Hawaii, TMK: (3) 9-5-15:03.
- Item D-22:** Amend Prior Action - Delegation of Authority for the Issuance of Right-of-Entries for Grazing Purposes, Puuwawaa and Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-01:06 & 04, (3) 7-1-02:01 & 13, (3) 7-1-03: 01 & (3) 7-1-04: 01.
- Item D-23:** Rescind Prior Board Action – Consent to Lease of Lands under Governor’s Executive Order No. 3663 to Orangutan Foundation International, Waiakea, South Hilo, TMK: (3) 2-4-04: por. of 01.

- Item D-24:** After-the-Fact Grant of Perpetual, Non-Exclusive Easements to Maui Electric Light Company, Limited for Utility Purposes, Makawao, Maui, TMK: (2) 2-3-07: por 32.
- Item D-25:** Set Aside to Department of Business, Economic Development and Tourism for Film Studio and Related Purposes, Honolulu, Oahu, TMK: (1) 3-1-42:09.
- Item D-26:** Amendment to Prior Board Action of October 22, 2004, Agenda Item D-8, Continuation of Rent for General Lease No. 4544, Episcopal Church in Hawaii, Maui.
- Item D-28:** Cancellation of Governor's Executive Order No. 3141 and Reset Aside to County of Hawaii for Park and Related Purposes, Piopio, South Hilo, Hawaii, TMK: (3) 2-2-01:27 & (3) 2-2-02:35.
- Item D-29:** Amend Prior Board Action of August 13, 1999, (Agenda Item D-18), Direct Sale of Perpetual, Non-Exclusive Easement and Issuance of Immediate Construction Right-of-Entry to William and Aileen Chinen for Waterline Purposes Over and Across Government Land Situate at Waimanalo, Koolaupoko, Oahu, TMK: 4-1-10:por. 96 & 95.
- Item D-31:** Cancellation of Revocable Permit Nos. S-7277 and S-7283, and Issuance of Revocable Permit to The Kapaa Banana Co., Inc., por. of Lihue, and Wailua, Kawaihau, Kauai, TMK: (4) 3-9-02: por. 20 and por. 01.
- Item D-32:** Amend Prior Board Action of December 12, 2003, D-4, Consent to Assign General Lease No. S-4957, David H. Lawton, as Commissioner/Assignor, to Louis Kuahuia Jr., Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:02.
- Item D-33:** Amendment to Prior Board Action of July 9, 2004, Agenda Item No. D-6 Consent to Assignment of Grant of Easement Identified by General Lease No. S-5652, Richard A. Riley and Carol H. Riley, Assignors, to Christopher R. Brigham, Trustee and Cathy V. Brigham, Trustee, Assignees, Kaneohe, Koolaupoko, Oahu, Tax Map Key: 4-4-18: 68 seaward.
- Item D-34:** Withdrawing Land from Governor's Proclamation Dated May 2, 1938 (Koolau Forest Reserve); Set Aside to Department of Transportation, Highways Division for Highway Purposes and Issuance of a Construction Right-of-Entry, Hana, Maui, TMK: (2) 1-1-01: por. 44.

- Item D-41: Grant of Term, Non-Exclusive Easement to Kaimana Kai Limited for Utility Purposes, Makawao, Maui, TMK: (2) 2-1-06: por. 99.**
- Item D-42: Consent to Assign General Lease No. S-5344, Carl Braun, Assignor, to Richard Abigania, Assignee, Lots A & B, Kapaa Rice & Kula Lots, Kapaa Homesteads, 4th Series, TMK: (4) 4-5-15:17 & 30.**
- Item D-43: Sale of Remnant to Kenneth R. Lesperance and Kristine G. Lesperance, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-25: por. 56 (Remnant G).**

Unanimously approved as submitted (Johns/Inouye).


There being no further business, Chairperson Young adjourned the meeting at 1:23 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

Terry Crowell

Approved for submittal:

for 
PETER T. YOUNG
Chairperson
Department of Land and Natural Resources