

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

DATE: FRIDAY, DECEMBER 10, 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. Ron Agor

Mr. Timothy Johns
Mr. Toby Martyn

STAFF

Ms. Dede Mamiya, Land
Mr. Richard Rice, DOBOR
Mr. Paul Conry, DOFAW

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, State Parks
Mr. Mike Shinozuka, DOT

OTHER

Mr. William Wynhoff, Deputy Attorney General
Mr. Russell Tsuji, Deputy Attorney General
Ms. Julie China, Deputy Attorney General
Mr. Mike Oshiro, D-22
Ms. Sandy Miyoshi, D-17
Mr. Mike Donoho, C-4
Mr. Jeff Tsuzuki, K-1
Mr. David Durant, E-4
Ms. Ronnie Grover, E-3
Mr. Rick Havilland, E-3
Ms. Sabra Kauka, E-3
Mr. Jerry Ornellas, D-25

Mr. Phil Hauret, D-8
Ms. Lena McCormack, D-4
Mr. Peter Simmons, C-2
Mr. Chuck Hayes, K-3
Mr. Gary Gill, E-4
Mr. Andy Evans, E-3
Mr. Ted Meyers, E-3
Mr. Max Graham, D-25
Mr. Roy Oyama, D-25

Mr. Leslie Milnes D-25
Mr. Alton Miyamoto, D-26
Mr. Gary Pierce, D-26
Mr. Robert Klein, D-18
Mr. Clement Kanuha, D-18
Mr. Lee Sickter, D-18
Mr. Paul Gaynor, D-29

Mr. Moses Haia, D-25,D-26
Mr. Jonathan Scheuer, D-26
Ms. Linnel Nishioka, D-26
Ms. Coochie Cayan, D-18
Mr. Jerry Rothstein, D-18
Mr. David Goode, D-29
Mr. Kent Smith, D-29

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

Item A-1: Minutes of November 19, 2004

The Board made the following change

Page 11, third paragraph

“Member Johns noted his concern with this item being decided in Honolulu instead of Kona.”

Unanimously approved as amended (Johns/Agor).

Item M-1: Issuance of Two Replacement Leases Federal Aviation Administration United States of America (USA), Kahului Airport.

Mike Shinozuka representing the Department of Transportation briefed the Board and recommended the Board approve the issuance of two new leases as stated in staff's submittal.

Unanimously approved as submitted (Johns/Inouye).

Item J-1: Consent to Subleases, Harbor Lease No. H-82-4, GKM, Inc., a Hawaii corporation, Lessee, to various sublessees, Honokohau Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-04-008:42.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation communicated his request to subleases fourteen subleases under Harbor Lease No. H-82-4. Mr. Rice recommended the Board consent to the subject subleases under Harbor lease No. H-82-4 between GKM, Inc., as Sublessor and the fourteen subleases listed in staff's submittal.

Unanimously approved as submitted (Johns/Agor).

Item D-22: Conveyance of State Land for Proposed Kuakini Street Extension Road to the City and County of Honolulu and Issuance of a Construction and Management Right-of-Entry, Kapalama, Oahu,

TMK: (1) 1-6-9:1 and Portion of Proposed Kuakini Street Extension Road.

Ms. Mamiya conveyed that in 1987, the City and County of Honolulu proposed the Kuakini Street Extension Project. Due to lack of funding the project was never completed. Recently, the City and County of Honolulu revived the project with support from the community as well as others. Ms. Mamiya pointed out a portion of the proposed Kuakini Street Extension already exists and staff's abstractor has determined that the subject portion was transferred from the State to the City pursuant to Section 264-2, HRS. Ms. Mamiya recommended the Board authorize the conveyance to the City and County of Honolulu covering the subject area and authorize the issuance of a construction and management right-of-entry permit to the City and County of Honolulu covering the subject area.

Mike Oshiro of DTS was present.

Written testimony in support of staff's submittal was received from Councilman Rod Tam and Francis Nishimura, co-champion of the Vision Team 12.

Unanimously approved as submitted (Inouye/Johns).

Item D-8: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Verizon Hawaii Inc. for Utility Purposes and Cancellation of Revocable Permit No. 497 to Hawaiian Electric Company, Ltd. and Hawaiian Telephone Co., Waimanalo, Koolaupoko, Oahu, TMK: 4-1-09:01.

Ms. Mamiya briefly went through the submittal and recommended the Board authorize the issuance of a perpetual, non-exclusive easement to Hawaiian Electric Company, Inc. and Verizon Hawaii Inc. covering the subject area for utility purposes and cancel Revocable Permit No. 497 when the perpetual, non-exclusive easement is executed.

Phil Hauret representing Hawaiian Electric Company was present at the meeting.

Unanimously approved as submitted (Inouye/Johns).

Item D-17: Cancellation of Governor's Executive Order No. 3605 and Reset Aside to the Housing and Community Development Corporation of Hawaii (HCDCH) for "Homeless Shelter and Supportive Rental Housing Purposes"; Waianae-Kai, Waianae, Oahu, TMK: (1) 8-5-28:44.

Ms. Mamiya disclosed the subject property was previously set aside to the Hawaii Housing Authority (HHA), a division of the Department of Human Services as a public housing site but due to lack of funds, the State was unable to develop the public housing. Later, the Department of Human Services went through a reorganization resulting in HHA being replaced by the Housing and Community Development Corporation of

Hawaii (HCDCH). At present the Department of Human Services is requesting the use of the subject land for more homeless and public housing facilities. They are also requesting the purpose of Governor's Executive Order 3605 be changed from "Public Housing Site" to "Homeless Shelter and Supportive Rental Housing." Ms. Mamiya recommended the Board approve of and recommend to the Governor the issuance of an executive order canceling the area under Governor's Executive Order No. 3605 and approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Housing and Community Development Corporation of Hawaii for "Homeless Shelter and Supportive Rental Housing Purposes."

Sandy Miyoshi representing the Housing and Community Development Corporation of Hawaii informed the Board her organization has received a grant from the City to develop the subject parcel.

Unanimously approved as submitted (Inouye/Agor).

Item D-4: Withdrawal from Governor's Executive Order No. 1598 to Department of Agriculture for Irrigation System and Sale of Remnant to Toyoko Moromisato, Waimanalo, Oahu, TMK: (1) 4-1-25: por. 27 & 36.

Ms. Mamiya disclosed the subject land is currently under a Governor's Executive Order to the Department of Agriculture (DOA) for the operation and maintenance of a ditch. DOA has indicated and identified sections of the ditch that have been abandoned. The abutting property owners were notified with regards to purchasing the subject parcel. Ms. Mamiya recommended the Board approve of and recommend to the Governor the issuance of an executive order withdrawing 1.072 acres from the Governor's Executive Order No. 1598, authorize the subdivision and consolidation of the subject remnant by the applicant and authorize the sale of the subject remnant to Toyoko Moromisato covering the subject area under the terms and conditions listed in the submittal.

Lena McCormick was present for this item.

Unanimously approved as submitted (Inouye/Martyn).

Item C-4: Requests for Approval in Concept and to Issue a Public Notice to Solicit interest for developing Multi-Recreational and Educational Opportunities within the Pu'u Wa'awa'a and Pu'u Anahulu Ahupua'as, Hawaii.

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) let it be known today's submittal would only involve Puu Waawaa. The submittal asks for permission to solicit interest for developing a multi-recreational and educational opportunities within the ahupuaa of Puu Waawaa. Mr. Conry envisioned the development and implementation of education programs as well as commercial activities. He pointed out the proposal for the development of the subject area includes guidelines,

which will be distributed to the interested parties. Mr. Conry recommended the Board approve this initiative in concept and authorize the Division to issue an RFI via the State and County Procurement web page to solicit interest and ultimately solicit proposals for developing and operating a multi-recreational and educational opportunities in Puu Waawaa.

The Board asked Mr. Conry when he returns to the Board for approval of a proposed development plan to do it in the context of a Master Plan for Puu Waawaa.

Unanimously approved as submitted (Johns/Agor).

Item C-2: Approval of Conservation District Use, Keahou Ranch Upper Boundary Protective Fencing Project Kau and North Hilo Districts, Island of Hawaii.

Mr. Conry outlined the process the Division went through to comply with the environmental requirements. He noted the establishment of a protective fencing would separate state forest reserve lands from lands owned by Kamehameha Schools. Mr. Conry recommended the Board approve the Keahou Ranch Upper Boundary Protective Fencing Project as a permitted government use within the Conservation District consistent with the objectives of the Protective Subzone.

Peter Simmons representing Kamehameha Schools asked the Board for support of staff's recommendations. Mr. Simmons let it be known the establishment of the protective fencing will allow them to protect their lands from moufloun sheeps occupying the abutting State property.

Unanimously approved as submitted (Johns/Agor).

Item C-3: Annual Renewal of Revocable Permit #OA-375-1 on the Island of Oahu.

Mr. Conry indicated this is a renewal of revocable permit OA-375-1 that provides the division with assistance in the management of cattle to improve game bird habitat. Mr. Conry pointed out the applicant has performed all of the requirements of the permit and has done a good job. Mr. Conry recommended the Board approve the continuation of Revocable Permit # OA-375-1 on a month-to-month basis for another one year period from January 1, 2005 to December 31, 2005.

Unanimously approved as submitted (Inouye/Johns).

Item C-1: Approval of 2004-2005 Game Bird Hunting Season Changes and Delegation of Authority of the Chairperson for Changes in Hunting Seasons, Bag Limits, Conditions and Restrictions for the Hunting Program.

Mr. Conry let it be known for the past twenty-five (25) years the Department has been making changes to the Game Bird Hunting Season. On October 11, 2004 the Division expanded 2004-2005 Game Bird Hunting Season to include hunting on 1-2 weekdays in selected areas of Hawaii and Kauai. A lawsuit was filed on behalf of four hunters asking for a Temporary Restraining Order and Preliminary Injunction. A court hearing was held on November 24, 2004, at which time the presiding judge asked the Department to clarify who are the authorities that are allowed to make such changes to the Game Bird Hunting Season. To clarify this issue, Mr. Conry would like to establish the intension of the Board for the administration of hunting rules and delegate the authority to the Chairperson and staff within DOFAW. Mr. Conry distributed a 1981 Board submittal, which provided for delegation of authority to the Chairperson and staff within DOFAW. Mr. Conry recommended the Board concur with the process and adjustments made in the 2004-2005 bird hunting season and delegate authority to the Chairperson to make adjustments in the game bird and game mammal hunting seasons, hunt conditions and restrictions and the use of non-fee application forms and tags and to administer or designate in writing an appropriate Division staff to administer permits and hunter selection process.

Written testimony was received from Gerard D. Loy and Melvin Tanaka.

The Board amended the following:

1) Page 3 of the submittal, first paragraph

“A search of Division files found ~~[no]~~ a prior record of [a] delegation of authority from the Board to the Chairperson for administering the rules and ~~[but did find]~~ delegation[s] of authority from the Chairperson to Division staff for administering the permit system (Attachment 2).”

2) Recommendation 2)

“2. Delegate authority to the Chairperson and administrator of the Division of Forestry and Wildlife to make adjustments in game bird and game mammal hunting seasons, hunt conditions and restrictions, and the use of non-fee application forms and tags as provided by HAR Sections 13-122-4, 13-122-5.1, 13-123-4 and 13-123-5.1”

3) Recommendation 3)

“Delegate authority of the Chairperson and administrator of the Division of Forestry and Wildlife to administer or designate in writing an appropriate Division staff to administer permits and hunter selection processes as provided by HAR Sections 13-122-5, 13-122-9.1, 13-122-9.2, 13-123-4, 13-123-5, 13-123-9.1 and 13-123-9.2”

Unanimously approved as amended (Johns/Inouye).

Item K-1: Conservation District Use Application (CDUA) OA-3206 for After The Fact Seawall Improvements for Jeffery Tsuzuki, Located at 44-235 Mikiola Drive, Kaneohe Bay, Oahu, Subject Parcel TMK: (1) 4-4-018:080.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands pointed out the applicant was found to be in violation for failing to obtain the appropriate approvals for the construction of a shoreline structure on the subject parcel at the September 10, 2004 board meeting. At that same meeting, the applicant was instructed to apply for an after-the-fact conservation district use application for the continued use of the seawall. Mr. Lemmo went on to disclose within the immediate area of the subject parcel there is no public access to the shoreline except by boat, therefore removal of the shoreline structure will not benefit the general public. He also determined that removal of the structure could compromise the structural integrity of the existing nonconforming wall and may allow the upland property to erode and increase siltation into the Bay. Mr. Lemmo recommended the Board approve this application for the after the fact seawall improvements on the subject parcel subject to the conditions listed in staff's submittal.

Jeff Tsuzuki, the applicant was present.

Unanimously approved as submitted (Inouye/Agor).

Item K-2: Conservation District Use Application (CDUA) OA-3212 for Ka Iwi Scenic Shoreline Improvement, Department of Land and Natural Resources (DLNR), for State Parks Division (SPD), Located in East Honolulu, Oahu, Subject Parcels TMK: (1) 3-9-011: por. 02; (1) 3-9-011: 06; (1) 4-1-014: 02.

Mr. Lemmo reminded the Board on February 8, 2002, approval was granted for the proposed Ka Iwi Scenic Shoreline Improvement project. However the deadline to initiate construction has passed therefore the applicant is resubmitting the application. Mr. Lemmo recommended the Board approve CDUA OA-3058 Ka Iwi Scenic Shoreline Improvements.

Dan Quinn, Administrator of the Division of State Parks came forward to address the issue of funding for this project. He pointed out federal funding is available and they will be using monies from the Federal Highway Enhancement Fund. He also disclosed the contract has been awarded.

Unanimously approved as submitted (Inouye/Martyn).

Item K-3: Enforcement File No. OA-05-28, Regarding Alleged Unauthorized Land Uses found at the University of Hawaii (UH) at Manoa, Lyon Arboretum University of Hawaii at Manoa, C/O College of Natural Sciences, 2545 McCarthy Mall. Bilger Hall 102, Honolulu, Hawaii

**96822, Subject Parcel TMK: (1) 2-9-055:006, Manoa Valley,
Honolulu, Island of Oahu.**

Mr. Lemmo communicated the subject parcel is comprised of 124 acres and is known as Lyon Arboretum (arboretum). The University of Hawaii at Manoa (UH), College of Natural Sciences is in charge of the maintenance of the arboretum and is therefore being held responsible for the various violations. Mr. Lemmo went on to discuss the history of the subject parcel. He revealed that the arboretum was given to UH under the condition they "maintain and preserve the granted premises as an arboretum and botanical garden only." He also pointed out in 1972, the arboretum contained the following structures: sugar cane plantation buildings, equipment sheds and barns all of which are considered non-conforming uses within the Conservation District. Mr. Lemmo noted the unauthorized uses and the fines associated with each violation. Mr. Lemmo recommended the Board find the University of Hawaii in violation of Conservation laws and is subject to the seven conditions listed in the submittal.

Chuck Hayes, Interim Dean of the College of Natural Sciences came forward to testify. He acknowledged that the violations presented by staff are true and have occurred on the subject parcel. Mr. Hayes let it be known they are working with Group 70 to remediate all violations. He told the Board he accept the fines imposed by the Board.

Unanimously approved as submitted (Inouye/Agor).

Item E-4: Request for Approval to Lease State Park Land at Kalihi Valley State Park Reserve, Kalihi, Oahu.

Dan Quinn, Administrator for the Division of State Parks made it known the subject parcel was transferred from the City and County of Honolulu to the State in 1992. A non-profit organization, Kokua Kalihi Valley (KKV) proposes to create, restore and renovate the old residential structure on the site and create a classroom and watershed reserve center. They also propose to use a large open lanai for an outdoor gathering place. The structure would be renovated to provide meeting rooms, restrooms, office space and possibly a caretaker's residence. Mr. Quinn pointed out the Board is authorized to enter into an a lease agreement at a nominal consideration by direct negotiations with non-profit organizations under Chapter 171-43 HRS. He communicated that before improvements can be made the applicant must go through the environmental assessment process. Later, an overall plan will be submitted to the Department for approval. Mr. Quinn recommended the Board approve a 20-year lease to Kokua Kalihi Valley for the Kalihi Valley State Park Reserve with a lease rent of \$144.00 annually and approve issuing a revocable permit subject to the conditions listed in staff's submittal.

David Durant, Executive Director of Kokua Kalihi Valley and Gary Gill the active living program coordinator came forward to testify. Mr. Gill spoke in support of staff's submittal and spoke of their close working relationship with State Parks. He also communicated their plans for the area and noted there would be no exclusive use of the

area. He informed the Board upon the completion of an environmental assessment and a community based plan they will return to the Board to ask for a conservation district use permit for work that will be done on the subject area.

The Board asked staff to return to the Board with the lease when Kokua Kalihi Valley has finalized their plans for the area.

The Board made the following change to page 2, third paragraph:

“In order to allow this process to get underway, staff is [~~reseinding~~] recommending issuing a revocable permit for the interim period while the lease is being processed.”

Unanimously approved as amended (Inouye/Martyn).

Item E-1: Approval to issue, evaluate, accept and select a Request for Qualifications/Request for Proposal (RFQ/RFP) for proposals to develop, operate and maintain public recreational facilities at Hapuna Beach State Recreation Area, Island of Hawaii.

The Board made the following changes:

1) Page 2, under “Proposed Use”

“The Hapuna Beach State Recreation Area Expansion Master Plan Report and accompanying Environmental Impact Statement were [~~approved~~] published by the Land Board in 2001”

2) Page 4, first paragraph “Family Camps”

“Twenty camp site clusters to serve up to 800 people will be developed [~~mauka~~] makai of the existing [~~Puakp~~] Puako Road. The clusters will consist of tent sites, restrooms, and shared cooking and eating facilities.”

Unanimously approved as amended (Johns/Agor).

Item E-2: Cancellation of Revocable Permit No. S-6258 to Jose and Corazon Gaceta and Issuance of New Revocable Permit to Jose Gaceta Ahupua’a ‘O Kahana State Park, Ko’olauloa, Oahu, TMK: 5-2-02: por.01.

Unanimously approved as submitted (Inouye/Martyn).

Item E-3: Request for Authorization to Issue a Concession Agreement for Commercial Motorboat Tours (Zodiac) and Commercial Kayak Landings at the Na Pali Coast State Wilderness Park, Kauai.

Mr. Quinn reminded the Board at its December 12, 2003, meeting the Board approved a one-year extension of three existing Na Pali Zodiac commercial motorboat tour permits with the stipulation that a public process be initiated to review the current permit issuance process. Subsequently, it was discovered that there are commercial kayak tour operations that have no authorization to land in State Parks and staff wishes to address this issue also. As background information, Mr. Quinn informed those present for the last twenty (20) years the Board has approved a series of one-year extensions to the same three permittees for the three special use permits to make commercial tour boat lands at Na Pali Coast State Wilderness Park. He also made known the individuals that comprised the committee developing the parameters for the concession agreement. Mr. Quinn went over the total number of people allowed at Nualolo Kai, Milolii and Kalalau, the fee charged per person and other terms and conditions of the permit. As a condition of the new concession agreement, State Parks is proposing to allow the concessionaire the ability to sell, assign or transfer their permit. Mr. Quinn recommended the Board approve the permits for the existing three (3) permittees at Nualolo Kai for motor boat landing opportunities, approve a public process for motor boat landing opportunities at Milolii and Kalalau and enter into new concession agreements with the three (3) commercial kayakers under the terms and conditions outlined in staff's submittal.

Andy Evans representing Na Pali Eco Adventures came forward and provided testimony in support of staff's recommendation. Mr. Evans made it known his company is one of the three existing permittees.

Rick Havilland of Outfitters Kauai spoke in support of staff's recommendation. He conveyed he has been asking State Parks for this type of process for the last fifteen (15) years. Mr. Havilland's only concern was the issuance of a permit from year-to-year. He spoke of their company's long-term goals and the benefits and stability a long-term permit would provide their company with.

Mr. Quinn clarified the permit would be issued for three (3) years then State Parks would come before the Board to re-evaluate the permit process.

Ted Meyers representing Captain Zodiac echoed Mr. Havilland's concerns with regards to the term of the permits. He too felt the permits should be issued for a longer term than three years. Aside from the term of the permit, Mr. Meyers supported staff's recommendation. Mr. Meyers made it clear that Captain Zodiac is also interested in obtaining a permit to perform landings at Kalalau. He pointed out beginning in 2000, Captain Zodiac began performing drop off's in Kalalau but after the Hanalei issues they ceased providing this service. Mr. Meyers asked the Board for the opportunity to renew their Kalalau drop-off permit.

Ronnie Grover representing Kauai Sea Tours spoke in support of staff's recommendation. She spoke of her company's positive working relationship with the Department. She told the Board her company has received many request to be dropped-off at Milolii and she hopes State Parks will be opening the area soon. Ms. Grover also echoed the concern of

Mr. Havilland and Mr. Meyers with regards to the permit being issued on a short-term basis.

Sabra Kauka, member of the Na Pali Coast Ohana who is also the caretakers of Nualolo Kai State Park came forward to testify. She told the Board she is generally pleased with the outcome of the permitting process but she spoke in favor of funds that are generated by a specific park be used for upkeep and maintenance of that park. Ms. Kauka also voiced her appreciation to the permitted boat companies for their help in transporting members of the Ohana to the various parks to do work. Ms. Kauka made it known she is concerned with staff allowing the concessionaires to sell, assign or transfer their permits, instead she suggested the permits be returned to the Board and they are the entity to reissue that permit. Lastly, Ms. Kauka told the Board the Ohana is content with the limits placed on the amount of people able to land in each park.

The Board amended the following:

- 1) **Page 4, Milolii “Proposed Zodiac Use” table under heading “Times per day” each should read “2” instead of “1”.**
- 2) **Page 4, Milolii “Proposed Zodiac Use” table under heading “Number of People” should say “15” instead of “30”**
- 3) **Page 5, last paragraph “Proposed Additional Permit Terms and Conditions”**

“The recommendation for the new concession agreements is that the concessionaires be allowed to sell, assign and transfer the permits subject to consent of the Board and to the new permittee meeting Division of State Parks and DOBOR permit requirements.”

- 4) **Page 6, first paragraph**

“The term of the Concession Agreements would be [~~annually renewable~~] for a term of three years. [~~The annual renewal will be at the sole discretion of the Chairperson.~~]

- 5) **Page 6 last paragraph**

“The term of the Milolii kayak landing Concession Agreements will be [~~annually renewable~~] for a term of three years. This Concession Agreement may be revoked with or without cause at the Chairperson’s discretion.”

- 6) **Recommendation Section**

“That the Board approve the permits for the Existing three (3) [~~permitttees~~] Concession Agreement at Nualolo Kai for Motor boat landing opportunities, approve a public process for motor boat landing opportunities at Milolii and

Kalalau and enter into new concession agreements with the three (3) commercial kayakers under the terms and conditions outlined above provided that:"

The Board also advised staff to revisit the Concession Agreements after the second year and return to the Board with their recommendations for renewal of the Concession Agreement.

Unanimously approved as amended (Agor/Johns).

The Board recessed at 11: 05 a.m. and resumed the meeting at 11: 20 a.m.

Item D-15: Consent to Mortgage and Extension of Lease Terms, General Lease Nos. S-3777, 3778 and 3779, Sharon's Plants Limited, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-27:6, 7 and 8.

Ms. Mamiya announced that the applicant is requesting to extend three Waimanalo agricultural leases to expire in 2018 in order to qualify for a mortgage from Bank of Hawaii. Ms. Mamiya recommended the Board consent to the mortgage between Sharon's Plants, Ltd., Mortgagor, and Bank of Hawaii, Mortgagee and authorizes the extension of General Lease Nos. S-3777, S-3778 and S-3779 under the terms and conditions listed in the submittal.

Unanimously approved as submitted (Johns/Agor).

Item D-25: Dispute of Rent Under Revocable Permit No. S-7310, East Kauai Water Users Cooperative, Permittee, Portion of Government Land and Waters within the Drainage Basins of North Wailua and Kapaa Rivers, Kawaihau, Kauai, TMK: Various.

Member Johns recused himself.

Ms. Mamiya indicated RP S-7310 is for a portion of the water license that was issued to the East Kauai Water Company under General Lease No. S-3827 for the diversion and use of water for irrigating the Lihue Plantation. She went on to explain the three different sections of the irrigation system. Ms. Mamiya went on to disclose that the Board waived the first six (6) months of rent followed by a monthly rent established by appraisal. The in-house valuation recommended the monthly rent is set at \$1,971.00 per month based on the total amount of water diverted from the Wailua North Fork and Kapaa Stream system. On November 19, 2003 the East Kauai Water Users Cooperative (EKWUC) requested that the rental assessment be reviewed and revised to reflect the amount of water consumed (750 million gallons per year) by its members rather than the amount diverted (3,375 gallons per year). EKWUC also pointed out the community benefits they provided by up keeping the irrigation system. Ms. Mamiya went into the financial aspect of EKWUC and the annual income and expenses incurred. Last she pointed out since the Department began billing the EKWUC no rental payments have been received.

Currently, the amount owing is \$53,317. EKWUC also has not provided the security deposit as well as other compliance issues. Lastly, Ms. Mamiya indicated the irrigation system should be placed under the management of the Department of Agriculture or Agribusiness Development Cooperation. Ms. Mamiya recommended the Board confirm staff's in-house valuation of \$1,971 per month for RP No. S-7310 to be effective October 1, 2003.

Max Graham, attorney representing the EKWUC appeared before the Board. Mr. Graham communicated EKWUC has no problem with the State taking over the operation and maintenance of the irrigation system. As background information he told the Board the irrigation system was previously run by Lihue Plantation but as the sugar plantation ceased operation EKWUC took over the system about three years ago. He pointed out should the system cease operation for a small period of time it will be extremely difficult to get it started again as it needs to be continually hydrated at all times. Mr. Graham pointed out EKWUC has applied and received some grants but the funds are not enough to cover the operation and maintenance of the irrigation system so in lieu of the service they are providing to the State, EKWUC is asking that their rent be waived.

Jerry Ornellas, President of EKWUC addressed the issue of water diverted versus water actually used. Mr. Ornellas indicated the system requires a certain amount of water for its hydration and the prevention of the clay in the tunnels from drying up which could lead to the collapse of the caves. Another factor contributing to the difference in water diverted versus use is leakage. Mr. Ornellas does not believe there is any waste of water.

Moses Haia attorney representing the Native Hawaiian Legal Corporation (NHLC) spoke on the issue of water diversion. Mr. Haia gave details of the case in 1904 involving Wailuku Sugar Company and Hawaiian Commercial Sugar Company. The end result of the case being that Hawaiian Commercial Sugar Company was able to prevent Wailuku Sugar Company from diverting water from Wailuku Stream. In regards to this case, Mr. Haia is concerned that there has never been a determination of what rights may have been impacted as a result of the diversion of water.

Roy Oyama, President of the County of Kauai Farm Bureau appeared before the board and spoke about the formation of the EKWUC. Mr. Oyama spoke of his desire to see the agriculture industry grow on the island and his support of the work the EKWUC are accomplishing. He reminded those in attendance the EKWUC is a non-profit organization that hopes to promote the growth of agriculture.

Leslie Milnes, Field Manager of EKWUC addressed the issue of expenses incurred versus the income generated. Mr. Milnes pointed out EKWUC has over 40 members and two large landowners paying for water from the irrigation system. He indicated the irrigation system is in horrible disrepair and they are doing what they can to keep the system running. When asked by the Board how they are making up for the difference of income versus expenses, Mr. Milnes pointed out they are currently using a contingency fund to pay this deficit but the fund is just about used up.

Written testimony was received from Reverend Swami Arumugam Katir, Beth Tokioka, the Limu Coalition, the Hanalei Watershed Hui, Carol Wilcox and Rex Johnson of the Hawaii Tourism Authority.

The Board amended the Recommendation Section by amending the rent to be \$156 per year (or \$13 per month) during an interim period until the irrigation system is set-aside to either the Department of Agriculture (DOA) or Agribusiness Development Corporation (ADC). Within the next three months, staff shall bring back to the Board a proposal to set aside the water system to either the DOA or ADC.

Approved as amended by the remaining Board members (Agor/Inouye).

Item D-26: Sale of 65-year Lease at Public Auction of Water Rights for the Use of the “Blue Hole” Diversion and Portions of a Water Transmission System, Lihue-Koloa Forest Reserve (Wailua Section), Wailua, Lihue, Kauai, TMK: (4) 3-9-01:01 & (4) 3-8-01:01 for Hydropower Generation, Non-Polluting and Non-Consumptive Use.

Member Johns recused himself.

Ms. Mamiya communicated at the December 2002, meeting the Kauai Island Utility Cooperative (KIUC) was issued a revocable permit which allowed them to use water from the Blue Hole Diversion and a portion of state-owned water transmission system for its Upper and Lower Lihue Hydropower plants. Also in April 2004, KIUC obtained Concurrent Resolution from the Legislature for their use of water at the Upper and Lower Lihue Hydroelectric Plants. Being that the submittal involves water rights for non-consumptive use, Ms. Mamiya pointed out under section 171-58, HRS the department is required to notify the Department of Hawaiian Home Lands (DHHL) of its intent to execute a lease and to develop a reservation of water rights sufficient to support current and future homestead needs. DHHL had some concerns about this issue but after consultation with staff and the applicant they've agreed that staff's submittal does not need to be held up due to their concerns. Ms. Mamiya recommended the Board authorize the sale of a water lease by public auction for the use of water located on TMK No. 3-8-01:1 (4th Division) from the Blue Hole Diversion, including a portion of the state owned ditch system and such roadways and access over state lands for the operation, maintenance, and repair of the system.

Alton Miyamoto, President and Chief Operating Officer of KIUC reminded the Board this process began in 2001 and since that time KIUC has been working towards today's submittal. Mr. Miyamoto went into the history of the existence of KIUC.

Gary Pierce of KIUC conducted a brief presentation of the physical layout of the hydroelectric plant, the Blue Hole Diversion system and the ditch. Mr. Pierce used a map and pictures to explain the diversion of the water. In his presentation, Mr. Pierce pointed

out there is no consumptive use of the water, all of the water is released back into the Hanamaulu ditch.

Jonathan Scheuer, Policy Analyst for the Office of Hawaiian Affairs (OHA) spoke of three of their concerns: 1) the submittal errs in concluding the use is nonconsumptive; 2) staff errs in recommending that an Environmental Assessment not be prepared under Chapter 343, Hawaii Revised Statutes; and 3) the public trust doctrine, which does not only guide the action of the Commission on Water Resource, but all agencies when dealing with water and other public trust resources, places the burden on the Board and the applicant to affirmatively demonstrate that public trust purposes will be considered and the uses balanced. Based on the above concerns, Mr. Scheuer requested a contested case hearing on behalf of OHA.

Motion made at 12:25 p.m. by Member Agor and second by Member Inouye 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.

Motion to move into Executive Session

Unanimously approved to move into Executive Session (Agor/Inouye).

The meeting resumed at 12:53 p.m.

Deputy Attorney General, William Wynhoff advised the Board to end all testimony relating to agenda item D-26 as a request has been made for a contested case hearing.

Moses Haia, an attorney for Native Hawaiian Legal Cooperation suggested the Board inform the public at the beginning of the meeting that if a contested case hearing is requested on an item, all testimony on this item will cease. Mr. Haia requested a contested case hearing on behalf of Life of the Land.

Linnel Nishioka, attorney for the applicant made it known she believes a request for a contested case hearing is not available for the disposition of a lease.

Written testimony was received from the Limu Coalition, the Hanalei Watershed, Carol Wilcox and Clyde Namuo of OHA.

Chairperson Young notified those wishing to request a contested case hearing that they will need to follow up their verbal request with a written request within ten (10) days.

No Action.

Item D-18: Re-Submittal – Sale of Reclaimed (Filled) Lands to Beth Clark, Trustee of the Big Surf Trust, Kailua-Kona, North Kona, Hawaii, TMK: (3) 7-5-05: seaward of Parcel 12.

Ms. Mamiya indicated an encroachment of filled land acting as a breakwater of approximately 3,096 square feet was discovered when the applicant attempted to repair a portion of a seawall after a boat hit and damaged it. The applicant told staff the encroachments probably resulted many years ago from the dredging of a channel entrance to an existing inland pond on the subject property and the subsequent construction of a breakwater to protect the channel from the prevailing northwest ocean swell. Ms. Mamiya conveyed that Section 171-53(b), HRS states that the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds the disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located. The applicant has provided staff with documentation, which shows that the seawall was built between February 23, 1949 and January 31, 1962 thus it can be sold. The Office of Conservation and Coastal Lands (OCCL) has reviewed the encroachment and has concluded that allowing the encroachments to remain would have minimal adverse impacts on natural resources, including beach resources and their removal would not substantially improve the beach resources. OCCL also noted that there is public access along the shore from the east to about midway of the subject property but becomes impassable from there due to the rocky nature of the shoreline therefore OCCL feels public access is not being hindered or restricted by this sale. Ms. Mamiya pointed out this item was deferred at a previous board meeting in response to public concerns over public access and allegations that a historic "old Hawaiian trail" existed on the subject property that should be recognized and restored. A staff abstractor researched this claim and stated there was no evidence of any historic trail passing to the east of the subject property. Ms. Mamiya recommended the Board authorize the sale of the subject reclaimed land to Beth Clark, Trustee of the Big Surf Trust covering the subject area and impose a fine of \$500 for encroachment upon public lands without Government authorization.

Robert Klein, representing the applicant provided a power point presentation to the Board. In his presentation, Mr. Klein spoke about the history of the property, the damage to the seawall in 2004, traditional access at Kamakahonu, Kamakahonu and its environs, the Ahuena and cultural and other opposition to the footbridge.

Kahu David K. Roy and W. Kaleo O Kalani Nakoa provided testimony via DVD tape in support of staff's recommendation. They spoke about the occupation and history of the subject parcel. Mr. Roy and Mr. Nakoa spoke of the Ahuena and other areas on the property that are sacred to them and the need to preserve it and stop any desecration of these areas.

Clement "Junior" Kanuha testified in support of staff's recommendation and in opposition to the proposal for a footbridge to be built across the lagoon entrance at the Big Surf estate. Mr. Kanuha questioned the board if the footbridge is built who will be responsible for its maintenance and if someone got hurt who would be liable. He spoke in agreement with Big Surf's offer to repair the damaged seawall at their expense in order to protect the community. Lastly, Mr. Kanuha expressed his concern with the sacredness of Kamakahonu and asked that everyone respect it.

Jerry Rothstein, President of PASH testified against staff's recommendation. With regards to the footbridge he noted it was just a means to get from the park to the old Kona Airport. He let it be known they've worked with Kahu David K. Roy with regards to his desire to restore the Ahuena but talks abruptly stopped for no apparent reason. Mr. Rothstein provided a win-win solution, which called for the Board to grant Big Surf Trust a non-exclusive term easement so they can repair the seawall while allowing the public continued unrestricted public lateral shoreline access. Also in the Trust efforts to repair the seawall, Mr. Rothstein proposes they move two or three rocks in such a way as to enhance the safety of stepping on to the site from the shore.

Lee Sickter of Belt Collins spoke of a lateral access from the pier to the old Kona Airport. He told those in attendance he believes there is no easy pedestrian access along the shoreline.

Written testimony was received from Kalani Nakoa, David K. Roy, Claudia Rohr, Glenn Ordell, Barbara Scott, Shannon Rudolph, Antonio Grafilo, Glenys Spitze, Jan War, Fax Sinclair, Toni Auld Yardley and Wattie Hedemann.

The Board amended the Recommendation Section by adding approval for the issuance of a right-of-entry with a deposit of the estimated consideration of \$141,000. The Applicant shall work with the community regarding access issues (not necessarily shoreline access).

Unanimously approved as amended (Inouye/Johns).

Item D-29: Issuance of Direct Lease to Kaheawa Wind Power, LLC for Commercial Wind Farm Purposes and Rescind Prior Board Approval of February 28, 2003 under Agenda Item D-13, Olowalu-Ukumehame, Lahaina, Maui, TMK: (2) 4-8-01: por. 01.

Ms. Mamiya briefly went over the history of the subject wind farm lease. She reminded the board in the end a lease was granted to Hawi Renewable Development, Inc. (HRD). Through the various assignment of rights the project was acquired by UPC Hawaii Wind Partners, LLC who will develop the wind energy project under the name Kaheawa Wind Power, LLC (KWP). KWP proposes to use a different wind turbine than the turbine proposed by HRD so the Office of Conservation and Coastal Lands (OCCL) asked KWP to prepare a mini Environmental Assessment to analyze potential visual impacts. On November 23, 2004, a finding of no significant impact was determined. Currently the wind turbines KWP proposes to use have not been certified by any organization that evaluates the performance of wind turbines but they hope to receive a certification report in the first quarter of 2005. Ms. Mamiya conveyed an interconnection requirement study has been complete and a purchase power agreement will be executed shortly. At this point there are two outstanding issues for the board to decide: the request by KWP to delete the improvement bond and the rental amount. Ms. Mamiya recommended the Board authorize the issuance of a direct lease together with co-terminus non-exclusive access and electrical transmission line easements to Kaheawa Wind Power, LLC covering

the subject area and rescind its prior action of February 28, 2003, under agenda item D-13.

Russell Tsuji, Deputy Attorney General advised the Board that the Department of Land & Natural Resources (DLNR) requires a lessee to supply to types of bonds: 1) a performance bond which is one year's rent and 2) an improvement bond which would assure the applicant completes the work in the allowable time frame, free and clear of any liens. Mr. Tsuji went on to tell the Board the benefits for requiring an improvement bond.

Paul Gaynor, Chief Executive Officer of UPC Wind Partners that is based in Boston came forward and introduced members of his group. He pointed out he has been feverishly working with staff for the last two weeks on the two outstanding issues. Mr. Gaynor went on to speak of the benefits this project would bring to Hawaii. He went on to discuss the Construction Plan including the three main contractors and the total project improvement cost. In lieu of an improvement bond, Mr. Gaynor is proposing the State of Hawaii be named on the GE Company and ABB, Inc. guarantees and the GBI bond and the project lender, HSH Nordbank will also be named along with the KWP equity investors – UPC Hawaii Wind Partners, LLC. In summary he believes the provision of a completion guarantee and the GBI bond puts the State in the same position as an Improvement Bond does. Addressing the second outstanding issue which is rent, Mr. Gaynor let it be known in staff's comparison of UPC with HRD it doesn't account for the fact that the factors used by staff to negotiate HRD rent was limited. Secondly the percentage rent does not fully account for national recommendations.

Written testimony was received from Theodore E. Lui, Director of the Department of Business, Economic Development and Tourism and Ron Sturtz, President of Maui Tomorrow.

The Board amended the submittal by:

- 1) Changing the rent for the first ten years to be 2.5% of gross revenues or \$150,000 per annum whichever is higher.**
- 2) Adding a reopening of both the percentage/royalty rate and the minimum rent at the 11th year provided that the percentage/royalty rate shall not be less than 2.5% nor higher than 3.5% at such reopening.**
- 3) Replacing the Improvement Bond requirement with a restoration bond and requiring the project be completed free and clear of liens. The restoration bond will be based on an estimate provided by the Applicant and confirmed by the Department. IF an agreement cannot be reached on the restoration cost, this item will be brought back to the Board.**

- 4) Adding a requirement that construction of the project shall not commence until the Department has been provided evidence of full financing of the construction costs of the project.
- 5) Adding a requirement that the State be named as an obligee on the contractors' bonds.
- 6) Recommendation 1.C. to read as follows

“ The Lessee shall comply with CDUP MA-3103, issued to GE Wind Energy, approved by the Board at its meeting on January [10] 24, 2003 under agenda item D-9.”

Unanimously approved as amended (Johns/Agor).

- Item F-1: Request for a 6-month No-Cost Extension to Contract No. 51782 to Allow Completion of the Hawaii Coastal Zone Management Program's Community-Based Management Studies on Coral Reefs.
- Item F-2: Request for Approval to Enter into a Contract with Hawaii Pacific Entertainment for “Production, Marketing, and Coordination of “Hawaii's Living Reef” Program” (February 1, 2005 – August 31, 2005).
- Item F-3: Request for Approval to Amend a DLNR/RCUH Agreement for a Division of Aquatic Resources “Alien Invasive Species” Project (September 1, 2004 – September 31, 2005).

Unanimously approved as submitted (Johns/Inouye).

- Item D-21: Sale of Remnant to Carol A. Plummer and Jerry Plummer, Ookala, North Hilo, Hawaii, TMK: (3) 4-1-03: por. of Remnant 2.

Motion to Defer

Unanimously approved to defer (Johns/Inouye).

- Item D-1: Permission to Hire Consultant for 548 Kapahulu Avenue Rezoning Project.
- Item D-2: Rescind prior Board action of February 9, 1990 (Agenda Item F-4), approving a Land Exchange to Correctly Align a 30-Foot Homestead Road Situate at Puukapu Homesteads, 1st Series, Puuukapu, Waimea, South Kohala, Hawaii, TMK: (3) 6-4-01: Road Remnant (Government) and (3) 6-4-01:50 por. (Private).

- Item D-3:** Amend prior Board action of October 11, 2002 (Agenda Item D-20), Quitclaim of Land from the United States of America, Department of Army to the State of Hawaii, Lease of Land to the United States of America, the Department of Army, Waialua, Oahu, TMK: (1) 6-8-14:por. 01, 6-9-01:05 & 16.
- Item D-5:** Issuance of Land Patent in Confirmation of Land Commission Award No. 3702 to David Malo situate at Waikapu, Wailuku, Maui, portion of TMK: (2) 3-5-04:23.
- Item D-6:** Issuance of Land Patent in Confirmation of Land Commission Award No. 7558-B to Kuahine situate at Honuapo, Kau, Hawaii, portion of TMK: (3) 9-5-14:17.
- Item D-7:** Amend Prior Board Action – After the Fact Grant of Term, Non-Exclusive Easement for Seawall Purposes to Edmond Benech and Margarita Sanchez, Holualoa 3rd, North Kona, Hawaii, TMK: 7-7-04: Seaward of Parcel 41.
- Item D-9:** Grant of Term, Non-Exclusive Easement to Shawn Ries for Seawall Purposes, Puuloa, Ewa, Oahu, TMK: 9-1-07:50 seaward.
- Item D-10:** Grant of Term, Non-Exclusive Easement to James Togami and Mildred Togami, Trustees, for Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: 4-5-01:20 seaward.
- Item D-11:** Consent to Assign General Lease No. 3170, Juliette Simpson Furtado, Trustee under Revocable Living Trust Agreement made by Juliette Simpson Furtado dated February 19, 1988 Assignor, to Leonard D. and Jane L. Sutton, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-07:36.
- Item D-12:** Grant of Term, Non-Exclusive Easement for Access and Utility Purposes to Robert Alan Woodcock and Margaret Ann Schofield, Kapaa Homesteads, 1st Series, Kawaihau, Kauai, TMK: (4) 4-6-07: por. 09.
- Item D-13:** Amend Prior Board Action of June 18, 2004 (Item D-8), Cancellation of Revocable Permit No. S-4110 to Yoshiko Kagawa, and Issuance of Revocable Permit to Mary A. Kagawa-Walker, Lot 10-B, Block D, Waimea Town Lots, Waimea, Kauai, TMK: (4) 1-6-04:15.
- Item D-14:** Sale of Reclaimed (Filled) Land to Violet Chun Trust at Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-01:37 seaward.

- Item D-16:** Consent to Mortgage and Extension of Lease Term, General Lease No. S-4340, Akea Farms, Inc., Hoolehua-Apana 2, Molokai, TMK: (2) 5-2-1:9.
- Item D-19:** Consent to Assign General Lease No. S-5094, Andrea Cronrod, Assignor, to Kathleen Castillo, Assignee, Lot 76, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, TMK: (4) 1-4-02:73.
- Item D-20:** Consent to Assign General Lease No. S-5057, Paul S. and Maile F. Hurley, and Dane K. and Frances H. Oda, Assignor, to Michael S. McElgunn, Assignee, Lot 11, Puu Ka Pele Park Lots, Waimea, (Kona), Kauai, TMK: (4) 1-4-02:12.
- Item D-23:** Cancellation of Governor's Executive Order No. 1775 to the Hawaii National Guard for National Guard Armory Site (Kahului Armory) and Issuance of Revocable Permit to the Division of Conservation and Resource Enforcement for Office Space Purposes, Kahului, Wailuku, Maui, TMK: (2) 3-7-12:07.
- Item D-24:** Forfeiture of Revocable Permit No. S-7217, Bailon Batalion, Permittee, Hanapepe Beach Lots, Hanapepe, Kauai, TMK: (4) 1-9-09:06 & 08.
- Item D-27:** Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.
- Item D-28:** Cancellation of Governor's Executive Order No. 4008 to the County of Kauai, Withdrawal from General Lease No. S-5245 and Reset Aside to DOT Highways for Extension of Temporary Kapaa Bypass Road; and Issuance of Construction Right-of-Entry, Kawaihau, Kauai, TMK: (4) 4-5-15: 28 & 35.
- Item D-30:** Request to Write-Off Uncollectible Accounts, Oahu, Hawaii and Maui.

Unanimously approved as submitted (Johns/Agor).

- Item L-1:** Approval for Award of Construction Contract – Job No. J00CF12A, Russian Fort Elizabeth State Historical Park, ADA Barrier Removal, Waimea, Kauai, Hawaii.

Unanimously approved as submitted (Inouye/Agor).

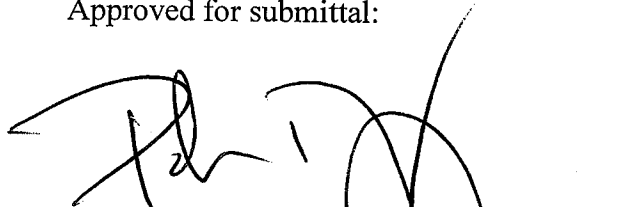
There being no further business, Chairperson Young adjourned the meeting at 3:50 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources