

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

DATE: FRIDAY, FEBRUARY 25, 2005
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 9:10 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. Charlene Unoki, Land
Mr. Dan Quinn, State Parks
Mr. Paul Conry, DOFAW
Mr. Keith Chun, Land

Mr. Sam Lemmo, OCCL
Mr. Richard Rice, DOBOR
Mr. Curt Cottrell, DOFAW

OTHER

Ms. Pamela Matsukawa, Deputy Attorney General
Ms. Sandie Wong, K-2
Ms. Barbara Karleen-Brown, K-2
Mr. Rory Frampton, D-7
Mr. R. Marple, D-6
Mr. Robin Cypriano, J-1
Mr. Tony Moniz, J-1
Mr. Joe Green, J-1
Mr. Mike Beason, J-1
Mr. Kalani Nakoa, J-1
Ms. Lucia Elmaleh, C-1

Mr. Don Karleen, K-2
Mr. Ted Myers, E-1
Mr. David Bills, K-1
Mr. George Kaya, D-3
Ms. Karen Gallagher, J-1
Ms. Suzy Stewart, J-1
Mr. William Aila, J-1
Mr. Pat Henry, J-1
Mr. Jack Elmaleh, C-1
Mr. Roy Sakata, D-5

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

Item A-1: Minutes of March 11, 2005

The Board made the following changes:

Page 2, Item D-2, second paragraph

“Tim Lui-Kwan of Carlsmith Ball indicated they were unsure of how staff derived [at] the amount of the estimated easement consideration.”

Page 3, Item D-9 first paragraph

“Mr. Wegesend pointed out he was able to confirm the [existence of and Exemption Class 5] request was exempt under Class 5.”

Page 3, Item D-9, third paragraph

“Ms. Inouye questioned the [importance of issuing] need of having to issue both a right-of-entry and a grant of term, non-exclusive easement today.”

Page 4 first line

“Wegesend is recommending a fine of \$500 and that the Board authorize[d] the acceptance of a deposit . . .”

Page 4, last paragraph

“The Board informed Mr. Vitousek of his right to a contested case hearing and he acknowledged this right . . .”

Unanimously approved as amended (Inouye/Johns).

Item K-2: Enforcement File No. OA-05-40 Regarding Alleged Unauthorized Alteration and Construction of a Single Family Residence (SFR), Alleged Unauthorized Construction of a Rock Wall, and Unauthorized Alleged Tree Cutting of Fifty-Seven Native and Non-Native Trees.

Board member Agor recused himself.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) let it be known the subject parcel is located approximately two miles up from Tantalus State Park. Mr. Lemmo then addressed the issue of alteration and construction of a single-family residence (SFR). He pointed out the City’s Real Property Assessment

records indicate the SFR was constructed in 1929, which would make the residence nonconforming. Mr. Lemmo believes the subject structure was significantly altered without the department's knowledge or approval. He went on to say HAR, Section 13-5-37 states that "if a nonconforming structure is destroyed by any means to an extent of more than fifty percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter." Mr. Lemmo recommended a fine of \$1000.00 for this violation and \$1000.00 fine for the unauthorized construction of a retaining wall without a permit. In the process of a site inspection staff counted fifty-seven (57) native and non-native trees with a diameter of more than six (6) inches having been removed. The removal of trees includes 2 dead ohia trees, 10 koa trees and 45 non-native trees. Per conservation rules it allows for the removal of dead or diseased "non-native" trees or "native" trees less than six (6) inches in diameter measured at ground level, without a permit therefore a permit should have been obtained for the removal of these trees. Mr. Lemmo is requesting a fine of \$2000 for the removal of all non-native trees and \$650 each for the removal of twelve (12) native trees. Mr. Lemmo recommended the Board find the Karleens in violation of Chapter 183C and assess a fine of \$13,300.00 and instruct the Karleens to file an after-the-fact Conservation District Use Application for the alterations and construction of the single-family residence and the driveway rock wall.

The Board questioned Mr. Lemmo as to why the fines for the construction of the single-family residence and the rock wall were \$1000.00 instead of the maximum fine of \$2000 per violation. Mr. Lemmo noted he felt the landowner appeared genuinely remorseful, was forthcoming with information and was not aware of conservation district rules.

Sandie Wong, attorney for the Karleens came forward and let it be known the violations that occurred were not done willfully, quite simply her clients did not possess knowledge of the conservation rules but once they were aware they violated the rules the Karleens ceased work on the subject property. Ms. Wong pointed out the trees in the amphitheater which were removed was done at the recommendation of their geologist who recommended that the trees be cut to prevent further erosion and to secure the safety of their home. With regards to work done on the single-family residence, Ms. Wong let it be known the Karleens were unfamiliar with the requirements of the conservation district and did not know a permit was required for the work being done on their home. Addressing the issue of cutting down koa trees, Ms. Wong acknowledged the Karleens cut down three koa trees without a permit, but the other seven trees were cut down prior to their acquisition of the property. Ms. Wong asked the Board when making a decision today to please take into account that the Karleens acknowledged they violated conservation district rules and accept responsibility for their actions but in return to remember they were unaware of the conservation rules and when they learned about it they fully cooperated with the Department to remedy the situation.

Don Karleen the landowner testified that in the past he has built other homes in Hawaii. He made the Board aware of an incident on Kauai which occurred on conservation land (on the beach) in which he was assessed a fine. Mr. Karleen told the Board he was aware of rules that governed beachfront lands but not rules that cover the reduction of the size

of his home. He went on to explain the changes he made to his home as well as the removal of native and non-native trees on the subject property. Mr. Karleen told the Board he acknowledges what he did was wrong and he would like to accept responsibility for his actions.

Annie Karleen communicated to the Board of the three (3) koa trees they cut one was alive and the other two trees were dead.

The Board made the following changes to the Recommendation Section:

1) Recommendation 1)

“That the Karleen’s violated the Provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in fifteen (15) instances for failing to obtain the appropriate approvals for the unauthorized land uses(unauthorized alteration and construction of SFR, unauthorized construction of driveway rock wall, unauthorized native and non-native tree cutting) on the subject parcel within the Conservation District. The Karleen’s are fined [~~\$11,800.00~~] \$2000.00 for the unauthorized alteration and construction of SFR, \$2000.00 for the unauthorized construction of driveway rock wall, \$1000.00 for each for the cutting of 12 native trees (\$12,000.00), \$2000.00 for the cutting of non-native trees.”

2) Recommendation 3)

“That the Karleens shall pay all fines (total [~~\$13,300.00~~] \$19,500.00) within thirty (30) days of the date of the Board’s action”

Unanimously approved as amended by the remaining Board members (Inouye/Johns).

The Board made Ms. Wong aware of her right to a contested case hearing and that written paperwork must be filed within ten days of the Board’s decision on this item.

Item E-1: Request to amend Board submittal of December 10, 2004 (Item E-3); Authorization to Issue a Concession Agreement for Commercial Motorboat Tours (Zodiac) and Commercial Kayak Landings at the Na Pali Coast State Wilderness Park, Kauai.

Dan Quinn, Administrator for the Division of State Parks disclosed at the December 10, 2004 Board meeting approval was granted by the Board to grant a Concession Agreement for a term of three years. After consultation with the Office of the Attorney General it was revealed that to comply with HRS 102 the language of the term of the Concession Agreement must read, “The term of the Agreement would be for a one year term.” Mr. Quinn recommended the Board approve the request to revert to the original intent of the submittal for a term of the permit to be one year.

Written testimony was received from Rick Haviland of Outfitters Kauai.

The Board amended the Recommendation Section as follows:

“That the Land Board approve the request to revert to the original intent of the submittal for the term of the permits to be one-year [~~with a one-year renewal delegated to the Chairperson~~]. All of the other amended conditions remain unchanged.”

Unanimously approved as amended (Agor/Johns).

Item D-7: Grant of Term, Non-Exclusive Easement to 575 South Kihei Road LLC for Revetment, Filled Land and Monument Purposes, Kaonoulu, Kihei, Maui, TMK: (2) 3-9-01:83, 120 seaward.

Charlene Unoki, Assistant Administrator of the Land Division indicated the owner of Maui Lu Resort is in the process of planning a redevelopment project. The planned project triggered the need for a Special Management Area application with the County of Maui. During the review it was found that three revetments were encroaching onto State lands. Ms. Unoki pointed out in 1964, after a heavy storm, which result in erosion the owners of Maui Lu Resort, constructed the revetments. The Office of Conservation and Coastal Lands (OCCL) has been consulted and has no objections to the request for an easement. However OCCL is requesting the easement documents provide for lateral public access to the shoreline. Ms. Unoki recommended the Board impose a fine of \$500.00 for the encroachment. Aside from the standard easement conditions she is also recommending the documents include, the grantee shall implement the Maui Lu Beach Nourishment Project and the Grantee shall provide lateral public access through the easement area at all times. Other recommendations include the authorization of the Chairman to amend any of the time requirements under the Applicant’s Requirement for the beach nourishment project and that this approval be rescinded automatically if the Grantee fails to execute the easement document before the issuance of a building permit for the development.

Rory Frampton, agent for Maui Lu Resort noted they’ve been working on this issue for the past 1 ½ years and think they’ve come up with a workable solution for themselves and the public.

Unanimously approved as submitted (Yamamura/DeMello).

Item K-1: Conservation District Use Application (CDUA) No. OA-3203 for Kaelepulu Pond Caretaker’s Single Family Residence and Associated Improvements.

Mr. Lemmo pointed out previously there was some unauthorized filling and dredging taking place on the subject property. As part of that mitigation efforts the former landowner, LECI properties was required to establish a conservation easement and trust

fund for the perpetual preservation and maintenance of the 5.8-acre wetland area. The current property owner is required to continue the maintenance of the area. Mr. Lemmo disclosed the applicant's proposes to construct a single family residence (SFR) in the dry land area (which is not part of the wetland mitigation). The SFR will be single storied and have a developed area of 4500 square feet. The majority of the dry land area will be landscaped and it is believed the proposed plantings will increase the populations of native plants and minimize soil erosion at the water's edge. Also there will be no lighting directed toward the wetland. A public hearing on this action took place in November 2004 and a majority of public comments were supportive. Mr. Lemmo recommended the Board approve this application for a single family residence subject to the conditions listed in staff's submittal.

David Bills, President of Bill's Engineering and agent representing the landowner came forward to testify. Mr. Bills spoke of the history of the subject parcel dating back to 1975. He gave information on the violation that previously occurred and what has transpired since then. Mr. Bill disclosed he was the individual who designed the reconstructed wetland area. He pointed out the trust fund is for the maintenance of the wetland area and can not be used in the dry land area. Lastly, he indicated the Army Corps of Engineers has no interest in the dry land area.

Cindy Turner-de Vries, the property owner described their landscape plan and the plants they plan to use on the property.

Larry Abbott, a biologist working on the restoration activities on the wetland let it be known the he currently works on the wetland at lease twice a week. He communicated to those present that the deVries will be great caretakers for the land. He believes their presence on the subject property will be a positive impact.

Ron Walker a retired wildlife biologist spoke of his interest in the subject wetland. Mr. Walker noted the present landowners have done far greater improvements than any of the previous owners. He urged the Board to approve the submittal before them today.

Bob Burke, a property owner whose land adjoins the wetland spoke in support of staff's submittal. He spoke of the ease to work with the current owners as well as the improvements they've made on the wetland.

Unanimously approved as submitted (Inouye/Johns).

Item D-6: Amend Prior Board Action of December 10, 2004, under Agenda Item D-9, for Grant of a 55-year Non-Exclusive Easement for Seawall Purposes to Shawn Ries, Puuloa, Ewa, Oahu, TMK: 9-1-07:50 seaward.

Ms. Unoki communicated the applicant is in the process of obtaining a building permit for house repairs which will require a shoreline certification. The process of the easement and the shoreline certification will run simultaneously therefore he has agreed

to pay a deposit of \$1,395.00 for the subject easement. Ms. Unoki recommended the Board amend its action of December 13, 2002 by accepting a deposit of \$1,395.00.

Unanimously approved as submitted (Inouye/Johns).

Item D-3: Grant of Term, Non-Exclusive Easement to Mihana Souza for Seawall Purposes, Ewa Beach, Oahu, TMK: 9-1-25:74 seaward.

Ms. Unoki conveyed the applicant, Mihana Souza proposed to increase the height of the existing seawall. During the shoreline survey process an encroachment of the seawall footing was revealed. Ms. Unoki is recommending a fine of \$500 for the encroachment as well as other standard shoreline easement terms.

George Kaya representing Mihana Souza came forward to provide testimony in support of staff's recommendation. Mr. Kaya stated he had no objections to the submittal.

Unanimously approved as submitted (Inouye/Johns).

Item J-1: Request for Approval to conduct a Public Process to address User Conflicts and Capacity Issues Related to Ocean Recreation and Authorization to Issue Concession Agreements for various Ocean Related Activities as immediate management tools.

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) noted the focus and intent of this submittal are to take a proactive approach to ocean recreation activities and minimize and/or avoid user conflicts. The underlying premise of this is the protection and preservation of the natural and cultural resources. Mr. Rice went on to say the proposal before the Board will address ocean recreation "User Conflicts" and DLNR's Division of Boating and Ocean Recreation will take the lead in formulating a suggested policy and management tools relating to this issue. Mr. Rice reminded those present of the Board's Hierarchy of Priorities which gives highest priority to the protection of Natural and Cultural Resources followed by the Use by the General Public and lastly if possible to Commercial activities. In the past DOBOR has dealt with user conflicts by designating Ocean Recreation Management Areas (ORMAs). These ORMA areas help to control certain commercial activities to specifically designated locations and time periods, as well as place limits on equipment types. Mr. Rice recommended the Board authorize the Department, through the Division of Boating and Ocean Recreation to conduct a public process, to include in the public process the prospect of initiating and/or amending Ocean Recreation Management Areas as tools to avoid and/or mitigate ocean recreation user conflicts and to address capacity issues, to initially focus on priority issue such as surf instruction/schools, kayaking, snorkel/dive and related operations and authorize the Department to prepare concession agreements, with terms of one year or less (HRS 102-2 (b) 7) for Board approval as immediate management tools to avoid or mitigate ocean recreation user conflicts.

The Board questioned the need for recommendation 4) which called for the issuance of concession agreements with terms of one year or less during the time the division is going through the public process. Mr. Rice pointed out currently they have some management tools to address problems that could arise but should a situation arise in which a better solution than what is currently being used comes to light the division would need to come back to the Board for approval which could take considerable time.

Pam Matsukawa, Deputy Attorney General requested that DOBOR consult with their office on recommendation 4) if it pertains to the water. Mr. Rice noted his agreement with Ms. Matsukawa's request.

Robin Cipriano, founder of Professional Association of Surfing Instructors (PASI), a non-profit organization spoke in regards to DOBOR's request to issue concession agreements as an immediate management tool. He let it be known his organization was formed a year ago to address ocean recreation user conflicts in the water. Currently PASI's intent is to develop a surfing certification program and address ocean recreation safety pertaining to all facets of recreational surfing. PASI is looking at self-regulation of their industry and believes it will resolve some of the problems on the water. Mr. Cipriano went on to read testimony from Robert Hempsher owner of Ocean Eco-Tours in Kona who spoke of the need in Kona to promote safe surfing and basic water safety. Mr. Cipriano spoke of his concern with the issuance of concession permits by either open or closed bids. He feared the issuance of concession permits would bring in people from the mainland and upset many of the current businesses. In closing, Mr. Cipriano asked the PASI be included in all discussion that could affect them as they are one of the major stakeholders in this issue.

Karen Gallagher a surfer and owner of North Shore Surf Camps testified. She communicated her business has been in operation for the past five years. Ms. Gallagher operates a surf camp in the summer. She let her concern be known regarding the issuance of concession agreements and how this measure could possibly put her out of business. She believes self-regulation is the way to go and supports PASI. She asked the Board to support self-regulation, which would save the State a lot of money

Tony Moniz a surfer for the past forty (40) years who also has a surf school that's been in business for ten (10) years testified in support of working with PASI and the Department to solve whatever problems that could arise. He spoke of his mentor, Duke Kahanamoku and his portrayal of the aloha spirit.

Suzy Stewart, owner of Sunset Suzy's Surf School on the North Shore came forward to testify. Ms. Stewart acknowledged that she has her blue card, which is issued by the Department and has followed all of their rules and regulations. She feels there is a need to educate the tourist on how to and where to surf safely. Ms. Stewart believes the issuance of concession agreements would put small businesses out of business. She asked the Board to allowed the surf industry to regulate themselves first before going through with concession permits. Lastly, she asked the Department when looking at the

various ocean related areas, to view each region separately from others as each area is unique in itself.

Joe Green, owner of Surf n Sea, a surf shop in Haleiwa let it be known he has spent years introducing people to the area and conducting surfing lessons. He spoke of his feeling that the ocean is safer today than it ever was before and believes self-regulation is in order. Mr. Green let it be known PASI should be given an opportunity to see if their program can work.

William Aila came forward to testify in support of the intent of issuing concession permits as defined in HRS 102-2 as a tool to mitigate user conflicts but he has several concerns: 1) Does "land" as used in HRS 102 apply to submerged land as defined in Chapter 171, HRS; 2) How does chapter 102 fit within the context of Chapter 200 – are they contradictory or are they compatible; 3) What is the statute that authorizes enforcement action against someone who does not have a concession permit; 4) Are the concession permits transferable; 5) Are the funds realized from the concession permit go to DOBOR's special fund or to some other fund; and 6) How are the concession permits going to solve the other user conflicts, such as off shore conflicts. Mr. Aila believes if the Department should be clear if they have the authority to issue activity specific permits, including commercial activities that originate from private marina's, as another possible management tool to better deal with user conflicts.

Mike Beason, a representative from Save Diamond Head Waters spoke in support of the public process but opposed the issuance of concession agreements. Mr. Beason feels the issuance of concession agreements is premature. He believes self regulation is a positive tool, which should be used while the rules are being developed. He asked PASI to approach DLNR to require that 'blue cards' be required statewide so everyone's teaching will be qualified. Mr. Beason spoke of this group's concern with some issues in the submittal. He questioned how the user/advisory groups would be created. He also asked the Board to be included on the user/advisory group. Mr. Beason communicated that it is inappropriate to issue concession permits at this time. He noted if the Department were to issue a concession permit for a specific area, it gives that group an entitlement to that area. He also questions the issuance of a concession agreement on land and whether a special management area requirement comes into play. In closing Mr. Beason supported the public process but asked the Board to strike recommendation 4) which called for the issuance of concession permits.

Pat Henry, an apartment owner whose apartment is located on the ocean's front testified before the Board. Mr. Henry spoke of the parents of children attending the surf schools congregated in front of his lanai to shout encouragement to their children. He spoke in opposition of any commercial activity taking place in front of residential areas. He questioned why commercial activities are not allowed on the streets in front of his home but are allowed on the ocean side of his home. He feels this is an incompatible use. Mr. Beason noted if the Department is inclined to issue concession permits that they take into account the zoning of the adjacent lands and not allow incompatible uses.

Kalani Nakoa, a resident of Hawaii spoke of surfing being a cultural resources and applying that to the Departments hierarchy would put this activity at the highest priority level. Mr. Nakoa supports this management plan but believes there are rules in place already that would alleviate user conflicts, one example being the "blue cards." Mr. Nakoa plans to support PASI and self-regulation however he feels PASI should not be used in lieu of what the Department's obligation is as stated in 251 and 256 in ORMA part three. He noted his concern with the lack of enforcement on the Big Island and feels there is a need for concession agreements on his island. Lastly, he echoed the concerns of Ms. Stewart that each island be viewed separately from the other islands when dealing with possible user conflicts.

Chairperson Young clarified the issue of concession permits. He let it be known the issuance of concession permits have already been used in State Parks on the Napali Coast and for kayaks at Makua and in both of these cases it was not a bid process. He made available draft copies of the concession agreement.

The Board instructed staff to include stakeholders who are not necessarily users that may have conflicts. Staff was also directed to work closely with the Attorney General's Office while going through this process and lastly to address the questions raised by Mr. Aila.

Written testimony was received from Gail Hunter, Alethea Rebman, Shayne Satambler, M.A. Glover, and 2 petitions in opposition of concession permits.

Unanimously approved as submitted (Johns/Agor).

Item C-1: Enforcement Action Involving Illegal Commercial Trail Tour Activity along the Manoa Falls Trail in the Honolulu Watershed Forest Reserve, Oahu.

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) and Curt Cotrell, Program Manager for Na Ala Hele appeared before the Board to go through the above submittal. Mr. Conry let it be known Manoa Falls is managed by DOFAW through the Na Ala Hele (NAH) Trail and Access Program. As background information, Mr. Conry noted in 1999, NAH promulgated the rules to establish a permit requirement for commercial trail tour activity in which Manoa Falls was included. In 2000, NAH closed Manoa Falls due to illegal tours and the increased amount of public use. In 2001, Chapter 198D, HRS amended the rules to add a civil penalty provision then in 2002, the rules were amended to reflect the new statutory civil penalty. In February 2004, the Division reopened Manoa Falls to commercial activity. Mr. Conry went over the maximum amount of permitted tours and individuals on the tour per day at Manoa Falls. Mr. Conry indicated over the past several years, various illegal tours have been observed by staff or reported by the public or authorized commercial tour operators on various trail on Oahu with Manoa Falls being the most frequent location of sightings of illegal tours. One company in particular, Magnum Tickets and Tours has been reported and cited on several occasions. Staff included in their submittal three citations issued to Magnum

Tickets and Tours. Mr. Conry described to the Board the administrative penalties available to the department under Chapter 198D-12. Mr. Conry recommended the Board find Magnum Tickets and Tours has violated Chapter 13-130 HAR, Section 13-130-43 (b) on multiple cases and authorize an administrative fine of \$2,500 to be assessed.

The Board questioned a fine of \$2,500 since there were six incidents involving Magnum Tickets and Tours and wondered why staff did not assess a fine of \$2,500 per incident. Mr. Conry pointed out the rules assessing civil penalties did not come into effect until 2002 and some of the incidents occurred prior to that date. As far as administrative cost the statute does allow for reimbursement of administrative cost but Mr. Conry noted it could be done through a civil court process.

Jack Elmaleh, owner of Magnum Ticket and tours testified his ex-wife, Lucia got sick and as part of her therapy she began hiking around Honolulu, one of the areas being Manoa Falls. Mr. Elmaleh acknowledged Lucia hired him to direct business to her for hikes at Manoa Falls. He confirmed that Lucia is not an employee of Magnum Tickets and Tours. Mr. Elmaleh told the Board he was led by Lucia to believe that she had all the necessary paperwork and permits to conduct tours at Manoa Falls. He told the Board all he did was to accept payment for the hikes, which Lucia took the clients on.

Lucia Elmaleh let be known in the past she would take interested parties on hikes to Manoa Falls free of charge then at the end of the hike they would give her a tip. Ms. Elmaleh realized this was something she wanted to pursue so she went and purchased a van and obtained the necessary insurance. She went on to say when she came to the Department to obtain a commercial hiking permit but was told by staff she'd have to wait a year to obtain a permit. Ms. Elmaleh acknowledged when asked by her ex-husband if she had the necessary paperwork she said yes. Ms. Elmaleh went on to say she thought it was okay to take a group of five or six people on a hike to Manoa Falls without a permit.

The Board asked staff how did they identify it was Magnum Ticket and Tours and not an independent contractor of Magnum Ticket and Tours. Mr. Conry indicated on one of the citations issue, which was to Donald Simcox he acknowledged that he worked for Magnum Tickets and Tours. Mr. Cotrell also affirmed that Mr. Simcox gave the Division of Conservation and Resource Enforcement (DOCARE) officer a statement saying he is the boyfriend of Lucia Elmaleh and she worked for Magnum Ticket and Tours. Mr. Cotrell also noted Magnum Tickets and Tours website advertises a "Jungle Water Fall" as well as distributing brochures of this hike that have Magnum Tickets and Tours address on it.

The Board explained to Mr. Elmaleh there is enough evidence before them today to find whomever were conducting the tours were in fact agents acting on behalf of Magnum Tickets and Tours. The Board conveyed to Mr. Elmaleh if he does not believe this is the case he has the right to request a contested case.

Chairperson Young informed Mr. Elmaleh of his right to a contested case hearing and that the necessary paperwork must be filed within ten days of the Board's action.

Unanimously approved as submitted (Johns/Yamamura).

Item D-1: Grant of Perpetual, Non-Exclusive Easement to Philip K. Binney and Peter A. Binney for Access and Utility Purposes, Keahilaka, Puna, Hawaii, TMK: (3) 1-3-08:12.

Unanimously approved as submitted (DeMello/Johns).

Item D-2: Request to Write-Off Uncollectible Account; General Lease No. S-5089, David Akama, Lessee, Kauai.

Item D-4: Amend Prior Board Action of July 30, 2004, Agenda Item D-28, Set Aside to University of Hawaii for Pier Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-6-01:15 seaward.

Item D-8: Grant of a Term, Non-Exclusive Easement for Seawall, Stairs and Reclaimed land to Frank and Miriam Ryder, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-7-30:15 seaward.

Unanimously approved as submitted (Yamamura/DeMello).

Item C-3: Requesting Approval to Conduct Public Hearings for Hawaii Administrative Rules, Title 13, Chapter 8, for The Design and Placement of Warning Signs on Improved Public Lands, Pursuant to Act 82, Session Laws Hawaii 2003 (Relating to Public Land Liability).

Unanimously approved as submitted (Yamamura/DeMello).

Item D-5: Amend Board Action of October 8, 2004, Agenda Item D-1, regarding the Sale of Lease at Public Auction for Industrial and/or Commercial Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41.

Ms. Unoki reminded the Board on October 8, 2004, they approved a fifty-five (55) year lease at public auction for a state property just outside of the airport. Since that time staff is requesting to make several changes to that document. Ms. Unoki indicated the requested changes would be to the Character of Use, Avigation Easement and FAA Requirements, the Commencement Date and the Consent to Sublease Requirement/Board's Sublease Rent Participation Policy.

Keith Chun, Planning and Development Manger with the Land Division clarified that staff is requiring the lessee to cover the cost of improvements so the State would not participate in sandwich profits earned from the sublease. Mr. Chun let it be known discussion with the Department of Transportation (DOT) with regards to the easements have not been worked out. He pointed out one of DOT's concern is the height limit requirement.

Roy Sakata, Airports Operation Officer for the Department of Transportation, Airports Division came forward to testify. Mr. Sakata explained that the Hilo Airport has two runways, its primary runway being 9800 feet and the secondary runway being 5600 feet. He noted the primary runway can support all aircrafts at its maximum load but if the primary runway shuts down due to maintenance or repairs the secondary runway would only be able to support a passenger load of 75-80 people (maximum load 126). Mr. Sakata wants to ensure that the Board understands the height restriction must be maintained so as to not impact the length of the runway.

Unanimously approved as submitted (DeMello/Johns).

Item C-2: Request for the Amendment of the Habitat Conservation Plan for Hawaiian Stilt at Cyanotech Aquaculture Facility, Keahole Point, Hawaii and One-Year Extension of the Accompanying Incidental Take License.

Unanimously approved as submitted (Johns/Yamamura).

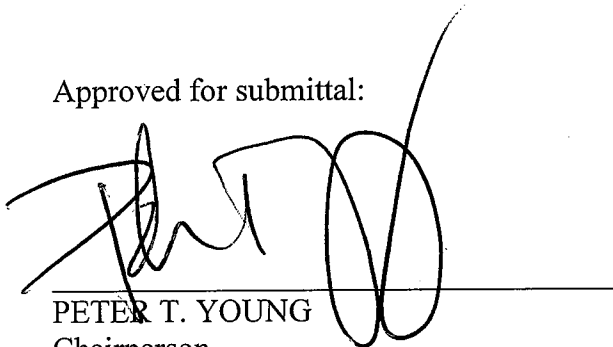
There being no further business, Chairperson Young adjourned the meeting at 12:45 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources