

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

DATE: THURSDAY, JUNE 9, 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 9:20 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Tim Johns
Mr. Toby Martyn (arrived at 10:15 a.m.)

Ms. Kathy Inouye
Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Ms. Charlene Unoki, Land
Mr. Dan Quinn, Parks
Mr. Sam Lemmo, OCCL
Mr. Eric Hirano, Engineering

Mr. Paul Conry, DOFAW
Mr. Francis Oishi, DAR
Mr. Richard Rice, DOBOR
Mr. Mike Shinozuka, DOT

OTHER

Ms. Julie China, Deputy Attorney General
Mr. Randy Barelett, C-1
Mr. Miles Wobley, E-4
Ms. Natalie Iwasa, E-4
Mr. Daniel Weaver, E-4
Ms. Jean Connelly, E-4
Mr. Dan First, E-4
Mr. David Auwae, E-4
Mr. Kekua Hunter, E-4
Ms. Frenchy DeSoto, E-4
Ms. Alice Greenwood, E-4
Ms. Gayle Hunter, E-4

Mr. Richard Holland, E-4
Mr. Kaimi Pelekai, E-4
Mrs. Yuriko Holland, E-4
Mr. Joe Alafichi, E-4
Ms. Clarenia Batongacal, E-4
Mr. Carl Jellings, E-4
Mr. Reid Nagai, E-4
Ms. Lilett Sibadi, E-4
Ms. Pat Peterson, E-4
Mr. William Aila, E-4
Ms. Leandra, E-4

Ms. Shelley, E-4
Mr. Giovanni Navarro, E-4
Mr. Kalani, E-4
Mr. Armin Collins, E-4
Ms. Maha Mapuahi, E-4
Ms. Maltibie Eleger, E-4
Ms. Karen Awana, E-4
Ms. Linda Henriques, D-14
Mr. Bob Staufer, D-17
Ms. Paulette Tau-a, D-6
Mr. Cliff Cisco, J-1
Ms. Sandi Ichihara, D-12

Mr. Adam, E-4
Ms. Melva Aila, E-4
Ms. Jo Jordan, E-4
Mr. Elijah Grilo, E-4
Ms. Debra Thompson, E-4
Mr. Gary Geronomo, E-4
Mr. Peter Fithian, M-3, M-4
Mr. Brett Pruett, D-17
Pastor Richard Trier, D-7
Ms. Deborah Dunn, E-1
Mr. Geoffrey Parerson, K-1

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

Item A-1: Minutes of May 27, 2005

Member Johns recused himself.

Unanimously approved as submitted by the remaining Board members (Inouye/Martyn).

Item C-1: Puu Kukui Watershed Preserve/Renewal for Continued Enrollment in the Natural Area Partnership Program.

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) communicated that the Puu Kukui Preserve is an important habitat for the endangered bat, at least 36 species of rare native plants, several native forest birds and seabirds, and rare native invertebrates. Over the next six years, planned management for the area will focus on maintaining the native ecosystems as intact watershed and protecting the rare habitat for native Hawaiian plants and animals. The management emphasis will be on the continued reduction in feral pig activity through strategic fencing, monitoring and animal control, and on reduction in the range of habitat modifying weeds and preventing the introduction of non-native plants. Additional management activities include invertebrate and small mammal control and monitoring the effectiveness of their management programs. The total budget for the program is \$2,487,366 of which the State's portion will be \$1,658,244. Mr. Conry recommended the Board continue approval to the applicants for the Puu Kukui Watershed Preserve Long-Range Management Plan as a permitted use within the Conservation District, authorize the continued funding for the preserve project and Direct DOFAW to encumber the Puu Kukui Watershed Preserve/Natural Area Partnership Agreement with Maui Land & Pineapple.

Randy Barelett of Maui Land & Pineapple was present at the meeting.

The Board amended recommendation 3)

- “3. authorize the [Division of Forestry and Wildlife] Chairperson to execute the contract and to encumber the Pu’u Kukui Watershed Preserve/Natural Area Partnership Agreement with Maui Land & Pineapple for Fiscal Years 2006 – 2011 with the following conditions:**
- a. The Long-Range Management Plan is accepted for a six-year period.**
 - b. Funding is authorized for the full six-year period as described in the Long-Range Management Plan subject to the availability of funds and contract approval as to form by the Attorney General.**

Unanimously approved as amended (Yamamura/Johns).

Item E-4: Request for a Kayak and Related Commercial Activity Permit/Concession for Makua Lani to Operate Kayaks from Sections on Makua Beach of Kaena Point State Park, Oahu.

Dan Quinn, Administrator of the Division of State Parks reminded the Board at the June 9, 2005 meeting the Board approved an interim permit to Makua Lani to operate a kayak concession on a month-to-month basis with the current permit expiring on June 30, 2005. Also at that meeting the Board approved a public process to develop a regular permit. Two public meetings were held at which time the community brought up user conflicts between fishermen, pre-existing commercial activities, and impact on the spinner dolphins. At those meetings there were both support and opposition for Makua Lani’s operation. One strong support for Makua Lani was their employment of individuals in the Waianae community. Lastly, Mr. Quinn noted the Waianae Coast Neighborhood Board gave their support to ocean tours like Makua Lani on the condition that the department establishes rules and guidelines, which have not yet been done. Also this morning, Mr. Quinn received a letter from the Waianae Coast Neighborhood Board, which stated that they’ve revisited this issue and now do not support the issuance of permits for concessions at Makua Beach. Mr. Quinn recommended the Board not issue a new permit to Makua Lani and based on recent public testimony the Department temporarily cease the issuance of any further commercial recreation activity permits at Makua Beach of Kaena Point State Park until the Department further reviews the situation.

The Board questioned staff if there is any record on file of the applicant violating the terms and conditions of the permit. Mr. Quinn replied that some individuals have indicated there were violations but upon inspection by the Division of Conservation and Resource Enforcement (DOCARE) there were no violations. The Board went on to ask Mr. Quinn what were the community’s concerns expressed at the public meetings. Mr. Quinn let it be known the community cited numerous concerns regarding inappropriate actions by the individuals conducting the tour. Fishermen in the area also had concerns that this type of activity was driving away the akule population. Some comments were also directed to the person running the operation.

When questioned by the Board if there was a timeline to develop rules and guidelines regarding the application process for concessions, Mr. Quinn told the Board the department has not begun work on the rules.

Miles Wobley, a friend of Makua Lani testified that at the June 9, 2004 meeting there was unanimous support for Makua Lani from the Waianae Neighborhood Board because they saw what a positive impact Makua Lani would have on the community. Mr. Wobley believes those in opposition to Makua Lani are individuals who would like to keep the beach area to themselves which he feels is disconcerting. He noted this is a public beach and Makua Lani is only there for about three hours a day at which time there are no other people using the beach. He told the Board Makua Lani has met all of the terms and conditions of their permit and he believes the department have failed them as they have not implemented the rules to govern the concession permit. Lastly he told the Board Makua Lani has had a positive effect on the community and noted that the governor has issued a letter in support of their operation.

Richard Holland, Executive Director of Makua Lani acknowledged his staff, which includes 26 Waianae residents. Mr. Holland spoke about his operation at Makua beach and his belief that his operation can coexist with the fishermen and other commercial operations using Makua beach. He let it be known his operation does not cause harm to the environment. Mr. Holland pointed out if Makua Lani is not granted a permit a lot of people will be unemployed which would place a heavy burden upon the State. When asked by the Board if he could operate his business elsewhere, Mr. Holland replied that the experience Makua provides is a feeling that cannot be achieved elsewhere. He reminded the Board in 2004 when they were issued a concession agreement it was with the intent that the Department would work on a process to create a concession permit which has yet to happen. Mr. Holland acknowledges he has a City permit to operate at Pokai Bay but if granted a permit for Makua he would cease operation at Pokai Bay. He pointed out his customers prefer the experience at Makua to that of Pokai Bay. In terms of the cost of the tour, Makua Lani charges \$148.00 per person and Mr. Holland pointed out this money stays in Waianae.

When questioned by the Board regarding the non-profit status, Mr. Holland told the Board per information from Makua's attorney they have five months to submit their application to be considered a 501(c)(3). Mr. Holland confirmed he was registered in the state as a non-profit but not yet recognized as a 501(c)(3) and has yet to apply.

Kaimi Pelekai, President of the Board of Directors of Makua Lani testified. He let it be known he became involved with the organization six months ago and upon further review of Makua Lani's operation they have gained his support. He spoke of the organizations employment of residents of Waianae and at the same time instilling a sense of identity in their youth that they may not have otherwise. If given the opportunity, Mr. Pelekai would like to steer the organization in a direction in which it would serve the youth of the area by giving them the opportunity to learn about their culture as well as gain self-esteem. As far as user conflicts he agrees there is a lot of issues but notes Makua Lani allows community members to sit on their board thereby allowing them to have a voice in the way the operation is conducted.

Natalie Iwasa, a Certified Public Account working with Makua Lani testified before the Board. Ms. Iwasa spoke of the generosity Mr. Holland has displayed towards his workers by paying most of them more than the minimum wage. She let it be known if Makua Lani is not granted a permit these individuals will need to apply for welfare and quest medical program, which would be a burden on the state. Ms. Isawa asked the Board to renew Makua Lani's permit for a year at which time the Department can establish rules and guidelines governing concession permits at Makua beach.

Yuriko Holland, a Japanese translator for Makua Lani testified in support of Makua Lani's permit being renewed. Mrs. Holland spoke of the magically feeling she as well as the tourist have experienced at Makua.

Daniel Weaver, an employee of Makua Lani spoke of his appreciation for the opportunity to be at Makua beach. He communicated that the employees of Makua Lani work at cleaning the beach and the reef area at Makua beach. Mr. Weaver let it be known Makua Lani employees certified lifeguards who are knowledgeable in CPR. He feels Makua Lani should be issued a permit for the area as they've shown that they deserve to be there and want to be there and they do not cause any harm to the environment.

Joe Alafichi, an employee of Makua Lani told the Board he believes this job is a gift from god because prior to his employment with the permittee he was on drugs and had a negative outlook on life. Through his employment with Makua Lani he has been able to learn about his Hawaiian culture. Mr. Alafichi believes this generation should support the younger generation in their endeavors.

Jean Connelly, a resident of Makaha spoke of her sadness about what is going on in Makua regarding the depletion in the stock of akule and the effects commercial operations are having on the spinner dolphins. Ms. Connelly told the Board she believes a study should be done that details the impact Makua Lani is having on the environment.

Clarencia Batongacal spoke against Makua Lani's operation. She believes if the Board issues a permit to the applicant it would be the beginning of a threat to the environment. Ms. Batangacal told the Board she recently went to the market to purchase akule at a time when it should be plentiful and was not able to find any akule in the stores. She let it be known if Makua Lani were granted a concession permit she would like for it to be in another area aside from Makua beach.

Dan First, an employee with Makua Lani since June 3, 2004 told the Board he has worked with Makua Lani in preparing the paperwork that is before the Board today. Mr. First pointed out that Makua Lani charges each individual \$148 for this experience. Of the money collected forty dollars (\$40) goes towards commission, ninety dollars (\$90) goes toward staff's salary and nine dollars (\$9) goes toward vehicles, rentals and other expenses leaving nine dollars (\$9) for Makua Lani. Mr. First conveyed that every day Makua Lani is on the beach they've cleaned the beach of debris left by others. Mr. First informed the Board staff's recommendation is based on the fact that Waianae community is against

Makua Lani. He make it known if the Board does not grant Makua Lani a permit to operate at Makua Beach there is no other place on the island which provides the same type of magic.

Carl Jellings, a fisherman spoke in favor of staff's recommendation not to issue a permit to Makua Lani and presented the Board with a petition against issuing a permit to Makua Lani. Mr. Jellings told the Board commercial tours are fast money but it comes with a price to the environment. He went on to speak of the depletion of akule stock at Makua due to commercial activities taking place upon these fishing grounds and his belief that commercial activity is causing a major hardship on fishermen. He let it be known he has tried to work with Makua Lani in the past but without any positive results.

David Auwae, a commercial fisherman testified against the Board issuing a permit to Makua Lani. He feels there is too much activity already occurring on the coastline. Mr. Auwae told the Board he has not fished in Makua Bay for the last year due to the depletion in the akule stock. Mr. Auwae pointed out the Waianae Neighborhood Board as well as staff has recommended denial of a permit to Makua Lani and the Board should therefore follow their recommendation.

Reid Nagai, a commercial fisherman testified in support of staff's recommendation regarding the denial of the issuance of a permit to Makua Lani. Mr. Nagai spoke of his concern with the Department issuing permits for any commercial tourist activity in Waianae.

Kekua Hunter, a fisherman testified in favor of staff's recommendation. He pointed out from April 2005 to July 2005 they've caught a total of 25,000 lbs of akule when Makua Lani was issued a cease and desist order with regards to operating in Makua.

Lilett Sibadi, a native Hawaiian testified in support of staff's recommendation. When dealing with the ocean she let it be known we are dealing with the habitat, the reef and the pile of rock, sand and stone. Ms. Sibadi spoke of the sacredness of Makua and pointed out there is a difference between the sacredness and specialness of Makua. She feels the sacredness of Makua has been challenged over the generations. Ms. Sibadi let it be known that Makua is a place of tradition for the fishermen as they are the chief practioners that visit the ocean each day. In closing she asked the Board to deny any permits to Makua Lani.

Frenchy DeSoto appeared before the Board and asked that they support staff's recommendation. She pointed out the Department does not have the manpower to provide monitoring and enforcement in the subject area. Ms. DeSoto questioned how Makua Lani was able to obtain a permit for operation of a concession at Makua without a public process. Pat Patterson, a resident of Waianae testified in support of staff's recommendation. Ms. Patterson indicated out in Makua Bay both the population of fish and dolphins are on a sharp decline. She went on to read sections of her written testimony.

Alice Greenwood, a Waianae resident spoke in opposition of issuing a permit to Makua Lani. She spoke of being raised in Makua as well as her family being buried in Makua. Ms. Greenwood spoke of her love for the area. She conveyed her outrage at the way the

dolphins in the bay were being treated. Ms. Greenwood communicated that once the environment is destroyed it will never come back again.

William Aila reminded the Board a year ago he consented to the experiment of issuing of a permit to Makua Lani. Since that time, it has become clear to him that the impact created by the permittee has been a negative impact on the akule fishermen on the Waianae Coast. He believes the behavior of the commercial tour boat operators out of Waianae is negatively impacting the resources along the Waianae coastline. Mr. Aila urged the Board not to issue a concession permit to Makua Lani.

Gayle Hunter testified in support of staff's recommendation. She told the Board we cannot eat money but the fish in the bay can sustain the people. She addressed the lack of enforcement personnel in Makua and their inability to view any violations created by Makua Lani. Ms. Hunter noted she has videos and photos of violations by Makua Lani.

Leandra came forward and spoke in support of staff's recommendation. She let it be known their spirituality is not for sale therefore she is against any issuance of permits for Makua. She told the Board the needs of the fishermen need to be met before we look at allowing others into the area. Leandra requested the Department spend more of its money towards the enforcement of rules in Waianae.

Shelley a member of the Neighborhood Watch spoke in support of staff's recommendation. She told the Board of acts of vandalism and robbery that have occurred in the area where Makua Lani is operating. Shelley told the Board she obtained a listing of all non-profit companies in the Waianae area and Makua Lani was not listed. She also spoke of the lack of trash receptacles in the area as well as the lack of cell phone reception in the area should emergency help be needed.

Adam an employee of Makua Lani told the Board Makua Lani is on the verge of becoming a solid entity on the westside of the island. He feels it would be a shame if the company had to shut down and asked to Board to issue a permit to Makua Lani.

Giovanni Navarro, an employee of Makua Lani testified in opposition of staff's recommendation. He spoke of the various possibilities of why the dolphins might not always be around the bay.

Marco Paul, an employee of Makua Lani asked the Board to issue Makua Lani a permit for operation of their concession at Makua.

Melva Aila, a resident of Waianae and a native practioner testified in support of staff's recommendation. She told the Board she is really offended that Makua's sacredness is being exploited for money. She explained to the Board she does not support the issuance of a concession permit. Ms. Aila pointed out that fishermen occupied the area long before kayakers therefore they should be given the respect they deserve.

Kalani, an employee at Makua Lani testified in favor of Makua being issued a concession permit. Kalani feels those individuals testifying against Makua Lani are individuals who are actually against Richard Holland.

Jo Jordan, speaking on behalf of the Waianae Neighborhood Board spoke of her knowledge of this issue and of Makua Lani. She let it be known she has attended the two public hearings the department has established. She also ran a parks and recreation meeting twice a month for the last seven years and in that time, Mr. Holland nor his staff has ever been to any meetings prior to 2004. Ms. Jordan pointed out he did appear before the Neighborhood Board in May 2004. Ms. Jordan clarified that in May 2004, the Waianae Neighborhood Board approved a conditional motion to support ocean tours like those of Makua Lani as long as the permit process and the rules and regulations governing concession permits were implemented to support these types of entities. Ms. Jordan went on to point out since then the Department has not moved towards putting together rules and guidelines regarding the application process for concessions and at its June 2005 meeting the Waianae Neighborhood Board revisited its position taken in May 2004 meeting and voted not to support the issuance of any commercial permit/concession out of the Makua Beach section of the Makua-Kaena State Park. As far as the City jurisdiction at Pokai Bay, Ms. Jordan noted the City does not issue any type of kayaking permits out of any City parks. She let it be known there are posted blue signs at City parks stating that commercial activities are not allowed on City parks.

Armin Collins, a tour operator out of Waianae spoke in support of staff's recommendation. He stated in Waianae they have a gentlemen's agreement with tour operators but some operators have failed to abide by this agreement. Mr. Collins feels the State should do something about people swimming with the dolphins as there has been a steady decline in the amount of dolphins coming into Makua Bay. Lastly, Mr. Collins let it be known when employees of Makua Lani sees dolphins coming into the bay they should be taking their customers out of the water but instead they drop more customers by the dolphins which is a clear violation of their permit.

Elijah Grilo, an employee of Makua Lani informed the Board he likes his job and would like to keep his job.

Maha Mapuahi, a musician and kayaker with Makua Lani spoke in support of issuing a permit to Makua Lani. She told those present that the "boys" employed at Makua Lani respect the ocean and love their job. Ms. Mapuahi spoke of the positive change on the "boys" since being employed by Makua Lani. She communicated those present who oppose Makua Lani should be implementing programs to help Native Hawaiians.

(name is inaudible), an employee of Makua Lani stated that schooling did not work out for him but upon arriving on the Westside of Oahu it was like heaven and he would like to keep the area as it is. He also spoke of the specialness of Makua.

Maltibie Eleger, a lifelong resident of Waianae spoke of her concern with Makua Lani's effect on the dolphins. Within the past year she has seen the size of the dolphin pods

dwindle and feels that Makua Lani has gone after the dolphins. Ms Eleger asked the Board to include the Waianae community in decisions dealing with their area.

Debra Thompson spoke in support of staff's recommendation. Ms. Thompson believes Makua Lani is not trustworthy and has provided a negative impact on the environment. She spoke about Richard Holland's invitation for members of the community to view his financial records and when Ms. Thompson took him up on that request, she was denied access to his records.

Gary Geronomo, and employee of Makua Lani spoke in support of the State issuing a permit to Makua Lani. Mr. Geronomo spoke of the negative connotation associated with Waianae as well as the drug and homeless problem. His hope is that the community would use its energy to deal with the problems happening in Waianae.

Karen Awana, a member of the Waianae Coast Neighborhood Board spoke in support of staff's recommendation. Ms. Awana spoke of the Neighborhood Board's conditional approval in May 2004 of Makua Lani's concession permit. At present due to a lack of Department rules and regulations, Ms. Awana informed the Board the Waianae Neighborhood Board no longer supports Makua Lani.

Richard Holland believes the individuals testifying against Makua Lani today are testifying not against the company but against him. Mr. Holland offered to resign as Executive Director of Makua Lani in order for the company to obtain a permit from the Department.

Francis Oishi, Acting Administrator for the Division of Aquatic Resources (DAR) confirmed that he took the data supplied by Mr. Jellings to his office and confirmed the numbers relating to the report on commercial landings are valid numbers. He pointed out these numbers are not from a report but are numbers generated by the statistical unit from the reports turned in by commercial fishermen. Mr. Oishi conveyed that the last comprehensive analysis of the akule fisheries was done by the University and other organizations and they concluded: 1) the akule population is in good shape and is not subject to over fishing statewide; and 2) they found a very strong correlation between rainfall and the size of the akule population (when it rains a lot the akule population is in good shape). Mr. Oishi stated he believes today's discussion is not about whether the resource is sustainable but one of access to the resource.

The Board questioned whether they were attacking the right issue and also should anyone have a commercial operation in Makua Bay.

Written testimony was received from the Waianae Neighborhood Board, Patricia Patterson, Kaimi Pelekai and Maralyn Kurshals.

Motion to approve as submitted (Johns/Yamamura).

Some of the Board did not feel comfortable making a decision on this issue as they do not believe they have enough information to make an informative decision.

Ayes – Johns and Young
No – Inouye, Martyn and Agor

Motion does not pass.

The Board asked Mr. Jellings if there was a way he could work together with the commercial operators to which he replied no. Mr. Jellings feels he has given up enough of his fishing grounds to competing users and should not be asked to give up any more.

The Board stated they do not believe they should allow commercial operations in an area where there is a degradation of our resources. The Board also questioned whether Makua Lani should have been issued a concession permit back in June 2004.

Motion to approve as submitted (Martyn/Johns).

Ayes – Martyn, Johns and Young
No – Inouye and Agor

Motion does not pass.

The Board called for a recess at 2:33 p.m. and resumed the meeting at 2:40 p.m.

Item E-3: Establishment of Volunteer Agreement for Sand Island State Recreation Area, Oahu.

Motion to withdraw
Unanimously approved to withdraw (Johns/Inouye).

Item E-1: Five Year Extension of Lease to Friends of Iolani Palace, Inc., 2005 to 2010, for portions of the Iolani Palace State Monument.

Item E-2: Wailua River State Park, Kauai – Request to Amend previous Board Submittal of April 1, 2005 (Agenda Item E-3) for approval to award a one year Revocable Permit for the Wailua Marina Restaurant Concession to Wailua Marina Restaurant, Inc. and pursue a public sealed bid process for a 5-year lease to the highest bidder.

Written testimony was received from Lorna Nishimitsu.

Unanimously approved as submitted (Johns/Agor).

Item J-1: Issuance of Revocable Permit to Honolulu Transpac, Ltd for Support Areas for its Regular Biannual California to Hawaii Yacht Race finishing at the Ala Wai Small Boat Harbor, Tax Map Key (1) 2-3-037: portion of 12.

Item J-2: Amend General Lease H-70-9 to the United States Coast Guard (Coast Guard) at Maalaea Small Boat Harbor, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-6-001-041.

Unanimously approved as submitted (Johns/Inouye).

Item F-1: Request for Approval to Enter into a 3-Year Contract with the University of Hawaii (UH) (August 15, 2005 – August 14, 2008) to Conduct Fine-Scale Habitat Characterizations and Reef Fish Monitoring.

Unanimously approved as submitted (Johns/Inouye).

Item C-2: Request for Final Approval of Safe Harbor Agreement with Chevron Products Company, Hawaii Refinery at James Campbell Industrial Park, Oahu, and Accompanying Incidental Take License.

Motion to defer.

Unanimously approved to defer (Johns/Inouye).

Item M-1: Issuance of a Long-Term Lease to the U.S. Federal Aviation Administration (FAA) for the Airport Surveillance Digital Radar-11 (ASR-11), Hilo International Airport, Island of Hawaii, State of Hawaii.

Item M-2: Fourth Amendment to Harbor Lease No. H-87-30 Issued to the Hawaii Maritime Center Situated at Pier 7, Waikahalulu, Honolulu Harbor, Oahu.

Item M-3: Amendment No. 4 to Lease No. DOT-A-92-0018, Restaurant and Lounge Concession Lease, Host International Inc., Honolulu International Airport.

Item M-4: Amendment of the Florist Concession Lease (DOT-A-01-01) with Greeters of Hawaii, Ltd. at Honolulu International Airport.

Unanimously approved as submitted (Johns/Inouye).

Item L-1: Certification of Election and Appointment of West Oahu Soil and Water Conservation District Directors.

Item L-2: Certification of Election and Appointment of East Kauai Soil and Water Conservation District Directors.

Item L-3: Certification of Election and Appointment of West Kauai Soil and Water Conservation District Directors.

- Item L-4: Approval for Award of Construction Contract – Job No. J00CF53A ADA Barrier Removal, Kalopa SRA, Hamakua, Hawaii.**
- Item L-5: Permission to Hire Consultants for State Parks TAT & HTA – Funded Projects.**
- Item L-6: Approval for Award of Construction Contract – Job No. F00CF51B, Individual Wastewater System at Puu Ualakaa State Wayside, Honolulu, Hawaii.**

Unanimously approved as submitted (Johns/Agor).

- Item D-17: Resubmittal – Rescind Prior Board Action of December 15, 1995, (Item F-10) and Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-14: por. 47 and 5-1-11:por. 55.**

Charlene Unoki, Assistant Administrator of the Land Division disclosed this permit was issued in 1995 for a direct lease to Windward Retreat Center for thirty-five years. Subsequently there were disagreements over certain portions of the lease between the lessee and staff, which was later, worked out. Staff has incorporated comments into the new lease made by the neighborhood board. Ms. Unoki announced that the applicant is asking the Board that they be considered a non-profit organization. Ms. Unoki recommended the Board Rescind its prior action of December 15, 1995, under agenda item F-10, determine that the lease rent for Windward Retreat Center shall be fair market rent or nominal rent and authorize the issuance of a direct lease to the Windward Retreat Center cover the subject area under the terms and conditions listed in the submittal.

Member Inouye questioned staff as to what is considered “Fair Market” rent and “Nominal” rent and what is the determining factor.

Ms. Unoki pointed out 171-43.1 states the board may lease the subject area at “nominal” rent but it does not define the amount that is considered “nominal.”

Board member Inouye disclosed she had no problem issuing a nominal/minimal rent to an organization that provide a direct social service that helps the public on a statewide basis. However, she did have a concern with allowing a nominal/minimal rent to special interest groups.

Brett Pruett reminded the Board this lease was approved in 1995 as a direct lease at nominal rent plus the statutory twenty (20) percent to the Office of Hawaiian Affairs (OHA). Since that time the Attorney General’s Office concluded the twenty (20) percent of the rent given to the Office of Hawaiian Affairs was not legal. Mr. Pruett asked the Board to reaffirm the decision made by the previous Board and charge their organization nominal rent which was determined to be five (5) percent of fair market value plus twenty (20) percent to OHA.

Bob Stauffer, President of Windward Retreat Center let it be known the previous tenants who were a non-profit organization had the subject parcel appraised at \$16,000 a year. He pointed out they've progressed with this lease bearing in mind a lease rent of \$4,200 per month.

The Board approved the direct lease but amended the Recommendation Section to state that the rent shall not be more than \$500 per month. The Board asked staff to bring this item back to the Board on the determination of the annual rent.

Unanimously approved as amended (Inouye/Agor).

Item D-7: Reconsideration of Rent for Issuance of Revocable Permit to Door of Faith Church and Bible School for Access, Parking and Church Related Purposes, Makawao, Maui, Tax Map Key: (2) 2-9-8: por. 18.

Ms. Unoki stated in 2003 the Board approved the issuance of revocable permit to the Door of Faith Church and Bible School. Staff appraisal came up with an amount for the monthly rent but the applicant did not agree with the amount. Due to the dispute in rent the revocable permit documents has not been executed. To comply with the Attorney General's concern staff is appearing before the Board for authorization for the annual renewal for 2003, 2004 and 2005. Ms. Unoki recommended the Board determine that the monthly rent shall be fair market rent or nominal rent and authorize the annual renewal of the pending revocable permit from October 11, 2003 to December 31, 2005.

Pastor Richard Trier communicated that the subject parcel is the only way for the church to access their property. Pastor Trier told the Board of his efforts to clean the area of debris and their participation in the neighborhood crime watch program. Pastor Trier reminded the Board their monthly rent under the previous agreement was \$131 and since his congregation is small, he does not believe they can afford an increase in the monthly rent. Pastor Trier let it be known they only use a quarter of an acre for parking and are looking at perhaps starting a 4-H program on the remainder of the land.

The Board amended Recommendation A to be \$500 per annum with no improvements.

Unanimously approved as amended (Johns/Agor).

Item D-5: Reconsideration of Rent under General Lease No. S-5152 to Hawaii Conference Foundation for Youth Athletic, Education and Religious Purposes and Authorize Amendment to Delete Rent Reopening Provision, North Kona, Hawaii, Tax Map Key: (3) 7-6-16:33.

Ms. Unoki indicated an appraisal of the subject property was completed which determined the fair market rent to be \$10,680 per year. Upon notification of the new rent amount, the applicant asked staff to be considered a non-profit organization pursuant to Section 171-43, HRS. She also pointed out the subject property is listed under the Federal and State Historic Sites. Ms. Unoki recommended the Board determine that the lease rent for the subject

property shall be fair market rent or nominal rent and authorize the amendment of General Lease No. S-5152 by deleting provisions B and C.

Written testimony was received from John Derby.

The Board amended

- 1. Recommendation A to be \$132 per annum rent until October 2, 2011.**
- 2. Delete Recommendation B.**

Unanimously approved as amended (Johns/Inouye).

Item K-1: After the Fact (ATF) Conservation District Use Application (CDUA) OA-3220 for After the Fact Filled Land and Shoreline Structure.

Unanimously approved as submitted (Inouye/Johns).

Item D-10: Reconsideration of Rent under General Lease No. S-5497 to Trustees for the Apostolic Faith Church of Honolulu for Church and Allied Facilities Purposes, Lahaina, Mau, Tax Map Key: (2) 4-5-5:por. 17.

Ms. Unoki pointed out the tenant has been at the subject property since 1954. In 2004 staff conducted a reopening on the rent and it was determined to be \$7000 per annum. Upon learning of the new rent amount the tenant asked staff to be considered a non-profit organization pursuant to Section 171-43, HRS. Ms. Unoki recommended the Board determine that the lease rent shall be fair market or nominal and authorize the amendment of General Lease No. S-5497 by deleting provisions B and C of the lease.

Motion to defer.

Unanimously approved to defer (Johns/Inouye).

Item D-6: Rescind Prior Board Action of August 13, 2004 (Item D-9), Issuance of Revocable Permit to Paulette Tau-a, Puolua-Hanehoi, Hamakualoa, Makawao, Maui, Tax Map Key: (2) 2-9-6:6 and 2-9-8:13, 17 24.

Ms. Unoki explained they are having trouble with obtaining all the necessary paperwork and is recommending the Board rescind the prior Board action of August 13, 2004 under agenda item D-9 and authorize staff to collect any rent monies owned by Ms. Paulette Tau-a for the use of the State parcels.

Paulette Tau-a told the Board there was some confusion as to the area of the parcel the applicant would be renting. Later there was also a question as to the amount of the rent. After an agreement in the rent amount, staff told Ms. Tau-a she would need to provide a tax clearance as well as insurance for the subject property. Currently, Ms. Tau has been working on obtaining all the paperwork required by the State.

Motion to defer

Unanimously approved to defer (Johns/Agor).

Item D-2: Reconsideration of Rent under General Lease No. S-5358 to Kauai Independent Daycare Services, Inc. for Pre-School Day Care Purposes and Authorize Amendment to Delete Rent Reopening Provisions, Kapaa, Kauai, Tax Map Key: (4) 4-5-8:11.

Ms. Unoki communicated in 2003 staff conducted a rental reopening in which an independent appraiser determined the fair market rent to be \$7,500 per year. The tenant informed staff they do not have the funds to arbitrate the rent and would therefore like to be considered a non-profit organization pursuant to Section 171-43, HRS. Ms. Unoki recommended the Board determine that the lease rent shall be fair market or nominal and authorize the amendment of General Lease No. S-5358 by deleting provisions B and D of the lease.

Written testimony was received from John Apana and Phyllis Kunimura.

The Board amended Recommendation A to be \$1445 per annum to April 30, 2034, subject to verification that the Lessee is providing services to under privilege children.

Unanimously approved as amended (Agor/Johns).

Item D-18: Reconsideration of Rent under General Lease No. S-5382 to Waianae District Comprehensive Health and Hospital Board, Inc. for Health Care and Medical Facilities Purposes and Authorize Amendment to Delete Rent Reopening Provision, Waianae, Oahu, Tax Map Key: (1) 8-6-01:03.

Ms. Unoki noted a rental reopening was done in 2004 at which time the fair market rent was determined to be \$12,600 per year. Upon notification of the new rent amount the tenant asked to be considered a non-profit organization pursuant to Section 171-43, HRS. Ms. Unoki recommended the Board determine that the lease rent shall be fair market or nominal and authorize the amendment of General Lease No. S-5382 by deleting provisions B and C of the lease.

The Board amended Recommendation A to be \$4,000 per annum rent until October 31, 2037.

Unanimously approved as amended (Inouye/Johns).

Item D-3: Issuance of Revocable Permit to State of Hawaii, Department of Education, Honokaa High and Intermediate School, Honokaa, Hamakua, Hawaii, Tax Map Key: (3) 4-5-01:12.

Ms. Unoki briefed the Board and recommended the Board authorize the issuance of a revocable permit to Department of Education, Honokaa High and Intermediate School covering the subject area for agricultural purposes.

Unanimously approved as submitted (Johns/Inouye).

Item D-13: Grant of Perpetual, Non-Exclusive Easement and Issuance of Construction Right-of-Entry Permit to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Access and Utility Purposes, Waimanalo, Oahu, Tax Map Key: 4-1-08:por. 05 & 80.

Board Member Johns recused himself.

Deferred due to lack of quorum.

Item D-1: Report of Forfeiture of General Lease No. S-4992, Frank O. Hay, Jr., Lessee, Waimea, Kauai, Tax Map Key: (4) 1-4-4:43.

Written testimony was received from Frank Hay.

No Action.

Item D-4: Consent to Construct Dwelling – Howard and Pat Hall dba Hall’s Farm, Land Patent Grant S-13,931 Land Office Deed S-19,941, Lot 22-A, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-6-5:38.

Item D-8: Rescind Prior Board Action of February 14, 2003 (Agenda Item D-4), Grant of Term, Non-Exclusive Easement to Jeffrey and Judi White for Telephone Transmission Purposes, Makawao, Maui, Tax Map Key: (2) 2-9-10: por 7, 8 22 and 2-9-11:por. 8,23.

Item D-9: Mutual Cancellation of Grant of Easement No. S-4441, Maui Kamaole Enterprises, II, Grantee, for Access Purposes, Kihei, Maui, Tax Map Key; (2) 3-9-4:por. 61.

Item D-11: Grant of Perpetual Non-Exclusive Easement to the City and County of Honolulu for Sewer Line Purposes and Issuance of a Construction Right-of-Entry Permit, Kalihi-Kai, Honolulu, Oahu, Tax Map Key: 1-2-13:02.

Item D-12: Consent to a Revocable Permit No. 27 between the Department of Business Economic Development and Tourism and Grass Skirt Productions, LLC, Diamond Head, Honolulu, Oahu, Tax Map Key: (1) 3-1-42:por.09.

Item D-14: Enforcement of Unauthorized Occupation of Government Land, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-07:23 seaward.

Item D-15: Grant of 55-year Term, Non-Exclusive Easement to Harold L. Rice, Trustee and Muk Lan Leung Rice, Trustee for Seawall Purposes, Kaneohe Bay, Oahu, Tax Map Key: 4-6-03:89 seaward.

Item D-16: Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Lease to Stevan Bailey for Private Noncommercial Piers Purpose Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-7-30:18.

Unanimously approved as submitted (Johns/Inouye).

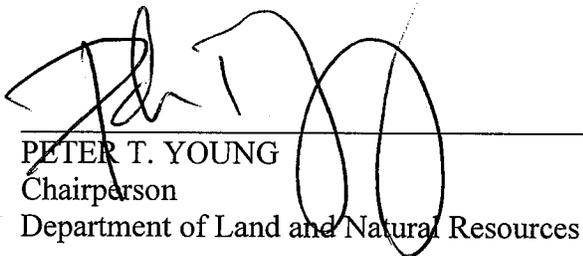
There being no further business, Chairperson Young adjourned the meeting at 4:20 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources