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

DATE:	THURSDAY, APRIL 13, 2006
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 9:00 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello
Mr. Tim Johns
Mr. Ron Agor

OTHERS

Mr. Russell Tsuji, Land
Mr. Steve Molman, Land
Mr. Keith Chun, Land
Mr. Sam Lemmo, OCCL
Mr. Barry Cheung, Land
Mr. Paul Conry, DOFAW

STAFF

Mr. Vince Kanemoto, Deputy Attorney General
Mr. Linda Chow, Deputy Attorney General
Mr. Gregory Sue, D-1
Mr. Dale Bonar, C-1
Mr. Terry Rodrigues, D-6
Mr. Tom Stanton, D-6
Mr. Steve Nimz, D-6
Ms. Ellen Yee, D-6
Mr. Dave Thompson, D-6
Ms. Annette Lee, D-6
Mr. Dean Okamoto, D-6
Mr. Patrick Oka, D-6
Mr. Michael Teterling, D-6
Ms. Rose Marifaso, D-4
Ms. Yvonne Izu, K-2
Mr. Kali Watson, D-6
Mr. William Tam, D-6
Mr. David Fell, D-6
Mr. Fred Humphrey, D-6
Mr. Matthew Chun, D-6
Mr. Clifford Migita, D-6
Mr. Ed Miyashita, D-6
Mr. Timothy Ross, D-6
Mr. Don Clegg, D-4
Ms. Julie Walters, D-4
Mr. Jeff Ashmore, D-4

Mr. Walt Resneski, D-4
Mr. Richard Clifton, D-4
Mr. Richard McCarty, K-6
Mr. Terry Brooks, D-11
Mr. Ronald Sato, K-4
Mr. Michael Gibson, K-6
Mrs. Vicky McCarty, K-6

Mr. Phil Keniceck, D-4
Mr. Michael Gibson, K-6
Ms. Vicky McCarty, K-6
Mr. Dickson Lee, D-11
Mr. John Cross, D-3
Mr. Richard McCarty, K-6

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

Item K-1: Amendment to Condition 7 & 9 of Conservation Use Permit HA-3002 to resolve Enforcement File No. HA 05-19 Located at Hokukano, Ka'u, Island of Hawaii,TMK: (3) 9-5-016:036.

Member Johns recused himself.

Deferred due to lack of quorum.

Item A-1: Minutes of February 24, 2006

Deferred due to lack of quorum.

Item A-2: Minutes of March 16, 2006

Deferred due to lack of quorum.

Item A-3: Minutes of March 23, 2006

Unanimously approved as submitted (Johns/Agor).

Item A-4: Minutes of March 24, 2006

1. The Board made the following changes on Page 10

"[~~Member Johns and Yamamura recused themselves.~~

~~The Board made a change on page 2, third paragraph to read~~

~~"Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [mediation] action needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation."~~

~~**Unanimously approved as amended by the remaining Board members (DeMello/Schuman).**~~]

" **Deferred due to lack of quorum.**"

Unanimously approved as amended (Johns/Agor).

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

Item D-1: Sale of Lease of Public Auction for Commercial Purposes, Kawaihae 1st, South Kohala, Island of Hawaii, TMK: (3) 6-1-03:15.

Russell Tsuji, Administrator of the Land Division let it be known that Keith Chun has worked tirelessly to get the subject land rezoned for commercial purposes as there has been a lot of interest in this property. Mr. Tsuji recommended the Board Find the area to be an economic unit in terms of the intended use, find that the area is not suitable for hunting, nor will it become so during the term of the lease and authorize the sale of a lease at public auction covering the subject area for commercial purposes under the County of Hawaii zoning ordinance under the terms and conditions stated in staff's submittal.

Gregory Sue was present.

Unanimously approved as submitted (DeMello/Johns).

Item K-2: Request for 180-Day Time Extension to the 180-day Processing Period Conservation District Use Application for the Conservation District Use Application (CDUA) OA-3266 to process Haseko request to utilize State-owned land for proposed drainage system improvements, Located Ewa District, Island of Oahu, TMK: (1) 9-1-11:002 and 003.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) reminded the Board the application is currently in a contested case mode and staff is in the process of hiring a hearings officer. Mr. Lemmo recommended the Board approve this request to extend the processing period for CDUA OA-3266 an additional 180 days (to November 9, 2006) to allow sufficient time to complete the contested case hearing process.

Yvonne Izu, attorney representing the applicant was present to answer any questions.

Unanimously approved as submitted (Johns/Agor).

Item C-1: Request for Approval of a Land Conservation Fund Grant to Maui Coastal Land Trust for Partial Match for the Purchase of an Agricultural Conservation Easement on Kainalu Ranch, Molokai.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) announced that this is the start of the new Land Conservation Fund Program that the legislature passed last year. The program establishes an annual acquisition program in which the State could purchase important conservation lands. Mr. Conry communicated when the act establishing this program was passed the legislature specifically identified $1.1 million dollars to be used for purchasing agricultural conservation easements in association with the Federal Farm and Ranch Program. Today's Board action would give the Department authority to go ahead and proceed with this program. Mr. Conry disclosed the subject parcel's estimated appraisal value is $2.8 million. The way things are set up the Department will provide a grant to the Maui Coastal Land Trust and they will hold the conservation easement on the property. Maui Coast Land Trust will then work with the federal government to obtain the remainder of the funds. Mr. Conry recommended the Board authorize the Chairperson to execute a Memorandum of Agreement with the Maui Coastal Land Trust, to provide a grant of up to $1,000,000 from the Hawaii State land Conservation Fund for Maui Coastal Land Trust to acquire and hold a perpetual agricultural conservation easement on Kainalu Ranch subject to the terms and conditions listed in staff's submittal.

The Board asked staff to include a condition in the Memorandum of Agreement stating if the federal funds are not available or we do not reach an agreement with the landowner for the Bargain component that the Departments funds would not be released.

Dale Bonar of the Maui Coastal Land Trust let it be known that the other monies are available and they are ready to go into escrow.

Unanimously approved as submitted (Johns/DeMello).

Item D-6: Second Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR) Located at Honokohau, Island of Maui, TMK: (2) 4-1-002:008.

Mr. Tsuji acknowledged this is a resubmittal from a previous Board meeting. He noted at the March 10, 2006 meeting there was extensive testimony from the tenant as well as witnesses in the area. Mr. Tsuji reminded the Board its previous decision was to defer action for thirty days at which time the tenant would need to establish to the satisfaction of the Board that the subject area is no longer used for his other operation which is not intensive. Since the last Board meeting the issue of back rent has surfaced. Upon consulting with the tenant staff was told that they are reluctant to pay the rent if they're going to lose their lease. Since that conversation, the tenant has paid the rent which is now current but there is still the issue of an outstanding performance bond which expired on March 4, 2006. Mr. Tsuji recommended the Board authorize the cancellation of General Lease No. S-5707, authorize the retention of all sums heretofore paid or pleaded under General Lease No. S-5707 as liquidated damages, terminated the lease and all rights of the Lessee and all obligations of the Lessor effective as of April 13, 2006 and

authorizes the Department of the Attorney General, the Department of Land & Natural Resources or their agents to collect all monies due the State of Hawaii under General Lease No. S-5707.

Steve Molman, Land Agent with the Land Division announced that up until Tuesday night staff was not clear as to if the baseyard on the subject property was relocated. Mr. Molman went on to say on Tuesday night the lessee sent staff copies of agreements for three different locations where they would relocate All Tree Service. Mr. Molman noted his concern with the Kailua site as it is zoned R-5 which does not allow a baseyard. Mr. Molman stated he does not believe there has been a change in activity at the subject location in terms of using it as a baseyard. He stated that the workers have been taking the trucks home and they've also arranged to meet at another location to receive their work orders in hopes of appeasing the community.

Kali Watson, Attorney representing All Tree Service, Inc., prefaced his comments by reminding the Board that at the last meeting an invitation was extended to staff to come to the subject site to check it out and see what has been done. This offer was never taken up and no action was followed through by staff. At today's meeting, Mr. Watson plans to establish their continued nursery expansion. Mr. Watson went on to conduct a slide presentation dictating what has been done at the subject site since the last Board meeting. To summarize their position Mr. Watson stated that the property is being used as required under the lease and is limited to a nursery. With regards to a performance bond by this week, Mr. Watson's client will be submitting a $15,000 certificate of deposit and by the end of the week the balance ($15,000) will be deposited (way in advance of the cure period).

The Board asked Mr. Watson if his power point presentation was made available to staff prior to today's meeting to which Mr. Watson replied no. The Board reminded Mr. Watson that it was his obligation to provide the Board with evidence of his client's compliance. Mr. Watson noted the letter he received from staff stated that his client has the burden of establishing full compliance which is what he feels he's done today.

Mr. Molman confirmed that Mr. Watson has continually invited staff to come to the subject property for a site visit but the issue at hand is the use of the property as the location of a baseyard which is an inappropriate use for the current zoning. When asked by the Board after hearing the testimony by Mr. Watson if he'd change his recommendation, Mr. Molman replied that he would defer action for sixty days at which time the lessee can use the property solely for intensive agriculture. In response to the Board's question Mr. Tsuji recommended hearing Mr. Rodrigues honestly tell the Board he is using the property for intensive agriculture and listen to the testimony of the community as he is not sure how the community feels.

The Board questioned if this item is eligible for a contested case. Mr. Tsuji made it know the lessee has an avenue through the judicial system. Mr. Tsuji stated that he has never seen a contested case hearing on a default issue. Deputy Attorney General Vince Kanemoto told the Board if there is a breach people can choose to challenge it

administratively or in court but the only issue before the Board is if there has been a breach. Mr. Kanemoto believes if you have a lease with the State you have a property interest.

The Board asked Mr. Watson who uses the office on the subject site. Mr. Watson replied that Mr. Rodrigues, his secretary and Leslie occupies that space. Leslie also added that the accountant for the nursery and someone to answer the phones are also in the office trailer. When asked by the Board if the office was the headquarters for All Tree Service, Mr. Rodrigues replied it is where he receives his calls for All Tree Service. Mr. Rodrigues noted if need be he can change where the calls for All Tree Service is received.

Bill Tam, attorney representing the Waimanalo Agriculture Association noted they have eleven farmers ready to testify on this item. He let it be known this issue before the Board is not a matter of where trucks are being parked but it is a much broader issue of how agriculture lands are used. Mr. Tam noted these farmers will testify on the effect of having this tenant at the subject site.

Tom Stanton, a farmer in Waimanalo for eighteen years and whose office is located directly across the street from the subject site testified before the Board. He noted since the last Board meeting he would like to make the Board aware of what has and has not been changed at the subject site. He communicated that All Tree Service still has their office in the trailer on the subject site. As far as things remaining the same, Mr. Stanton spoke of people coming in and out of the office all day long but he does not see anyone working in the fields on the nursery except for someone weedwacking the site within the last few days. He let it be known truck loads and truck loads of tree trimming waste from All Tree Service is being dumped at the property and being disguised as mulch thus saving money but not having to take the waste to the composing facility and paying the required fees. Mr. Staton testified the only thing that has changed since the last Board meeting was that trucks no longer park in front of the office to get their daily work assignments. Instead they meet at Jack in the Box which is located a mile away. Mr. Stanton feels the future of diversified agriculture in Waimanalo is under serious threat and available land is becoming less and less.

David Fell, owner and operator of Hawaiian Sunshine Nursery and a 1979 graduate of the University of Hawaii, Horticulture Department testified. Mr. Fell told the Board his greatest challenge has been to find space to run a nursery. He disclosed he was a bidder on the subject property but was not successful. He feels he was out bid because the owners were operating with a different game plan and believes the proof is what the lessee has spent on infrastructure and what it was geared towards. Mr. Fell asked the Board to send a message to future bidders that if the lease terms specify intensive agriculture use the lot needs to be used for that purpose. Mr. Fell pointed out if All Tree Service was not using the subject site as a baseyard why is there tree trimming trucks in the neighborhood.

Steve Nimz, a resident of Waimanalo who is a graduate of the University of Hawaii with a degree in Tropical Agriculture and Horticulture appeared before the Board. Mr. Nimz let it be known for the past thirty-five years he's owned and ran a tree care business which he recently sold two years ago. He feels the subject property is an ideal location and has the set up to run a commercial operation. Mr. Nimz communicated that he recently sold his composting business and has knowledge in this area. He went over the process of getting the compost ready to be used and noted at the subject site all he sees his compost being dumped and nothing being done to get the compost ready for use.

Fred Humphrey, a resident of Waimanalo who lives about a quarter mile from All Tree Service and who is also a commercial grower and nursery owner provided testimony. Mr. Humphrey disclosed he owns a company that sells wholesale equipment and supplies to tree nurseries, plant nursery's and farms around the state. Through his work, Mr. Humphrey has visited a lot of tree farms and has never seen one that looks like All Tree Service. Within the last thirty days, Mr. Humphrey has seen All Tree Service purchase trees from one of his customers to plant on the subject site to give the appearance that this is a tree farm.

Ellen Yee, a farmer and who currently possess two DLNR leases and have been a farmer in Waimanalo for forty-five years testified. Ms. Yee pointed out the lease states what can and can not be done on the property. She told the Board they need to execute control on the land as agriculture lands are for agriculture use.

Matthew Chun a resident of Waimanalo agriculture lots spoke of his concern with the future of agriculture lands in Waimanalo and the State of Hawaii. He made it known that his father purchased nine acres of fee simple land fifty years ago and raised bananas and tropical flowers. In 1991, Mr. Chun graduated from the University of Hawaii with a degree in Horticultural Technology and went on to work with the United States Department of Agriculture (USDA) working at the inspection stations. Mr. Chun also took over his family's business MCA Tropical's in 1995. He spoke of the importance of keeping agriculture lands in agriculture as these lands are important in the viability of tourism. In his opinion, Mr. Chun feels that All Tree Service is not in the business of intensive agriculture and does not perpetuate the rural lifestyle of the Waimanalo farming community. Mr. Chun asked the Board to cancel All Tree Service's lease and apply the bond to cleaning up the property. Mr. Chun disclosed that through his employment with the USDA at the inspection station he came in contact with products from All Tree Service. Through the inspection process there were a lot of insects in the plant and personal from All Tree Service was told to take the plant and bring it back later for another inspection. A couple of days later they returned with the plants and Mr. Chun feels what they did was to balm the plant with an insecticide.

Dave Thompson, a resident of Waimanalo farm lots for eighteen years and lives approximately 500 yards from All Tree Service's location testified. Mr. Thompson provided the Board with photo's of the subject location as well as their former location. Within the last thirty days, Mr. Thompson feels they haven't done anything on the site except to make the site dirtier. He asked the Board to cancel All Tree Service's lease.

Clifford Migita, President of the Waimanalo Agricultural Association and who also has a degree in agriculture appeared before the Board to provide testimony. For the past fifteen years, Mr. Migita has managed a plant nursery for his boss who has a lessee with the department. He spoke of an incident on their site a few years ago in which a land agent told him they were in violation of the lease and had forty five days to correct the violation. The violation was corrected. In conservation with a friend, Mr. Migita's was told that he feels the department was stepping up their level of inspection and going after violators and these violators would in turn lose their lease. Mr. Migita believes the land agents have done their job and asked the Board that their work not be dismissed.

Annette Lee, a farmer in Waimanalo for twenty-five years spoke of her concern with All Tree Service having a baseyard on the subject site. She told the Board as stewards of state lands it is their duty and responsibility to ensure that agricultural lands are utilized for agriculture and operate according to the lease agreement. Should the lessee violate terms of the agreement they should be evicted. If the Board chooses to do nothing and take a wait and see attitude others will view it is an approval to conduct unpermitted activities on agricultural zoned lands.

Ed Miyashita a Department lessee testified. He announced that good agriculture land is in great demand now and for future farmers and nursery people. He communicated that we must take care of the land to ensure it will be available for others down the road. He told the Board he does not want the subject site to look like All Tree Service's previous site. He also stated it is unfair for the future lessee to be handed the responsibility to clean up the property.

Dean Okamoto, a second generation farmer in Waimanalo and President of Nalo Farms and the Farm Bureau Federation testified. Mr. Okamoto testified on the negative effect All Tree Service has on the long-term viability of agriculture. He feels companies like All Tree Service look at DLNR agriculture leases as cheaper land to run inappropriate and often illegal operations. Mr. Okamoto noted that the operation of a baseyard on the subject land is illegal.

Mr. Tam concluded his presentation by leaving the Board with two thoughts: 1) the issue is whether intensive agriculture is being done as required by the lease and 2) the design plans for All Tree Service has changed in the last two meetings. Mr. Tam asked the Board to adopt staff recommendations and cancel the subject lease.

Timothy Ross, a farmer manager at All Tree Service testified. Regarding the mulch situation, Mr. Ross noted that the chips from the trees takes about three to four months before it can be used as compost. He told the Board the mulch is used on the property to control weeds.

Patrick Oka who has been in the nursery business for forty-five years appeared before the Board to provide testimony. He indicated since retiring as a landscaper he is operating a small nursery in Waimanalo. Mr. Oka indicated the trees planted at the subject site are

planted primarily on the ground because they are operating a tree nursery. He noted there is a difference between a potted plant nursery and a tree nursery as a tree nursery satisfies the need of landscaping companies. As a consultant to All Tree Service, Mr. Oka's job is to ensure they have an ample supply of a specific type of palm. Mr. Oka noted All Tree Service is a tree nursery that preserves the erosion control factor and does not clog the streams when there is heavy rain. He stated during the last heavy rains nothing was washed off from the subject property. Mr. Oka told the Board to go to the site and see if All Tree Service is in violation of the agricultural code.

Mr. Watson let it be known that Mr. Rodrigues tried to do what was right. When he turned in his plans to DLNR it showed a warehouse, office and a large parking area which is what is at the subject site. Mr. Watson does not believe having an office is in violation of the terms of his lease and if need be he'd relocate the phone line for the other business. He told the Board and members of the audience that the subject site is available should they desire to conduct a site visit. He went on to let the Board know that his client has spent over $700,000 on the subject property and to cancel his lease would be a cruel and unusual punishment.

Terry Rodrigues, owner of All Tree Service stated that he has complied with the terms of his lease and invited the Board to conduct a site visit. He told the Board when he acquired the lease for the subject property he was led to believe that he could run his other business from the subject site and not being able to do this is tying his hands. Mr. Rodrigues told the people of Waimanalo he is willing to work with them.

The Board asked Mr. Tusji if the lease was forfeited is there in any way in which the lessee can recoup the cost of improvements and/or investments. Mr. Tusji noted the terms of the lease does not allow for the lessee to recoup those costs.

Mr. Molman told the Board one of the requests of the farmers is to send a message to individuals thinking of bidding on farm land that you will need to farm the land and if you acquire the land under false pretences and invest money into the property for industrial type uses you may lose that investment. Another issue the farmers have is the economic impact of non-farmers bidding up the land as it impacts the farmers indirectly – when there is a reopening that property would become a comparable thereby pricing the property out of the farmers reach.

Mr. Tsuji stated that his objective is to make sure the land is used for its intended purpose. Mr. Tsuji went on to say if the lessee is compliant with the intensive agriculture use restriction as administrator he would have no objection to the lease not being forfeited. He told the Board if the lessee was to provide assurance that he would cease all operations relating to the tree trimming business and solely use it for the tree growing operation it would be satisfactory to him.

Mr. Johns noted that he was troubled by what he heard and would like staff to explore if there is any way for the lessee to recoup some improvement costs. Mr. Johns also noted

that he believes that there is a violation of the use restriction and Mr. Rodrigues has had ample opportunity to cure the violation.

Motion to approve staff's recommendation as submitted (Johns/Agor).

The Board received an assurance from Mr. Rodrigues that they will no longer use the subject site to operate the tree trimming business.

Mr. Tam read from the lease term which stated, "in the event of termination the option of the lessor all buildings and improvements shall remain and becomes the property of the lessor, the State or shall be removed by the lessee."

Motion made at 11:08 am by Member Johns and second by Member Agor to move into session to consult with the Board's

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

The meeting resumed at 11:19 a.m.

Aye- John, Agor, Young
No- DeMello

Motion fails

Motion to defer for thirty (30) days

Unanimously approved to defer for thirty (30) days (Johns/Agor).

The Board noted its concern with whether or not the property is being used for intensive agriculture. Member Agor committed to visit the site in three weeks.

Mr. Tsuji noted that it would be helpful to get a sworn declaration from Mr. Rodrigues that the property is being used solely for intensive agriculture.

Written testimony received from Senator Fred Hemmings and Representative Tommy Waters.

Item D-4: Withdrawal from the Honolulu Watershed, Governor's Proclamation Dated October 13, 1913, and Issuance of Direct Lease to Hawaii Public Radio for Non-Commercial Radio Transmission Site, together with a Road Access and Utility Easement, Honolulu, Oahu, TMK: (1) 2-5-19:05 (por.)

Mr. Tsuji noted staff's submittal was circulated for comments and OCCL deferred response on this issue to DOFAW who is on record as opposing this issue. Mr. Tsuji conveyed that the Board issued a Conservation District Use Permit (CDUP) for the Radio

Transmission Site. Linda Chow, Deputy Attorney General noted that DOFAW opposed the CDUP as they believed this was an inappropriate use in the forest reserve. Mr. Tsuji recommended the Board Approve of and recommend to the Governor issuance of an executive order withdrawing 3,000 square feet, more or less, from the Honolulu Watershed set aside by Governor's Proclamation of October 13, 1913, authorize the issuance of a direct lease to Hawaii Public Radio covering the subject area.

Don Clegg, agent for Hawaii Public Radio let it be known they've been working on this process for over two years and this is the final step in that process.

Michael Teterling spoke of the limited coverage of Hawaii Public Radio (HPR) due to technical problems. Over the years they've been working to find a site that would allow HPR to transmit island wide. The objective of this exercise has been to bring this valuable information island wide and to provide a site that is easily accessible. Mr. Teterling respectfully asked the Board to take whatever steps necessary to have the subject land withdrawn from the forest reserve and a lease issued to HPR.

Julie Walters a landscape architect and resident of Tantalus spoke in favor of staff's recommendation. Ms. Walters reminded the Board approval was already received for the relocation of the antenna to the Tantalus site. With a new transmitter facility in place, all of Windward side, Hawaii Kai and many of the valleys would be able to received HPR. Ms. Walters believes there will be minimal impact to the forest reserve should the subject area be removed.

Rose Marifascio, former chairperson of HPR and a current board member respectfully asked the Board to vote in favor of staff's submittal. She noted HPR is a public radio station that has tremendous impact on the public.

Jeff Ashmore, a resident of Makakilo and long time board member and listener testified in support of staff's recommendation. Mr. Ashmore communicated the sole source of HPR's content is to local affairs and emergency matters. Mr. Ashmore noted there is a substantial amount of the public that can not receive HPR's transmission and this new site would make that opportunity available to them.

Walt Rezneski, a resident of Kahaluu made it known he can not receive HPR's reception from his home and in his car until he goes through the tunnel. Mr. Rezenski informed the Board of some of the information he learned from listening to KIPO. Lastly, Mr. Rezneski spoke of one of the Department's mission statement which is the need for working with other agencies and his belief by granting this lease the public will be able to get information on the environment and other things by listening to KIPO.

Phil Kennineck, a resident of Kailua and avid fan of HPR testified in support of staff's recommendation. He feels news and information is vital to our society especially in times of crises. Mr. Kennineck believes it is in the public's interest to allow HPR to relocate its antennae so a larger population would be able to received its signal.

Richard Clifton, current chairman of HPR's board came forward to answer any questions the Board might have. Mr. Clifton told the Board he would have no doubt that the public interest would be best served by issuing a permit to HPR.

Unanimously approved as submitted (Johns/DeMello).

Item K-6: Second Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR) Located at Honokohau, Island of Maui, TMK: (2) 4-1-002:008.

Mr. Lemmo reminded the Board on November 16, 2001 the Board denied the McCarty's request for a Conservation District Use Application (CDUA) to build a single family residence(SFR) at Honokohau, Maui. Subsequently a petition for a Contested Case was filed. Between 2001 and 2004 the Department processed the contested case. On August 31, 2004 the Board released the order granting the petitioner's request to build a SFR. On March 21, 2005 the McCarty's requested a one (1) year time extension to initiate construction. On April 21, 2005 OCCL processed a time extension. On February 17, 2006 the department received a letter from Ronald Kotoshirodo, a Chapter 7 trustee for Vicki McCarty's. He noted Mrs. McCarty's bankruptcy schedules a list of $226,048.17 as owed to unsecured creditors, and the subject parcel is the only asset available in the estate that may be liquidated to pay all or part of Mrs. McCarty's unsecured creditors. Mr. Kotoshirodo in his capacity of trustee is requesting that the department grant a one year time extension of the deadline to initiate and complete construction to demonstrate the value of the subject parcel will not decline as a result of the expiration of the deadline for imitating construction of the SFR. Mr. Lemmo went on to say it has been a long-standing practice of the Board to authorize single family residence where appropriate, for landowners who wish to construct a residence for themselves and their family. In the present case, the property will be sold to pay a debt, and the extension is necessary to maximize the fair market value of the property, rather than to provide the current permittee with an opportunity to construct the approved SFR. Mr. Lemmo believes the extension has a speculative nature and that this action would create a poor precedent in the Conservation District. Mr. Lemmo recommended the Board deny this request for a time extension and is subject to the following condition: "That the Board deny the request, and further stipulate that the Chairperson shall revoke the permit if construction on the SFR is not initiated by August 13, 2006, pursuant to Section 13-5-44, REVOCATION OF PERMITS, " in any case where a permit has filed to comply with any of the conditions contained in a permit, the Board may direct the Chairperson to revoke the permit."

Michael Gibson, attorney with the law firm Ashford and Wriston came forward to represent Ronald Kotoshirodo, the bankruptcy trustee. Mr. Gibson made the Board award of the bankruptcy trustee's job which is to preserve the assets for creditors and not the debtor. He feels that staff's recommendation accurately analyzes the situation but there is a lot more to it. Mr. Gibson conveyed his belief that the McCarty's want to build

a home on the property and is not asking for a time extension for speculative purposes. Mr. Gibson believes the request for a time extension is to allow the McCarty's time to build their home and not for the asset to be liquidated. Mr. Gibson noted that it was his understanding that the McCarty's are in the process of refinancing their debt so they can pay off their creditors then proceed with building their home.

Richard McCarthy let it be known the application for a time extension was made by the bankruptcy trustee and he is not part of that request. Mr. McCarty asked that the time extension application include the fact that he is having problems with building the home. He went on to note the problems he's encountered (i.e. finding a contractor and complete financing). Mr. McCarty asked the Board not to be side tracked by bankruptcy matter as it is not his intention and his request. He acknowledges that he signed the request but did so because Mr. Kotoshirodo is handling the bankruptcy filing and doesn't want to get in his way. Mr. McCarthy provided the Board with other time extension applications granted by the department and paid specially attention to the Brennan Residence which was granted four time extension and is also located in the same area as their proposed residence.

Board Member Johns disclosed to Mr. McCarty that he previously voted against his CDUA request.

Vicky McCarty appeared before the Board and spoke of their difficulty in finding a builder for their home. Mrs. McCarthy went on to explained what they've gone through in trying to obtain a building contractor. She let it be known that they're requesting a one-year time extension because they are doing the best they can with this difficult situation. Mrs. McCarty communicated that she wanted to request a time extension for her home but when she told this to Mr. Kotoshirodo his response was that she could not do so as she was not a party to this issue. Ms. McCarty conveyed to the Board that the subject SFR is intended to be their family home. She let it be known if the Board is willing to approve an extension of more than a year she would be in favor of that request.

Mr. Gibson addressed the Board and communicated that the Board can not discriminate against the McCarty's just because they filed for bankruptcy. He went on to say if it is common for the Board to approve a time extension request to someone else then they should approve the request before them today.

The Board denied staff's recommendation and approved a six (6) month time extension.

Unanimously approved as amended (Johns/DeMello).

Item K-3: Conservation District Use Application (CDUA) for OA-3278 to Construct Kawai Nui Gateway Park, Located Abutting Kawai Nui Marsh, Kailua Town, Koolaupoko District, Island of Oahu, TMK: (1) 4-2-017:020 and (1) 4-2-016:001.

Item K-4: **Conservation District Use Application (CDUA) OA-3284 for Four-Inch Sewer Force Main under Kalihi Channel part of the Keehi Small Boat Harbor Boating Pump-out Facility, Located Kalihi-Kai, Honolulu, Oahu, TMK: (1) 1-2-025:024, 025 & 027 and 1-5-041:006.**

Item K-5: **Conservation District Use Application (CDUA) OA-3289 for Small Boat Pier Construction, Located at Mikiola, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-018:080.**

Unanimously approved as submitted (Johns/DeMello).

Item D-11: **Consent to Lease of Lands under Governor's Executive Order No. 4122 to Housing Solutions, Incorporated, Waianae, Oahu, TMK: (1) 8-5-28:por. of 44.**

Unanimously approved as submitted (Johns/Agor).

Item D-7: **Re-Submittal: Forfeiture of Grant of Non-Exclusive Easement S-5195, George W. Playdon, Jr., Kaluanui, Oahu, TMK: (1) 5-3-08:28 (seaward).**

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

Item D-8: **Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation, Housing and Community Development Corporation of Hawaii and State of Hawaii on behalf of the Department of Accounting and General Services for Access and Utility Purposes, Honolulu, Oahu, TMK: (1) 1-5-7: portion 1 and 2.**

Written testimony was received from Pacific Housing Assistance Corporation.

Motion to defer
Unanimously approved to defer (Johns/Agor).

Item D-2: **Amend Grant of Easement No. S-5613; Consent to Assign Portion of Grant of Easement No. S-5613, Keauhou 1st, North Kona, Hawaii, TMK: (3) 7-8-12:seaward of 40, 41, 51 & 75.**

Item D-3: **Cancellation of Revocable Permit No. S-7085 to Kau Agribusiness Company, Inc.; Issuance of Revocable Permit to Edmund C. Olson, Trustee of the Edmund C. Olson Trust II for Use of Water from Noguchi Tunnel; Wood Valley and Kau Forest Reserve, Kau, Hawaii, TMKs: (3) 9-6-06:15, 16, 17, 18; (3) 9-6-07:02; (3) 9-6-08:39, 45, 46 and (3) 9-7-01:01, 18.**

Item D-5: **Amend Prior Board Action of March 11, 2005, Item D-1, Quitclaim of State's Interests in a Drainage Easement, Grant of Perpetual, Non-Exclusive Easement, and Construction Right-of-Entry to the City and County of Honolulu, Palolo, Honolulu, Oahu, TMK: (1) 3-4-03:pors. of 10 and 37.**

Item D-9: **Amendment of Prior Land Board Action of August 26, 2005, Agenda Item D-16, Perpetual Non-Exclusive Easement to the United States of America, for Road Right-of-Way Purposes, Pupukea-Paumalu, Koolauloa, Oahu, TMK; (1) 5-9-06:26.**

Item D-10: **Rescind Prior Board Action of December 10, 2004 (Item D-22), Conveyance of State Lands 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.**

Item D-12: **Sale of Lease(s) at Public Auction for Industrial Purposes, Waikele, Ewa, Oahu, TMK: (1) 9-4-166:1, 2, 3, 24, 25, and 26.**

Unanimously approved as submitted (Johns/DeMello).

Item L-1: **Approval for Award of Construction Contract: Job No. J00C103A – Peacock Flats Campground ADA Barrier Removal Job No. J00C104A – Mokuleia Forest Reserve Parking ADA Barrier Removal Oahu, Hawaii.**

Item L-2: **Request for Authorization for the United States Department of the Army (including the Army corps of Engineers) and its agents, employees, consultants, and investigators, to enter upon private property for the purposes of investigating and inspecting dams and reservoirs located within the State of Hawaii pursuant to Hawaii Revised Statutes Chapter 179D and Authorize the Chairperson to negotiate agreements with the United States Department of the Army.**

Unanimously approved as submitted (John/DeMello).

Item M-1: **Issuance of Two Replacement Leases U.S. Federal Aviation Administration Kahului Airport.**

Item M-2: **Amendment No. 4 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport.**