

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

DATE: FRIDAY, JUNE 12 1992
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

**ROLL
CALL**

Chairman William Paty called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Mr. T.C. Yim
Mr. Christopher Yuen
Mr. William Paty

**ABSENT &
EXCUSED:** Ms. Sharon Himeno

STAFF: Mr. W. Mason Young
Mr. Roger Evans
Mr. Michael Buck
Mr. Manabu Tagomori
Mr. Linford Chang
Ms. Dorothy Chun

OTHERS: Ms. Dawn Chang, Deputy Attorney General
(9:05 am-10:35)
Mr. Randall Young, Deputy Attorney General
(10:35 am)
Mr. Peter Garcia, Department of Transportation
Ms. Sandra Schutte
Ms. Sandy Padeken (Items F-5 and F-3)
Ms. Meridith Ching, Mr. Dick Cameron, Mr. Bob
Warzecha, Mr. Carl Christensen (Items F-1-a, F-1-b,
F-1-c and F-1-d)
Ms. Frances Yamada (Item H-3)
Mr. Michael Burke (Item F-14)
Mr. Michael Stewart, Mr. Don Stimson (Item H-2)
Mr. Everett Kaneshige (Item H-1)
Ms. Barbara Smith, Mr. Gary Lee (Item H-5)

MINUTES The minutes of March 27, 1992 were approved as circulated. (Arisumi/Apaka)

Items on the agenda were considered in the following order to accommodate those applicants and interested parties at the meeting.

**ITEM F-2 DIRECT SALE OF EASEMENT TO MAUNA KEA HOLDING COMPANY, INC.
AT WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-1-03:POR. 23**

Mr. Young presented the request from the Mauna Kea Holding Company, Inc. Staff recommended approval subject to the conditions listed.

Ms. Sandra Schutte, attorney for Mauna Kea Holding Company said that they had no objection to staff's recommendations.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM F-5 **DIRECT SALE OF UTILITY EASEMENT TO GTE HAWAIIAN TELEPHONE COMPANY, INC. AT PUUKAPU HOMESTEADS, 2ND SERIES, WAIMEA, SO. KOHALA, HAWAII, TAX MAP KEY 6-4-03:POR. 16**

Mr. Young said that permission has been received from the University of Hawaii. The University of Hawaii has no objections to the installation of this facility. Staff is recommending that the Board grant approval as submitted.

Ms. Sandy Padaken said that she did not have anything to add.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

Item F-1-a **Issuance of Revocable Permit to East Maui Irrigation Company Limited, Portion of the Koolau Forest Reserve, Identified as The "Nahiku License" Area At Nahiku, Hana, Maui, Tax Map Key 1-2-04:5 and 7**

Item F-1-b **Issuance of Revocable Permit to A&B Hawaii, Inc., Portin of Koolau Forest Reserve, Identified as the "Honomanu License" Area at Honomanu, Hana, Maui, Tax Map Key 1-1-01:44**

Item F-1-c **Issuance of Revocable Permit to A&B Hawaii, Inc., Portion of Koolau Forest Reserve Between Puohokamoa and Hono Pou Stream, Identified as The "Huelo License" Area, Keopuka-East Makalwa, Hana, Maui, Tax Map Keys 1-1-01:2 & 50 and 2-9-14:1, 5, 11, 12 & 17**

Item F-1-d **Issuance of Revocable Permit to A&B Hawaii, Inc., Portion of Koolau Forest Reserve, Identified as the "Keanae License" Area, Wallua-Iki-Keanae, Hana, Maui, Tax Map Key 1-1-02:por. 2**

Chairperson Paty informed the Board that Items F-1-a, F-1-b, F-1-c and F-1-d are being taken up together as they all relate to revocable permits to East Maui Irrigation (EMI) Company on water licenses.

Mr. Young made the presentation giving the background as outlined under Remarks recommending that the water licenses be issued.

Mr. Young said that their division had received communication from the Division of Forestry and Wildlife this morning with respect to the watershed areas and to the designation of increase in public hunting opportunities within State lands to the control of feral pigs. Mr. Michael Buck, State Forester has asked that as part of the amendment to the watershed, that the Board consider funding by the permittees to construct a plan which will be a condition of the water permits to be issued today. He is also recommending that as additional condition of the permit that EMI and the permittees work with the Division of Forestry to increase public hunting opportunities within State owned lands for the control of feral pigs. This could be made as an amendment to the disposition.

Mr. Young also informed the Board that he had received communication this morning from Mr. Carl Christensen of the Native Hawaiian Legal Corporation pertaining to certain issues of the conditions.

Relative to the increase in the rent where an 8% increase is being recommended, Chairperson Paty asked Mr. Young to review the basis on which staff proceeded to accept it. Mr. Young explained that they searched the files and noticed that there were periodic increases over the years. In compliance with the statutes, staff is recommending that the rental be subject to staff appraisal to determine whether that it does constitute fair market rent.

Mr. Michael Buck explained to the Board that in 1990, HRS 171-58 was amended to say that any new lease or renewal of a lease of water rights shall contain a covenant that requires the lessee and the Department of Land and Natural Resource (DLNR) to jointly develop a watershed management plan. The staff of East Maui Irrigation has been very helpful and cooperative in working together. Last year they had completed a preliminary management plan of the East Maui watershed that outlines what activities are ongoing at the moment.

Questions were then asked of Mr. Buck by the board members relating to the watershed management plan, funding, resource and what they will be looking for in the plan.

Ms. Meredith Ching, Vice-President of A & B Hawaii, Inc. said with her this morning were Dick Cameron and Bob Warzecha from HC&S and EMI, respectively.

Ms. Ching responded to Mike Buck's recommendations. She said, "As far as Mike Buck's recommendations, I can understand his enthusiasm for completing the plan. We, too, are very enthusiastic for seeing the plan finished. However, we did participate in the partnership as one of the seven landowners in the area and we can understand paying a share of the cost to complete the plan but are unsure whether it is continuing as a joint cooperative effort as was started. Again there will be costs open that will be implementing the plan as well. As far as Mike's request for EMI personnel to meet with DOFAW personnel about increase public hunting opportunities, we don't have any problems with this except for the considerations of liability for our own workers and for the system. The system doesn't just include the water transmission system itself, but the roads and trails. Often times dirt bikes, trucks, etc. eat up the roads, make it difficult for our personnel to access the system and also increase erosion. The other consideration we have is public health consideration because the water system does serve County domestic purposes and much of the ditch is open ditch. And we're concerned about what could be placed into that ditch that couldn't be traced at the end of the system. We would be happy to work with DOFAW personnel.

"On the issue of compensation, our last information was the 8% increase which we can live with. The concept of fair market value, I think deserves our input, in the sense that, what we're paying for here is raw water where it falls on the ground. The EMI water transmission system is owned and operated by EMI, HC&S and I think it's somewhat unique in that it has perpetual easements over

government lands. So right now the only uses that can be put into is our sugar operations, the ditch ends of our sugar operations and some limited use to the county and are appearing that's the fair market use right now. I think everyone is familiar with the economic state of the sugar industry, there's not a whole lot of room for highly increased water costs. There are a lot of other costs, we can't control at this time. We're a little concerned about that proposal."

Chairperson Paty asked Mr. Warzecha about the EMI system overall.

Mr. Bob Warzecha said that the system was going along well although he wished it would rain more as it's been pretty dry on Maui. He then reviewed for the Board how they handle their hunting and access permitting at this point in time per the Chairperson's request. He said that there is a hunting club that handles the permitting for 12 hunting areas and only one hunting party is allowed in a hunting area at a time. They also keep the area very clean.

Mr. Warzecha said that the only thing they have a rental on is a ditch system and a road. They would have no control on people who want to walk in and go hunting. He felt that the State would be liable in case of an accident on State land.

Mr. Dick Cameron commented that HC&S is vitally concerned, this EMI water system that provides HC&S's life blood. He commented also of the economics of business and the value of the water for central Maui farming area. He mentioned when water flow is at an absolute minimum they have water restrictions. The reservoirs that are going in on Maui and the improvement by the Maui County Water system is going to help out greatly in the process of developing additional ground water sources.

Mr. Carl Christensen, staff attorney for Native Hawaiian Legal Corporation said that they have clients that are interested in this matter that relates to several aspects of this issue. Some are small farmers located downstream of EMI's water intakes and they're concerned on how much water is allowed to pass down stream. Others are concerned with the preservation of instream flows for native stream fauna. Others are concerned with entitled payments to either Office of Hawaiian Affairs (OHA) or Department of Hawaiian Home Lands (DHHL) as a result of section 5B of the Admission Act of the Hawaiian Homes Commission Act and various State constitutional and statutory provisions. Also there's a question of availability of water for future DHHL developments.

He went on to say that Mr. Young and Mr. Buck anticipated some of these concerns and had addressed them in their presentation.

Mr. Christensen commented on what they see as an improper use of temporary permits as a long term management plan. He cited that the submittal says that the permits should be only for a year but then it alternates them between EMI and A & B yet avoids the prohibitions of the statute. They feel by alternating the permits, will not make it legal.

Mr. Christensen said that they were very pleased to hear about the watershed management plan proceeding. They would ask that a definite timetable be made a part of this agreement and that discussions be open to the public. One

of the things they believe should be considered in planning for this area is permanent instream flow standards including appropriate restoration of instream flows in some streams that are now dewatered. They believe that this should be addressed soon. With regard to the fair market issue, they recognize the difficulties that the sugar industry is in if they are required to pay more for this. They would ask the Board also to recognize that Congress and the State legislature and the people of Hawaii have chosen to finance certain benefits for native Hawaiians by entitled payments based on these revenues from public lands. (A copy of Mr. Christensen's written testimony has been placed in the Departmental Board folder.)

Mr. Christensen said he was here today to raise various red flags and point out issues that need resolutions and to encourage the Board to move forward with that resolution. He was not here to ask for a contested case.

Mr. Arisumi addressed the chairperson and requested an executive session to consult with legal counsel.

**EXECUTIVE
SESSION**

9:50 a.m.-10:25 a.m.

Chairperson Paty called the regular meeting back to order.

MOTION Mr. Arisumi made a motion to approve items F-1-a, F-1-b, F-1-c and F-1-d with the added condition that EMI work together with DOFAW to complete the management plan within a year. He also suggested that in-kind services could be provided to get this management plan developed. Motion was seconded by Mr. Yim.

DISCUSSION Chair Paty mentioned that a question was raised as to the participation of the other landowners. He would like to recognize that EMI and HC & S are the ones harvesting the water and are the primary beneficiaries of the watershed as a result, but he didn't think it should preclude the active participation of the other landowners in that plan. He would suggest that the added condition could be modified that A & B would be responsible for working with DOFAW to complete the watershed management plan within a year after it's begun with the active participation and cooperation of the other landowners. He asked the Board if that approach would be acceptable.

Mr. Arisumi asked Mr. Buck for clarification as to what is exactly needed.

Mr. Buck said that the two major areas of concern is the monitoring of the water quality and yield in relation to the effects of management. Estimates of monies to finish the plan have been made but in-kind services through editing and putting together would probably greatly reduce the amount of funds to be needed. He thought that the other landowners would be very interested in the cooperative and already beginning to work and ongoing management, he didn't think that would be a problem. He felt they would actually look forward to working together.

Chair Paty then addressed the Board if they would be agreeable to amend the motion to include the participation and cooperation of the other landowners with

respect to this, although the prime responsibility for the completion of the plan would rest with EMI and A&B.

Mr. Arisumi said that he would have no problem with amending his motion to include it in the conditions.

Mr. Young also suggested that staff was recommending that they accept the monthly rental subject to staff appraisal based on fair market value but shall not be less than the recommended monthly rental contained in the submittal.

ACTION Mr. Arisumi amended his motion to also include:

1. That the permittees to work with DOFAW to complete the watershed management plan within one year. The water management plan is to address increasing public hunting opportunities within the active participation and cooperation of the landowners.
2. Monthly rental to be determined by staff appraisal based on fair market value but shall not be less than the recommended monthly rental contained in the submittal.

Seconded by Mr. Yim, motion carried.

ITEM H-3 **CDUA FOR WATER SYSTEM IMPROVEMENTS AND SUBDIVISION OF THE PROJECT AREA AT WAIKAPU, MAUI, TAX MAP KEY 3-6-2:2; APPLICANT: WAIKAPU MAUKA PARTNERS**

Mr. Evans recalled for the Board that at a public hearing held on Maui, a request for a Contested Case hearing was made and followed-up in writing in timely manner. This request was forwarded by staff to the Department of the Attorney General for review and guidance. The Attorney General has had an opportunity to review the request. The petitioner does not meet the criteria for a party established under the administrative rules for a contested case and has no legal standing.

Staff's recommendation needs to be modified this morning under Part A: 1. That the contested case hearing be denied.

2. In terms of the application itself, staff is recommending that the Board approve this application for the subdivision of the project site and the water system improvements at Waikapu, subject to the 11 conditions listed.

Mr. Evans informed the Board that there is one change that the applicant is proposing relative to the location of the storage tank. Staff would not be changing the basic recommendation but would require that the applicant revisit with the Department's Division of Historic Preservation for their clearance prior to any plan approval.

Ms. Frances Yamada with the firm of Wilson Okamoto and Associates said that she was here today with an engineer of their firm to represent the applicant. She said that they would like to familiarize the Board with their proposed

relocation of the reservoir site. She used a drawing to show the original configuration and proposed project site area. The applicant is requesting to adjust the location of the reservoir of the one million gallon open irrigation reservoir. From atop of the reservoir elevation of approximately 1,050 feet to a top of elevation to approximate 1,080 feet. The necessity of revising the location is to provide increased pressure for the distribution of water to the higher elevation of the lots in the Waikapu Subdivision. In addition they will be able to avoid some archaeological features which are within their original project area. The configuration of the project site has changed with the adjustment of the reservoir, however, they are still able to maintain an approximate two and one-half acre project site which remains unchanged from their original location. In addition their one-half million gallon water storage tank remains unchanged on this present location as does their 1,200 foot access road. They did have an archaeological survey conducted on the new area and there are several agricultural features which she pointed out. However, their archaeologist has determined that these features are not significant and is therefore recommending that no further work testing or mapping is required of these sites. In addition, the vegetation within the area is fairly similar to what was found in the original project site which includes wiliwili trees, ironwood trees, haole koa and an assortment of mixed plants. The area to be graded will slightly increase from their original reservoir location as will the earth work quantities due to the topography of the area.

Mr. Arisumi asked if they were going to replant and landscape after the completion of the project.

Ms. Yamada said that they would be landscaping the area for erosion control as well as aesthetics.

Mr. Yuen asked if the new archaeological work has been reviewed by the Historic Preservation Division

Ms. Yamada said that it had not been at this time but they will be submitting the report to the Historic Preservation Division for review.

ACTION Mr. Arisumi moved for approval of item H-3 as amended. Mr. Yuen seconded the motion but added another amendment that there be no ground disturbance until the Division of Historic Preservation has had a chance to review the archaeological report on the new area and that the applicant comply with all mitigation requirements recommended by the Division of Historic Preservation.

Mr. Evans clarified to the Board that there's a follow-up requirement that the applicant needs to submit construction plans to the department and at that time the Division of Historic Preservation would also need to sign off on the submitted archaeological report. It would be covered under conditions 1, 2 and 8.

Chairperson Paty called for the question and motion carried for approval as amended.

(Chairperson Paty was excused at 10:45 a.m.)

DIRECT SALE OF UTILITY EASEMENT TO GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED AT PUUANAHULU, NO. KONA, HAWAII, TAX MAP KEY 7-1-03:POR. 01

ITEM F-3

Mr. Young said that the environmental assessment has been filed and there have been no objections from the people contacted. Staff is recommending that the Board approve the granting of the easement to Hawaiian Telephone Company.

Ms. Sandy Padaken of Volt Information Sciences Inc. informed the Board that there are three pole lines in the existing corridor and they're going to be attaching to the middle pole line, not adding any additional poles or anchors. The easement itself already supports three major pole lines for 69 kv pole lines for HELCO.

Mr. Apaka questioned how the fiber optic cables would be used.

Ms. Padaken said that she was not sure about the actual diameter of the cable itself and wouldn't be able to answer that particular question. The amount of cables that will be put on that line will not add anymore stress on the lines so the engineers have decided they don't need anymore anchors or anything else to stabilize the pole line. The fiber optic itself is glass medium as opposed to copper based and is much lighter and there are a lot of benefits to it. In order to affect the whole project HELCO has to give them an easement over their Anaehoomalu Substation and they are in the process of finalizing that. Both of these utility companies already have a joint utility agreement. Their engineers have worked with her on this project.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

AUTHORIZATION TO WITHDRAW LAND FROM THE OPERATION OF GENERAL LEASE NO. S-4413 AND RIGHT-OF-ENTRY TO DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION FOR CONTRA-FLOW ROAD PURPOSES, WAILUA, KAWAIHAU, LIHUE (PUNA), KAUAI, TAX MAP KEY 3-9-06:POR. 1 AND 12

ITEM F-14

Mr. Young explained that traffic is heavy and really bad during the early morning and late afternoons near the Coco Palms Hotel and the Department of Transportation (DOT) is recommending as part of a pilot study, they do a contra-flow lane over part of the bridge that is presently leased to Lihue Plantation. They would like to do the pilot to determine if and when the Kauai by-pass will be built. They are recommending negotiation with Lihue Plantation for use of the bridge.

Lihue Plantation has been contacted and they have no objections as long as the portion that is being used for the contra-flow lane is withdrawn from the operation of their lease with an appropriate reduction of the annual lease rent.

Mr. Young explained that part of the withdrawal will require subdivision approval. This will be the DOT's responsibility to obtain from the County. Also that DOT will be responsible for providing DLNR with the metes and bounds descriptions and parcel map. If deemed necessary, the DOT will demolish the

Wailua River cane haul bridge.

Mr. Mike Burke of Lihue plantation said that they are in support of the proposal and they really don't have any problems with the request. Using a map he provided, he pointed to the areas he was referring to. He said that there is a portion of the road that becomes a remnant of part of this project and he would also like that portion withdrawn from the lease. There's an additional piece on the Wailua side of the easement and it consists of .618 acres. The additional piece called parcel 8 under the lease is being used for parking by people going to the beach and they really have not been using it as a cane haul road for a number of years. Since they will no longer have the rights to a portion of the bridge, he asked if the remnant could be withdrawn at the same time. He used the map to point out the different areas he spoke of.

Mr. Apaka asked if there would be any problem if the State takes it back.

Mr. Young said, "Yes." He explained that because they're asking for reduction in rental. The contra-flow that they're asking for really doesn't impact on this parcel and staff really didn't see the need to withdraw it. But they see a liability which they admittedly took on when they acquired the lease. In addition to this contra-flow they are asking for reduction in rental. If that's the case, then staff would recommend that we not include it as part of the withdrawal unless Mr Burke was wishing to forgive the reduction of rental for both parcels."

Mr. Burke said that they would waive the reduction in rent on the additional parcel.

Mr. Burke said that their point is that when the original lease was granted in this area, this roadway has gone through a lot of different gyrations through the years. This was included in the master lease and over time this area has become unused by the plantation and more of a public use area. Since they will be losing the bridge and the approach lanes, he was just trying to clean the area up and basically they won't have anything in this whole area after that.

Responding to Vice-Chair Arisumi, Mr. Burke said that the area being withdrawn is .78 acres and this is an additional .6 acres from a total area of 44.13, he's not quite sure. This is a very small piece of the major portion of the roadways.

Mr. Burke then said they would waive the reduction of the rent.

It was then decided to allow the Division of Land Management and the staff of Lihue Plantation to work on the additional area.

ACTION Mr. Apaka moved for approval as amended; seconded by Mr. Yuen, motion carried.

Chairperson returned at 11:00 a.m.

ITEM H-2 **CDUA FOR A SINGLE FAMILY RESIDENCE, WAIPUNALEI, NORTH HILO, HAWAII, TAX MAP KEY 3-6-05:15 AND 93; APPLICANT: MR. MICHAEL A. STEWART; AGENT: D.S. STIMSON**

In his presentation of Item H-2, Mr. Evans relayed staff's recommendation that the applicant be fined \$500.00 for the illegal cutting of trees on the property and in part 2. recommended approval subject to the conditions listed.

Mr. Evans did inform the Board that the applicant has cooperated with the department and in fact they were the ones that brought this illegal cutting to the attention of the department. The trees that were cut were not pulled out of the ground and in the follow-up report by the Division of Conservation and Resource Enforcement has noted that the trees are revegetating themselves.

Mr. Yuen had a question on the violation and the fine as cited in the submittal which stated that someone trespassed on the applicant's property and cut the trees. They suspected it was the neighbor who was trying to improve their view. The applicant made a complaint to DLNR about this and actually brought it to the attention of DLNR. Given that he had a problem of fining the applicant who did not commit the violation.

Mr. Evans stated that staff had that problem also. During the process staff will have to come to the Board with the standard fine of \$500.00. The Land Board would be the ones with the discretion to reduce the fine or not set a fine.

Mr. Yuen commented if the landowner were fined, then we're requiring the landowner to bring private trespass action to cover a \$500.00 fine that we impose. He had real concern over this policy. If somebody understands what's going to happen, why would they, if somebody trespasses on your property and commits a conservation district violation, you don't want to report it to DLNR because you might wind up in front of the Board for the \$500.00 fine. It discourages people from reporting violations. He felt that this policy will need to be examined and really go after the wrongdoer and not the innocent landowner, if the landowner didn't do it. If our rules talk about the landowner being responsible, they're kind of assuming that the landowner or the landowner's agent committing the violation and not a trespasser on the property who's doing it without the permission.

Mr. Evans responded that he has gone through an investigator's report, read the allegations and right now unfortunately the individual who is alleged to have done it is not here to say to you "I did not do it."

Vice-Chair Arisumi informed the Board members that they have the right to delete the fine. Staff must recommend as in the process. The Board after reviewing all reports can either apply or delete the fine after hearing staff's presentation.

Mr. Michael Stewart, applicant said that he had no objections to staff's recommendations except the fine for the violation. He said that he would humbly ask the Board that the fine be reduced.

Mr. Don Stimson the architect said that he doesn't recommend any clearing at all where the house goes even before the trespass tree cutting. The area was pretty grassy. The landowner has been in communication with the person alleged to have done it, as there were witnesses. They've communicated with them and initially he said that they would clean it up and finally he just realized that it was too much trouble and hoped that it would all go away. He hasn't been very cooperative and in fact he hasn't returned any phone calls including to the enforcement officer.

Mr. Stimson said that he did not want to create an environment in this community where one neighbor is going to sue another neighbor as people must live together and enjoy living there. Regarding the fine, if Mr. Stewart were fined for something he didn't do, this seems that initially he was a victim and the fine would make him a victim again.

Mr. Yuen asked if they would like it cleaned.

Mr. Stimson said that they would clean it up regardless if they were ordered to do it or not in the course of constructing Mr. Stewart's home. The debris there was not exclusively trees that were felled but also the debris that existed on the neighboring property. It appears the neighbor bulldozed that property and pushed it over the edge and he now gets a beautiful view of the coastline and the estuary. He then pointed out the neighbor's home on the map.

Discussion continued that he was planning to remove the debris anyway and a time frame of 90 days would be more reasonable. They don't believe the material deposited there now constitutes a fire hazard of any great concern because it is a moist area. This tree cutting occurred almost a year ago.

ACTION Mr. Yuen made a motion to approve the staff's recommendation for the home, delete the fine and as far as removal of cut foliage, that the applicant be given 90 days to do that. That the applicant be directed to keep a record of the cost that they incur in doing that and to submit that to OCEA for their consideration in a fine to be levied against whoever is found to be actually responsible. That OCEA follow up with the Enforcement Division to find out 1) Who was at fault and 2) make an enforcement action against that person. Motion was seconded by Mr. Yim and carried unanimously.

11:20 a.m. Chairperson Paty excused.

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A .1 MILLION GALLON WATER TANK AT KAMEHAME RIDGE, OAHU; TAX MAP KEY 3-9-10:1; APPLICANT: HAWAII KAI DEVELOPMENT COMPANY

Mr. Evans said that this is a request for a water tank with an access road in the limited subzone in Hawaii Kai. Staff has taken this application through a public hearing and is recommending approval.

Mr. Evans made a correction to his presentation. There was no public hearing held because a subdivision was not requested. He said that Bishop Estate will be granting an easement on the property instead of a subdivision.

Mr. Everett Kaneshige, attorney for Hawaii Kai Development Company said that they had no objections, questions or comments with respect to the staff report. They also had no objections to the conditions as recommended.

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM F-6 AMENDMENT TO PRIOR BOARD ACTION OF JULY 26, 1991 (AGENDA ITEM F-11) RELATIVE TO DIRECT SALE OF AN ACCESS EASEMENT, WAIKIU, KAWAIPAPA, HANA, MAUI, TAX MAP KEY 1-3-04:POR. 6 AND 12

Mr. Young presented item F-6 to the Board. The additional line that they wanted to be included as part of the granted easement will run co-terminus with the lease they have with the property presently. In addition to the perpetual easement, there will be an easement to be co-terminus on the existing lease.

Mr. David Nakamura, attorney for the applicant was present and had nothing to add and no objections to the conditions.

ACTION Unanimously approved as submitted. (Apaka/Yuen)

ITEM H-5 EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT OA-2051, SINGLE FAMILY RESIDENCE AT LANIKAI, OAHU, TAX MAP KEY 4-3-2:01; APPLICANT: RALPH & BETTY ENGELSTAD; AGENT: BENJAMIN MATSUBARA, ESQ.

Ms. Barbara Smith from the Lanikai Association addressed the Vice-Chair and requested a deferment to the next Oahu meeting to further review the staff's new recommendation and also there is some new information that has come to them concerning this case which they feel they need to research more thoroughly to present to this Board because it could have actual and legal implications.

Vice-Chair Arisumi asked Ms. Smith what were they planning to present to the Board.

Ms. Smith said it concerns the Special Management Area Permit that the applicant needs and the applicant's agent is saying that they do not need.

Mr. Gary Lee, Attorney for the applicant said he was here today with Jason Yoshida and Mr. Bernard Kea, consultant. Mr. Lee said they would strenuously object to this request for deferment. Firstly, this would be the third deferment, secondly, they received no notice of any possible request for deferment and they're ready to proceed, thirdly, their petition for a contested case was untimely filed and applicant filed a memorandum in opposition; and the information in regard to their extension of time has been on file since February of this year.

It was decided to allow Mr. Evans to make his presentation to the Board before acting on the request.

Mr. Evans said that this request for extension was deferred at the April 22nd meeting because of a verbal request for a contested case hearing. A written

petition was not submitted. The request was again deferred at the May 22nd Board meeting because of confusion over the contested case hearing procedures. The Lanikai Community Association was given every opportunity so that there would be no confusion. They were required within 10 days to come in with a written petition for a contested case, which they did.

Staff referred the petition to the Department of Attorney General for review and advice if a contested case was warranted.

Mr. Evans said that he has been apprised that the Lanikai Community Association has made a request for a deferral and he has also been apprised of a written memorandum on the part of the applicant that opposed the contested case hearing.

Staff had prepared a two part recommendation. Staff would like to modify the recommendation based upon advice and guidance received from the Department of Attorney General.

Part A. Request for a contested case hearing.

That the Board deny the request for a contested case hearing based upon the facts that were presented to the Department of the Attorney General.

Part B. No change to recommendation.

It was clarified that staff was in possession of a written Attorney General's opinion.

EXECUTIVE SESSION Mr. Yim moved for an executive session to consult with counsel. Motion was seconded by Mr. Yuen, motion carried.

11:45 am-12 noon

The regular meeting was called back to order by Vice-Chair Arisumi.

DEFERRED Mr. Yim moved that Item H-5 be deferred to the next Board meeting to be held on Oahu and that this deferment shall in no way prejudice the applicant's case before this board. Mr. Yuen seconded the motion and motion carried.

Mr. Gary Lee again strenuously objected to the deferment. In regard to the contested case, they feel that there were procedural flaws. that it was not properly and timely submitted.

ITEM D-1 APPROVAL FOR AWARD OF CONTRACT - JOB NO. 35-MW-L2,
IMPROVEMENTS TO KULA WATER SYSTEM, PHASE II, KAHAKAPAO
RESERVOIRS, MAUI

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM D-2 APPROVAL FOR AWARD OF CONTRACT - JOB NO. 2-HW-K, PUU PULEHU RESERVOIR IMPROVEMENTS, PHASE II, WAIMEA IRRIGATION SYSTEM, HAWAII

Mr. Tagomori made his presentation to the Board.

Mr. Carl Christensen of the Native Hawaiian Legal Corporation said he had comments to make on Items D-2, D-3 and D-11. He was here today representing the homesteaders in the Waimea area. There's been a problem with the availability of water for homestead purposes there and he wanted to point out that there are certain obligations as far as planning for making water available to the Department of Hawaiian Homestead Lands (DHHL) and its beneficiaries and also as far as consulting with DHHL and its beneficiaries. He said this would apply to Items D-2, D-3 and D-11 today.

Mr. Tagomori responded to the comment by saying that the Puu Pulehu Reservoir and the Puukapu shallow exploratory well on the next item are part of the Waimea Irrigation System of which a major portion of that services the Hawaiian Homesteads lands. In effect this system is partially owned by and provides water to Hawaiian Homesteads and that's how the system has been built. The other part, like Molokai, they have a State ag subdivision also attached to the Lalamilo farm lots, so it services both Hawaiian Homesteads and the farm lots.

ITEM D-3 APPROVAL FOR AWARD OF CONTRACT - JOB NO. 48-HW-H, PUUKAPU SHALLOW EXPLORATORY WELL, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Yim)

ITEM D-4 APPROVAL FOR AWARD OF CONTRACT - JOB NO. 8-HW-F, KAINALU TEST WELL NO. 3255-02, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Yim)

ITEM D-5 AWARD OF CONSTRUCTION CONTRACT - JOB NO. 31-OL-C1, WAIKIKI SEAWALL WALKWAY REHABILITATION, PHASE V, OAHU

WITHDRAWN Mr. Tagomori requested to withdraw Item D-5 as the opening of the bids for this project has been postponed for another week. Staff will be coming to the Board later.

Mr. Yim moved that Item D-5 be withdrawn; seconded by Mr. Yuen, motion carried.

ITEM D-6 AWARD OF CONSTRUCTION CONTRACT - JOB NO. 61-OQ-A, REPAIR METAL ROOF - ANUENUE FISHERIES RESEARCH CENTER, SAND ISLAND, OAHU

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM D-7 **AWARD OF CONSTRUCTION CONTRACT - JOB NOS. 98-MP-K, AND 62-MF-B, POLIPOLI ACCESS ROAD RECONSTRUCTION, MAUI**

ACTION Unanimously approved as submitted. (Apaka/Yim)

ITEM D-8 **AWARD OF CONSTRUCTION CONTRACTS, VARIOUS DOWALD PROJECTS STATEWIDE**

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM D-9 **AWARD OF CONSTRUCTION CONTRACTS, VARIOUS STATE PARKS PROJECTS STATEWIDE**

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM D-10 **PERMISSION TO HIRE CONSULTANT FOR JOB NO. 35-MW-L2, IMPROVEMENTS TO KULA WATER SYSTEM, PHASE II, KAHAKAPAO RESERVOIRS, MAUI**

ACTION Unanimously approved as submitted. (Apaka/Yuen)

ITEM D-11 **PERMISSION TO HIRE CONSULTANT FOR JOB NO. 2-HW-K, PUU PULEHU RESERVOIR IMPROVEMENTS, PHASE II, WAIMEA IRRIGATION SYSTEM, HAWAII**

ACTION Unanimously approved as submitted. (Apaka/Yuen)

ITEM F-1 **TRANSMITTAL OF DOCUMENTS**

Item F-1-a)

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Item F-1-b)

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) See Pages 5-6 for Action on F-1-a, F-1-b, F-1-c and F-1-d.

Item F-1-c)

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Item F-1-d)

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Item F-1-e Issuance of Revocable Permit DOH-92-06 by Department of Health to Serenity H0use, Inc., Samuel Mahelona Memorial Hospital, Kapaa, Kauai, Tax Map Key 4-6-14:Por. 30

Item F-1-f Assignment of Grant of Easement No. S-4558 Covering Government (Crown) Land of Hauula, Hauula, Koolauloa, Oahu, Tax Map Key 5-4-07:POR. 63

Item F-1-g Assignment of General Lease No. S-4519, Former Kaupakalua School Lot, West Kaupakalua, Makawao (Hamakualoa), Maui, Tax Map Key 2-7-15:26

Item F-1-h Issuance of Land Patent In Confirmation of Land Commission Award No. 9701 to Apea by Application of Richard and Nancy Frazier, Covering Land Situate at Keauhou 1st, No. Kona, Hawaii, Tax Map Key 7-8-11:por. 13

Item F-1-j Issuance of Land Patent In Confirmation of Land Commission Award No. 7327 to Keohulu by Application of Richard and Nancy Frazier Covering Land Situate at Keauhou 1st, No. Kona, Hawaii, Tax Map Key 7-8-11:ports. of 10 and 13

Item F-1-j Issuance of Revocable Permit to Sand Island Business Association, Sand Island Industrial Park, Sand Island, Honolulu, Oahu, Tax Map Key 1-5-41:327

ACTION Mr. Apaka's motion was to approve Items F-1-e, F-1-f, F-1-g, F-1-h, F-1-i and F-1-j as submitted; seconded by Mr. Yuen, motion carried unanimously.

ITEM F-2 See Page 2 for action.

ITEM F-3 See Page 8 for action.

DEPARTMENT OF TRANSPORTATION REQUEST SET ASIDE OF FORMER PLANT INSPECTION LOT (KUHIO WHARF FUMATORIUM SITE) AT WAIAKEA, SO. HILO, HAWAII FOR EXPANSION OF INTERISLAND CARGO AND CONTAINER YARD OPERATIONS

ITEM F-4

Mr. Young brought attention to Condition 3. Because of the Boating transfer to DLNR, staff would like to include the use of the premises by DLNR as provided for in Condition #3 shall be at gratis. Two additional amendments would be 1) because of the ceded lands, he would like to include that 20% of any revenues from the premises to be paid to OHA; 2) recommending that the disposition shall be in compliance with Chapter 343, HRS, prior to set aside.

ACTION Unanimously approved as amended. (Yuen/Yim)

ITEM F-5 See Page 2 for action.

ITEM F-6 See Page 12 for Action.

CANCELLATION OF FORMER BOARD ACTION OF MARCH 27, 1992 (AGENDA ITEM F-1a) AND CONCURRENT SALE OF A PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, MOOLOA, HONUALUA, MAKAWAO, MAUI, TAX MAP KEY 2-1-05:POR. 77

ITEM F-7

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM F-8 **AMENDMENT OF LEASE AGREEMENT NO. 90-679 FOR STORAGE SPACE FOR THE DEPARTMENT OF HEALTH AT KAHULUI, MAUI**

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM F-9 **SETTLEMENT OF DELINQUENT ACCOUNT ON EXPIRED GENERAL LEASE NO. S-3180, LOT B, KAWAIKI GOVERNMENT LOTS, KAWAIKI, HONOLULU, OAHU, TAX MAP KEY 1-7-41:2**

ACTION Unanimously approved as submitted. (Yuen/Apaka)

GRANT OF NON-EXCLUSIVE EASEMENT FOR SEAWALL, LANDSCAPE AND STORAGE PURPOSES AT HEEIA, KOOLAUPOKO, OAHU, TAX MAP KEY 4-6-01:SEAWARD OF 10

ACTION Unanimously approved as submitted. (Yuen/Apaka)

CANCELLATION OF FOUR (4) OFFICE SPACE REVOCABLE PERMITS AT THE KALANIMOKU BUILDING, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Apaka/Yim)

STAFF REQUEST FOR AUTHORIZATION TO SELL A GENERAL AGRICULTURAL LEASE AT PUBLIC AUCTION COVERING STATE LAND SITUATE AT WAILUA, KAUAI, TAX MAP KEY 4-4-02:31

After staff's presentation, Mr. Yuen questioned the figures of 100-1000 feet listed under Elevation. Mr. Young said that must have been a typo.

ACTION Unanimously approved as submitted. (Apaka/Yim)

REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR ACCESS PURPOSES, WAILUA HOMESTEADS, KAPAA, KAUAI, TAX MAP KEY 4-4-03:31 AND 32

ACTION Unanimously approved as submitted. (Apaka/Yim)

ITEM F-14 See Page 9 for Action.

RESUBMITTAL--REQUEST FOR DIRECT LEASE FOR MARITIME PURPOSES, WAILUA RIVER, KAUAI, TAX MAP KEY 3-9-02

ACTION Unanimously approved as submitted. (Apaka/Yim)

ITEM H-1 See Page 12 for Action.

ITEM H-2 See Page 11 for action.

ITEM H-3 See Page 7 for action.

TEMPORARY VARIANCE FOR THE INSTALLATION OF A NAVIGATIONAL BUOY FOR THE BIENNIAL KENWOOD CUP RACE, HAWEA POINT, MAUI; OFFSHORE OF TAX MAP KEY 4-2-01; APPLICANT: ROYAL HAWAIIAN OCEAN RACING CUP

ACTION Unanimously approved as submitted. (Yuen/Yim)

ITEM H-5 Deferred. See page 13.

AMENDMENT NO. 6 TO LEASE NO. DOT-A-78-22, LIHUE AIRPORT, KAUAI (HAWAIIAN AIRLINES, INC.)

ACTION Unanimously approved as submitted. (Apaka/Yim)

ITEM J-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4859, ETC.,
AIRPORT DIVISION, HNL, MKK, LIH, ITO

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM J-3 ISSUANCE OF LEASE BY PUBLIC AUCTION, HILO HARBOR, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Yim)

ITEM J-4 SIXTH AMENDMENT TO RESTATED AND AMENDED HARBOR LEASE AND
SPECIAL FACILITY LEASE AGREEMENT, (HARBOR LEASE NO. H-79-5),
SAND ISLAND CONTAINER FACILITY, OAHU (MATSON TERMINALS, INC.)

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM J-5 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40,
HONOLULU HARBOR, OAHU (TRANSOCEANIC CABLE SHIP COMPANY
C/O THEO DAVIES MARINE AGENCIES)

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PORTION OF
PIER 7, HONOLULU HARBOR, OAHU (WINDJAMMER CRUISES, INC.)

ACTION Unanimously approved as submitted. (Yim/Apaka)

ADJOURNMENT There being no further business, the meeting adjourned at 12:50 p.m.

Respectfully submitted,

Dorothy Chun
Dorothy Chun
Secretary

APPROVED:



William W. Paty, Chairperson

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