

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

DATE: Friday, August 27, 1993
TIME: 8:30 a.m.
PLACE: Lihikai School Cafeteria
335 South Papa Avenue
Kahului, Maui, Hawaii

**ROLL
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 8:40 a.m. The following were in attendance.

MEMBERS: Mr. Herbert Apaka
Mr. Christopher Yuen
Ms. Sharon Himeno
Mr. William Kennison
Mr. Michael Nekoba
Mr. Keith Ahue

STAFF: Mr. Roger Evans
Mr. Mason Young
Mr. Alan Tokunaga
Mr. Philip Ota
Mr. Floyd Miyazona
Mrs. LaVerne Tirrell

OTHERS: Mr. Johnson Wong, Deputy Attorney General
Mr. Peter Garcia, Dept. of Transportation
Dr. Russ C. Schnell (Item F-2)
Mr. Philip Brutte, Richard Wasden, Mark McMillan,
Ron, Ms. Luana Ohare (Item F-3)
Mr. Bill Santos, Anthony James, Ms. Paris Chai,
Chester Koga, Ed Boughton (Item F-5)
Mr. Bert Hatton, Ms. Linda Delaney, Linda Rosehill,
Dan Awai (Item F-6)
Dr. Kevin Pyle (Item F-8)
Mr. Max Graham (Item F-15)
Mr. Robert D. Slenk (Item H-1)
Mr. Ben Tsukazaki (Item H-2)
Mr. Everett Kaneshige (Item H-4)
Mr. Walton Hong (Item H-5)
Mr. Roy Vitousek (Item H-6)
Messrs. Erick Pong and Mike Sone (Items H-7 and H-8)

**ADDED
ITEM:**

The board voted unanimously to add the following item to the Agenda:

Item E-1 Request by the County of Hawaii to transfer the Hawaii County Vietnam Memorial in Wailoa River State Recreation Area to their care.

MINUTES:

Mr. Yuen asked that the ACTION on Item F-1f, page 11, line 4, of the July 23, 1993 minutes be amended to read: "The rental, if any, shall not be more than 20% of the fair rental value." Mr. Yuen then moved to approve the July 23, 1993 minutes as amended and the August 13, 1993 minutes as submitted. Motion carried with a second by Mr. Apaka.

Items on the Agenda were considered in the following order to accommodate the applicants and/or interested parties at the meeting:

**DIRECT SALE OF NON-EXCLUSIVE INTERISLAND FIBER OPTIC
SUBMARINE CABLE SYSTEM EASEMENTS TO GTE HAWAIIAN
TELEPHONE CO., INC. AT VARIOUS OFFSHORE ALIGNMENTS,
STATEWIDE.**

ITEM F-5

After much discussion with respect to Mr. Young's recommendation that the State derive a percentage of GTE's growth versus collection of a lump sum figure, Mr. Young stated that he had a responsibility to the public to generate revenue and maximize use of State lands. He said that the scenario he was offering was consistent with how DLNR does business with the State.

Mr. Apaka agreed that Mr. Young's proposal had merits but because this was the first time he was hearing this proposal, he did not feel that the board could make a decision in such a short time. Mr. Young said that he understood but he felt that he had to let the board members know where he was coming from.

Mr. Bill Santos, of Hawaiian Telephone said that they would like to keep the cost down for use of the cable. Even though Mr. Young said that it is up to the Utilities Commission to determine the rate, as a business person you would not want to make an investment if you knew you could not get a return. Mr. Santos went on to explain what is expected of them as a public utility company and, if these expectations are not met they will be penalized. Another mandate of a public utility company is that they are also limited to the amount of profit they can receive.

Ms. Himeno asked Mr. Santos if he would comment with respect to Mr. Young's presentation about the minimum percentage being a standard approach with regard to businesses that proceed in growth. Mr. Santos said that what they want is to put a 3-inch cable into the ground and bury

it and they are willing to pay the fair market value for use of this land. He felt that by charging a percentage you would not only be hurting the company but also the public. Mr. Santos, in reply to Mr. Ahue's question whether he had any comments on staff's written recommendation, recommended that, under B.3 and C.1 a specified coverage of liability insurance be inserted and that this amount be \$1 million for single incident and \$2 million total aggregate.

Mr. Ahue clarified that when we talk about the appraised value of the easement, in essence we are talking about the value of the land. Mr. Young stated: "and the use to which the lot is being put to". Mr. Ahue felt that the use was completely different from the appraised value of the property.

Mr. Ahue stated that he had talked briefly with Mr. Santos about GTE's timetable with regards to manufacturer and the schedule for laying the cable. Because most everyone did not have an opportunity to review Mason Young's proposal, he asked Mr. Santos to comment on a situation that would occur if this item were to be deferred.

Mr. Santos said that the issue now is to lay the cable as quickly as possible because of the costs. He said that there is a lot of money in the state riding on the completion of this cable, in addition to the Maui super computer. One of the key items is that this cable needs to be built and shipped here. Even if they were to tell the manufacturers to go ahead with the cable tomorrow it would still take at least a month before it would get here.

Mr. Edward M. Boughton, Vice President of the Maui Economic Development Board, testified, as follows, in favor of speeding up GTE's request:

"I heard the question of when will the high performance computer center be here and that is my primary interest for being interested in this action. That computing center is a national resource and is due to be operative here on Maui in December, 1993.

'To give a little scale of that computer center, the computer that will be here approximately a year from now, which comes in phases, will be the third largest computer in the world. There have been contributions to the creation of this center from the federal government, from the state government in providing funds for the Maui Research and Technology Center, which is a part of it, and of course from private enterprise here on Maui and a great deal more private enterprise is expected to participate once it's in place.

'What we need is for GTE to finish the rest of the job. I have heard the discussions this morning and some discussion which preceded this. As far as I can understand there are a set of precedents that allow GTE to have

the easement that they need to bring that cable across the sand and thus make 20th century, or even 21st century communication services available to us. I don't understand why those precedents are not as appropriate in this case as they have been in the past. The arguments that I heard this morning sound as if other utilities have been able to obtain the easements that they require.

'Couple of specific comments about the role this computing center will have with respect to the State of Hawaii -- the numbers, the size, the grandiosity of it all is hard to comprehend. But something that is not hard to comprehend is the fact that the eyes of the country, if not of the world, are on us with respect to this center. This is the largest news in high performance computing to happen in a decade. It is very important to us as a county, to us as a state, to us as a nation. I believe the benefits that will come to the State of Hawaii from having this here, and having it work, and work right and work on time far exceeds any revenues that might come from some formula that operates on behalf of GTE's revenue.

'The necessity for additional capacity simply can't be argued. I have not heard previous testimony on this but I presume it's been made to you. But I know full well that the kind of capacity that we require is simply not available. The term used for this kind of computing center is high performance computing. High performance computing is meaningless without high performance communications as well. We must have the kind of communication services that are available only from fiber in order to make this center be anything other than a momentary ornament. It must have that fiber in order to work and it will be here in December. The existing system on Maui is saturated. As far as I know were we to try to obtain the sort of communication that we need today, I am told it is simply not available.

'Furthermore, everything that I know about history says that with respect to communication, once the facilities are there they are quickly used up. Potentially, I suppose, there could be additional microwave services provided or some other method of a stop gap. But the fact is that those will not even touch the requirements that we have. Furthermore, new technologies are needed in the communication field altogether. I believe there have been various items discussed in the legislature, ISDN and what we are primarily interested in something called APM. These needs will continue to come and they are even here today.

'You asked some questions about delays. I heard Mr. Santos say that the schedule was for mid-1993. As a matter of fact, all during the conception of the high performance computing center, we and the sponsors of this program have been assuming technology or adequate communication would be available in calendar year 1993. That's a planning and technological assumption for this center. The eyes of the world are on

us with respect to this. I believe the only sensible action for the State of Hawaii is to move with all possible speed. Anything that will delay this process and, certainly what I heard this morning, especially the comments that you made that you haven't heard about this before you need time to analyze it, I am positive this is going to delay the process and that actually engenders a sense of panic in me because we don't have time for additional delay. If you want to start a precedent for charging some different way for easements for utility, do it on the next one -- don't do it on this one, we need it now."

In reply to Mr. Nekoba's inquiry, Mr. Baughton said that the first phase will be operative in December, 1993, the second phase, which is to double the capacity of two such computers, will be in March, 1994. The second of those computers will be increased in size to the second or third largest in the world during the course of the following six months -- by September 1994 the entire center will be in operation. Even the first phase puts us in the upper echelon of computers in the country.

Ms. Himeno said that even though she thinks that Mason Young's proposal has merit, in light of the deadline and the fact that we just got the material this morning on this proposal, she thought that it would not be wise to go ahead and implement something that she was not satisfied is the right way to proceed or will work.

Ms. Himeno moved to approve the written submittal on this item.

Mr. Santos requested an amendment to the submittal, that the coverage of the liability insurance be \$1 million for single incident and \$2 million total aggregate. Mr. Ahue asked Mr. Young if he had a problem with this. Mr. Young replied, "no".

Mr. Yuen suggested another proposal as follows:

1. Appraise the value of the easement under the method of the written submittal but rather than it being a lump sum, one time payment, the appraiser would establish a yearly lease rental.
2. At the end of the first year we would look at the revenues generated by the cable and pick the percentage that would equal the first years appraised rent.
3. Every year after that, apply the same percentage to the end of the year's revenue so that if the revenues increased the rental would increase in the same rate as the revenue. That this would be a sixty-five year lease with a reappraisal every 20 years starting the same cycle over as far as the percentage.

Mr. Santos said that without the figures or at least an idea of how much we are talking about, they could not agree to this because it will affect the cost or the pricing of the cable and it will affect the users and how many people that would want to use the cable. It might be too expensive so they might want to get together and build their own cable.

Mr. Yuen said that as it stands now with the written submittal you don't know what the appraised value of the easement is going to be either.

ACTION Ms. Himeno amended her motion to include GTE's request that the coverage of the liability insurance be \$1 million for single incident and \$2 million total aggregate. Motion carried with a second by Mr. Apaka. Mr. Yuen voted no.

ITEM F-6 REVIEW OF AND RESPONSE TO AMFAC/JMB HAWAII, INC.
PROPOSAL FOR A REDUCTION IN RENT OF VARIOUS SUGAR
LEASES SITUATED ON OAHU, KAUAI AND MAUI.

In answer to Mr. Kennison's query regarding the 50% annual lease rents, Mr. Young said that currently DLNR has to, as part of the statute, pay off OHA and Hawaiian Home Lands 50% of the value. When staff looked at this, without eroding the current revenues of OHA and DHHL, staff felt that the bottom line they could look at was probably 50% of the rent. On the other hand AMFAC is saying they need to survive, we have some fiduciary responsibilities to two native hawaiian agencies.

Mr. Yuen was not clear how the 50% rental would work. Mr. Ahue said as he understood, in order for OHA and DHHL to receive their current revenues the lease rent would have to remain as it is but the state, by this proposal, would waive 50% of that rent.

Mr. Bert Hatton, Senior Vice President of AMFAC/JMB thanked the staff for their continued work on a very complex and comprehensive issue which involved a whole lot of state owners.

Mr. Hatton said that they have spent over \$35 million in capitol to take care of things which are under their control. This amount does not cover operating costs. They have also invested \$4 million to start a coffee operation at Pioneer Mill and spent much money for items which are not under their control. As a result, each and every year, for each and every plantation, they have to make a decision whether or not to continue.

In summary, Mr. Hatton said that they have proposed a significant restructuring of their lease rentals and their proposal is based on paying minimum rent, based on alternative uses of these tracts of land. They are not making money but they are also proposing paying what they call

"kicker", which is paying a percentage of their gross proceeds if and when they do make money. He said that time is critical since they have to decide whether or not to plant the 1994 crop for harvest in 1996 at Kekaha, Lihue and Pioneer Mill companies.

They believe they can work within the framework as proposed by staff. They have not paid any rent on the Oahu Sugar Co. property for about three years. The major reason being that this was a condemnation and there were condemnation issues to be settled as well as lease rental issues.

In reply to Mr. Kennison's question, Mr. Hatton said that DLNR staff is proposing that they pay more lease rent than they have proposed. However, the staff is also proposing that they work with AMFAC/JMB in the area of infrastructure maintenance. Because a decision has to be made pretty quick, Mr. Hatton suggested that perhaps they focus on a place where issues are a little bit clearer, such as Kekaha.

Mr. Ahue asked Mr. Young for clarification. He was not sure whether the board was being asked to make a decision on items that are being proposed today or, as stated in the recommendation, that DLNR offer these concepts to AMFAC and at such point and time that they are able to negotiate some kind of agreement staff comes back to the board to formalize. Mr. Young answered affirmatively. "So we're not voting today on specific rent reductions", asked Mr. Ahue? Mr. Young said, "no".

Mr. Ahue presented written testimony from DHHL, who are essentially concerned about revenues from sugar cane lands that they currently receive.

Ms. Linda Delaney, Lands Officer for the Office of Hawaiian Affairs presented testimony. The concerns of OHA with respect to the proposed reduction, in part, focused in three areas:

1. The disproportionate negative impact on the trust entitlements due the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands unless the recommended decrease is derived solely from the public interest;
2. The need to develop, in consultation with OHA, a coherent public policy related to agricultural leases of trust lands to avoid the apparent inequity and injustice of this month reducing lease rents to a major sugar corporation and a few months ago telling traditional taro farmers in Keanae that their leases would be put up to the highest bidder; and
3. The even deeper need to coordinate with OHA on all proposed Board of Land and Natural Resources decisions affecting not only the trust entitlements but the deeper and broader issues which affect our Hawaiian communities and the public.

Ms. Delaney then went on to briefly address each of these points.

Mr. Ahue informed the board that written testimony was also received from the Native Legal Hawaiian Corporation.

ACTION Unanimously approved as submitted. (Kennison/Himeno)

RECESS: 10:40 - 10:55 a.m.

ITEM H-2 CONSERVATION DISTRICT USE APPLICATION FOR A SINGLE FAMILY RESIDENCE AND RELATED FACILITIES AT OKOE, SO. KONA, HAWAII, TMK 8-9-03:02, APPLICANT: MS. MARGOT SKILLING; CONSULTANT: MENEZES TSUKAZAKI YEH AND MOORE.

Mr. Evans distributed to the board comments from the Division of Historic Preservation. A fax was also received from Daryl DeSilva of the Governor's office in Hilo requesting deferral of any decision on this matter until he had an opportunity to review the document and situation since the State has not established the correct Okoe Trail in the area. Mr. DeSilva mentioned also that there were unmarked family graves on the site.

Ben Tsukazaki, Attorney for the applicant, said that he was surprised at the evidence provided the board by Mr. DeSilva and objected to this matter being deferred for the reason that this application was filed March 23, 1993, had received comments from the various agencies, and OCEA had drafted recommendations based on input from these agencies. To hold things up at the last minute without a better basis he felt was inappropriate.

As far as Mr. DeSilva's question regarding possible burials on the site, Mr. Tsukazaki said that the archaeological survey findings done by Historic Preservation were in the report, along with the environmental assessment, with this application. The record right now, he said, is completely devoid of any burial existing on this kuleana.

With respect to Mr. DeSilva's second question on the Okoe Trail, Mr. Tsukazaki said that in a Quiet Title Action, an amended judgment was entered into in 1992 which gave the State title over the Okoe Trail. In that lawsuit specific reference was made to Registered Maps 2469 and 2468 which shows where the Okoe Trail is. Just from the review of these maps, Mr. Tsukazaki stated that they estimate the trail is no closer than 200-250 feet away from the kuleana at its nearest point. Mr. Tsukazaki said that he would be happy to provide copies of this survey map to the chairman prior to submitting any construction drawing.

Mr. Tsukazaki asked also that the board not incorporate those comments just received yesterday from the State Historic Preservation office. He had no objection to the recommendations in the submittal, but he did

object to the two that were just received this morning. For the record, Mr. Tsukazaki voiced his reasons for objecting to the conditions submitted this morning.

The first condition, said Mr. Tsukazaki, would give the State Historic Preservation Division the total control for approval of house plans. He believed this to exceed their legal authority, and that the board has the authority to determine what type of use should be approved. He believed also that as the conditions are structured the chairman exercises the board's power when he reviews the construction drawings at a later point. Beyond that he felt that this particular condition was unnecessary. Mr. Tsukazaki said that the applicant was not going to exceed any of the dimensions or design constraints that was presented in the application.

Mr. Tsukazaki also objected to the second condition which would give the Historic Preservation Division the approval power on any data recovery plan, etc. He felt that to give them total discretion in that area is beyond authority given them by law. Recognizing that the Historic Preservation Division is a resource agency for DLNR and recognizing that they do have statutory functions of reviewing and commenting on archaeological matters, he said that he would be agreeable to an amendment of that second condition so that the applicant is required to provide Historic Preservation with its data recovery plan in case there are any ground disturbance activities.

Mr. Tsukazaki presented some written info to the board.

Mr. Evans said that the major concern is that staff would prefer to have the approval with the chairman as opposed to the division.

Mr. Yuen said that in the letter they received there will be at least one significant historic site which would be adversely affected by the construction of the house. He asked, "what is the nature of that site?" Mr. Tsukazaki disagreed with several statements in this letter. The archaeological work that was done involved tests, excavations, and collection of samples. What they thought to be cultural deposits on one site basically was a piece of bone and some green glass. Their archaeologist deemed that site to be significant for information purposes. However, that is not significant as an example of a site. They would disagree with Historic Preservation's characterization on that. This house would be built above ground without any touching of any archaeological sites which have been located (three). The applicant is willing to do more archaeological survey, data recovery, at any site where there will be any grading or ground excavation.

ACTION Mr. Yuen moved to defer; Mr. Apaka seconded, motion carried unanimously.

Mr. Yuen said that he had received a call from Mr. DeSilva who said that he had family buried in the area and he was also concerned about the trail. Mr. Yuen felt this to be a very sensitive area.

Mr. Evans said that this item would be brought back at the next meeting scheduled for September 24, 1993 on Oahu.

CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A SINGLE FAMILY RESIDENCE AND ACCESSORY USES AT KANEOHE, KOOLAUPOKO, OAHU, TMK 4-4-13:59, APPLICANT: MR. ROBERT D. SLENK.

ITEM H-1

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT OA-2547-0.1 MILLION-GALLON WATER TANK AT KAMEHAME RIDGE, OAHU, TMK 3-9-10:2, PETITIONER: HAWAII KAI DEVELOPMENT COMPANY.

ITEM H-4

ACTION Unanimously approved as submitted. (Nekoba/Himeno)

REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR STORM DRAIN OUTLET, NAWILIWILI, KAUAI, TMK 3-2-03: CONFLUENCES OF NIUMALU STREAM AND NAWILIWILI HARBOR.

ITEM F-15

ACTION Unanimously approved as submitted. (Apaka/Yuen)

1) CANCELLATION OF REVOCABLE PERMITS FOR NON-CONFORMING USE; 2) WITHDRAWAL OF A PORTION OF LAND FROM GOVERNOR'S EXECUTIVE ORDER NO. 2427; AND 3) SET ASIDE LANDS TO THE COUNTY OF MAUI AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE, KAHULUI, MAUI, TMK 3-8-01:19 (POR.).

ITEM F-3

On November 30, 1984, the Department of Hawaiian Home Lands, Department of Transportation and DLNR entered into a tri-party agreement and land exchange. As a result of this Agreement, subsequent board actions were taken to transfer the property and issue DLNR revocable permits for those newly acquired airport properties within the subject area. DLNR subsequently issued 17 revocable permits for various uses within this area. One of staff's recommendation is that these 17 revocable permits be terminated effective September 30, 1993. Mr. Young said that they were informed that most, if not all, of the existing permittees in the area have found relocation sites.

Several permittees testified. Basically, they requested to keep their yards or extend the time frame for them to move. All had worked hard to maintain the area and promised to continue maintaining the area in compliance with their leases. They testified that these are tough economic times and they wondered if there was any way they could keep their permit. Those who testified were Mark McMillan, Philip Boulte, Richard Wasden, Luana Ohare and Ron. Permittees Carol Thuro, Karl Calleon and Dan Thuro were also present but did not testify.

In reply to staff's comment that most of the permittees had been relocated, Mr. McMillan said that he knows of no one in their area who has been relocated. They are aware that they signed a 30-day agreement and by law they know that they have to move but they would like to have more time to work things out.

With respect to the disposition of this property, inasmuch as DLNR was acting on behalf of the Department of Transportation, Mr. Ahue asked Peter Garcia if he would update the tenants on DOT's plans and timetable for the area.

Mr. Garcia pointed out which areas would be affected and to whom they would be set aside. One of the concerns was environmental, such as the spilling of waste products. As far as extending the deadline, Mr. Garcia said that they had no problem if DLNR wanted to extend.

ACTION Mr. Kennison moved to approve with the amendment that the termination date is to be extended from September 30, 1993 to December 31, 1993. Mr. Nekoba seconded, motion carried unanimously.

ITEM F-8 LEASE OF BUILDING FACILITIES AT KAHU MOHALA BY THE DEPARTMENT OF HEALTH, CHILD AND ADOLESCENT MENTAL HEALTH DIVISION, CENTRALIZED TREATMENT SERVICES BRANCH, HONOLULU, EWA, OAHU, TMK 9-1-17:16.

Dr. Kevin Pyle of the Department of Health said that about 336 children require this type of service. Therefore, they have been asked to expand this service in residential treatment facilities throughout the islands and this would be the start of doing something like this.

ACTION Unanimously approved as submitted. (Himeno/Kennison)

ITEM H-5 AMENDMENT TO CDUA KA-2326 FOR THE CYPTEL MICROWAVE REPEATER STATION AT OMAO, KOLOA, KAUAI, TMK 2-5-01:POR 11, APPLICANT: CYBERTEL CORPORATION, C/O WALTON D. Y. HONG.

Mr. Evans asked that the board approve this submittal with the amendment to allow the chairman to administratively approve or deny future kinds of dishes on towers.

Mr. Walton, representing the applicant, said that they go along with staff's recommendation. Also, at Mr. Apaka's request, Mr. Hong went on to explain to the board the reason they needed the additional dish.

ACTION Mr. Apaka moved to approve staff's recommendation as amended. Motion carried unanimously with a second by Ms. Himeno.

ITEM H-7 EXTENSION OF TIME REQUEST FOR CDUP MA-2076-
TELECOMMUNICATION FACILITY AT HALEAKALA, MAUI, TMK 2-2-7:5
(POR), APPLICANT: DEPT. OF BUDGET AND FINANCE.

ITEM H-8 EXTENSION OF TIME REQUEST FOR CDUP LA-2083 -
TELECOMMUNICATION FACILITY AT HALEAKALA, LANAI, TMK 4-9-2:1,
APPLICANT: DEPT. OF BUDGET AND FINANCE.

ACTION Mr. Kennison moved to approve Items H-7 and H-8 as submitted, but that the dates shown under RECOMMENDATION be changed from April 13, 1993 to April 13, 1994. Motion carried unanimously with a second by Ms. Himeno.

ITEM F-2 WITHDRAWAL OF LAND FROM GOVERNOR'S EXECUTIVE ORDER NO.
1288 AND ISSUANCE OF GOVERNOR'S EXECUTIVE ORDER TO U.S.
DEPT. OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION FOR SET ASIDE OF MAUNA LOA CLIMATOLOGICAL
AND ATMOSPHERIC RESEARCH OBSERVATORY SITE AT KAOHE 5,
HAMAKUA, HAWAII, TMK 4-4-16:POR. 1.

Mr. Young said that under Chapter 183, before you can withdraw land from the forest reserve, you must hold a public hearing to receive comments for and against the withdrawal of land out of the forest reserve. Normally the board is asked to hold a hearing, approve designating the state forester as a master for the hearing, and a place and time to be determined by the chairman with the approval of the governor. In light of this law, the proposed set aside is inappropriate and therefore staff is recommending that the submittal be amended to comply with the law to authorize the public hearing.

Mr. Young said that he received a fax from NOAA. It appears that there is some concern on their part with the budget situation and they need to get in the area as soon as possible. Mr. Buck is aware of this and will expedite the hearing. NOAA asked if the CDUA public hearing would suffice with respect to the withdrawal. Mr. Young understood that the CDUA public hearing was for the use of the land and not the withdrawal. Therefore, staff is saying 1) comply with Chapter 183; 2) approve a public hearing; and allow the state forester to be the master.

Mr. Yuen asked if a right of entry could be granted today. Mr. Young said, no. Not until after a public hearing is held. There may be objections with respect to the proposal. Mr. Yuen felt if the right of entry does not involve physical construction it might be o.k. Mr. Young said they would have no problem if they went in for a survey, but he understood that this has already been done.

Dr. Russ Schnell, Director of the Mauna Loa Observatory, said that they are in the process of expanding into a new area where they will be measuring ozone concentrations in real time. The reason for this is because the ozone layer is slowly being eaten away. NOAA is putting a new facility in Mauna Loa, which is one of five around the world. They are ready to construct this facility.

Dr. Schnell said that they understood that the hearing they had in July was enough. He said that if there was any way the second meeting could be waived they could start putting bids out next week for the land preparation and the money that has been appropriated could not be taken away. He said that they do not have to have title but they do need some kind of commitment from the State. Mr. Young suggested that Dr. Schnell let the Federal government know that we are willing to agree to this in principle but staff would still have to go to public hearing. If there are no problems with the public hearing, staff will come before the board for disposition. If that would satisfy the federal government then action could be taken today.

Mr. Yuen asked if once this went out to bid if this would be considered "encumbered". Dr. Schnell said if there is a viable bid and the government says o.k. we have a viable bid and if there is no objection we will have our money. Mr. Yuen felt they were cutting this pretty close. Mr. Young said that is why he suggested approving in principal.

ACTION Upon motion by Mr. Yuen and second by Mr. Kennison, the board voted unanimously to approve with the following amendment:

- A. Approval of staff recommendation subject to compliance with applicable procedural and statutory requirements.
- B. Recommend to the Governor that a public hearing be held on the island of Hawaii covering the proposed withdrawal of approximately 4.40 acres from the Mauna Loa Forest and Game Reserve (E.O. 1288) and that Mr. Michael Buck, State Forester, or his designated representative, be appointed Master. The time and place of the hearing to be determined by the Chairperson, with the approval of the Governor.

**CONSERVATION DISTRICT USE APPLICATION FOR NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENT AT LALAMILO, SO. KOHALA,
HAWAII, TMK 6-6-02:31, APPLICANTS: MR. TIMOTHY J. HOSBEING,
MR. RICHARD R. TREADWELL, RICHARD TREADWELL TRUST;
CONSULTANT; MR. ROY VITOUSEK.**

ITEM H-6

Mr. Evans presented staff's recommendation to approve a temporary access road easement at Lalamilo, TMK: 6-6-02:31, subject to the conditions listed in the submittal and with an amendment that the access would be for single family residential use. However, Mr. Evans said that there is a conflict on Condition No. 12 between himself and counsel. Staff feels that this easement should not be taken to increase the value of the property should, in the future, the state choose to condemn this area for public purposes. In this case, this could possibly be a state park.

Mr. Yuen asked if this easement was subject to relocation at the applicant's expense if park plans are such that the road is in a bad place for the park. Mr. Evans said that this is the primary reason staff is asking that the access be temporary. He understood that the alignment that has been represented has not been finalized to the point of metes and bounds where they would want anything along that line.

Mr. Yuen asked if this was a condition where if the road was interim and they moved it at their expense, it needed to be realigned. Mr. Evans said that this condition could be added if this is what the board wants. However, he said that condition no. 8 was included so that the Division of Historic Preservation would be involved before anything is finalized.

Mr. Vitousek referred to Mr. Yuen's concern regarding the alignment. He said that this alignment was selected simply because it was an existing dirt road and they have the metes and bounds description of the proposed 10-foot wide easement. Mr. Vitousek said that the selection of this alignment came from a meeting that took place in September, 1991 where state parks expressed a preference for that alignment rather than the other alignment, where the public gets access to Wailea Bay. Vitousek said that they then went to get the alignment surveyed so that the alignment would be on the road because that would certainly mitigate any archaeological concerns it's been a road for 20-30 years.

Mr. Vitousek said that his understanding was that they were applying for a perpetual easement subject to relocation if and when the park plans come through. The idea that this is temporary and they have to reapply and go through the CDUA process again is not what they anticipated. They have no objection to it being subject to realignment at their expense if the park plans change.

Another problem, said Vitousek, is that the 180 day period for taking action on this matter has elapsed so the board does not have authority to pull these conditions on the applicant since the use has already been granted. Mr. Vitousek said that the State has been reluctant to give access easements because they have been trying to keep the value of the properties down so if and when they decide to acquire it they won't have to pay a higher value for it. This is just not fair to the landowner.

"We filed the CDUA in December which was rejected. We renegotiated with State Parks, reduced the width of the easements and re-filed the CDUA. State parks again recommended denial. At that point I met with the Chairman and came to a written agreement which provided that the Treadwell's would dismiss a lawsuit they had filed against the State and in exchange for that the State would acknowledge that the existing access was legal. The state also agreed August 1992 that the chairman would file and assign and process the CDUA as soon as practicable after receipt of the stipulated dismissal of the litigation", said Vitousek. He continued explaining the history of this application.

Mr. Vitousek stated that he had no problem with staff's recommendation for approval; however, he did have a problem with Condition 12 which says that this legal access cannot be used to increase the value of their property, should the State seek to condemn the property in the future. He felt Condition 12 was unreasonable and unconstitutional.

Mr. Vitousek also voiced concern with the portion of Condition No. 15 which reads: "and, as may be necessary for park security, close vehicular access within the easement at the direction of the Division of State Parks."

Mr. Yuen asked Mr. Vitousek if he would have legal access through the existing primary public access, which is a dirt road, if this access were not granted. Mr. Vitousek said, no. In reply to Mr. Yuen's question regarding the legal access, Mr. Vitousek stated that what the agreement said was that "pending determination of the CDUA, the State would not prevent them from utilizing that to access the property." But what they needed was a letter from DLNR to Norman Hayashi of Planning saying that they would not interfere with the current access in order to get the building permit. If they did not get the building permit then they would lose their zoning.

Mr. Yuen asked Mr. Evans to justify condition 12. Mr. Evans said that he normally takes a certain philosophy where private lands are concerned. This is a little different. Here we are talking about state lands/public lands, so from the public policy perspective -- if you have access over these lands then staff has no argument. However, because public lands are being used to accommodate the private land owner, and staff is recommending approval in this case, we should not do anything to enhance the value of those private lands; especially if there is a possibility that we might be condemning the property.

EXECUTIVE SESSION: Mr. Yuen moved to go into executive session to confer with counsel. Mr. Apaka seconded. Motion carried. The board met in executive session from 12:45 -12:55.

ACTION Mr. Yuen moved 1) to approve as modified for a single family residence; 2) that Condition No. 15, regarding the closing of vehicular access, would apply to closing of the public vehicular access only; and, 3) to keep condition no. 12. Mr. Apaka seconded, motion carried unanimously.

With respect to Condition No. 12, Mr. Yuen felt that the applicant should have the opportunity of getting a permit and taking condition 12 to court. Mr. Vitousek was concerned with the portion that requires that these conditions be recorded. They would hardly be able to argue these conditions once they had voluntarily put this restrictive covenant on the property. Mr. Yuen said that if condition 12 is illegal then this condition should not have to be recorded. As far as condition no. 20 is concerned, whatever modifications are necessary to enable Mr. Vitousek to take the permit and challenge condition 12 should be made.

Mr. Vitousek said that he didn't mind deferring the issue until a condemnation action is filed. He just did not want a situation where this argument was waived here and then have to go to court.

Mr. Evans said that action was taken by the board so he would go with the board action. Mr. Vitousek said that all he is trying to do is avoid any more expenses for the applicants.

Mr. Yuen felt that if it was illegal to include condition 12 then the board should grant the easement without this paragraph. He stated that he would like to modify conditions 18 and 20 that when the conditions are put in the deed that it state the applicant has not accepted conditions 18 and 20 and that these are conditions placed by the State of Hawaii, which is valid unless overturned over by the court.

Mr. Vitousek said that the decision may or may not come up, what he is trying avoid is going to court on what is really a hypothetical issue. Mr. Nekoba disagreed that this is a hypothetical issue. Nekoba said that when he looks at this -- if you tell us to remove condition 12, then we would not approve this.

With respect to Mr. Vitousek challenging Condition 12, Counsel Johnson Wong explained that this paragraph has nothing to do with legality or constitutionality, it is a question of agreement. Is the party willing to purchase this easement on that condition?

Mr. Yuen said if the Judge came in and said you cannot have a condition like this and then they came and they wanted to get this easement from the State, would the board say no? Mr. Evans said that considering the legality if we were to revisit the effort today our position would be," show us the court document."

Mr. Vitousek said that one alternative, if the board objects to the condition, would be to appeal the decision not only the grounds that they are objecting the condition but on the question on whether the board has the authority to impose conditions. So I guess the issues becomes whether we have to come back here for a contested case hearing. The board has not made a decision on the question of the 180-day period. Mr. Vitousek had no qualms about having to address the issue and having to take it to court if necessary, but he did not want to come back for a contested case hearing.

Mr. Wong said that the board has moved to approve this package. Mr. Vitousek's question is whether he could challenge any of the provisions. If any of those provisions are stricken out by the court then the board may not have approved this -- this should be a total package. Mr. Vitousek asked whether the board had made a decision on the 180-day period. Mr. Evans said that they did when they approved this submittal. The 180-day is shown on the first page and that date is October 4, 1993. Mr. Vitousek asked if there would be a findings of fact and conclusions of laws which could be appealed to under chapter 91. Mr. Evans said there would a letter. Mr. Vitousek said that he was not trying to be difficult he just did not want to have extra procedural steps.

EXECUTIVE Mr. Yuen moved for an executive session. Mr. Apaka seconded. Motion
SESSION: carried. The board met in executive session from 1:05-1:15.

Mr. Yuen said that he could not get a consensus from the board on any additional motions or clarifications beyond what has already been acted upon. His personal feeling, however, is that they should be able to challenge condition 12 separately from the rest of the submittal.

Mr. Vitousek said that both he and the board knew each others position and it would be a shame to have to come back for another level of hearing before they would be able to get a judicial review. He requested that this be treated as a contested case hearing that the decision be issued in a format that could be appealed under chapter 91. His clients could then make a decision whether to accept it as is or appeal.

Mr. Evans said that he would put this in a letter. Mr. Vitousek asked that as far as the contested case is concerned, all the submittals from the applicant, including all correspondence, be included as record. Mr. Evans said that he could this.

ITEM C-1 APPROVAL TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE UNITED STATES FISH AND WILDLIFE SERVICE.

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

ADDED ITEM E-1 REQUEST BY THE COUNTY OF HAWAII TO TRANSFER THE HAWAII COUNTY VIETNAM MEMORIAL IN WAILOA RIVER STATE RECREATION AREA TO THEIR CARE.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION.

Item F-1-a Request to Issue a Revocable Permit to the County of Hawaii for Dump Closure Purposes on Government lands at Kealakehe, No. Kona, Hawaii, TMK 7-4008:17(por.)

Item F-1-b Request Land Board approval for issuance of Revocable Permits to Former Department of Transportation permittees at the Keehi Industrial Lots, Keehi Lagoon, Kalihi-Kai, Honolulu, Oahu, TMK 1-2-23.

ACTION Upon motion by Mr. Apaka and a second by Ms. Himeno, the board voted unanimously to approve Items F-1-a and F-1-b as submitted.

ITEM F-2 WITHDRAWAL OF LAND FROM GOVERNOR'S EXECUTIVE ORDER NO. 1288 AND ISSUANCE OF GOVERNOR'S EXECUTIVE ORDER TO U.S. DEPT. OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FOR SET ASIDE OF MAUNA LOA CLIMATOLOGICAL AND ATMOSPHERIC RESEARCH OBSERVATORY SITE AT KAOHE 5, HAMAKUA, HAWAII, TMK 4-4-16:POR. 1.

ACTION See Page 13.

ITEM F-3 1) CANCELLATION OF REVOCABLE PERMITS FOR NON-CONFORMING USE; 2) WITHDRAWAL OF A PORTION OF LAND FROM GOVERNOR'S EXECUTIVE ORDER NO. 2427; AND 3) SET ASIDE LANDS TO THE COUNTY OF MAUI AND THE DEPT OF LAND & NATURAL RESOURCES, DIV. OF FORESTRY & WILDLIFE, KAHULUI, MAUI, TMK 3-8-01:19(POR.)

ACTION See Page 11.

ITEM F-4 CONVEYANCE IN FEE SIMPLE OF STATE-OWNED LANDS TO HOUSING FINANCE AND DEVELOPMENT CORPORATION AT WAIAHOLE, KOOLAUPOKO, OAHU, TMK 4-8-01:19 AND 20; 4-8-07:3,6,7,8,9,10,11 AND 12.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-5 DIRECT SALE OF NON-EXCLUSIVE INTERISLAND FIBER OPTIC SUBMARINE CABLE SYSTEM EASEMENTS TO GTE HAWAIIAN TELEPHONE CO., INC. AT VARIOUS OFFSHORE ALIGNMENTS, STATEWIDE.

ACTION See Pages 5 and 6.

ITEM F-6 REVIEW OF AND RESPONSE TO AMFAC/JMB HAWAII, INC. PROPOSAL FOR A REDUCTION IN RENT OF VARIOUS SUGAR LEASES SITUATED ON OAHU, KAUAI AND MAUI.

ACTION See Page 8.

ITEM F-7 QUITCLAIM OF WHATEVER INTEREST THE STATE MAY HAVE IN ALALA ROAD, W/OUT PREJUDICE TO THE STATE'S POSITION THAT THE CITY & CNTY OF HONOLULU ALREADY OWNS ALALA ROAD PURSUANT TO SEC. 264-1, HAWAII REVISED STATUTES, ENCHANTED LAKE ESTATES, UNIT 3, FILE PLAN 735, KAELEPULU, KAILUA KOOLAUPOKO, OAHU, TMK 4-2-54.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-8 LEASE OF BUILDING FACILITIES AT KAHU MOHALA BY THE DEPARTMENT OF HEALTH, CHILD AND ADOLESCENT MENTAL HEALTH DIVISION, CENTRALIZED TREATMENT SERVICES BRANCH, HONOULIULI, EWA, OAHU, TMK 9-1-17:16.

ACTION See Page 11.

ITEM F-9 SECOND AMENDMENT TO PRIOR BOARD ACTION OF FEBRUARY 12, 1993 (AGENDA ITEM F-7) RELATIVE TO THE DIRECT ISSUANCE OF A GOVERNOR'S EXECUTIVE ORDER TO HAWAII HOUSING AUTHORITY FOR PUBLIC HOUSING AT WAIANAE-KAI, WAIANAE, OAHU, TMK 8-5-28:POR. 42.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-10 DELEGATION OF AUTHORITY TO THE DEPT. OF TRANSPORTATION FOR THE ISSUANCE OF REVOCABLE PERMITS PURSUANT TO CHAPTER 171-11, HRS, AS AMENDED.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-11 AUTHORIZATION TO TERMINATE GENERAL LEASE NOS. S-5244 AND S-5247 TO DONNA MAHAS, WAILUA, KAUAI, TMK 3-9-04:2 AND 4-1-09:5 AND 6.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-12 REQUEST TO AMEND PRIOR BOARD ACTION FOR KAUAI RACING ASSOCIATION 1993 RACE SCHEDULE.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-13 REQUEST FOR EXTENSION OF DEADLINE FOR WILCOX MEMORIAL HOSPITAL TO OBTAIN COUNTY OF KAUAI PLANNING COMMISSION APPROVAL.

Action Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-14 REQUEST FOR FINAL EXTENSION OF CONSTRUCTION DEADLINE, SPECIAL SALE AGREEMENT NO. S-5592 AT KAPAA, KAUAI, TMK 4-5-08:33.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-15 REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR STORM DRAIN OUTLET, NAWILIWILI, KAUAI, TMK 3-2-03: CONFLUENCES OF NIUMALU STREAM AND NAWILIWILI HARBOR.

ACTION See Page 10.

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A SINGLE FAMILY RESIDENCE AND ACCESSORY USES AT KANEOHE, KOOLAUPOKO, OAHU, TMK 4-4-13:59, APPLICANT: MR. ROBERT D. SLENK.

ACTION See Page 10.

ITEM H-2 CONSERVATION DISTRICT USE APPLICATION FOR A SINGLE FAMILY RESIDENCE AND RELATED FACILITIES AT OKOE, SO. KONA, HAWAII, TMK 8-9-03:02, APPLICANT: MS. MARGOT SKILLING; CONSULTANT: MENEZES TSUKAZAKI YEH AND MOORE.

ACTION See Page 9.

AMENDMENT TO CDUA HA-2270 FOR THE CONSTRUCTION OF A GARAGE AND COMMERCIAL AND NON-COMMERCIAL AGRICULTURAL USES AT KAIWIKI HMSTDS., NO. OF HILO BAY, HAWAII, TMK 2-6-11:23, APPLICANT: MR. & MRS. MICHAEL ZELKO.

ITEM H-3

Mr. Evans said that he had received a phone call from Mrs. Zelko asking why this item was being considered on Maui instead of the Big Island. Mr. Evans explained to her that the 180-day date on this is the end of September and the board will not be meeting on the Big Island until December.

ACTION Mr. Yuen moved to approve with an amendment to replace the present condition no. 7 as follows: "The introduction of fish and other aquatic organisms (in the aquaculture ponds) shall be at the discretion of the Division of Aquatic Resources." Ms. Himeno seconded, motion carried unanimously.

EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT OA-2547-0.1 MILLION-GALLON WATER TANK AT KAMEHAME RIDGE, OAHU, TMK 3-9-10:1, PETITIONER: HAWAII KAI DEVELOPMENT COMPANY.

ITEM H-4

ACTION See page 10.

AMENDMENT TO CDUA KA-2326 FOR THE CYBERTEL MICROWAVE REPEATER STATION AT OMAO, KOLOA, KAUAI, TMK 2-5-01:POR. 11, APPLICANT: CYBERTEL CORPORATION, C/O WALTON D.Y. HONG.

ITEM H-5

ACTION See page 12.

CONSERVATION DISTRICT USE APPLICATION FOR NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AT LALAMILO, SO. KOHALA, HAWAII, TMK 6-6-02:31, APPLICANTS: MR. TIMOTHY J. HOSBEIN, MR. RICHARD R. TREADWELL, RICHARD TREADWELL TRUST; CONSULTANT: MR. ROY VITOUSEK.

ITEM H-6

ACTION See page 16.

EXTENSION OF TIME REQUEST FOR CDUP MA-2076 - TELECOMMUNICATION FACILITY AT HALEAKALA, MAUI, TMK 2-2-7:5 (POR.), APPLICANT: DEPT. OF BUDGET AND FINANCE.

ITEM H-7

ACTION See page 12.

EXTENSION OF TIME REQUEST FOR CDUP LA-2083 - TELECOMMUNICATION FACILITY AT PUU KILEA, LANAI, TMK 4-9-2:1, APPLICANT: DEPT. OF BUDGET AND FINANCE.

ITEM H-8

ACTION See page 12.

ITEM H-9 DELEGATION OF AUTHORITY (RE: CDUA TIME EXTENSION REQUESTS.)

ACTION Deferred to the next Oahu meeting. (Himeno/Apaka)

ITEM K-1 LEASE - INSTALLATION AND MAINTENANCE OF AUTOMATIC RAINFALL OBSERVING SYSTEM (ARC), PORT ALLEN AIRPORT, KAUAI (U.S. DEPT OF COMMERCE, NATIONAL WEATHER SERVICE).

ACTION Unanimously approved as submitted. (Kennison/Himeno)

ITEM K-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 5067 AND 5069, AIRPORTS DIVISION, KAHULUI AIRPORT, HONOLULU INTERNATIONAL AIRPORT.

ACTION Unanimously approved as submitted. (Kennison/Himeno)

ITEM K-3 RENEWAL OF REVOCABLE PERMITS 2066, ETC., AIRPORTS DIVISION- ITO, LIH, KOA, OGG, HDH, HNL, MUE, MKK.

ACTION Unanimously approved as submitted. (Kennison/Himeno)

ITEM K-4 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 35, HONOLULU HARBOR, OAHU (CLEAN ISLANDS COUNCIL).

ACTION Unanimously approved as submitted. (Kennison/Himeno)

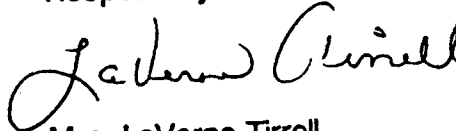
ITEM K-5 CONTINUANCE OF REVOCABLE PERMITS H-84-1160, ETC., HARBORS DIVISION.

ACTION Unanimously approved as submitted. (Kennison/Himeno)

**ADJOURN-
MENT:**

The meeting was adjourned at 1:25 p.m.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



KEITH W. AHUE
Chairperson