

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

DATE: FRIDAY, MAY 13, 1994

TIME: 9:00 A.M.

PLACE: THE ROYAL WAIKOLOAN HOTEL (BALLROOM)  
69-275 WAIKOLOA DRIVE  
KAMUELA, HAWAII

**ROLL  
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. and the following were in attendance:

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

**STAFF:** Mr. Roger Evans  
Mr. W. Mason Young  
Mr. Manabu Tagomori  
Mr. Ralston Nagata  
Mr. Michael Buck  
Ms. Dorothy Chun

**OTHER:** Mr. Johnson Wong, Deputy Attorney General  
Mr. Tom Toyama, Department of Transportation  
Mr. Ray Sanborn, Mr. Mark Nishiyama, Ms. Sheryl  
Perreira, Ms. Ipolani Tano, Mrs. Gladys Pualoa,  
(Item E-6)  
Messrs. Ben Kudo, Warren Lee, Mahi Cooper, Albert  
Hee, Mike Matsukawa, Leon Sterling, Jim Rath,  
Arthur Kepoo, He'inoanoa Kalaoa, Kevin Seiter, Brad  
Houser, Jerry Rothstein, Chris Harrison, Richard  
Kormack, John Crouch, Keiji Ikeda, Al Kamigaki, Ms.  
Peggy Ratcliff, Ms. Annabelle Kikilani Craig, Ms. Jojo  
Tanimoto, Linda DelaCruz, Ms. Bev Akimseu (Item  
H-3)  
Ms. Charlotte Batalona, Rep. Ululani Beirne  
(Item H-2)  
Ms. Sandra Nakamura (Item F-13)  
Ms. Cheryl Hall (Item H-4)  
Mr. Steve Morris, Mr. Albert Lono Lyman (Item D-3)  
Ms. Frances Shodahl (Item E-2)

**ADDED ITEM** By motion of Mr. Apaka and second by Mr. Nekoba, the following item added to the agenda:

Item F-14 Department of Defense/Hawaii Army National Guard Request Right-of-Entry to Conduct Military Training Exercise on State-owned Land at Honopou, Maui, Tax Map Key 2-9-03:20

**MINUTES** Chairperson Ahue then called for the approval of the minutes of June 25, 1993, March 11, 1994 and April 8, 1994.

Mr. Evans addressed the Board to consider the amendment of the previously approved minutes of June 25, 1993. He cited the first paragraph on page 14 of the minutes relative to what was considered at that time, the Keenan Conservation District Use Application. The first page of the minutes read, Mr. Fortes said that the Keenans understand that the shoreline is open to the public but they also understand that "the pond is public property" and a source of water that must be protected. Mr. Evans said that they did have an opportunity to review the tape and as a result they are asking that the minutes be amended as follows:

"that the Keenan's understand that the shoreline is open to the public but but they also understand that "the pond is on private property" and that is their source of drinking water and that must be protected."

With that review of the tapes the minutes should be corrected to reflect the fact that the pond is on private property.

Mr. Yuen clarified with Mr. Evans that he was requesting to amend the minutes of June 25, 1993 to correct what was recorded of what Mr. Fortes was saying. Mr. Evans responded, "That's correct."

Mr. Yuen asked to amend the minutes of March 11, 1994 on page 15 where the minutes quoted a Mr. Jim Neiss saying he had done business here for forty years. Mr. Yuen stated that he believed he said, "fourteen years."

In the minutes of April 8, 1994 on page 10, fifth paragraph, Mr. Yuen stated that the minutes had Mr. Parsons saying that the Board is "parodying" what the Navy enforces, he believes the word should be parroting.

**ACTION** The minutes of June 25, 1993, March 11, 1994 and April 8, 1994 were approved as amended. (Kennison/Nekoba)

Items on the agenda were considered in the following order to accommodate the applicants and interested parties who were present:

**ITEM E-6**

**REQUEST TO TERMINATE THE EXISTING LEASE AND ESTABLISH A LEASE AND ESTABLISH A LEASE TO A NEW NON-PROFIT ORGANIZATION FOR THE OPERATION OF PUBLIC CAMPING AND CABIN RENTALS AT MALAEKAHANA STATE RECREATION AREA, KAHUKU, OAHU**

Mr. Nagata made the presentation of Item E-6 with the recommendation that the Board authorize the direct issuance of a lease, following the terms of the existing General Lease No. 5-91-01 as amended, to Kama'aina Care to commence June 1, 1994 at gratis, subject to such other terms and conditions as may be prescribed by the Chairperson.

Mr. Nagata informed the Board that there were two other entities that did express interest in taking over this leased area and they were the Boy Scouts of America and the Koolauloa Hawaiian Civic Club. He said that the Boy Scouts have kind of moved to the side but the Koolauloa Hawaiian Civic Club along with the Kama'aina Care people would like to make a pitch to the Board this morning.

Mr. Nagata stated that the area in question was purchased with federal funds and the State is required to keep that area primarily for outdoor recreation.

He testified that Kama'aina Care is an accredited camp organization experienced and equipped for the bookings that are required and they are a registered non-profit 501C3 organization. He stated that he believed that the Hawaiian Civic Club was applying for the 501C3 status but they do not have that status at this time.

Mr. Mark Nishiyama, Vice President of Kama'aina Care, Inc. introduced Mr. Ray Sanborn, President of Kama'aina Care, Inc. and Sheryl Perreira their after school site coordinator at Ahuimanu Elementary and their prospective manager at Malaekahana State Park.

Mr. Nishiyama started by reading their Mission Statement and Goals.

Mr. Sanborn then elaborated on some of the areas that they were really experienced in being able to take over the camping facilities. They are accredited by the American Camping Association and meet high standards for safety, risk management, operations and procedures and have knowledge in water and waste management. They have professional training for their camp directors. They also have a full-time maintenance department.

Ms. Perreira testified that Kama'aina Care has always been environmentally aware of their surroundings. She stated that the programs at Malaekahana would be environmental as well as educational

in nature and Hawaiian studies. Benefits towards the community would be through the children.

Mr. Sanborn stated in closing, they have passed out to the board members a packet that contains their brochures of enrichment activities and summer day camp, copy of their accreditation and letters of endorsement.

Ms. Ipolani Tano with the Koolauloa Hawaiian Civic Club addressed the Board and asked to give a quick overview of their proposal. She had also passed out to the board members a copy of their proposed management plan. She pointed out that the Hawaiian Civic Club is a non-profit organization. Presently they do not have the 501C3 status but have filed for this exemption so that they may become a tax exempt group.

Ms. Tano wanted to clarify that Malaekahana is in Laie and not Kahuku.

Ms. Tano stated that they do not agree with the statement in the submittal that say the area is well maintained. She testified that the cabins are in deplorable condition and some of the plumbing and electrical wiring pose a safety and health hazard. The area where there is limu kouhu and the fishpond are being destroyed or depleted and that is an area of concern to them. Their proposed solution, they are prepared to step in immediately to begin work at this site. They propose to bring the cabins and public areas up to habital standards, create a living cultural park with an eco-tourism theme to augment the visitors on the northshore and provide a model for sustainable development featuring the State of the Art hydroponic farm and use the monies derived from these projects to provide scholarships for cultural and traditional education.

Mrs. Gladys K. Nainoa Pualoa of Laie, President of the Ko'olauloa Hawaiian Civic Club then gave an overview of the club and background of the area. She also mentioned that they are prepared immediately to go in and operate the park with knowledgeable personnel. They have lived there all their lives and know what can be done there. She also talked about cultural activities and developing the area for eco-tourism.

Ms. Tano continued to inform the board of their goals and described their proposals in greater detail. She also stated that members of the community were anxious for them to move forward with this project.

Responding to questions by the board, Ms. Tano stated that this is not the first large project they have undertaken.

Chairperson Ahue said that we could probably all agree that many of the

facilities at the site are at the end of their useful life and the reason the department has not been able to renovate or replace those facilities was because of the lack of funds. He asked if they were proposing to use private monies to renovate the structures.

Ms. Tano testified that they had already received offers of monetary donation. She also stated that people wanted to donate materials and time. They are not going to the State to ask for money because they feel they can do this with their resources and they want to allow people the time to give their time and money.

Ms. Himeno asked if they had ever sat down and talked with Kama'aina Care people since their programs are so similar and compatible whether there could be a mutual use of the area.

Ms. Tano stated that she had met with Raymond and told him what they were proposing to do. She also felt that this was a win win situation. She testified that she was asking the Board to grant the lease to the Hawaiian Civic Club because she believed that all requirements and needs of servicing the community are paramount.

Representative Ululani Beirne testified that she had submitted written testimony to the Board and at this time she also mentioned that she was supporting the issuance of the lease to the Koolauloa Hawaiian Civic Club.

Mrs. Pualoa presented a letter of support from Councilman's Steve Holmes office. They were at the neighborhood board meeting last night and all of the members of the board had signed a letter of support for the Koolauloa Hawaiian Civic Club. She also stated that they would like to offer to Kama'aina Care the area of the polo field if they want to come in and join with them, they can do their projects in that area.

Mr. Nekoba suggested that this item be deferred and have the two interested parties get together and see if they can work out some type of agreement of the use of the park and then the board can decide who they should award the lease to.

Mr. Nagata responded that one of the things he had mentioned that was fairly significant was having to do with being a bona fide eleemosynary organization with a 501C3 status. He stated that he believed that was necessary to negotiate a direct lease with the organization that was selected. He stated that they would like to have some resolution today because the present group would like to stay until after the Memorial Day weekend and they would use the following two weeks to train whichever group is selected.

Ms. Himeno stated that she was inclined to defer this to the next board meeting to give the civic club some time to respond to the concerns of the 501C3 status and also to get an opinion from the Attorney General's Office on that and to allow both sides to get together and see if something could be worked out.

Ms. Tano testified that they would be very willing to work with Networks Enterprise for the next two weeks and would not object to Kama'aina Care working together also to be trained so that whoever received the lease would be ready to step in for the transition.

**DEFERRED** Ms. Himeno moved that this item be deferred to the next Oahu Board meeting. Seconded by Mr. Nekoba, motion carried.

**ITEM H-3** **CDUA FOR EXPANSION OF THE KEAHOLE GENERATOR STATION, KEAHOLE, NORTH KONA, HAWAII, TAX MAP KEY 7-3-49:36. APPLICANT: HAWAII ELECTRIC LIGHT COMPANY**

Ms. Himeno recused herself from this matter because of a conflict of interest.

Before beginning today's discussions, Chairperson Ahue stated that he would like to read a statement to which he hoped would clarify the issues before the Board today with regards to HELCO's CDUA:

"On the Board's agenda today is a matter involving Hawaii Electric Light Company, Inc.'s application for Conservation District Use Permit for an extension of its power plant at Keahole. I'd like to inform the audience that the only thing that has been recommended to the board today is that HELCO's application be denied without prejudice solely because it was not possible to hold a contested case hearing prior to the expiration of the period in which the Board had to make a decision on that application. There's a number of reasons for that delay that we can discuss. HELCO, in the event that the Board accepts the recommendation to deny without prejudice, would be free to refile its application. The contested case hearing on HELCO's application had been requested by various members of the community. We are not taking action on the merits of the application. We will not be getting into matters such as whether or not the proposed expansion is needed. Nor the environmental impacts of the proposed expansion today. If there are any members of the audience who wish to be heard solely on the agenda item which the Board will be considering today, which is the denial without prejudice of HELCO's application, then of course we will be glad to hear you. What I'd like to emphasize, that because of the limited scope of the HELCO application agenda item, you should keep any comments and their testimony limited and should not address the merits of whether or not the HELCO's Conservation District Use

Application on the Keahole Generator Station expansion should be granted. If and when HELCO resubmits its Conservation District Use Application, if the staff recommendation is accepted, they'll be other opportunities to talk about the need for the proposed expansion and the impacts of the proposed expansion on the environment. Again, just to summarize, we're here to determine whether or not to deny without prejudice HELCO's CDUA because we have not been able to schedule a contested case hearing within the period required to take action on that CDUA."

Mr. Evans made his presentation to the Board explaining that there was no analysis provided to them or hearing officer's report which would incorporate an analysis because the contested case hearing had not occurred. The recommendation in the submittal is based solely on process as opposed to merit or substance. He then went on to give the Board a chronology background which led up to this point.

On April 4, 1994 a hearings officer was appointed by the Chairperson and rescheduled for May 2, 1994. However, the new hearing officer was unable to continue in his role because of an unforeseen health problem. Relative to the staff request, a denial of the Conservation District Use Application HA-487A is without prejudice.

Staff was unable to proceed with the rescheduled contested case hearing for May 2, 1994 even with the extension of a 45-day processing period. Replacing the hearing officer with a suitable individual at this time would be difficult within the current budget of the department. Staff has also been informed that the Department of Attorney General staff time is somewhat limited because of another complicated contested case hearing, further lengthening the time needed in this case. The effect of all this is that this CDUA cannot be properly be considered without a time extension of at least a 134 days. The processing period extension may only be granted at the applicant's request. Unless the applicant request sufficient time to adequately proceed in the manner the Board must make a decision one way or the other. The current processing deadline is May 18, 1994. If the Board does not render a decision prior to that processing deadline, the application will be approved by default pursuant to Chapter 183-41. Because of the processing requirement, staff feels the only recommendation that they could come to the Board with this morning is as follows: 1) That the Board deny this application without prejudice to avoid the automatic Board approval by default. This will allow the applicant to reapply. 2) Should the applicant file a written request, which has not been done as of today, that the Board authorize a 180 day time extension from the period May 18, 1994 to November 14, 1994. He stated that currently they are in a contested case mode. They are functioning under the department's administrative rules for contested case. However, because this item is in the public arena this morning,

they have received a number of letters in the office relative to this application. He then read the names of the individuals who were in support and in opposition of the project.

Chairperson Ahue asked Mr. Evans if he would be able to make a determination based on the letters received, whether or not they deal with this question of the CDUA requirements and impact of a decision for an approval by default.

Mr. Evans replied he felt that none of the correspondence dealt with the issue today.

Chairperson Ahue then called for testimony and reminded that he will try to restrict discussion as much as possible to the issue of the time extension of the CDUA or the lack thereof. We will not be discussing the expansion of Keahole or what the impact might be to the environment.

Mr. Ben Kudo, representing HELCO introduced Mr. Warren Lee, President of HELCO and began by handing in petitions with several thousand signatures supporting the Keahole Expansion. He testified, "Chapter 183-41 provides that the CDUA process is to take no longer than 180 days from the date that the CDUA application is filed. Unless an EIS is required, in which case the 180 days may be extended for an additional 90 days at the request of the applicant. I would like to say that during this conservation application, HELCO has not attempted to delay or be dilatory in any fashion in attempting to process this application, which the original permit was issued in 1973. In fact we have tried to expedite this process within the means of the law. In order to better understand this particular situation that we find ourselves in today, I would ask the Board to permit me to go through a short chronology of the application process. To aid me I have prepared some charts and made copies of these charts which I will pass out at this time."

"This chronology of HELCO's Conservation District Use Application for the Keahole site, the original permit was issued for the power generation site in 1973 and was subsequently amended three times; in 1984, 1987 and 1988. The application that you have before you is an amendment to the original 1973 application. We filed that application in August 26, 1992. In January of '93 HELCO requested its first extension of 90 days because an EIS was determined to be required. On May 14, 1993, we requested a 180 day extension for this particular application. In October of '93 the Land Board approved our request and the deadline was extended to May 18, 1993.

"In February of '94, the first hearings officer, Rodney Maile was appointed by the Land Board to hear the contested case. Unfortunately Mr. Maile disqualified himself from continuing with that particular contested case



and a new hearings officer had to be appointed. The second hearings officer was appointed in April 4, 1994. On April 22, 1994, we were notified that, Mr. Nagata the second hearings officer was taken ill and could not continue with the contested case. The May 18th date represents 630 days that this application has been pending before this Land Board. As you will recall, Section 183 calls for a 180-day process. We were requested on April 25, 1994 to extend this hearing an additional 180 days which is 6 more months, taking us out to November of this year for this proceedings to conclude. If you add 180 to the 630 days you are talking about a period in excess of 2 years. We believe that this time is an unreasonable time to request for this CDUA application. We would like to bring to the Land Board's attention, State Law Chapter 91 Section 91-11. This particular section of Chapter 91 which is the Administrative Procedures Act, says that the Land Board shall not render a decision, adverse to the application until the land board has had an opportunity to hear and examine the evidence submitted by the parties. That has clearly not occurred in this case.

"During the preparation for the contested case, we alone had listed 21 witnesses to be put up for examination by the hearings officer and the other parties in the contested case. In addition, we had numerous exhibits which we were intending to introduce to support our testimony. The other intervenors also had several witnesses and numerous exhibits that they were intending to submit to those proceedings. The second requisite before the land board can take any action adverse to any party is that a proposed decision including a determination of each issue of fact or law has been prepared.

"The staff report that you have before you is not such a proposed decision. Mr. Evans stated that the staff report does not go into the merits of this particular application. It is merely a recommendation based on the procedure. The third requisite is that the proposed decision has been served on the parties. That has not occurred since no proposed decision has been prepared. The fourth is that the parties, the intervenors as well as the applicant has been given the opportunity to file exceptions and present arguments, that has also not occurred. We conclude that a denial is a decision adverse to HELCO, it is adverse because of the time frame required for us to put into place the power necessary to meet the anticipated demands of this island by the year 1995.

"To delay this procedure any further, would extremely prejudice HELCO's ability to accomplish that. Anything else that we had to add that I was prepared to discuss today, was to address the merits of the case. In deference to the Chair's instructions to us, we will forego any discussion or arguments relating to the substance of our application at this time."

Mr. Yuen asked Mr. Kudo, "You started, I think by saying that you felt a six month time extension as requested by the department was not reasonable. Is there some time extension that you think is reasonable?"

Mr. Kudo responded, "Unfortunately the time frame required for our construction is 11-1/2 months. When we had the first hearing scheduled which was in March, one of the intervenors, Waimana filed a TRO action to stop that contested case. Pursuant to those proceedings, Judge Ibara had the parties enter into a stipulation where we would agree to a forty-five day extension. We originally told him that that would prejudice our construction time table but in deference to the parties who are claiming that their due process rights were being affected because of the March hearing we agreed to a 45 day extension if the hearing would take place. The hearing was then scheduled for May 2, which did not occur. To ask for anymore time, would again severely prejudice our ability to provide the power in time. The 45 day extension that we had originally requested through Judge Ibarra, was already cutting into that time period. So unfortunately, we are not able to grant any further extension beyond the time frame in question."

Mr. Yuen asked, "Nothing at all, not 60 days, 90 days, nothing?"

Mr. Kudo responded, "Again, this process has been going on for 1 year and 8 months. Any additional time is going to seriously prejudice our ability to provide that power. We have certain requirements before the Public Utility Commissions and made certain representations to them about our delivery of power. Unfortunately our hands are tied at this moment to be able to give you any further extension of time."

Mr. Yuen further questioned, "You talk about the 18 months time frame, but the Environmental Impact Statement (EIS) was only approved four months ago, right, so the Board couldn't act until the EIS was approved."

Mr. Kudo said that the EIS was approved on January 7th. He said that they had talked to staff at DLNR to engage the services of the hearings officer and to set the schedules in anticipation of the approval of the EIS. If that had occurred he felt that the time crunch would not have occurred in this particular case and avoid this deadline.

Mr. Yuen inquired, "So the actual delay that's connected with not having a hearings officer is about four months, right? You couldn't have gotten the hearings going until after the EIS was approved?"

Mr. Kudo said, "That's correct."

Mr. Yuen asked, "Does HELCO have all other permits needed to proceed

with this construction? Do they have the Authority To Construct (ATC) permit which is issued by the Department of Health?"

Mr. Warren Lee responded, "The process that we're going through right now, Commissioner Yuen is that we have the Public Utilities Commission has approved the first phase of the Keahole expansion. That's what they refer to as CT4. Presently we have applications before the Board of Land and Natural Resources (BLNR) and also the Department of Health (DOH). The permit for ATC which leads to PSB has been processed by the DOH right now. So we have couple more permits we need, the CDUA permit, UH permit, and DOH permit. Once we get these approvals we would move to the county for the building permits."

Mr. Yuen asked if there was a time limit for the DOH to issue the Authority to Construct permit.

Mr. Lee responded that from his experience there is no time limit but estimated that they probably would receive these permits in the June or July time frame. These permits are in parallel. The DOH could issue the permit tomorrow if they finish their review but based on past experience they are expecting it in mid-year. Following that they will pursue the building permit. As far as the review process of the building permit, he was not exactly sure.

Mr. Yuen asked Mr. Kudo, "I see what you've presented here on the administrative procedures act, but isn't it true that we cannot by the same token, approve your project today?"

Mr. Kudo responded, "That's correct."

Mr. Yuen asked, "So if you're saying that if we deny your project, we violate the administrative procedures act or if we approve your project we also violate the administrative procedures act?"

Mr. Kudo testified, "Unfortunately that's correct. I wish that you could approve it today."

Mr. Yuen asked, "And so the reason that we cannot comply with the administrative procedure act is because you won't ask for a time extension."

Mr. Kudo testified, "Again this has to be weighed with the prejudice clause to our ability to supply the power in time for this island. I wish that we were able to give an extension but unfortunately we cannot."

Mr. Yuen stated, "What concerns me about this and honestly, this is a friendly question, you're already in court, you have somebody who is

dogging you legally, and you are presenting a situation where any action that the board takes is a violation of the administrative procedures act. If we deny it, it really doesn't do you any good to go to court, because that's going to take longer than the rest of the process, starting from the beginning. If we approve it, your nemesis is going to have you in court and then at least have an argument that can be made that action of approval was in violation of the administrative procedures act, it's a chancy situation?"

Mr. Kudo testified, "Mr. Yuen, since you raised the issue, yes what you said is true. However, one of the parties, Waimana has tried its best to thwart any attempt by HELCO to get any permit including filing an injunctive action to stop the contested cases from proceeding. Their motives plain and simple, is that their competitive position is enhanced if they're able to deny or delay any of our permits. It is not in their best interest that we go forward, whether it's a contested case or permit action. Given that, and the choices that you've just laid out before me, we would rather take our chances with no action taken today and being appealed in court."

Mr. Yuen stated, "My concern about this is, if we had gone through the contested case process, we would have a hearings officer who would hear all of the information, get all of the evidence, prepare a detailed report for us and a recommendation upon which we can act. As we sit here today, I feel like we haven't gone through the process. We haven't gotten that kind of information. I feel very uncomfortable with approving a project when that hasn't happened."

Mr. Kudo stated, "We were never, ever intending to delay this procedure. We were ready, willing and able and spent hundreds of man hours preparing for the two contested cases. If there is anything that we wanted to do was to put the facts before this board. It is our opinion that there are some intervenors involved in this particular case which find to be against their own interest."

Mr. Yuen stated, "It's really unfortunate that the hearings were not held but apparently one of our hearings officers had a heart attack and the other hearings officer disqualified himself due to an allegation of a conflict of interest or something like that."

Mr. Kudo stated, "Well, because Waimana had filed an injunctive action against him personally as well as the department, he felt that he was not able to proceed forward with the case because he would feel that he would be prejudiced against, and since they sued him."

Mr. Yuen stated, "Speaking as a board member, I understand that you are in a difficult position but you are certainly putting us in a difficult

position. As board members, when the whole process has not been gone through, speaking for myself, I'm a lot less likely to vote for your project sitting here today when I feel that the whole process hasn't been gone through."

Mr. Kudo stated, "Mr. Yuen, I apologize for the situation, this is not a situation where we're purposely attempting to not put forth the facts before you. I think the opposite has been true if you look at the facts and the chronology of this case. If there was any way that we could do that, we would but the time frame has just gone beyond what I believe is reasonable. And if there was any way to do it, we have looked at it. We have looked at it very hard to see whether an extension can be granted, but unfortunately we cannot request an extension."

Mr. Nekoba commented, "In looking at the time frame and everything, I think that the 180-days was there for a purpose and that was so that certain applications would go through in a somewhat timely manner. I think when I look at this, it's not just applicant's situation but it's also the State's fault too, it's our staff too, the inability to have a hearings officer to hear the contested case plus opposition that's been going around have caused the delay and created this somewhat administrative problem. I hope that we do not have a situation like this where we are in this position again. I think that it should be noted from the applicant standpoint but also from my own staff standpoint too because we theoretically cannot make a decision and I'm sure there is testimony and expert commentary that really should be heard in this matter. It's just my comment and just saying that I think that it's not just the applicant's responsibility but it's also our State's responsibility too, to process things like this in a timely manner."

Mr. Apaka commented that having looked at the presentation and chronological information of this entire application he would like to have a little more information regarding the fourth amendment applied for.

Mr. Kudo responding to Mr. Apaka's questions said that they were replacing some of the older diesels with new combustion turbines which have greater electrical generating capacity as well as to meet the additional needs that they anticipate. For that they had to file another CDUA for an amendment to the original permit. This is needed before they can begin construction.

Mr. Yuen had another question, "I've been getting materials and some letters about this and also the testimony that was presented earlier, the jist of it is that there's going to be a crisis in generating capacity if you do not get this facility going immediately?"

Mr. Kudo responded, "Yes, we're prepared to go into detail if you would

like, but in deference to Chairman Ahue's request they chose not to speak on the substance of the matter."

Mr. Yuen said that he was curious about the planning time frame. When did it become apparent that this crisis would happen and why are we in a situation where, if the permits do not come on the schedule that you're planning.

Mr. Kudo testified that in all his 15+ years of experience in doing permits, this is the longest CDUA that he has personally been involved in that is potentially going on for more than two years.

Mr. Kudo then pointed to the charts put up which showed the energy demand figures to show how accurate or inaccurate they have been since 1975.

Mr. Yuen stated that he was more interested in why they were in a situation where if there are delays in a permitting of several months, that they were facing a crisis in capacity.

Mr. Warren Lee then explained the major problems and projects in 1991 when he joined HELCO on how they would match the need for new generation for new capacity. With additional growth being projected it was decided to locate a site in West Hawaii for a power plant. The planners came out, they put together a community advisory group made up of elected officials, representatives from officials from the County and the State, DLNR, DHHL, the business community, special interest people, the Outdoor Circle and private citizens. Working with this advisory group he said that their goal was to identify or have them make recommendations on sites for a West Hawaii power plant facility to house up to 200 megawatts and this would take them into the year 2020. This study was done in 1988 and completed in early 1989. The results of that study was the recommendation that came back that HELCO should look at two sites in Kawaihae and these two sites were on Hawaiian Home lands. The third site was at Puuanahulu. In 1990 and 1991 they started working with DHHL in collecting data in trying to select a site. DHHL Commission raised questions of their incomplete master plan for the area and should native Hawaiian corporations who qualify with experience as power generators be given first preference to lease the property.

Mr. Lee testified that they approached the State to lease the 15 acres at Puuanahulu in 1992. After having done studies it was realized that the site would not be available till 1996. Their engineers began studies again and the conclusion reached was that if they needed new generation based on their forecast, the best opportunity would be to go back to their existing plant at Keahole and use the remaining 12 of the 15 acres that HELCO presently own at the Keahole site. The long term plan was

to still pursue the site at Puuanahulu.

Mr. Lee testified that Keahole is really their third alternative at this point. To answer Mr. Yuen's question on how they got into this time crunch, they got into this time crunch because other sites through the process of elimination were not possible for them to implement the new generation.

Ms. Peggy Ratcliff, a party to the contested case hearing testified that she was having a hard time with the prior testimony which was based on need for the power plant.

Chairperson Ahue clarified that it was a response to a question by Board member Yuen regarding the timetable and how they got to where they are now.

Ms. Ratcliff then testified that a 180-days, HELCO cannot ask for extension because they cannot meet the deadline that they have to have, that the Big Island has to have. She went on to say that HELCO was trying to force the extension down their throats by preventing them from having a fair hearing. She stated that she needed to correct the record where Mr. Kudo said 'replacing older diesel' with the expansion. She said that was not a true statement because this a 300% expansion. She ended by saying that this was a major community issue.

Mr. Mahi Cooper, intervenor testified that he would be affected by HELCO's expansion because his home is 40 feet from the power line and he and his family would be affected. He testified that he is not opposed to this expansion but is asking if HELCO gets their approval that they relocate him and his family to 6.25 acres of land and a house another area.

Mr. Albert Hee, president and founder of Waimana addressed the board and also introduced his attorney in the contested case, Mr. Mike Matsukawa. He testified that he would like to speak on why he was here and the importance of this process and whose responsibility it is. He also wanted to give the board another look at the facts that were presented by Mr. Kudo.

Mr. Hee testified that in the past when additional power was needed, Hawaiian Electric invited or solicited mainland and foreign European companies to come in and build new power plants. He testified that Hawaiian Electric used the administrative process at the PUC to stop his company, a native Hawaiian company for three years. He stated that the PUC has a rule if they cannot agree on terms and conditions within 75 days, the utility must petition the PUC for intervention. He said that it has been three years and he has made four requests, three of them in writing that they comply with this rule, that they get PUC intervention, that

they don't come to the situation that they find themselves in now. He testified that HELCO has said no. He testified that he intervened in this case and the contested case as the last option. He stated that he did not request intervention after the public hearing in January 1993 because he thought they could work something out. It was only until it was very clear that HELCO has no intention to deal with the local company that he felt it was time to insure that his rights were protected and that is why he is in this case.

Mr. Hee stressed the fact that it was HELCO's responsibility to provide power to the Big Island and not the Land Board. He also testified that it was their responsibility to do proper planning and to make sure they have enough time for delays, whether it be for permits or contract negotiations. He claimed that in 1991, they put their written offer in front of HELCO, sat down and told them that they could come on line in 1994 with their help. If you fight us, we will be on line in 1996. He claims they will be on line in 1996 and it has cost them in excess of \$6 million dollars.

Mr. Mike Matsukawa, attorney for Waimana Enterprises, Inc. then proceeded to explain the reasons for the Temporary Restraining Order (TRO) before Judge Ibara. He said it was not intended to stop the hearing, to postpone the hearing or to otherwise interfere with the full review of the facts as we all requested and desired. The problem was to some degree to point blame to someone for process where perhaps a small flaw may have arisen. It was not until February 14, 1994 that they formally received notice that the hearing would commence within five weeks and they had parties scheduled on the mainland for witnesses, exhibits, the typical things necessary to do for a trial type of procedure; and a contested case pre-hearing conference scheduled for the 24th of February where they had to compress everything into a short time period.

One of the concerns raised at the pre-hearing itself by several of the parties was directed to the departmental staff as to why we are being compressed into a time frame which may be either unworkable and for those who are experienced in this type of proceedings, somewhat unrealistic. The basic response was, "We are working under this 180-day rule" which Mr. Yuen and Mr. Kudo described adequately earlier. After initial efforts to either extend the hearing dates or extend the processing period failed despite efforts to, as Mr. Yuen was attempting to solicit this morning, failed, we felt it was just inherently to unfair that there would not be an adequate opportunity to present the evidence to the hearings officer in the timely manner and with the time to review it and present an order or recommendation to the board. Based on that they felt it was important to at least get a TRO to stop the March 16, 1994 hearing date from starting. They did not say that they didn't want a hearing process at all. They just didn't want it to start in the compressed time frame and



during the process they agreed to set them moving forward on a complaint with the recommendations of the trial judge to work out a stipulation and they did reach an agreement with HELCO and the two intervenors, that they would commence the hearing on May 2nd and HELCO would then apply for a written extension to extend the May 18th date for 45 days. Although we felt that this was still somewhat a compressed time frame in which to prepare, it was nonetheless adequate in their view to make a good record of the evidence. Unfortunately to no one's fault, the hearings officer suffered a sudden illness. Again we're back into the 180-day rule that seems to be dictating how this Board behaves. As you know the 180-day rule is within the sole control if you believe the statute is correct and apply it that way. As we see the rule, it could also be used to force you into taking action prematurely and without the proper evidence. In reference to Mr. Apaka's question, "Why was this application so difficult?" he stated that Mr. Lee answered quite well.

The other issue regarding Mr. Yuen's question of what other permits were needed, he commented there was the water issue. These lands in question were part of the ceded lands inventory. There's water under the ground which the State reserved for the benefit of the ceded lands which surround this property. It still has not been decided who owns or who can use this water. He claims that HELCO still needs to get that resolved.

Mr. Matsukawa stated that since the Board does not have sufficient information they should follow the staff's recommendation.

Mr. Hee said his final comment, "I object to be made feel guilty for standing up for my rights. We are due a full and fair hearing and if HELCO gets this by default, then we have been denied our right. We should not have to feel guilty for standing up for our rights. All we're asking for is that we get our hearing."

Mr. Yuen asked if he could briefly explain the \$6 million dollars spent.

Mr. Hee explained that it was in connection with two major areas, 1) permitting, 2) trying to keep on equal footing with HELCO. He explained that permitting for a power plant is extremely expensive. They have an EIS for Hawaiian Home lands in the area that was covered. It was prepared and accepted in March of '93. They have prepared an EA to supplement that EIS. Most of the money has been spent in legal costs as he has six legal firms.

Mr. Yuen said that he had just wanted to get an idea of what they spent their money on and he didn't realize that there was this much going on. The other question he addresses to Mr. Matsukawa, "The 45 days, when

was that supposed to start and when was it supposed to end?"

Mr. Matsukawa responded, "The stipulation was, HELCO would request an extension for 45 days of the May 18 deadline. So 45 days forward from May 18, on condition that the contested hearing start on May 2nd and some other procedural conditions. Those were the terms of the stipulation.

Mr. Yuen said, "So it's not effective anymore because the hearing didn't start on May 2nd, is that the gist of it?"

Mr. Matsukawa responded, "I believe we still have an order. I believe they would interpret the order that their agreement was conditioned on the hearing starting, it didn't start so we're free of this obligation. Now it's a judicial issue as to what the effect of that stipulation."

Chairperson Ahue said, "If that's the case then I stand corrected earlier on Peggy Ratliff's question."

Having heard from the intervenors, Chairperson Ahue called for others wishing to testify reminding them that testimony should be strictly on whether or not the action relating to the CDUA before the Board needs to be taken today or not. They are not receiving testimony dealing with any of the rights issues or environmental issues.

Mr. Leon Sterling of the Kona Hawaiian Civic Club addressed the board testifying that they are concerned on what HELCO is trying to do.

Hawaii County Councilman for North Kona, Jim Rath testified that it is extremely important that the board take a vote in one manner or another to approve or deny and not let this pass by default. He asked that the board fulfill their mandate and responsibility under the law and do vote, do not let this slide by, by inaction. Do not let the courts do your job.

Ms. Annabelle Kikilani Craig presented copies of a petition signed by community members opposed to the expansion of Keahole's Generating Station. She said that there were more than 850 names on the petition.

12:00 noon --Recess (10 min.)

Mr. Arthur Kepoo testified that he is a native Hawaiian and resides at Puukapu, Waimea. He was representing Hui Makakilo Inc., one of the only bona-fide Native Hawaiian Non-profit Cooperation in the State of Hawaii. He was speaking in favor of Hawaii Electric Company's request to increase the electric power at its Keahole Power Generating facility.

Mr. He'inoanoa ... Moopuna Kane O Palikiko Kamakama ... O Kalaoa

testified that is a full-blooded Hawaiian. He testified that the proposed HELCO plant being proposed at Keahole is not at what is referred as Keahole. He claimed that the name of the site as Keahole is wrong and it should be Kalaoa. He testified that he lived above the power plant. He testified that HELCO is a necessity for their society today, however asked that in the future, whether it's this body or any agency concerned that they research it thoroughly.

Ms. Jojo Tanimoto asked to read from State Representative Larry S. Tanimoto letter of testimony, who could not be present today which stated that he was in support of the expansion of HELCO's Keahole Power Plant.

Ms. Tanimoto then testified on behalf of the Kawaihae Hawaiian Homes Association stating that they were in support of HELCO in Kalaoa, Keahole as it's being called. She stated that they would be providing public energy service.

Chairperson Ahue interrupted, again asking that testimony be confined to the issue at hand today which is to approve or deny the CDUA within the time limits as stated. The Board has not received any information concerning whether or not there should be a plant at Keahole or not. The Board will not be taking into account any information related to those issues. Any information provided to this board on the merits or demerits of having Keahole expansion will not be considered by the Board today.

Ms. Tanimoto continued to testify on the merits and ended by saying they support HELCO.

Ms. Alice Goo testified that she lives above the proposed Keahole expansion and would vote to deny HELCO's application.

Mr. Kevin Seiter, attorney testified that he represented a number of people in a law suit brought about by the time constraints. He testified that the Board owed it to the public to make a decision and not let it go by way of default. The litigation that is pending is challenging the adequacies of the EIS. He stated that he understood that the EIS was accepted with the express understanding 1) that this would be the basis for further discussion of unresolved issues and 2) with the understanding that there would be a contested case hearing. He testified that the Board must vote to deny without prejudice today. He stated if the Board allows this to go by way of default they would be shirking their statutory responsibility to the public.

Ms. Linda DelaCruz, from Hilo said her testimony is to approve the application or do nothing and allow it to be approved by default. She felt delays would not help the public.

Mr. Brad Houser, energy advisor to Kona Outdoor Circle (KOC) testified that they did have a program working with HELCO when they had an extensive tree trimming project previously. They had modified their procedures and KOC felt that was a good cooperative program. Their position on Keahole can't be inferred that they support the expansion of the power line. They feel that the Board should make a decision today and not allow it to go by default.

Mr. Jerry Rothstein testified that he was here on behalf of the West Hawaii Sierra Club. He asked that the Board deny the CDUA at this time.

Mr. Chris Harrison, employee of HELCO expressed his concerns and concerns of continuing the service of power to the people. He asked that the Board take a stand today although they have not heard all the comments regarding the good and the bad. He stated that the Public Utilities Commission is the primary agency that takes those hearings and they have already agreed that CT4 is necessary in a timely manner.

Mr Richard Kormack, a resident of Napoopoo and former electrical engineer testified that he has been following the EIS since early this year. He testified he had concerns that there was a lot of wasted heat coming out of the plant. He asked if there was a compromise that could be made here today because the Board was in a situation of "damned if you do and damned if you don't." He testified that the only way the Board get to hear all concerns would be at a hearing and thus they would need to deny the application today.

Chairperson Ahue informed Mr. Kormack that the applicant would need to be the party to request an extension and HELCO is refusing to request the extension.

Mr. John Crouch testified that he lived in the area over 20 years and would like to speak on the process. He stated that he had submitted written testimony to the Board. He stated that he agreed that the 180-day process period was a good one for the applicant, be it private citizen, business or government agency. His position is that we have laws, structures and a 180-day rule which protects the applicant from being adversely affected from extensive delays in process. He suggested that this be used.

Mr. Keiji Ikeda asked that the Board deny without prejudice, so that the people can be heard at a later date.

Ms. Bev Akimseu and co-worker Joycelyn Maunalili testified that they represent the employees of HELCO and that they are also customers of HELCO. They also have rights and urge the Board to support them.

Mr. Al Kamigaki, HELCO employee born and raised in Kona testified that his family lives in the area also. He testified that he lived about 2 miles above the Keahole facility. He stated at that certain times, no one wants a power plant or rubbish dump in their backyard but there are times when you need to look at it as benefitting the whole. He asked that the Board not delay the process as further delays will be costly and will affect everyone. He urged the Board not to take any action on this CDUA today.

Unidentified female testified that she was reading testimony for Cory Edonis, "Please deny HELCO's application. HELCO alleges if you do not grant this application the Big Island is in grave danger of rolling blackouts. The Board cannot and should not allow HELCO to intimidate it to accept HELCO's application because of these threats.

**EXECUTIVE SESSION** Motion was made by Mr. Apaka for the board to go into executive session for consultation with the Deputy Attorney General. Seconded by Mr. Nekoba, motion carried.  
1:15pm

1:30pm Chairperson Ahue called the regular meeting back to order.

Mr. Yuen then questioned Mr. Evans on some statements made that HELCO stated that they would not reapply for more power in Keahole in 1988. "Is that accurate?"

Mr. Evans responded that in reviewing the record, staff came across a representation that as a part of the proposal there were discussions and in those discussions, HELCO represented that were the Board to grant them what they had desired at that point in time, that that would be the last generator they would want to put at that site. Although that was part of the representation, we did not find anything in the Board's conditions when the Board approved that application that would give such a limitation.

**MOTION** Mr. Yuen made a motion to adopt staff's recommendation. He stated, "The reason is that I believe that what HELCO is doing today, is trying to coerce the Board to allow this to go through without the complete environmental review that a project of this magnitude deserves. I cannot vote to have a project like this go through without there being that kind of environmental review. We haven't got a list of the conditions that should go along with a project like this if it is approved. We haven't had the proof that there won't be the harm to the environment that is possible for a project like this. I don't see how the Board can approve it under those circumstances."

Because this matter has to go to a vote, Mr. Nekoba seconded the motion.

**ACTION** Ayes = Mr. Yuen, Chairperson Ahue  
Noes = Mr. Apaka, Mr. Kennison, Mr. Nekoba  
Motion fails.

**MOTION** Mr. Yuen made a motion to approve the CDUA. He felt that there should be a vote and felt that the Board should not have that practice of allowing major projects to go through by default because the hearings were not held in time to meet the time schedule. The motion was seconded by Chairperson Ahue.

**DISCUSSION** In relation to the second motion, Mr. Nekoba stated that because of the problems with the contested case public hearings not being held due to several valid reasons, he as a Board member have not had the information or evidence necessary to support or deny the HELCO project. Based on that he felt he could not vote on this second motion.

Mr. Kennison stated that he concurred with Mr. Nekoba and would not be voting on this motion also.

**ACTION** Ayes - none  
Noes - Mr. Yuen, Chairperson Ahue

Motion fails.

The audience asked for a clarification of the vote or non-action taken.

Chairperson Ahue explained for clarification that the Board did not deny the CDUA and they did not approve it. The Board needs four votes to approve or deny any item.

Mr. Mike Matsukawa, counsel for Waimana asked that he understood procedurally what happened today and he asked if it were fair for him to conclude, "that what happened was that the Board had an item set for "Action" today and that the record will reflect the Motion to approve was made but was not passed; and that a motion to grant was made and was not passed? But the necessary conclusion as to what the effect of that status is the conclusion that we need to wrestle with as to the fact that the Board did take some form of action this morning."

Chairperson Ahue clarified that the Board did not take any action.

Mr. Matsukawa stated, "So as far as your Board's rules are concerned, what you have then is a situation where nothing happened today from an official standpoint."

Chairperson Ahue clarified that there were official actions proposed in both instances but the votes were not there to approve either action.

**ITEM F-3**      **PETITION FOR A CONTESTED CASE HEARING TO APPEAL THE SHORELINE CERTIFICATION FOR TAX MAP KEY 5-7-07:21, PUKOO, KONA, MOLOKAI**

**ACTION**      Unanimously approved as submitted. (Kennison/Apaka)

**ITEM H-2**      **CDUA FOR THE REPLACEMENT OF A SINGLE FAMILY RESIDENCE AT MAUNALAHA HOMESITES, HONOLULU, TAX MAP KEY 2-5-024:019; APPLICANT: MS. CHARLOTTE K. BATALONA**

Before making his presentation, Mr. Evans requested to make a correction in the submittal on page 5 under RECOMMENDATION: That the Board of Land and Natural Resources approve the subject application to replace a conditional use to replace a single family residence at Maunalaha Homesites, on land identified as TMK: 2-5-24:19, subject to the following conditions: (*underscored to be added*)

Mr. Evans explained that currently there is a residence on the property for a number of years and staff has reviewed the application and has one additional agency review to add. The Board of Water Supply submitted no objections to the areas being served by a 4-inch cross country water line. There is an existing 5/8 inch water meter and availability of water will be determined when the building application goes before them. The plans should be coordinated with the Department of Health.

Mr. Evans wanted to bring to the Board's attention that the house on the property is probably non-conforming use, and the intent over time is to bring all non-conforming uses into conformance with the then existing zoning rule. Staff is supporting approval. They want to remove this non-conforming use that currently exists on the property and bring it into conformance with the existing zoning rule and that would be by approval as a conditional use.

Ms. Charlotte Batalona, applicant had no problems with the conditions but asked for a clarification on the terms non-conforming and conditional.

Mr. Evans explained that by going through this process her house will no longer be a non-conforming use. Her house will be in conformance with our zoning regulations which currently allows her house as a conditional use. It has no affect on the house per se, putting up the house, but it could have some legal effect down the road. He gave an example, say in 5 or 10 years if she wanted to do something on the property, wanted to claim non-conforming use, as it stands today she wouldn't be able to do that. She would have to proclaim conditional use.

Representative Ululani Beirne testified that she was in full support of this

item H-2.

**ACTION** Unanimously approved as amended. (Nekoba/Kennison)

**DIRECT AWARD OF PERPETUAL, NON-EXCLUSIVE UTILITY EASEMENTS TO MAUI ELECTRIC CO., LTD. AND GTE HAWAIIAN TELEPHONE CO., INC. AFFECTING STATE-OWNED LAND AT WAHIKULI, LAHAINA, MAUI, HAWAII, TAX MAP KEY (2)**

**ITEM F-13** 4-5-21:PORTIONS OF 10 AND 15

Ms. Himeno recused herself because of a conflict of interest.

Following staff presentation by Mr. Young, Ms. Sandra Nakamura of HFDC had no comment but said that she would appreciate favorable consideration by the Board.

**ACTION** Unanimously approved as submitted. (Kennison/Nekoba)

**REQUEST FROM THE BIG ISLAND FARM BUREAU TO USE THE OLD KONA AIRPORT STATE RECREATION AREA IN KAILUA-KONA, HAWAII, FOR A BIG ISLAND FARM FAIR**

**ITEM E-3**

Mr. Nagata stated that he had spoken to the applicant and applicant is in accordance with the submittal. Mr. Nagata stated that he would like to add another condition and that is he would like to charge \$100.00 per event day which would come out to \$300.00 for three event days for the use of the facilities. Hereafter, unless there are any major changes, Mr. Nagata stated that they will handle these requests administratively.

**ACTION** Unanimously approved as amended. (Yuen/Nekoba)

**CDUA FOR A DETACHED BEDROOM AND STUDY STRUCTURE AT KAMAII, PUNA, HAWAII, TAX MAP KEY 1-3-02:52; APPLICANT: ROBERT AND CHERYL HALL**

**ITEM H-4**

Mr. Evans informed the Board members that there should be a change on page 1 of the board submittal. The heading reads, "Conservation District Use Application for Detached Bedroom and Study Structure at Kamaili, Puna" and he would like to change it to read, "After the Fact Conservation District Use Application for ... "

Mr. Evans stated that the applicant is from the private sector, private land in the resource subzone. The land is currently in use with a single family dwelling on it and the proposed use is represented to be to construct a detached unit, 98 feet from the older home to be used for a bedroom and study structure. The applicant proposed to build a one-room structure with an open beam ceiling, back storage area, loft sleeping



quarters, study area.

One of the comments from DLNR's Division of Conservation Resources Enforcement was that they inspected the property on January 31, 1994 and noted that the proposed project to build a detached structure had already commenced and appeared one-half completed. Comment from the Division of Forestry and Wildlife's Na Ala Hele Trail Program that while on routine field inspections in early September told the landowner that they needed to file a CDUA and meet other county requirements as well.

Mr. Evans stated that the detached dwelling proposed by the applicant does not comply with past board practices of one house per lot or tax map key. He stated that this particular structure under consideration could be further developed by adding plumbing and other appliances to create a small self-sufficient dwelling, as such this property could conceivably end up two residences in the future should the Board approve this request.

Mr. Evans stated that staff's recommendation is two-fold, relative to violation a \$2,000.00 statutory fine and that the applicant restore the land to it's previous condition within 180 days or six months from the date of the Board's decision. Relative to the application itself, staff is recommending that the Board deny this request for detached bedroom and study structure on the land. He then presented photos of the structures to the Board.

Ms. Cheryl Hall, applicant testified that for personal reasons that are very important to herself and her children. She testified that there were mitigating factors in this application request. She testified that she stated these personal reasons in her SMA request. She and Mr. Hall were married for 20 years and they have two children. She's been a resident for 17 years. They were divorced 7 years ago but they still own the property jointly and share the care of the children. She does not have much financial resources and by divorce agreement she was given the right to live at the property. Mr. Hall has been residing on the mainland and he would like to spend time on the property since he is half-owner. She agreed to sign the mortgage on the property which is her only asset, which occurred last July at which time no funds were given to her, all were given to Mr. Hall. She testified that the construction started in August. Mr. Hall and her sons came over and within a month it was where it was seen. She went through due process, stopped construction and applied for the CDUA, the SMA. Since she never saw any of the funds, that went towards this project, if she's to tear this down, it's going to be very difficult for her. She stated that she's put a lot of time working for it herself.

She said that she didn't state her personal reasons in the CDUA but did in the SMA. She testified that the house that exists is totally conducive to any additions. The property has been used in the past and she lets complete access to everyone. Family reunions, weddings and people come and stay all the time. She asked the Board to reconsider the fine.

The Board then had questions for Mrs. Hall. Her responses were that she was presently living there for eight years now. She planned to live in the second structure on the property. Mr. Hall travels a lot and he wants to be able to come here and try to arrange some time for the boys but they can't stay under the same roof. Mr Hall started the structure without a permit. After he started the structure for about a month then he left. She claimed that she did not know that a CDUA was required and claimed that she was not involved in response to the requirement of a building permit.

Mrs. Hall responded that the older home on the property was built around 1960. She stated that she did not spend any money on the new structure but corrected herself saying that in a way she did because she gave up part of her ownership to the property and signed the mortgage. There was \$23,000.00 worth of material and all the labor was free being done by her ex-husband, her sons and herself. She responded there was no kitchen, no bathroom, it was just a room with a loft.

Responding to questions of the Board, Mr. Evans stated that the structure was 98 feet from the main house. Basically in the past, in the resource and general subzones, the Board would allow one single family residence, per parcel. The size of the single family residence was and has been a size that would be consistent with the carrying capacity of that parcel of land. The purpose of the Conservation District at the same time the board has said is not for speculation. The Board has consistently rejected those applications with more than one house.

Mr. Evans was asked if this structure with one bedroom, no plumbing and no kitchen would be looked upon as a separate dwelling.

Mr. Evans stated that staff's position would be, based upon previous experience that they have had, which is one of the reasons why the Board now has a standard condition. He gave examples of several cases where people have converted garages into a house and rented it out. Staff has also in the past recommended against disconnected buildings and out houses. In the past there have been instances where the the Board has recommended approval if the applicant connected the buildings but never 98 feet in distance. He mentioned that should the Board approve this application, staff may be faced in the future with others wanting similar approval.

Mr. Yuen testified, "Whenever we have these after-the-fact applications, my practice is to take a deep breath and to ask myself, would we approve the application if it had not been built and it was coming to us fresh? If you don't do that, it just tempts people to go out and do whatever they want to do and then if they don't get caught then they don't have any trouble with having to apply for permits and if they do have to come in for permits, there is a sympathy factor. I feel here everybody feels, geez, I already put all this work in, don't make me take it down. I'm not going to make the person take it down. There are people who said, 'We should reject all after-the-fact applications, make them take it down and come in and apply again.' I don't agree with that, I think that's too harsh but by the same token, I don't believe giving somebody more favorable consideration because they have already built part of the structure."

**MOTION** Mr. Yuen made a motion to follow the staff's recommendation and deny the request. Because of the tremendous hardship that it would make on the owner, he would amend the fine from \$2000.00 to \$25.00. The motion was seconded by Mr. Apaka.

**DISCUSSION** Ms. Himeno said that she would be voting 'no' to the motion and presented the example of someone building a tool shed and sleeping in it. She also felt that the structure of just the bedroom was only 30 yards away. She did agree with Mr. Yuen that special advantage should not be given to people that go ahead and build their structure. She felt that situations vary and that the Board should stay flexible.

Ms. Hall testified that the reduced fine was very generous but the fact that she received no funds because of the situation where she signed over part of the ownership to her ex-husband she felt she would not be able to recover any funds and work that she has put in it. This structure is her whole life, she doesn't have anything else to show.

Chairperson Ahue asked her if there were two residences, would she still be the only resident on the lot most of the time?

Ms. Hall stated that was correct but that Mr. Hall would be able to live there when he wanted to. Asked if she could move the structure, she said that the house is surrounded by tall mature coconut trees and didn't think so.

**ACTION** Chairperson called for the question. Motion carried unanimously. Ms. Himeno voted no.

Ms. Hall asked if someone could fill her in what she should do.

Mr. Evans said that he and staff would be more than happy to assist and

work with her. He asked the Board to allow him some flexibility in working with Ms. Hall relative to time. Perhaps it could be relocated to somewhere else with funds obtained.

**ITEM D-3 PUNA GEOTHERMAL VENTURE'S REQUEST FOR CONTESTED CASE HEARING**

Mr. Tagomori stated that this was more of a procedural matter than a substantive matter. He stated that the Board approved the method to calculate the geothermal royalties and subsequent to that decision, PGV submitted a petition for contested case. This petition has been reviewed by staff and with the Attorney General's office. The conclusion here is that PGV does not have standing based upon the two items listed that 1) The Board was acting in its capacity as a landlord and lessor; and 2) This matter was not classified to be rule making.

Mr. Tagomori informed the Board that they did receive a letter from Kapoho Land Development Company and they claimed in their letter that they are the owner of the geothermal resources subsurface right and secondly that they hold the geothermal mining lease R-2 they requested that this matter be deferred.

Mr. Tagomori commented on that matter of the owner of the subsurface rights and mineral reservation. They have made the research in the early years and their records show that the State has the mineral reservation and it's tied down to the royal patent. With regard to the second point, in January 1981 the Land Board did approve their subleasing of that mining lease to Thermal Power then and subsequently now PGV. DLNR has been dealing with the sublessee and PGV all these years.

Mr. Steve Morris addressed the Board that they were in opposition to the staff recommendation to deny the contested case. They believe that the adoption of the so-called staff method or modified net-back method is rule making and accordingly they should be entitled to a contested case hearing. Their logic is the statute provides for geothermal royalties and it also states that the BLNR shall adopt rules that will implement and calculate the royalties. The rules were adopted and set forth to arrange the royalty rates and from that range of rates, a rate was selected and put into their lease. The rules also define that the rate should be applied to the amount that is realized from the sale of the steam. If the steam is used by the developer and not sold as is the case with PGV, then the valuation of the steam would be based on what other people are taking for their steam. As far as we know there are no other people, we're the pioneers and we're the only ones selling steam. So there are no others by which to determine the valuation of steam. So the existing rules do not really permit for a methodology for valuing the steam as the situation relates to our project. therefore the rules are basically incomplete.

There's no way to calculate the royalty amount with the existing rules. The only way the royalty can be calculated is to expand the rules to include a methodology. Consequently, they believe the adoption by the Board of the so-called staff method or net-back method for steam valuation can be considered nothing else but rule-making. If it's rule-making, then PGV as an affected party should be entitled to a contested case. For those reasons they believe that PGV should be entitled to a contested case.

Mr. Albert Lono Lyman, representing Kapoho Land Partnership and Kapoho Land Development Company said that Kapoho Land Development Co. is the fee owner of the land but Puna Geothermal Venture is developing geothermal resource on it. Their basic concerns are that they still are in the lease and what is being proposed is a modification of R2. Their second concern is that the lease document itself recognizes that the ownership for the geothermal resources are not clear in that whether it is a mineral, or whether it's water/liquid. Actually what it is, based on legal counsel is basically heat and their concern has been that there is no longer that recognition that the ownership of the resource is still in dispute.

With respect to what is before the Board today, since it would be their only opportunity to address the issue of ownership of the resource as well as the royalty, they support the position taken by PGV.

Mr. Yuen said that he hears Mr. Lyman saying that you owe them a royalty for the use of resource over and above what you might pay the State. What I hear you saying is you don't.

Mr. Lyman stated that they have several agreements. One is for surface and others for subsurface. The royalty he refers to is for the subsurface.

**ACTION** Mr. Yuen commented that the Attorney General's Office has had this question for about seven months as to whether there's a contested case. He felt they must have spent a lot of time and effort in researching it. For that reason he move to approve Item D-3, seconded by Mr. Apaka, motion carried unanimously.

**ITEM E-2 APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR KEOLONAHIHI STATE HISTORICAL PARK, NORTH KONA, HAWAII**

Ms. Frances Shodahl, secretary of the Friends of Keolonahihi doing business under the name of Friends of Kamoho Point and also for the kupunas. She said that they had been in this fight since 1981 when the State acquired it. They do not consider this sacred, religious, cultural, historical complex as a park and they would strongly oppose any parking

on the site.

Mr. Yuen suggested that they could meet with people doing the EIS and work out something.

Mr. Nagata said that the EIS process would allow for public input.

**ACTION** Unanimously approved as submitted. (Yuen/Nekoba)

**ITEM C-1** **REQUEST APPROVAL OF CONTRACT WITH MR. SAMUEL PALTIN TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM**

**ACTION** Unanimously approved as submitted. (Yuen/Apaka)

**ITEM C-2** **REQUEST FOR APPROVAL TO RENEW CONSULTANT SERVICES CONTRACT WITH DR. J. GREGORY MASSEY, DMV, TO PROVIDE VETERINARY SERVICES FOR THE CAPTIVE PROPAGATION PROGRAM**

**ACTION** Unanimously approved as submitted. (Kennison/Nekoba)

**ITEM C-3** **SALE MECHANISM FOR SALVAGED TREE MATERIAL IN CONJUNCTION WITH DEBRIS CLEARING PROJECT ON KAUAI**

**ACTION** Unanimously approved as submitted. (Apaka/Nekoba)

**ITEM D-1** **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT JOB NO. 93-KP-J1, NEW PIER, WAIMEA, KAUAI**

**ACTION** Unanimously approved as submitted. (Himeno/Apaka)

**ITEM D-2** **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT JOB NO. 62-MM-7, HAWAII ENDANGERED SPECIES FACILITY, CARETAKER'S RESIDENCE, MAUI**

**ACTION** Unanimously approved as submitted. (Kennison/Apaka)

**ITEM D-3** See Page 29 for Action.

**ITEM E-1** **REQUEST BY MS. FERN PULE TO CONTINUE THE CONCESSION STAND AT KEALAKEKUA BAY, STATE HISTORICAL PARK**

**ACTION** Unanimously approved as submitted. (Himeno/Apaka)

**ITEM E-2** See Page 30 for Action.

**ITEM E-3** See Page 24 for Action.

**ITEM E-4** **APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO DESIGN A TRAIL BROCHURE FOR KOKEE STATE PARK, KAUAI**

Mr. Nagata pointed out that agenda listed the park as Kolee State Park and he wished to correct it to Kokee State Park.

**ACTION** Unanimously approved as submitted. (Apaka/Himeno)

**ITEM E-5** **HAWAII EXPLOSIVES & PYROTECHNICS, INC. REQUEST, ON BEHALF OF AMERICAN HAWAII CRUISES, TO CONDUCT A PUBLIC FIREWORKS DISPLAY AT SAND ISLAND STATE RECREATION AREA, HONOLULU, OAHU**

Mr. Nekoba questioned Mr. Nagata if the public were using the park from 7:30 pm to 9:30 pm. Mr. Nagata said there were camp grounds nearby the area but the camp ground would be away from the immediate hazard area.

Mr. Nekoba felt this privately funded display would be entertainment for the public as a whole as long it did not interfere with the public's use of the park.

**MOTION** Mr. Nekoba made a motion to approve the request of the applicant and staff to attach conditions in reference to the use and not interfere with the public, use of the park and clean up of the area. Motion was seconded by Mr. Apaka.

Mr. Nagata suggested that similar conditions that were attached to the Hilton approval and also include other safeguards because of the park situation and closeness to the airport. He suggested that the Chairperson oversee the conditions and use his discretion of any inclusions to the staff recommendations.

**ACTION** Mr. Nekoba amended his motion to include that the Chairperson be delegated to use his discretion to additional conditions. Seconded by Mr. Apaka, motion carried unanimously.

**ITEM E-6** See Page 6 for deferred action.

**ITEM E-7** **REQUEST FOR CHANGES ON APPROVED POLICY FOR THE IMPLEMENTATION OF THE KAHANA VALLEY STATE PARK DEVELOPMENT PLAN**

Mr. Nagata informed the Board that the residents had just formed the Kokua Committee which is included in their lease. The election of the

committee was held under the auspices of the League of Women Voters. Being this is their first request they are asking that this item be deferred to a meeting on Oahu so that they would be able to be in attendance.

**DEFERRED** Unanimously approved to defer. (Nekoba/Kennison)

**ITEM F-1 TRANSMITTAL OF DOCUMENTS**

**Item F-1-a Consent to Amendment No. 1 of Sublease Agreement Between Waikiki Community Center, sublessor, and the Department of Accounting and General Services for the Benefit of the Department of Health, Adult Mental Health Division, Sublessee, Covering General Lease No. S-4825 at 310 Paoakalani Avenue, Waikiki, Oahu, Tax Map Key 2-6-25**

**Item F-1-b Issuance of a Revocable Permit to Bobby C. Baker, M.D., Inc., Portion of Maui Memorial Hospital Site, Wailuku, Maui, Tax Map Key 3-8-46:Por. 13**

Mr. Kennison had a question regarding Recommendation B. 1.

Mr. Young recommended that the Board delete B. 1. as the Executive Order will be going to the Department of Health. The intent of this permit is to serve as an interim approval to work out a lease with the physician of the cancer unit at Maui Memorial Hospital.

**Item F-1-c Issuance of a Revocable Permit to Aloha Upholstery, Por. of the Former OR&L Depot and Iwilei Produce Center Site on Iwilei Road, Honolulu, Oahu, Tax Map Key 1-5-07:Por. 1**

**ACTION** Mr. Nekoba moved to approve items F-1-a and F-1-c as submitted and F-1-b as amended. Seconded by Mr. Kennison, motion carried unanimously.

**AMENDMENT TO PRIOR BOARD ACTION OF JULY 9, 1993 (AGENDA ITEM F-3), RELATIVE TO PUBLIC AUCTION SALE OF A LEASE AT KALUAPULANI GULCH, KULA, MAKAWAO, MAUI, TAX MAP KEY 2-3-07:15**

**ITEM F-2**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**ITEM F-3** See Page 23 for Action.

**REQUEST TO AMEND PRIOR LAND BOARD ACTION DATED FEBRUARY 11, 1994 (AGENDA ITEM F-19), CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 1049, CONVEYANCE IN FEE TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA),**



**ITEM F-4 KAKAAKO, HONOLULU, OAHU, TAX MAP KEY 2-1-06:04**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**AMENDMENT OF PREVIOUS BOARD ACTION OF JANUARY 22, 1993 (AGENDA ITEM F-5), RELATIVE TO GRANTING OF A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES, AND A RIGHT-OF-ENTRY TO DEPARTMENT OF TRANSPORTATION OVER ANUENUE FISHERY AND AT&T SUBMARINE CABLE SITES, SAND ISLAND, HONOLULU, OAHU, TAX MAP KEY 1-5-41:PORTIONS**

**ITEM F-5 OF 3 AND 333**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**DEPARTMENT OF TRANSPORTATION REQUESTS SET ASIDE OF LAND FOR BARBERS POINT DEEP DRAFT HARBOR, HONOULIULI, EWA, OAHU, TAX MAP KEY 9-1-74:37 & 38**

**ITEM F-6**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**REQUEST TO AMEND PRIOR BOARD ACTION OF OCTOBER 12, 1990 (ITEM F-9), DIRECT LEAST TO THE WAIMANALO TEEN PROJECT, INC., WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-09:POR. 1**

**ITEM F-7**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**AMENDMENT TO PRIOR BOARD ACTION OF APRIL 23, 1993 (AGENDA ITEM F-3), PUBLIC AUCTION SALE OF AN AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-27:20**

**ITEM F-8**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**AMENDMENT TO PRIOR BOARD ACTION OF APRIL 23, 1993 (AGENDA ITEM F-4), PUBLIC AUCTION SALE OF AN AGRICULTURAL LEASE, LOT 18, HAUULA HOMESTEADS, HAUULA, KOOLAULO, OAHU, TAX MAP KEY 5-4-14:03**

**ITEM F-9**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**AMENDMENT TO PRIOR BOARD ACTION OF DECEMBER 18, 1993 (AGENDA ITEM F-13), PUBLIC AUCTION SALE OF AN AGRICULTURAL LEASE, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEYS 4-1-08:11 AND 4-1-23:65**

**ITEM F-10**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**STAFF REQUEST CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 2405 TO THE DEPARTMENT OF TRANSPORTATION (AIRPORTS DIVISION/BULK FUEL STORAGE SITE), AND SUBSEQUENT SET ASIDE TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE BOARD OF WATER SUPPLY FOR BASEYARD PURPOSES, SAND ISLAND, HONOLULU, OAHU,**

**ITEM F-11 TAX MAP KEY 1-5-41:130**

Mr. Young requested an amendment to E. 1 That the monthly rental to be determined by the Chairperson.

**ACTION** Unanimously approved as amended. (Nekoba/Kennison)

**DIRECT AWARD TO CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PUBLIC WORKS, OF PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR SEWER LINE PURPOSES AT HALEKOU-WAIKALUAKAI HOMESTEADS, KANEOHE, OAHU,**

**ITEM F-12 TAX MAP KEY 4-5-77:59**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**ITEM F-13** See Page 24 for Action.

**DEPARTMENT OF DEFENSE/HAWAII ARMY NATIONAL GUARD REQUEST RIGHT-OF ENTRY TO CONDUCT MILITARY TRAINING EXERCISE ON STATE-OWNED LAND AT HONOPOU, MAUI,**

**ADDED  
ITEM F-14 TAX MAP KEY 2-9-03:20**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**AFTER-THE-FACT CDUA FOR THE MODIFICATION AND EXPANSION OF GARAGE STRUCTURE AT TANTALUS, HONOLULU, TAX MAP KEY 2-5-016:005; APPLICANT: MR. MYRON H. KERNER**

**ITEM H-1**

**ACTION** Unanimously approved as submitted. (Nekoba/Apaka)

**ITEM H-2** See Page 24 for Action.

**ITEM H-3** See Page 22 for Action.

**ITEM H-4** See Page 27 for Action.

**ITEM K-1 BARBER SHOP AND SHOE SHINE CONCESSION, HONOLULU INTERNATIONAL AIRPORT, OAHU**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**CONSENT TO PARTIAL REASSIGNMENT OF LEASE NO. DOT-1-83-25, HONOLULU INTERNATIONAL AIRPORT, OAHU (BHP PETROLEUM AMERICAS REFINING, INC. (FORMERLY HAWAIIAN INDEPENDENT REFINERY, INC.) - HAWAII FUELING FACILITIES CORPORATION)**

**ITEM K-2**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (THOMAS COOK CURRENCY SERVICES, INC. -MAKAALE, INC.)**

**ITEM K-3**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 5158, NONCONFORMING USE, AIRPORTS DIVISION, DILLINGHAM AIRFIELD, OAHU (WEIDENBACH, RONALD)**

**ITEM K-4**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**DIRECT ISSUANCE OF LEASE, SAND ISLAND CONTAINER FACILITY, HONOLULU HARBOR, OAHU (SEA-LAND SERVICES, INC.)**

**ITEM K-5**

Mr. Toyama requested an amendment an immediate right-of-entry pending the issuance of the direct lease to Sea-Land Services.

**ACTION** Unanimously approved as amended. (Nekoba/Kennison)

**ISSUANCE OF GRANT OF EASEMENT, HARBORS DIVISION, VICINITY OF PIER 37, HONOLULU HARBOR, OAHU (CHEVRON U.S.A. INC.)**

**ITEM K-6**

**ACTION** Unanimously approved as submitted. (Nekoba/Kennison)

**ADJOURNMENT** The meeting adjourned at 3:40 p.m.

Respectfully submitted,

  
Dorothy Chun  
Secretary

APPROVED:



KEITH W. AHUE, Chairperson

dc 6/30/84