

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

DATE: FRIDAY, SEPTEMBER 9, 1994
TIME: 9:00 A.M.
PLACE: KONA SURF HOTEL
MAUNA LOA CONFERENCE ROOM
KAILUA-KONA, 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
Mr. Christopher Yuen
Mr. William Kennison
Mr. Michael Nekoba
Mr. Libert Landgraf
Mr. Keith Ahue

STAFF: Mr. Roger Evans
Mr. W. Mason Young
Mr. Ralston Nagata
Mr. Charles Supe
Mr. Glenn Taguchi
Ms. Dorothy Chun

OTHERS: Deputy Attorney General Johnson Wong
Mr. Peter Garcia, Department of Transportation
Mr. Douglas Ing, Mr. Al Yoshikami (Item K-1)
Mr. Robert Kihune (Item H-3)
Ms. Sandra Nakamura, Mr. Eric Maehara
(Item F-13)
Mrs. Cheryl Hall (Item H-4)
Mr. Michael Loo (Item H-1)
Mr. Alan Sanborn, Ms. Donna Goth (Item F-12)
Mr. Anthony P. Locricchio (Item F-1-a)
Mr. Brian Takeda (Item H-5)
Mr. Uwe Schulz (Item H-2)
Mayor Joann Yukimura, Mr. Glenn Sato, Mr.
Donald Cataluna (Item F-11)

**ADDED
ITEM:**

Upon motion by Mr. Apaka and a second by Mr. Kennison, the following was added to the Agenda:

F-13 Amendment to Prior Board Action of May 13, 1994 (Agenda Item F-13) relative to direct award of perpetual, non-exclusive utility easements to Maui Electric Company, Ltd, and GTE Hawaiian Telephone Company Incorporated affecting

State-owned land at Wahikuli, Lahaina, Maui, Hawaii; Tax Map Key (2) 4-5-21:portions of 10 and 15

MINUTES: The minutes of August 12, 1994 were approved as submitted.
(Kennison/Apaka)

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

ITEM K-1 REQUEST FOR EXTENSION OF LEASE TERM AND AMENDMENTS TO HARBOR LEASE NO. 2767, PIER 23, HONOLULU HARBOR, OAHU (KERR PACIFIC CORP., DBA HFM)

Mr. Garcia presented Item K-1 to the Board with the recommendation by the Department of Transportation that the Board authorize the extension of the current lease term and its amendments, subject to the terms and conditions outlined in the submittal and other terms and conditions imposed by the Director of Transportation. He then answered questions from the Board regarding the description of the feed mill.

Mr. Douglas Ing, agent for the applicant did not have anything to add. Mr. Al Yoshikami was also present.

Deputy Attorney General Wong asked Mr. Garcia if he were aware that negotiation was in process regarding rent reopening on another parcel leased to the same applicant. Mr. Garcia responded that he was not aware.

Deputy A. G. Wong suggested that the record reflect that counsel for the applicant and the State have agreed that this request for extension shall be considered with the rental reopening on the other lease that is presently under negotiation. With that in mind, he believed that counsel has agreed that this request for extension will not in any way prejudice the right of the State to negotiate the rental reopening.

Counsel for the applicant agreed.

Deputy A. G. Wong clarified that counsel has agreed that the terms and conditions of this extension still has to be worked out and together with the pending negotiation on the rental reopening. What counsel wants was the approval of the Board in concept with this extension due to financing that may lapse.

ACTION Mr. Nekoba moved for the approval of Item K-1 with the extension of the lease, however the terms and conditions of the lease would be worked on at a later date. Seconded by Mr. Landgraf, motion carried.

CDUA HA-1862A FOR OCEAN RESEARCH, ALTERNATIVE ENERGY AND MARICULTURE RESEARCH, AND COMMERCIAL MARICULTURE AND ENERGY FACILITIES AT KEAHOLE POINT, NORTH KONA, HAWAII, TAX MAP KEY 7-3-09:23, APPLICANT: NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

ITEM H-3

Mr. Evans informed the Board that staff's recommendation for denial of this application was because there was no County Shoreline Management Area (SMA) permit forthcoming as required by the CDUA process. He stated that he also understands that there has been a meeting between the applicant and Hawaii County officials. As a result they do have their SMA application in the works. Staff would be amenable to deferring this application until the next Board meeting.

Mr. Robert Kihune, Executive Director of the Natural Energy Lab of Hawaii Authority informed the Board that the reason for the continuance is because the Planning Department of the County had some questions about this application. They have agreed to continue their hearing to the 22nd of September. He felt very optimistic that they would get through their September 22nd meeting. They have worked out with the County Planning Department to have a document that they can get to DLNR staff hopefully on the afternoon of the 22nd so that staff can work on it. He regretted that they had to do this on short notice but they will try their best to get the document approved.

DEFERRED Unanimously approved to defer. (Kennison/Apaka)

AMENDMENT TO PRIOR BOARD ACTION OF MAY 13, 1994 (AGENDA ITEM F-13) RELATIVE TO DIRECT AWARD OF PERPETUAL, NON-EXCLUSIVE UTILITY EASEMENTS TO MAUI ELECTRIC COMPANY, LTD, AND GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED AFFECTING STATE-OWNED LAND AT WAHIKULI, LAHAINA, MAUI, HAWAII; TAX MAP KEY (2) 4-5-21:PORTIONS OF 10 AND 15

**ADDED
ITEM F-13**

Mr. Young stated that this was a follow-up action taken by the Board in May of 1994. He then went over the Recommendation and the relocation provision. He understood that Maui Electric Company and HFDC are receptive to the amendment of the relocation provision.

Ms. Sandra Nakamura of HFDC stated that they had no problems with the amendment.

ACTION Unanimously approved as submitted. (Kennison/Nekoba)

**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS)
REQUESTS VARIOUS APPROVALS COVERING THE KAPOLEI CIVIC
CENTER, KAPOLEI, OAHU, TAX MAP KEY 9-1-16:POR. 1**
ITEM F-12

Mr. Young began his presentation by giving the Board a background of Item F-12. He then went over the conditions listed.

Mr. Alan Sanborn of DAGS passed out copies of the master plan for The Civic Center, City of Kapolei and asked at the request of the deputy attorney general that the write up from by the Land Board have the modifier for the facts. He stated that they had to be very cautious with the new procurement law. They are getting title to the land subject to a ground lease and they are getting a completed building which they are going to sublease. One ruling by the attorney general's office was that the comptroller could not lease a building that didn't exist. In order to make the two work together, they are taking the certificate of occupancy. They will sign the sublease, Campbell will give them the lease, subject to the ground lease that was initially entered into between the estate and the developers. All of this is subject to legislative funding.

Mr. Young responded to a question by the chairperson that the changes that are being suggested by the deputy attorney general are all part of the write up, it's not part of the recommendation. He pointed out that a question with respect to No. 3, regarding approve in principle the R. P., may be a concern of the Board. Everything that the Board is looking at today whether approved or approved in principle is subject to the review and approval by the Attorney General's Office. If the Board approves this today whether it be principle or otherwise, it goes to the A. G.'s for further review. Mr. Young informed the Board that they received this request from DAGS.

Mr. Landgraf expressed concern on added items or items distributed at the meeting that were of importance for the Board to consider. He also stated that this was not meant to criticize staff.

Mr. Young responded that he understood Mr. Landgraf's concern and that the reason for this request by DAGS is because they are trying to work out an R.P. on a time line which would involve the developer, Campbell Estate needing a commitment whether it be in principle or otherwise.

Mr. Sanborn stated that DAGS would be entering into an agreement with the intent to lease the building once it is built.

Deputy A. G. Wong stated that there was nothing wrong in signing an intent to lease after the structure is built.

Mr. Sanborn testified that is the reason that they are taking this method or approach.

Ms. Donna Goth of Campbell Estate was present and available to answer questions but did not have anything to add.

ACTION Unanimously approved as submitted. (Nekoba/Landgraf)

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION (CDUA) TO DRILL AN EXPLORATORY WATER WELL, IF SUITABLE SOURCE IS LOCATED, THE FACILITY WILL BE PLACED INTO PRODUCTION AS PART OF THE PRINCEVILLE POTABLE WATER SYSTEM, HANAIEI, HAWAII, TAX MAP KEY 5-3-01:16; APPLICANT: PRINCEVILLE UTILITIES CO., INC./PRINCEVILLE WATER SYSTEMS, INC.

Mr. Evans recalled for the Board that a public hearing was held on Kauai and one of the major questions was the practice that was in place that emanated from Windward Oahu basically where two separate applications were required. Today staff is asking for one application for an exploratory well and if successful to allow that well to go directly into production.

Mr. Evans stated that they would like to highlight condition no. 5, that the applicant shall obtain all the necessary permits required if a production well is to be constructed.

Chairperson Ahue added that both with regard to the exploratory as well as a production well if it comes to that, would continue to be under the review and approval of the Water Commission.

Mr. Michael Loo, Vice President of Princeville Utilities Company said that he had nothing to add but would be available to answer any questions.

Mr. Yuen's question related to possible effects of surface water flows in Hanalei River. He recalled that Mr. Tom Nance stated at the public hearing that he thought it was improbable but possible and he would now know until after the drilling was completed.

Mr. Loo agreed that it was correct.

Mr. Yuen followed with the question on the responsibility of making the determination whether the surface water flow are affected and what happens if they are.

Mr. Loo stated that there is a mechanism available to measure instream flows. They had been advised that they would probably not affect the Hanalei River as the drilling is quite far away.

Chairperson Ahue clarified the question of the need for a water use permit. Applicant would need a different well construction permit as he has an exploratory well construction permit presently and he'll need a production well permit. Because Kauai is not a water management area, there's no water use permit that's required.

Mr. Apaka questioned their ability to measure the large Hanalei River because of the rising and dropping tide levels.

Mr. Loo responded that it would be very difficult not only because of tides but also on the size and location of the river.

Mr. Evans stated that Condition 5 could be modified to be more specific regarding the responsibility issue at a minimum.

ACTION Unanimously approved as amended. (Apaka/Kennison)

Amendment: Add to condition 5. "including any adverse impacts related to Hanalei River, including pump test and stream gauging information be submitted to the Water Commission."

ITEM H-4 **REQUEST FOR AMENDMENT TO ORIGINAL CONDITIONS NO. 2 AND 4 OF DENIAL FOR AN AFTER-THE-FACT CDUA HA-2690 FOR A DETACHED BEDROOM AND STUDY STRUCTURE, KAMAILI, PUNA, HAWAII, TAX MAP KEY 1-3-02:52, APPLICANT: CHERYL L. HALL**

Mr. Evans recalled for the Board a previous meeting whereby the applicant was denied her application, fined and required to restore the subject land to its previous condition within 180 days of the Board decision.

Applicant has paid the fine and is now requesting an amendment to original conditions No. 2 and 4 and extend the 180-day time frame to three years.

Discussion followed citing similar situation on Oahu and the ruling of accessory structures away from the home.

Mr. Evans stated that the Board has pretty much of a hard and fast rule against accessory structures that would contain elements that could be construed to living quarters, such as plumbing, kitchen and bathroom.

Mr. Yuen had a proposal should there not be a hard and fast rule regarding this structure. That the applicant be required to submit at periodic intervals a letter from a certified home inspector, certifying that there has not been an addition of a bathroom installed. He also

suggested that the fine would be restored.

Chairperson Ahue had a question to Mr. Yuen's proposal, "Are we then establishing standards which define secondary residence? In other words, as long as you don't have plumbing, basically, you might be able to live there and it would not be considered a secondary residence and there's nothing to prevent anyone from going there and living there?"

Mr. Evans commented that there would be caution on staff's part relative to what would be established in terms of any precedent. Mr. Landgraf also voiced his concern that this was a very important factor to consider. He felt the Chairperson expressed it well.

Chairperson Ahue stated that Mr. Yuen might have an option worth considering. He wondered if additional restrictions were needed if it is our intent not to have people living in a second house on a conservation lot. Even if there is no plumbing, no kitchen or bathroom, is that the only restriction needed.

Mr. Evans stated that part of his difficulty is he does not have enforcement staff. He could include in the conditions that this structure cannot be rented out. He also stated that once he starts getting a second unit on a single piece of property, he will be under severe criticism relative to enforcement.

Mr. Kennison stated that he concurs with Mr. Yuen's proposal but asked if subdividing the property would be an option.

Mr. Yuen stated that he felt subdividing would be a problem because of the size and you would be subdividing a piece of property which is already substandard. He also stated that he didn't feel a divorce was a good reason for subdividing a piece of property.

Mr. Landgraf asked if there were some way of record keeping should the applicant sell the property for the new owner's information.

Mr. Evans said that a condition could be added to require that as part of the deed it is recorded at the Bureau of Conveyances.

Applicant Cheryl Hall again stated that this structure is her whole security. She would be more than willing to do whatever is required by the Board to save her structure.

Mr. Yuen explained his proposal to approve her accessory structure as after-the-fact with the standard terms of conditions attached and also a special condition that requires her to have a professional home inspector that would go at intervals and the inspector to submit a letter to the

department certifying that there has not been any plumbing fixtures or kitchen installed. The intervals that he would suggest would be after the first two months and thereafter every 10 years to follow after that. The permit itself with all these conditions would be recorded in the Bureau of Conveyances. There will be a \$2,000.00 fine for the after-the-fact structure.

When asked how many days out of the year would she anticipate utilizing the structure, Mrs. Hall replied, "Almost everyday, I mean because it's a study structure. It's got one big floor in the middle and I'm a dance instructor on the side. I have little kids, they come. It's not the going concern. Basically that's what I was going to be doing there. I probably would be using it all the time but not to cook or use the bathroom."

Chairperson Ahue asked how often would she over-night there. She responded with a question, "How often do I over-night there? It doesn't have any windows yet."

Chairperson Ahue expressed concern that it would be hard to administer and enforce. To avoid the problem of creating a secondary residence that restrictions be placed on over-nighting like the department places on camping. She had told the Board previously that over-night use would probably be during those periods when her ex-husband visited.

Mrs. Hall responded that her older son is going to graduate from high school this year and when he does, it could mean that Mr. Hall would move over but she didn't know. Then the kitchen and restroom facilities and property would be shared.

Chair Ahue said that he just wanted the Board to be aware of setting a precedence.

Mr. Yuen stated that there are circumstances we have to look at and he did want to hold the line on second dwellings.

Chairperson Ahue stated, "For what it's worth, you do understand that we are not approving a secondary residence."

Mrs. Hall answered, "Yes, I understand."

MOTION

Mr. Yuen's motion: Approve this structure as an after-the-fact with no plumbing. Apply standard conditions, plus that the applicant is responsible for having a licensed inspector or professional home inspector, send a letter to the department certifying that there has been no kitchen installed and no plumbing installed. The first letter to be two years after the date of Board action and then every ten years thereafter. The terms of this permit will be recorded by the applicant and the fine of

\$2,000.00 will be assessed.

Mr. Evans offered a suggestion. In the motion where it stated that the applicant be responsible for the home inspection, asked if he would consider it be changed to read that the landowner be responsible.

Mrs. Hall asked if the people that she works with, the banks that do mortgages, would they be suitable?

Mr. Yuen concurred that was the kind of people he meant. When doing a mortgage, the people would come out and inspect the area. All that is needed is for someone to go out and certify that they've been in the home, looked at it and there is no kitchen and no plumbing installed.

Chairperson Ahue stated, "Another item for the record, if the Board agrees, based on our review of this application along with the pictures and the maps and the testimony related to this accessory structure, he felt that the Board saw no adverse environmental impact on surrounding areas or the community in this particular case."

ACTION Unanimously approved as amended. (Yuen/Apaka)

Applicant asked about payment of the fine. Mr. Evans informed her that a payment schedule could be worked out.

Item F-1-a Assignment of General Lease No. S-5097, Lot 82, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, Tax Map Key 1-4-02:79

Mr. Young informed the Board that staff recommends consent to the assignment and consent be subject to an increase annually of the speculative profit amount of \$2,745 and shall remain effective until the next rental reopening date and other standard conditions.

Mr. Yuen said that he was not raising this with respect to this individual but asked if there's a possibility of inviting a kick-back, if we say reduce their assignment of lease consideration with your assignee and they come back and say, well I reduced it.

Mr. Young said that was an option of the lessee because he can at anytime up to the taking of the action by the Board, and say I pull back my application for assignment. He explained what staff did.

Mr. Anthony Locricchio addressed the Board with a very lengthy explanation. Here are excerpts: "I've asked to come before the Board, both in my own capacity and then there's another property. I'm the attorney for a lessee who died and I'm handling his estate and he will run into the exact problem based here. My concern is with the policy . . .

we asked for this decision one year ago and the first inclination we got of how these figures were arrived at and how the staff calculates these figures was what you heard today and what we heard for the first time. . . . let me explain what the Kokee leases are. They are essentially the worst leases from the lessees point that has ever been issued by the State of Hawaii. They are non-renegotiated leases with the date, with the termination. . . . You are required to build the structure and that structure must meet State standards. You are required to carry fire insurance on your building and the lease makes it very clear that the State does not own the building, both in the definition and in the sections of the lease. The title to the building or improvements does not transfer until expiration of the lease. At that point, like no other lease in the State of Hawaii public or private, the entire value of the building transfers 100% to the State. . . . we also put in furnishings, some \$20,000 worth of furnishings. The staff took our sale price, took credit for our furnishings, our beds, our pictures, our dishes, etc., etc. . . . Instead of appraising what was paid for the lease, the value of the lease,, which is what the State owns versus what I own or what my client owns, the client has died on that estate. What the State does is take the purchase price, deduct the tax assessment on the building period and then depreciate and has come up with an increase in the lease rent that almost doubles the lease rent. . . . We didn't get our opinion till August 30, 1994 after we requested to appear before the Board. . . . We were not requested to provide an on-site inspection, all we know is that this calculation was made, are being charged for a 4-bedroom, 3-bath, etc. "

Much discussion followed between the Board members, counsel and staff regarding the lease rent, sandwich profit, assignments, premium price, methods of calculating and justifying the charges.

Deputy A. G. Wong stated that there is a proposed amendment that calls for a one-shot premium. In this case here, you're trying to penalize the assignee by adjusting his rent when he also had already paid a price for the purchase of it. I think you're penalizing the assignee twice. That's why the new language calls for a one-shot premium, we went after the seller because he's the one that got the sandwich. Mr. Young said, "You're absolutely right." Deputy A. G. Wong asked, "So why are you proposing what you're proposing?"

Mr. Young replied, "Our interpretation of this \$2700.00 is the fact that we wanted to take a firm position of applying an annual, it's the discretion of the Board, if you want to make a one-shot deal to the seller who also becomes the assignee in this case."

Mr. Yuen said, "I'm not against making money for the State, but I don't see any sense to this provision of charging it every year and I think if we do take the position that we're going to charge him obviously, the Board

votes that his rent has to increase by \$2745.00 a year unless he reduces his purchase or sale price by \$6100.00 he will go back and give his purchaser back the \$6100 and the State will not see anything."

Mr. Young stated, "I'm willing to make an amendment to this lease act if the lessee is willing to, as the assignor, pay the State the \$2745.00 as the cost for co-assignment and not apply this annually. If he agrees with this."

Mr. Locricchio commented, "I think you understand why I'm here. 1) The \$67,500 was not a payment on the lease. It was an overall payment on the entire package, the bedding, the dishes, the sofas, the dining room table, the paintings, etc., etc. So what was called the sandwich profit of \$6,000.00 was in fact the furnishings that originally cost \$23,000.00 even though they're grossly depreciated, those furnishings would be more than the \$6,000.00 figure that the staff came up with. We tried to explain that to the staff and they just took the gross \$6700.00 profit. When the State is asking for a profit on my bed ..(interrupted)

Deputy A. G. Wong then quoted, "Your premium policy excludes any improvements put on by the lessee and therefore the price paid for improvements and resource should be allocated.

More lengthy discussion followed.

Mr. Young said that staff requests that this item be deferred or withdrawn until Mr. Locricchio can furnish the department with itemized cost of furnishings and other expenditures by the assignee.

Chairperson Ahue asked if there would be a problem deferring this item at this time.

Mr. Locricchio stated that he had waited a year and so there's no problem with him. He also would like the records to reflect that at least it's not the Board's interpretation that that profit be added annually to the rent because he didn't think that's what the lease said.

DEFERRED Mr. Apaka moved that this item be deferred to the next meeting which would held on Oahu. Seconded by Mr. Kennison, motion carried. Applicant/lessee is to submit to staff an itemized cost of furnishings to be considered as a deduction from consideration if such cost item was included in same then, staff to recompute whether there is a sandwich. If there is a sandwich, same to be a one time payment.

Mr. Locricchio stated that he had already done that but he would comply.

**CDUA OA-2704 FOR THE GTE HAWAIIAN TEL FIBER OPTIC
TELECOMMUNICATIONS CABLE FROM KEAWAULA TO MOKULEIA
WEST OAHU, TMKS 8-1-01:07, 6-9-3:05, 6-9-2:13, 6-9-04,08, 11, 21,
APPLICANT: GTE HAWAIIAN TEL; AGENT: R.M. TOWILL
CORPORATION**

ITEM H-5

Mr. Evans began by asking for a modification relative to staff's recommendation. Staff's recommendation on pages 18 and 19 was for denial because of a lack of a Special Management Area (SMA) use permit, which is a requirement prior to any positive consideration by the staff. However, since that was written, the applicant did receive a SMA for this project and was faxed to staff on September 6, 1994. As a result, staff has changed the recommendation from denial to approval subject to about 32 conditions, basically it is plan B. They've had an opportunity to show the conditions to the applicant who were concerned with one of them, Condition 13. which reads: "That the applicant conduct grubbing and grading activities during low rainfall months, April to October." There is some concern on the part of the applicant for that and in our review we haven't found a division that specifically recommended that. As a result, staff feels comfortable in deleting that condition. Thus, staff's recommendation is for approval with the new conditions minus no. 13.

Mr. Evans stated that there was another concern relative to landowners.

Mr. Evans was interrupted by the Board members as to the 30+ conditions he was referring to. They were informed that he had only one copy and that staff had come up with these conditions only yesterday. Mr. Evans explained that this situation is somewhat unfortunate. Staff is put in a somewhat difficult position when an applicant submits late information.

Board members Yuen, Nekoba, and Landgraf emphatically stressed to Mr. Evans that in a situation like this where the application was deferred at a prior meeting due to the pending approval of their SMA. Because there is the probability that the SMA would be approved, staff should have had the alternative recommendation ready with the conditions also attached for the Board's review should the SMA be received in time. Board members were concerned that they did not have a copy of the 32 conditions that were being recommended should the Board give their approval today.

Mr. Evans was asked if he had reviewed the SMA and did he see any problems with it. He replied that he had seen the SMA and did not see any problems.

Mr. Evans stated that he would take the responsibility for the error and apologized to the Board.

Mr. Brian Takeda of R.M. Towill said that they were the agent for GTE Hawaiian Tel. They had written testimony which they had presented to the Board. (Copy is filed in the departmental board folder.)

Mr. Yuen asked Mr. Takeda when did they receive their SMA permit.

Mr. Takeda replied that they received their SMA permit on August 31, 1994. Prior to that time he received a draft copy with a write-up which he forwarded to staff for the CDUA advising them that they anticipated no problems with this project and as soon as he received a finalized copy with dates and signature he would be faxing that to DLNR as well. The City Council issued authorization to undertake the work within a Special Management Area.

Mr. Takeda said that on August 31, 1994 the council met for it's third reading. At that time the full Council voted on the first issue and they received that application. From that moment, staff had to write it up and he was advised that he would receive the write-up probably early that week following. After the Council voted he informed OCEA staff.

Chairperson Ahue asked if he had seen the conditions.

Mr. Takeda said that they were shown to him this morning. They had no problem with the conditions except for condition no. 13 which Mr. Evans had already recommended that the board delete.

Mr. Takeda said, "We're in a situation right now where we would like the pending right of entry from DLNR. We would like the contractors to begin undertaking the work in October, this is still during the dry season and anticipate the work will be completed within approximately 90 days, that will take us to December 31, 1994."

Mr. Yuen stated, "I don't really see a problem with the project, I just wanted to be able to review the write-up before."

For the record, Mr. Evans said that he had the fax that came over from the City and County of Honolulu, September 6, 1994, 5:55 p.m. This was the SMA permit resolution.

ACTION Unanimously approved the new recommendation for approval with the conditions, deleting condition no. 13. (Nekoba/Landgraf)

CDUA MA-2707 FOR PORTIONS OF AN AFTER-THE-FACT SEAWALL/RETAINING WALL AT LAHAINA, MAUI, TAX MAP KEY 4-3-15:02, APPLICANT: UWE AND PAMELA SCHULZ

ITEM H-2

Mr. Evans stated because this application is for an after-the-fact seawall,

the recommendation is in two parts. 1) Recommendation that the Board find the applicant in violation and subject to a total fine of \$1,000.00; 2) That the Board approve this after-the-fact application subject to the conditions listed.

Chairperson Ahue asked for a clarification of the two separate violations which appear to be for the same event.

Mr. Evans explained that the violations are basically 1) in the Conservation District, statute 183-41, 2) on State land, 234 square feet of this wall lies on State land, violation under statute 171-6. He said that this has been consistently done in the past.

Applicant Mr. Uwe Schulz had no problems with the recommendations, except he said that he had agreed to a \$500.00 fine and was at a loss as to the increase.

Mr. Yuen said that he was a little surprised that the county of Maui does not have any setback from the certified shoreline for building a seawall and that they let you build a seawall right up to the certified shoreline.

Mr. Schulz said that he didn't know. He pursued the permits for a period of two years, went through all the necessary steps for shoreline certification and public hearings with the County of Maui and the contractor made a mistake. He wasn't aware of the mistake until his neighbor had his property surveyed for the purpose of building a seawall, then he found out that his wall was partially on State land.

Mr. Kennison stated that he was familiar with that area and it does not have any adverse effect but was unfortunate that it was built on State land.

ACTION Motion was made to accept staff's recommendation with an amendment of the violation to be \$250.00 for each violation for a total of \$500.00. Motion was seconded and carried unanimously. (Kennison/Apaka)

ITEM E-1 PAVILION RENTAL FEES AT WAILOA RIVER STATE RECREATION AREA (SRA) HAWAII

Mr. Nagata explained that recommended rental fees at Wailoa River State Recreation Area were also to get it in line with similar accommodations at Old Kona Airport State Recreation Area events pavilion and the County's Hilo Seven Seas Hall.

Should the Board approve this request, Mr. Nagata asked that the implementation of the fees to be effective October 1, 1995 instead of July 1, 1995 as recommended. This is necessary for adjustment to the

computers and because there were some permits that were issued between the period between July 1 through September 1995. He said they felt it would be unfair as these people were not informed when they were issued the permits.

Mr. Yuen asked if the department had ever charged a fee for people that used the facility for fundraisers where an admittance was charged.

Mr. Nagata related that in the past they had come to the board for approval but it had become an administrative function during the tenure of Mr. William Paty.

Mr. Yuen felt the suggested rental might be a little high for a family type function or class reunion and felt a two-step charge may be more acceptable.

ACTION Mr. Yuen made a motion for approval with the following amendments:

\$100.00 security deposit;
\$75.00 per day for regular users; and
\$150.00 per day that charge some kind of admission; and
Effective on all permits issued on or after October 1, 1994, regardless when they're using the facility. (Anyone that gets a permit before October 1, 1994, there will be no charge.)

Seconded by Mr. Nekoba, motion carried unanimously.

ITEM E-2 **APPROVAL OF A LEASE TO THE FRIENDS OF IOLANI PALACE, INC. FOR THE IOLANI PALACE STATE MONUMENT, OAHU**

Mr. Nagata said that basically they have been operating under an annual management agreement with the Friends of Iolani Palace (Friends) and little over a year ago they received an Executive Order (E. O.) under which they would manage the parcel. Previously the parcel was under the Department of Accounting and General Services. State Parks would like to continue utilizing the Friends on a more permanent basis.

They would like to issue a lease to the Friends subject to the six conditions listed. He requested to make several amendments to the conditions. After discussing the matter further with Mr. Young of the Division of Land Management he would like to amend Condition No. 6 and offer the lease at gratis. The Friends of Iolani Palace operate on State funds to facilitate their operation of the complex.

Mr. Nagata stated that the Department of Public Safety is providing some services on the palace grounds which is a night watchman type service. As long as they have it in their budget and as long as the Friends feel

they are needed, they would like assurance that it continues.

ACTION Unanimously approved as amended. Condition No. 6 to reflect a lease at gratis. (Nekoba/Landgraf)

Chairperson Ahue informed the Board for their information, and the Friends are well aware of this. Under a lease provision, they will no longer be a line item budget, which they are now. So essentially, the Palace is run under the Division of State Parks' administration as part of the executive budget. Under the lease they will have to go to the legislature for grant-in-aid financing because their revenues do not produce enough funds to run the palace.

Mr. Nagata also informed the Board that this will enable the Friends to seek some outside grants as well.

ITEM F-1 TRANSMITTAL OF DOCUMENTS

Item F-1-a Deferred, see Page 11.

Item F-1-b Issuance of Revocable Permit to Rego's Trucking, Ltd., Government Land at Kekaha, Waimea (Kona), Kauai, Tax Map Key 1-2-02:Por. 32

ACTION Unanimously approved as submitted. (Apaka/Kennison)

CANCELLATION AND FORFEITURE OF GENERAL LEASE NO. S-4789 TO LLEWELLYN L. BIVEN AND FRANCINE D. SAPLA, LOT 11, PAPA HOMESTEADS, PAPA 1ST, SOUTH KONA, HAWAII, TAX MAP KEY 8-8-04:11

ITEM F-2

ACTION Unanimously approved as submitted. (Yuen/Landgraf)

CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 1991, AHUALOA PARK, AHUALOA HOMESTEADS, AHUALOA, HAMAKUA, HAWAII, TAX MAP KEY 4-6-07:23

ITEM F-3

ACTION Unanimously approved as submitted. (Yuen/Apaka)

RESCISSION OF PRIOR BOARD ACTION OF SEPTEMBER 9, 1988 (AGENDA ITEM F-4) AND SUBSEQUENT SET ASIDE TO COUNTY OF MAUI FOR CULTURAL PARK PURPOSES AT KAMAOLE, KULA, MAKAWAO, MAUI, TAX MAP KEY 2-2-08:POR. 8

ITEM F-4

ACTION Unanimously approved as submitted. (Kennison/Apaka)

DIRECT ISSUANCE OF PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR GUY WIRES AND ANCHOR PURPOSES, AND RIGHT-OF-ENTRY OVER PORTIONS OF ANUENUE FISHERY AND AT&T SUBMARINE CABLE SITES, SAND ISLAND, HONOLULU, OAHU, TAX MAP KEY 1-5-41:PORTIONS OF 3 AND 333

ITEM F-5

Mr. Young stated that he was informed by staff this week that the consideration should be gratis because it is for a government project. He asked that the board grant the easement and the consideration be gratis.

ACTION Unanimously approved as amended whereby the Consideration is gratis. (Nekoba/Landgraf)

CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 955 TO BOARD OF WATER SUPPLY AND RESET ASIDE TO CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PARKS AND RECREATION, FOR BEACH PARK PURPOSES OF LANDS LOCATED AT DIAMOND HEAD, OAHU, TAX MAP KEY 3-1-42:05

ITEM F-6

ACTION Unanimously approved with amendments as presented by staff. (Nekoba/Landgraf)

Amendment: Amend Recommendation A to include Condition A.1 -- "The Board of Water Supply shall remove any structural and equipment from the premises and restore the area to its original condition satisfactory to the Department of Land and Natural Resources."

Under Recommendation B, the following condition:

3. Disapproval by the Legislature or by two-thirds vote of either the Senate or House of Representatives or by majority vote of both, in any Regular or Special Session next following the date of disposition, or with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution.

GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED REQUESTS NON-EXCLUSIVE TERM EASEMENT COVERING STATE LAND AT WAIMANO HOME ROAD, WAIMANO, EWA, OAHU, TAX MAP KEY 9-7-25:01

ITEM F-7

Mr. Young asked that the Status be amended to read as follows: "Encumbered by the Department of Health under Governor's Executive Order No. 1020 dated May 10, 1943."

ACTION Unanimously approved as amended. (Nekoba/Landgraf)

**AMENDMENT TO PRIOR BOARD ACTION DATED AUGUST 26, 1994
(AGENDA ITEM F-4), PERPETUAL, NON-EXCLUSIVE SECURITY
FENCE AND EROSION CONTROL EASEMENT, KAENA POINT
SATELLITE TRACKING STATION, KUAOKALA, WAIALUA, OAHU,
TAX MAP KEY 6-9-03:02**

ITEM F-8

After his presentation of Item F-8, Mr. Young stated that he had received notification yesterday that should the Board approve the staff's recommendation that Condition No. 2, insofar as indemnification be amended to reflect what the Federal government has worked out to read:

"The State will not be responsible for any loss, liability, claim or demand for property damage, property loss, personal injury, including but not limited to death arising out of any injury or damage caused by or resulting from any act or omission of the Government or their contractors in connection with the Government's entry onto and occupancy of the premises described herein."

ACTION Unanimously approved as amended. (Nekoba/Landgraf)

**REQUEST FOR AUTHORIZATION FOR NON-EXCLUSIVE TERM
EASEMENT FOR BOAT RAMP AND CONCRETE STEPS AT
KAHALUU, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-19:MAKAI OF
64**

ITEM F-9

Mr. Young stated that should the Board accept this recommendation that they include a condition under C. 9 to read: "Submission of two sets of survey parcel maps with description of metes and bounds prepared by a registered land surveyor."

ACTION Unanimously approved as amended. (Nekoba/Landgraf)

**REQUEST FOR AN EXTENSION OF LAND LICENSE NO. S-319,
L. REGO DUMP TRUCK AND HEAVY EQUIPMENT, KAWAIELE,
MANA, KAUAI, TAX MAP KEY 1-2-02:POR. 1**

ITEM F-10

In Mr. Young's presentation of Item F-10, he gave a past history of the land license. He informed the Board that on Wednesday of this week, staff received a request from the company asking for an extension of the removal date to December 31, 1994. Staff does not have any objections in recommending that the Board grant the license extension up to December 31, 1994 with the conditions that the license not be further extended after December 31, 1994; there will be no refund for the sand allotted under the Land License No. S-319 should it not be removed and subject to other conditions as may be prescribed by the Chairperson.

Mr. Apaka's concern was condition no. 2 which mentions no extensions

shall be granted. He informed the Board that it might be difficult for the applicant to complete the removal of sand by September 30, 1994 because the winter months are not good to work with the sand. He was in agreement of extension to December 31, 1994.

ACTION Unanimously approved as amended. (Apaka/Kennison)

Amendment: Add Recommendation: That the Board grant the licensee, under Land License No. S-319, an extension of the term of Land License No. S-319, subject to the following:

1. The license terms shall be extended to December 31, 1994;
2. No refund for the sand allotted under Land License No. S-319 but not removed by September 30, 1994; and
3. Other conditions as may be prescribed by the Chairperson.

ITEM F-11 See Page 24 for Action.

ITEM F-12 See Page 5 for action.

ADDED ITEM F-13 See Page 3 for Action.

ITEM H-1 See Page 6 for Action.

ITEM H-2 See Page 14 for Action.

ITEM H-3 See Page 3 for Action.

ITEM H-4 See Pages 8-9 for Action.

ITEM H-5 See Page 13 for Action.

ITEM K-1 See Page 2 for Action.

ITEM K-2 **REQUEST FOR A DIRECT SALE OF LEASE OF EASEMENT AT PIER 38, HONOLULU HARBOR, OAHU (GASCO, INC.)**

ACTION Unanimously approved as submitted. (Nekoba/Landgraf)

ITEM K-3 **DIRECT SALE OF LEASE, OFFICE SPACE AT KEWALO BASIN, OAHU (NAUTILUS SUBSEA ADVENTURES, INC.)**

ACTION Unanimously approved as submitted. (Nekoba/Landgraf)

AMENDMENT TO PRIOR BOARD ACTIONS OF SEPTEMBER 12, 1986 (ITEM F-8), JULY 18, 1988 (ITEM F-10), APRIL 28, 1989 (ITEM F-10), JUNE 9, 1989 (ITEM F-10), AND OCTOBER 16, 1992 (ITEM F-13), RELATING TO PUBLIC AUCTION SALE OF A LEASE COVERING GOVERNMENT LAND AND IMPROVEMENTS (FORMER AMFAC DISTRIBUTION CENTER), HANAPEPE, KAUAI, TAX MAP KEY 1-8-08:35

ITEM F-11

Mr. Young informed the Board that the staff has been attempting since 1986 to get the Hanapepe Distribution Center sold at public auction. Both hurricanes added adverse economic impacts and added on to the delays. There were also some consideration by the Hanapepe Community's recommendation for the use of the site as well as the limitations of the grandfather aspects. In addition to that there were discussions between the County of Kauai, the U.S. Department of Commerce, which is the Economic Development Administration (EDA), State Department of Business and Economic Development and Tourism (DBED) and DLNR.

There were several proposals provided by the Board and the concern at that time was getting it on line. After lengthy discussions with the government entities involved they had been informed by the County of Kauai because no funding from EDA has formally been applied for on this project, the county is confident that they can encumber the funds with other projects. However, the final decision rests with EDA. Staff is recommending to proceed ahead with a public auction of this particular property. We have cited for you in the submittal certain conditions under which this will be done, such as the character of use and the limited retail space and how we're going to determine how the rent is to be structured and whether it will be a waiver or a credit.

He then pointed out to details on page 2 on the rent waiver and rent credit. He informed the Board that this submittal was prepared by Dean Uchida and asked that it be submitted as is. Mr. Young stated that there was some concern by staff and himself that rent waiver and rent credit were the same. He then made reference to Section 171-6 of the Hawaii Revised Statutes, there is a section of the law which says the Board may reduce the waive the rent in the event that it's shown that substantial improvements will be placed onto the property. Such rent or reduction or waiver for certain uses should be for a specific period of time.

Mr. Apaka asked if the property went out to public auction, what would be the time-table.

Mr. Young responded that his understanding was that they wanted to accomplish it before the end of the year.

Mr. Nekoba's question related to the character of use. If the Board

approves this and it goes to auction, 10% is to go to retail and the balance to industrial use. He heard that this property was not zoned industrial or retail.

Mr. Young explained that this use was grandfathered. His understanding is if it went to public auction, the new owner would have the grandfather use also.

Mayor Joann Yukimura of the County of Kauai addressed the Board. She introduced Mr. Glenn Sato, Economic Development Director, Mr. Don Cataluna, specifically working on EDA projects and Mr. Dennis Kurokawa, member of the community representing people who supports this project. She stated that she could give the overall view in stance of the County and perhaps answer the Board's questions particularly some of the questions on grandfathering. She stated that she understood that the grandfathering had expired and that it is not available. That special use permits for rezoning would be required. If the staff has determined otherwise, she stated that there should be a letter from their Planning Department.

Mr. Yuen asked, "How long has this property been vacant?" Mr. Young responded for about 8 years or more.

Mr. Yuen felt that the grandfather clause would then have expired.

Chairperson Ahue commented that it hasn't really been vacant. It has some permittees on the property, using the premises.

Mayor Yukimura said to their knowledge the building is not being used right now. Even if there is a grandfathering there is an issue of, I think if you'd made 50% changes on it, then it will also lose it's grandfathering. She stated that the EDA monies on this project, \$2.3 million dollars and they received word that there's another \$800,000 available, so some \$3.2 million available. This project started prior to the hurricane by DBEDT which did a feasibility study. After the hurricane this became a potential EDA project.

Mayor Yukimura continued to inform the Board of their meetings with the community members and related what the community members had proposed or what they had wanted in the way of usage of the area.

Mayor Yukimura stated that the key issue she believes is whether this is a good use of those State lands.

Mr. Apaka pointed out that staff had recommended in their submittal to go out to auction with all the ingredients that the County was looking at. He stated that this is where the Board stands right now, going out to bid

and if no one is interested then they will negotiate with the County.

Mayor Yukimura stated that the missing ingredient is the \$3.2 million in EDA money and if the Board decides to go out to auction it could be pretty much assumed that those monies would not be available for the Hanapepe project.

More discussion followed covering the same issue.

Mr. Apaka clarified with the Mayor that should a private individual get the lease, he or she will have a difficult time in obtaining a zoning change and special use permit, but the county would not have any restrictions as far as rezoning and getting the necessary permits to make it work.

Mr. Apaka asked, "If it's turned over to the Department of Hawaiian Homes Lands and they want to develop them, then they would run into a problem with the County because they're not part of the County?"

Mayor Yukimura, "If it goes into Hawaiian Homes' hands, they will be faced with two main issues, 1) whether they want to develop it on their own or 2) if they will allow the County to develop it and then to get the revenues from that development.

MOTION Mr. Apaka made a motion that the Board go into an executive session to consult counsel. Seconded by Mr. Kennison.

DISCUSSION Mr. Don Cataluna asked to say something to the Board, "Going back to site control by the County and getting control of that site and putting the light industrial people in there will not compete with the town. In fact, as the Mayor talked about, there's a Hanapepe town revitalization implementation program who want to start because as we will all agree the place has been blighted for years. So we want to help them. Control of that site will enhance the town's revitalization program. If we don't have control of that site it will lessen the probability of success. So we're talking about the big picture tube."

There was no objection by the Board to go into an executive session.

EXECUTIVE SESSION 1:10 P.M. - 1:35 P.M.

Chairperson Ahue called the meeting back to order.

Mr. Nekoba questioned the length of time it would take the County to get a response for final approval from the EDA if the Board were to approve a lease to the County.

Mr. Glenn Sato responded, "According to the routine that we've

established with EDA, it will take about three or four months, but it hasn't really gone past the four months stage."

Mr. Nekoba stated, "The County and State have to work in good cooperation, I agree with that and this \$3.2 million federal funding, we don't want to see the County lose that, the State would lose it too in effect. What we're looking to I guess is to propose a direct lease, no auction to the County for this property. We have two major conditions. First condition is that it be subject to the County receiving the EDA funds of \$3.2 million, by January 31, 1995 and secondly, that in the event, the zoning, would actually be zoned or through an administrative permit, that that would be in place to handle this use, which is 10% retail and 90% light industrial, that it would be in place by December 31, 1994."

Mayor Yukimura injected, "We're not sure because we haven't gotten to the place of defining the permitting process."

Mr. Nekoba asked what would be the probability that you would get your EDA money if you had a direct lease. Mayor Yukimura felt it would be 99%. In the event you don't get the EDA money, that we would have the special use permit as the State will still have the land to deal with and we don't want to have these lands under-utilized for another two years."

Mayor Yukimura replied, "You're saying special use permits or zoning in place by December 1st?" Mr. Nekoba responded, "Yes, and I would think you would be able to do the special use permit faster."

Mr. Sato stated, "What we'll need first if you so approve. We'll need some kind of memorandum of understanding where you will lease the County the land. We have to include this with our request of the County Council for authorization to abide and 2) we'll need the memorandum of understanding plus the County Council's approval for EDA. That all has to be submitted in advance."

Mr. Nekoba stated he will put in additional points, "As far as the EDA money January 31, 1995 date and the December 31, 1994 date for the zoning or the Special Use Permit that if we can see good efforts being provided by the county, you can always come back and extend the dates"

Mayor Yukimura said that would make them more comfortable.

Chairperson Ahue clarified that the only point that Mr. Nekoba is trying to make is that the Board wants the County to be an advocate for operating the property even if in some point in time it may not be the County's because you are not able to get the funding as opposed to being an obstacle to rezoning even if it's under State control.

Mayor Yukimura stated that they could agree to that provided that the concept of the change, if it goes into State hands does not change. It's something that doesn't compete with the town core but complements it, that basic concept.

Chairperson Ahue stated that this could be agreed in concept but there may have to be modifications because this submittal was written to go out to bid.


ACTION Approved as amended. (Nekoba/Yuen)

Amendment: Board authorized the direct issuance of a lease to the County of Kauai covering the subject premises, subject to the following terms and conditions:

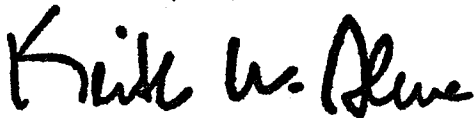
- 1) That the County of Kauai shall receive the written commitment from the Economic Development Administration (EDA) of the \$3.2 million by January 31, 1995 for this project.
- 2) That the zoning approval and/or Special Use Permit be obtained by the County of Kauai by December 1, 1994 for this project, for the subject premises covering the "Character of use" described in the submittal provided, that the Board may grant an extension of said deadline if the County is able to demonstrate a good faith effort in obtaining said approval and/or permit.
- 3) Staff instructed to negotiate with the County the lease terms and conditions and submit same to the Board for approval.
- 4) Staff instructed to write to the County of Kauai obtaining their written concurrence and understanding to the actions approved by the Board.

ADJOURNMENT The meeting adjourned at 1:50 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED FOR SUBMITTAL



KEITH W. AHUE, Chairperson, BLNR

dc 10/19/94