

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

DATE: FRIDAY, FEBRUARY 25, 2000
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Chairperson Timothy Johns called the meeting of the Board of Land and Natural Resources to order at 9:23 a.m. The following were in attendance:

MEMBERS:

Mr. Timothy Johns	Mr. William Kennison (left at 4:15 p.m.)
Mr. Colbert Matsumoto (left at 2:45 p.m.)	Ms. Lynn McCrory
Ms. Kathryn Inouye	Mr. Russell Kokubun

STAFF:

Mr. Dean Uchida, Land Division	Mr. Tom Eisen, Land Division
Mr. Bill Devick, Division of Aquatic Resource	Mr. Nelson Ayers, Division of Forestry and Wildlife
Ms. Athline Clark, Division of Aquatic Resources	

OTHERS:

Ms. Dawn Chang, Department of the Attorney General	Mr. Alan Kawada, Department of the Attorney General	Mr. David Shimokawa, Department of Transportation
Mr. Bob Endreson, B-2	Mr. Robert Smith, B-2	Ms. Linda Paul, B-2
Mr. William Aila, B-2	Mr. Alan Gottlieb, D-19	Mr. Steve Procter, D-19
Dr. Peter Worcester, D-3 & 18	Dr. Joseph Mobley, D-3 & 18	Mr. Lloyd Lee, D-14
Mr. Jeff Chang, D-7 & 22	Ms. Christine Moschetti, D-22	Ms. Ellen Ching, D-12
Mr. John Lehnert, D-20	Ms. Cheryl Fujiwara, D-17	Mr. Chip Westly, D-4
Mr. Paul Smith, D-5	Mr. Ernest Lau, D-8	Mr. Eton Arakaki, D-2
Mr. Bob Gregory, D-21	Ms. Manya Vogrig, D-21	Mr. Robert Butler, D-21
Mr. Sherman Hee, D-1	Ms. Lorna Nishimitsu, D-1	Mr. Melvin Ventura, D-1
Mr. Joe Vierra, D-1	Mr. Billy Fernandes, D-1	Mr. Kimo Fernandes, D-1
Mr. Michael Salling, D-1	Mr. Michael Matsukawa, D-27 & D-28	Ms. Sandra Wong, D-28
Mr. Ben Kudo, D-27 & D-28	Mr. Wayne Nasser, D-28	Ms. Peggy Ratliff, D-28
Mr. Mahi Cooper, D-28	Ms. Keichi Ikeda, D-28	

ITEM A-1: APPROVAL OF THE DECEMBER 10, 1999 MINUTES

Member McCrory recused herself, she was not present at this meeting.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-23: ISSUANCE OF REVOCABLE PERMIT AND IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY TO HAWAII ALL-STAR PAINTBALL GAMES, LLC SITUATE KEEHI LAGOON, MOANALUA, OAHU, TMKs: 1-1-03: 3, 204, 205, 206, 207 AND 212

Mr. Dean Uchida, Administrator of the Land Division, briefed the Board and recommended that the Board authorize the issuance of a revocable permit and immediate right-of-entry to the applicant, subject to standard terms and conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM B-2: REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO ADOPT A NEW HAWAII ADMINISTRATIVE RULES (HAR), CHAPTER 13-60.5, NORTHWESTERN HAWAIIAN ISLANDS (NWHI) FISHERIES MANAGEMENT AREA (FMA)

Mr. Bill Devick, Administrator of the Division of Aquatic Resources, briefed the Board and explained that the Board recently received a petition from the Western Pacific Fisheries Coalition requesting the State establish a framework regulator process to manage activities within the NWHI. The petition request that the State establish sound scientific management measures in all State waters within the NWHI. For these reasons, the Division of Aquatic Resources recommends the creation of an FMA as a regulatory framework for the region for managing the types of fishing in State waters and to address the issues being raised regarding current and proposed commercial fishing and eco-tourism activities. Limited fishing and eco-tourism activities will be allowed as long as such activities are not destructive to the coral reef ecosystems or the unique wildlife that inhabit the region. Staff's recommendation is that the Board approve the holding of public hearings for the adoption of HAR, Chapter 13-60.5, relating to establishment of the FMA in the NWHI.

Ms. Athline Clark, Planner for the Division of Aquatic Resources, presented a slide show that summarized some of the concerns and significance of the area.

Mr. Bob Endreson, Western Pacific Fisheries Coalition, explained the reasons for the petition, primarily that the State step in and take control of its State waters. He urged the Board to move forward with the FMA.

Mr. Robert Smith, U. S. Fish and Wildlife Service, provided oral testimony and distributed a briefing packet to the Board that supplemented their supporting testimony for an initiative to establish an FMA in the NWHI.

Ms. Linda Paul, Executive Director of the Hawaii Audubon Society, provided written and oral testimony in support of the establishment of an FMA, for managing both commercial and recreational fisheries and potential eco-tourism activities in State Waters in the NWHI.

Mr. William Aila, testified in support of initiating a process to begin discussions for the adoption of rules relating to the establishment of an FMA in the NWHI. He urged the Board to take the responsibility to protect the area, and the rights of certain people who want to use the area in a correct way.

Unanimously approved as submitted (Matsumoto/Kokubun).

ITEM B-1: REQUEST FOR APPROVAL TO AMEND AN AGREEMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII FOR STUDIES UNDER THE MAIN HAWAIIAN ISLANDS MARINE RESOURCES INVESTIGATION

Mr. Devick briefed the Board and recommended that the Board authorize the Chairperson to negotiate and execute, subject to the Governor's approval, the subject amendment with The Research Corporation of the University of Hawaii, for Fiscal Year 1999-2000.

Unanimously approved as submitted (Inouye/Matsumoto).

ITEM D-19: RESCIND PRIOR LAND BOARD APPROVALS FOR THE ISSUANCE OF REVOCABLE PERMITS TO PACIFIC DAIRY, FEED & FARM, INC., AMERON HC&D AND PACIFIC AIRLIFT AT KAPOLEI, OAHU, TMK: (1) 9-1-31: PORTION OF 1, 25 & 37

Mr. Uchida briefed the Board and recommended that the Board rescind Land Board approval of April 11, 1997, and April 9, 1998, subject to conditions.

Mr. Alan Gottlieb, Hawaii Cattleman's Council, understood that Pacific Airlift received their notice of termination, to be effective March 13, 2000, and that there were some problems with water usage. He stated that the current situation where Pacific Airlift is using the State property at the feedlot is very important to the cattle industry. He requested that the parties meet to try and figure out some kind of solution to the water problem situation.

Mr. Steve Procter, Manager of the Ameron HC&D, was concerned about the property he's utilizing. He was informed by staff and the Board that his property is one of the lots being set aside to the Department of Agriculture (DOA), and would fall under their jurisdiction.

Mr. Uchida suggested that the Board allow staff time to meet with DOA and the applicants to come up with a fair way of using the property that would relieve the State of some of the management oversights especially on the water billing side, and to also discuss having one applicant responsible for the area on a temporary month-to-month basis.

Unanimously approved to defer (Inouye/Kennison).

ITEM D-3: TIME EXTENSION FOR CONSERVATION DISTRICT USE APPLICATION (CDUA) KA-2734 FOR ACOUSTIC THERMOMETRY OF OCEAN CLIMATE (ATOC) PROJECT UTILIZING SUBMERGED LANDS

ITEM D-18: EXTENSION OF 180-DAY PROCESSING PERIOD FOR CDUA KA-2941 TO RETAIN IN PLACE AND RE-USE A SUBSEA POWER CABLE SOUND SOURCE (INSTALLED OFFSHORE OF KAUALI, PURSUANT TO APPROVED CDUA KA-2734) TO CONTINUE FEASIBILITY RESEARCH ON THE USE OF ACOUSTIC TRANSMISSIONS TO MEASURE THE LONG-TERM TEMPERATURE TRENDS OF THE GLOBAL OCEANS

Items D-3 and D-18 were taken together. Mr. Uchida briefed the Board and recommended that the Board, for Item D-3, approve the requested amendment to CDUA KA-2734, as previously amended, subject to the following conditions: 1) that Condition 7 of CDUA KA-2734 is amended to provide that the permittee has until September 30, 2001 to remove the cable and sound source; 2) no use of the power cable, or transmissions from the sound source, are authorized by this approval; and 3) that all other conditions imposed by the Board under CDUA KA-2734 shall remain in effect, and nothing else is affected by this action. For Item D-18, approve an extension of the processing period to September 30, 2001 for the subject CDUA.

Dr. Peter Worcester, Research Oceanographer for the Scripps Institution of Oceanography of the University of California, clarified that their request does not involve any additional environmental impacts to leave the source and cable in place, does not eliminate the requirement to remove the cable to the maximum extent feasible, and does not commit the Board to any decision on their new application. Their request is to provide time for the environmental review process that's needed in connection with the new permit application.

Items D-3 & D-18 were unanimously approved as submitted (McCrorry/Kennison).

ITEM D-14: REQUEST FOR PARTIAL WITHDRAWAL OF LAND UNDER EXECUTIVE ORDER NO. 177 AND ISSUANCE OF QUITCLAIM DEED FOR SAME TO THE COUNTY OF MAUI, TMK: 3-9-09: PORTION 13, WAIHOLI-KEOKEA, MAKAWAO (KIHED), MAUI

Mr. Uchida briefed the Board and recommended that the Board authorize the withdrawal of approximately 0.0556 acres of land from Executive Order No. 177 with the County of Maui, and authorize the issuance of a quitclaim deed for the subject property to the County of Maui for road improvement purposes, subject to conditions.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-7: COUNTY OF MAUI REQUEST TO AMEND PREVIOUS BOARD APPROVAL OF DECEMBER 12, 1997, AGENDA ITEM D-1, TMK: 4-6-01: 09, LAHAINA MAUI

Mr. Uchida briefed the Board and recommended that the Board amend their previous action to allow the County of Maui to use the Lahaina Banyan Tree Park for other purposes.

In response to a question raised by Member McCrory regarding the acknowledgement of the State's contribution, Mr. Jeff Chang, County of Maui, Department of Parks and Recreation, said his understanding is that the Mayors office is in discussions with the Maui District Land Agent to determine the language of this acknowledgement that was part of the original condition.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-22: COUNTY OF MAUI REQUEST TO ENTER INTO A LEASE AGREEMENT ON LANDS UNDER EXECUTIVE ORDER NO. 2771, HALEPIULA, WAINEE, LAHAINA, MAUI, TMK: 4-6-02: 10

Mr. Uchida briefed the Board and recommended that the Board grant approval to the lease agreement request involving lands under Executive Order No. 2771, subject to review and approval by the Department of the Attorney General and such other terms and conditions as may be prescribed by the Chairperson.

Ms. Christine Moschetti, Executive Director of Hui O Waa Kaulua, provided oral and written testimony in favor of staff's recommendation.

Unanimously approved as submitted (Kennison/Kokubun).

ITEM D-12: CONCURRENCE TO THE ISSUANCE BY DOH OF A REVOCABLE PERMIT TO ARC OF KAUAI, KAPAA, KAWAIHAU, KAUAI, TMK: 4-6-14: POR. 30

Mr. Uchida briefed the Board and recommended that the Board concur to the issuance of a revocable permit to ARC of Kauai for day program for persons with developmental disability purposes, subject to standard conditions.

Ms. Ellen Ching, Executive Director of the ARC of Kauai, gave some background information about their program and asked the Board for support in approving the request.

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-20: SALE OF LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES, ISSUANCE OF REVOCABLE PERMIT, MR. JOHN LEHNERT, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-27: 02

Mr. Uchida briefed the Board and recommended that the Board authorize the sale of a lease at public

auction, and authorize the issuance of a revocable permit to Mr. Lehnert, subject to standard conditions.

Mr. Lehnert was not in favor of a 15-year lease term. His understanding, when he bought his house, was that there was a 25-year extension available. He felt that the proposal was not entirely fair and reasonable because it didn't allow him much choices. He requested a longer term without having to go to public auction.

The Board advised the applicant that the requirement of a statutory change is needed in order to avoid a public auction. Mr. Uchida explained that the 15-year lease term was an attempt to bring the term's co-terminus with the existing surrounding leases.

The Board decided to defer this item to allow staff time do some research regarding the 15-year lease term, and to determine the term of the lease that will be offered at public auction.

Unanimously approved to defer (Inouye/Kennison).

ITEM D-17: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAIIAN ELECTRIC COMPANY, INC., (HECO) FOR UTILITY PURPOSES AT KAPAHULU, HONOLULU, TMK: 3-1-42: 06

Mr. Uchida briefed the Board and recommended that the Board authorize the direct sale of a perpetual, non-exclusive easement to HECO, authorize a construction right-of-entry to HECO, and cancel Grant of Easement No. S-4104 when the perpetual non-exclusive easement document is executed, subject to standard conditions.

Ms. Cheryl Fujiwara was present to answer questions.

Unanimously approved as submitted (Inouye/Matsumoto).

ITEM D-4: CDUA OA-2962B FOR EROSION CONTROL AND BEACH NOURISHMENT AT HAUULA, OAHU

Mr. Uchida briefed the Board and recommended that the Board approve this application to construct a pilot erosion control and beach nourishment project at Hauula, Oahu, subject to 18 conditions.

The Board asked if the adjacent landowners received notice of this project. Mr. Chip Westly, Applicant, stated that the landowner that owns the 3 lots in front of the sandbags is indecisive about this project, everyone else has signed the application. He believed that the project would help the adjacent landowners, if not the sandbags will be slashed and removed at his expense.

The Board amended the staff recommendation as follows:

9. The applicant shall provide DLNR with evidence of written notice [take measures] to ensure that the [public is] property owners within 500 feet of the project are adequately informed of the project

work [once it is initiated] prior to initiating construction and the need to avoid the project area during construction.

19. The applicant must obtain approval from DLNR on the type of sand brought in from off-site for the beach nourishment project.

Unanimously approved as amended (Inouye/McCrory).

ITEM D-5: CDUA NO. OA-2965 FOR AFTER-THE-FACT AUTHORIZATION OF EROSION CONTROL AND VARIOUS MINOR IMPROVEMENTS ON STATE LAND ADJACENT TO A PRIVATE RESIDENCE AT PUU UALAKAA (ROUNDTOP MOUNTAIN), HONOLULU, OAHU, TMK: 2-5-20: 06

Mr. Uchida briefed the Board and recommended that the Board approve this application for after-the-fact improvements to state land at Puu Ualakaa, subject to 11 conditions.

Mr. Paul Smith pointed out an error on page 2, 1st paragraph, last sentence, of the staff report. The predominant vegetation does not include "mature koa trees".

Unanimously approved as submitted (Inouye/Matsumoto).

The Board recessed at 11:40 a.m. The meeting was reconvened at 11:50 a.m.

ITEM D-8: SET ASIDE TO COUNTY OF KAUAI DEPARTMENT OF WATER FOR WELL SITE AND ISSUANCE OF GRANTS OF RELATED PERPETUAL NON-EXCLUSIVE EASEMENTS FOR THE KEKAHA-WAIMEA WATER SYSTEM, GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ELECTRIC TRANSMISSION LINE PURPOSES TO CITIZENS UTILITIES COMPANY, LTD., AND APPROVAL TO GRANT THE COUNTY OF KAUAI CONSTRUCTION RIGHTS OF ENTRY, KEKAHA, KAUAI

Mr. Uchida briefed the Board and amended page 3, from staff recommendation [A. 5.], to A. 4., and changed, on page 4, the last staff recommendation from [B.] to C.

Mr. Ernest Lau was present to answer questions.

Unanimously approved as amended (McCrory/Kokubun).

ITEM D-2: (1) WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER NO. S-3174, ISSUED FOR RAINBOW BAY STATE PARK; (2) TERMINATION OF REVOCABLE PERMIT NO. S-6578, ISSUED TO PACIFIC TRUCKERS ASSOCIATION, INC.; (3) SET ASIDE TO THE DEPARTMENT OF DEFENSE,

**STATE OF HAWAII, FOR THE OAHU VETERANS CENTER, AIEA, EWA,
OAHU, TMKs: 9-9-03: 35; 9-9-12: 05, 46 & 47**

Mr. Uchida briefed the Board and recommended that the Board withdraw the lands from executive order for a set-a-side to the Division of State Parks, approve the termination of Revocable Permit S-6578 issued to Pacific Truckers Association, and approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Defense, subject to terms and condition.

Mr. Eton Arakaki, Pacific Truckers Association, was concerned about the 30-days notice to move their property from the premises after receiving the notice of termination. The Board recommended that staff work with the Department of Defense and Mr. Arakaki to coordinate the transition and to see how long the truckers will be able to stay.

Unanimously approved as submitted (Inouye/Matsumoto).

ITEM C-1: REQUEST FOR APPROVAL OF CONTRACT WITH MR. ALAN BATESOLE TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM

Mr. Nelson Ayers, Service Forester for the Division of Forestry and Wildlife, briefed the Board and recommended that the Board approve the contract with Mr. Batesole and Division of Forestry and Wildlife to participate in the implementation of the State Forest Stewardship Program.

Unanimously approved as submitted (McCrary/Kokubun).

ITEM D-21: ISSUANCE OF REVOCABLE PERMIT AND IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY TO SANS SOUCI, INC., SITUATE WAIKIKI, HONOLULU, OAHU, TMK: 3-1-032: 7 (SEAWARD)

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Sans Souci, Inc., for the retention and maintenance of the concrete pier footing, and authorize the immediate construction right-of-entry, subject to standard conditions.

Mr. Bob Gregory, President of the Board of Director for Sans Souci, Inc., testified in favor of staff's recommendation.

Ms. Manya Vogrig, Landowner and Stockholder of the Sans Souci Inc., gave oral and written testimony against taking any responsibility or liability as a result of this revocable permit being issued. She requested that this item be deferred until after the March 7, 2000, Annual Stockholders Meeting.

Mr. Robert Butler, Vice-President of the Board of Directors for San Souci, Inc., testified in favor of staff's recommendation and showed some photos of the subject area. He stated that San Souci, Inc., has adequate insurance to cover liability for the pier.

The Board decided to defer this item until the March 7, 2000, Annual Stockholders Meeting to allow the

parties to work out the liability situation. The Board asked staff to investigate the additional structure to see if the revocable permit also needs to include the sidewalk that was constructed by San Souci, Inc.

Unanimously approved to defer (Inouye/McCrory).

The Board recessed for lunch at 12:30 p.m. The meeting was reconvened at 1:42 p.m.

ITEM D-1: DEFINITION OF "ALLIED USES" IN CONNECTION WITH THE CHARACTER OF USE PROVISIONS OF GENERAL LEASE (GL) NO. S-3674 AND IMPLEMENTATION OF RESULTS OF TRAFFIC STUDY RELATED TO USE OF VEHICULAR ACCESS EASEMENT - KAMOKILA VILLAGE, WAILUA, KAUAI

Chairperson Johns noted that written testimony was received from Mr. Michael Dick.

Mr. Uchida briefed the Board and recommended that the Board approve, as to the traffic study, recommendations by Department of Transportation (DOT) Highway be complied with immediately in their letter dated September 3, 1999; anytime there is a vehicle on-site, lessee shall have a flag man with radio communications capability to the village, stationed at the entrance to the site. This is to avoid possible 2-way traffic on the entry road.; and, vehicle access to the site shall be limited, as recommended by DOT Highways, to passenger cars, vans up to 15 passenger capacity, and mini-bus with a capacity of no more than 25 passenger. Kayak use shall not be permitted as an "allied use". A list of "allied uses" is included in staff recommendation 6. The allowance of evening luau activities shall be limited to 1 per month, with breakdown and cleanup not to exceed 8:00 p.m. in the evening because of noise consideration and impact to the adjacent properties.

Mr. Sherman Hee, Attorney for the Fernandes', addressed some concerns regarding the staff report. On page 5, under Discussion of Allied Uses, the restriction on the use of 4-man or 6-man Hawaiian canoes. He wanted 1-man and 2-man canoes to be applied as well. On page 7, staff recommendation 1.b., requirement of a flagman whenever a vehicle is onsite. He said this may be burdensome because on an average day, Kamokila Hawaiian Village hosts about 25 cars. On page 8, staff recommendation 4. that states: "Lessee shall not utilize amplified sound on the subject lease land." He indicated that tour boats are allowed to use amplified sound, and that the restriction may cause some problems for his client in terms of getting heard during the functions. On page 8, staff recommendation 7. that states: "Evening luau activity shall be limited to one per month, with breakdown and cleanup not to exceed 8:00 p.m., and with no amplified music permitted." He asked if the time could be extended to 10:00 p.m. because it takes about 2 hours to cleanup after a luau, which means for most of the year the luau would have to end at 6:00 p.m., before sunset. The difficulty in the once a month limitation of luau activity is that tourist don't usually stay that long. He suggested a once a week limitation to get better coverage with tourist type participation.

Ms. Lorna Nishimitsu, Attorney for Mr. Melvin Ventura, property owner adjacent to the subject area, gave some background information about this item and requested that the Board decline to expand a Hawaiian museum use to include luau activities for tourist. The issue is that the business expansion is not suited to the site and therefore this Board should not accommodate the lessees desires given the changed circumstances over the many years that have passed since this lease was issued. In order to expand the

Hawaiian museum use the lessee would have to obtain necessary governmental approvals for the larger commercial uses desired. She introduced Mr. Joe Vierra, Belt Collins Investigative Engineer who was present to answer questions the Board might have regarding the traffic assessment of the area.

In relation to a statement made by Ms. Nishimitsu regarding the tour boats not having amplified music at night therefore the residence should not be exposed to the same kind of noise levels the evening luau activities might generate, Member McCrory asked when the last trip is, up or down the river for tour boats. Mr. Ventura believed it was around sunset.

In response to a question raised by Member McCrory regarding the need for a flagman, Mr. Vierra's opinion was that a flagman is necessary for the larger vehicles for safety reasons and because of the limited site distance.

Mr. Billy Fernandes, original lessee and father of the current lessee Mr. Kimo Fernandes, gave some history of the Kamokila Hawaiian Village and reiterated some of the suggestions and concerns expressed by Mr. Hee. He commented on the flagman issue, indicating that whenever a mini-bus comes down they provide a security man that controls the bus to and from. Tour agents that want to bring a mini-bus down would need to make an appointment, no big buses are allowed. He asked that they not be restricted to 1 luau per month because of the bookings that they already have scheduled.

Mr. Michael Salling, brother-in-law of Mr. Kimo Fernandes, gave some additional history of the Kamokila Hawaiian Village lease.

The Board approved staff's recommendation with the following amendments:

- 1.b. "Anytime there are larger than 9 passenger vehicles on site,...."
4. "Lessee shall not utilize amplified sound on the subject lease land beyond sunset/dusk."
6. "Allied Uses" [shall] includes only the following: ..."
"...water based activities with traditional Hawaiian 4 and 6 man outrigger canoes and surfboards;..."
7. "Evening luau activity shall be limited to one per [month] week, with breakdown and clean-up not to exceed [8:00] 8:30 pm, with no amplified music permitted."

Unanimously approved as amended (McCrory/Inouye).

Member Matsumoto was excused from the meeting.

ITEM D-27: RESCIND PRIOR BOARD ACTION OF DECEMBER 14, 1984 (AGENDA ITEM F-7), HAWAII ELECTRIC LIGHT COMPANY, INC.(HELCO), REQUEST FOR AMENDMENT OF LAND PATENT GRANT (LPG) NO. S-15,591, KEAHOLE

DIESEL GENERATION SITE; AND AUTHORIZATION FOR THE ISSUANCE OF A CORRECTION DEED TO AFFECT THE SAID GRANT AUTHORIZED BY THE BOARD AT ITS DECEMBER 14, 1973 (AGENDA ITEM F-5), KALAOA 1ST-4TH, NORTH KONA, HAWAII, TMK: 7-3-10: POR. 33

Mr. Uchida briefed the Board and recommended that the Board rescind its prior action of December 28, 1984, HELCO's request for amendment of LPG No. S-15,591, Keahole Diesel Generation Site; and pursuant to Section 171-6(19), Hawaii Revised Statute (HRS), as amended, authorize the issuance of a correction deed substituting the proper language, in lieu of the language now appearing in condition 3 of LPG No. S-15,591. He made a correction, to the last line in staff recommendation B, that should read: "...LPG No. S-15,591...", instead of LPG No. S-15,592.

Mr. Ben Kudo, Attorney for HELCO, stated that they would like to follow the law by incorporating the correct provision in the LPG that was issued in 1974. He asked for the Board's support in correcting this particular situation.

Mr. Michael Matsukawa, Attorney for the Keahole Defense Coalition Inc. (KDC) and Ms. Peggy Ratliff, testified in opposition to staff's recommendation. His main concern was that the right to repurchase clause in LPG No. S-15,591, as originally drafted, is valid and not subject to correction.

A motion made at 2:57 p.m. to move into executive session to confer with counsel regarding legal matters. The meeting was reconvened at 3:00 p.m. (Kokubun/Kennison).

Unanimously approved as amended by staff (Kokubun/McCrory).

ITEM D-28: REQUEST TO NULLIFY HELCO "DEFAULT ENTITLEMENT" REGARDING CDUA HA-487A BY KDC.

Mr. Uchida said the petition before the Board is a request by KDC, asking that the Board consider nullifying the default entitlement based on their interpretation that the default entitlement cannot be complied with under the existing rules of the Board. The stated grounds for nullification are that: 1) HELCO cannot satisfy Conditions 1, 2, and 15 of Section 13-2-21(a), HAR; 2) HELCO cannot satisfy other laws and rules; and 3) HELCO forfeited its default entitlement. Staff analysis has a point-by-point discussion of findings for each of the 3 conditions. Staff believes that their enforcement capabilities are restricted to ensure that HELCO's land use does not exceed the default entitlement. Staff cannot find that the conditions apply for the purpose of re-considering or nullifying the default entitlement. Staff's recommendation, based on staff's analysis, is that the Board deny the subject request to nullify HELCO's default entitlement.

Chairperson Johns noted that documents were received from Mr. Matsukawa, Ms. Sandra Wong and Mr. Mahi Cooper that seemed to be for the Board's review, but addressed "In the Circuit Court of the Third Circuit". A fax was also received from Mr. Matsukawa dated February 25, 2000, correcting a typo on page 15. 50, of their request to nullify HELCO's default entitlement.

Mr. Matsukawa explained that they went to Circuit Court to ask the Judge to make this determination, because he wasn't sure if the Board adjudicated these types of permits. The Judge wanted to know what

the Board's position was and told them to bring their documents to the Board. They weren't sure if they needed to bring it under the Courts authority or a brand new document.

The Board wanted to confer with counsel to follow up on staff's presentation.

A motion was made at 3:10 p.m. to move into executive session to consult with legal counsel (Kokubun/Kennison). The meeting was reconvened at 4:15 p.m.

Member Kennison was excused from the meeting.

Mr. Matsukawa said the Board is reviewing the same questions it looked at 3 years ago, "Is it compatible?", "Are the environmental aspects improved or preserved?", and a 3rd new element, "Has the 3 year deadline to complete the project expired?". He believed that the Board should, as per the Courts instructions, inform the Court as to what the Board's position is on the items raised.

Mr. Wayne Nasser, Attorney for the Department of Hawaiian HomeLands, owner of a 153-acre parcel adjacent to HELCO's power plant, provided written and oral testimony against staff's recommendation. He believed that the CDUA was "deemed approved" on April 26, 1996, and the 3 year deadline to complete the project has expired.

Ms. Sandra Wong, Attorney for Waimana Enterprises, Inc., stated that a memorandum was filed in support of KDC and Ms. Ratliff's request. She testified in opposition to staff's recommendation, and in favor of the request to void and forfeit the default entitlement.

Mr. Mahi Cooper, Resident of the Keahole Agriculture Park, pointed out an error on the staff report, page 2, 2nd paragraph, last sentence, that should read: "The closest residence is located adjacent to the HELCO parcel, approximately 30 feet west of the pre-existing generating station." He explained the living conditions that he and his family goes through on a daily basis of having HELCO as a neighbor. He urged the Board to enforce the rules, regulations, and conditions that apply to this power facility.

Mr. Keichi Ikeda, Resident, provided written and oral testimony, requesting that the Board disregard staff's recommendation, and evaluate all the facts to reach a decision that is consistent with Conservation District Land Use Laws and regulations.

Ms. Ratliff, provided written and oral testimony, urging the Board to be very cautious, and carefully apply regulations strictly according to the facts.

Mr. Kudo, testified in favor of staff's recommendation. He stated that the central question is whether the Board has the authority to nullify something that was granted not by the Board, but by operation of law, because of Chapter 183-41, HRS. He felt that staff had correctly characterized this situation in their analysis and asked that the Board approve staff's recommendation.

Chairperson Johns clarified, because of the confusion regarding the Board's authority to look at or enforce conditions, his position is that the Board can consider whether the CDUA conditions are met, the Board can enforce them through a variety of methods, and that the Board would intend to enforce them if the applicable conditions are not satisfied. However, what the Board cannot do is enforce the condition in a

way that violated either the statute or the order of the Third Circuit Court.

Member Kokubun's opinion was that the action the Court took is what is ruling at this point. The Board does have some jurisdictional authority over some of the conditions, but the Board is really in this default entitlement. The Board should respect that, and figure out a way to work with the Court and the parties to move forward.

Unanimously approved as submitted (Kokubun/McCrory).

ITEM D-6: CONSENT TO ASSIGN GL NO. S-3761, SHINDO ET. AL., ASSIGNOR, TO HAWAIIAN FRESH PRODUCTS, INC., ASSIGNEE, LOT 1-A, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-50: 15

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of GL No. S-3716 from the existing tenants to Hawaiian Fresh Products, Inc., subject to standard conditions.

Unanimously approved as submitted (Kokubun/Inouye).

ITEM D-9: REQUEST TO ACCEPT A QUITCLAIM DEED FROM THE CITY AND COUNTY OF HONOLULU FOR A PORTION OF GOVERNMENT ROAD KNOWN AS ALAPAI STREET AT HONOLULU, OAHU, TMK: (1) 2-1-38-ROAD

Mr. Uchida briefed the Board and recommended that the Board accept the quitclaim deed from the City and County of Honolulu, for the section of Alapai Street, subject to standard conditions.

Unanimously approved as submitted (Inouye/Kokubun).

ITEM D-10: SALE OF ABANDONED RAILROAD RIGHT-OF-WAY AS REMNANT TO MR. ALAN PACKER, POR. KAPAA TOWN LOTS, 2ND SERIES, KAWAIHAU, KAUAI, TMK: 4-5-2: 21

Mr. Uchida briefed the Board and recommended that the Board authorize the direct sale of the subject State lands, subject to standard conditions.

Unanimously approved as submitted (McCrory/Kokubun).

ITEM D-11: ISSUANCE OF RIGHT-OF-ENTRY TO THE GARDEN ISLE RACING ASSOCIATION, INC., FOR INTERMITTENT USE OF THE KAUAI RACEWAY PARK FACILITY, MANA, KAUAI, TMK: 1-2-2: POR. 40

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a right-of-entry for automobile racing and ancillary purposes, to the Garden Island Racing Association, subject to standard

conditions.

Unanimously approved as submitted (McCrory/Kokubun).

ITEM D-13: CANCELLATION OF REVOCABLE PERMIT NO. S-7089 AND ISSUANCE OF REVOCABLE PERMIT TO MR. ROSS K. FERNANDEZ, POR. OF KEKAHA, WAIMEA, KAUAI, TMK: 1-2-2: POR. 32 (LOTS B & C) AND 1-2-12: 38

Mr. Uchida briefed the Board and recommended that the Board authorize the issuance of a revocable permit to Mr. Fernandez covering the subject area for pasture and holding pen purposes, subject to 3 conditions.

Unanimously approved as submitted (McCrory/Kokubun).

ITEM D-15: FORFEITURE OF GL NO. S-3780, NAPUANANI FARMS, LESSEE, WAIMANALO, KOOLAULOA, OAHU, TMK: 4-1-26: 19

Mr. Uchida requested that this item be withdrawn. The applicant is current with lease rental payments and is getting a performance bond.

Unanimously approved to withdraw (Kokubun/Inouye)

ITEM D-16: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO BOARD OF WATER SUPPLY FOR UTILITY PURPOSES, MOKAUEA, KALIHI-KAI, HONOLULU, OAHU, TMK: 1-2-08

Mr. Uchida briefed the Board and recommended that the Board authorize the direct sale of a perpetual, non-exclusive easement and construction right-of-entry, to Board of Water Supply, subject to standard conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-24: SET ASIDE TO COUNTY OF HAWAII FOR THE WEST HAWAII VETERAN'S CEMETERY, KUKIO-MAKALAWENA, NORTH KONA, HAWAII, TMK: 3RD/7-2-04: PORTION OF 4

Member Inouye recused herself.

No action. Lack of quorum.

ITEM D-25: SET ASIDE TO DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT FOR

**BASEYARD, OFFICES AND RELATED USES, WAIAKEA, SOUTH HILO,
HAWAII, TMK: 3RD/2-2-49: 09**

Mr. Uchida briefed the Board and amended the language on staff recommendation 2.a. to read: "The DOCARE shall require its contractors to use due...".

Unanimously approved as amended (Kokubun/McCrory).

**ITEM D-26: REQUEST AN EXTENSION ON A NOTICE OF DEFAULT FOR GL NO. S-3854,
MR. PATRICK AND MRS. NANCY L. MALONEY, LESSEES, WAIMANALO
AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU,
TMK: 4-1-26: 18**

Mr. Uchida briefed the Board and recommended that the Board approve a 30-day extension to Mr. and Mrs. Maloney to secure a performance bond.

The Board amended the staff recommendation to allow the lessee 60 days to try and obtain a performance bond.

Unanimously approved as amended (Inouye/Kokubun).

**ITEM K-1: ISSUANCE OF LEASE BY DIRECT NEGOTIATION, BUILDING T-904, AREAS
FKA KAPALAMA MILITARY RESERVATION, KALIHI-KAI, OAHU (MR.
FRED SALASSA) TMK: 1-2-25-11P**

Mr. David Shimokawa, DOT Airports Division, briefed the Board and recommended that the Board approve the lease by direct negotiations, subject to terms and conditions.

Unanimously approved as submitted (Inouye/Kokubun).

**ITEM K-2: CONSTRUCTION RIGHT-OF-ENTRY, SOUTH RAMP, HONOLULU
INTERNATIONAL AIRPORT (COX AVIATION, INC.) TMK: (1)-1-1-03-1P**

Mr. Shimokawa briefed the Board and recommended that the Board approve the construction right-of-entry to Cox Aviation, Inc.

Unanimously approved as submitted (Inouye/McCrory).

**ITEM K-3: ISSUANCE OF REVOCABLE PERMIT, NEAR PIER 29, HONOLULU HARBOR,
OAHU (LIQUIDATOR, LTD.) TMK: 1-5-38-2P**

Mr. Shimokawa briefed the Board and recommended that the Board authorize the Director of

Transportation to issue the applicant a revocable permit for the purposes of parking a container, subject to terms and conditions.

Unanimously approved as submitted (Inouye/Kokubun).

There being no further business, Chairperson Johns adjourned the meeting at 5:10 p.m.

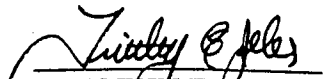
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Kimberly C. Keliioomalu

Approval for submittal:



TIMOTHY E. JOHNS
Chairperson

Board of Land and Natural Resources