

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

DATE: FRIDAY, APRIL 14, 2000
TIME: 9:00 A.M.
PLACE: MAUI COMMUNITY COLLEGE
310 KAAHUMANU AVENUE
LAULIMA BUILDING, ROOM 225
KAHULU, MAUI 96732

Chairperson Timothy Johns called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

MEMBERS:

Mr. Timothy Johns
Mr. Colbert Matsumoto
Ms. Kathryn Inouye

Mr. William Kennison
Ms. Lynn McCrory
Mr. Russell Kokubun

STAFF:

Mr. John Hino, Division of Boating and
Ocean Recreation (DOBOR)
Mr. Gary Moniz, Division of Conservation
and Resource Enforcement

Mr. Dean Uchida, Land Division
Ms. Carol She', DOBOR
Mr. Phil Ohta, Land Division

OTHERS:

Ms. Linden Joesting, Department of the Attorney General (AG)
Mr. Peter Garcia, Department of Transportation
Mr. Alan Kawada, AG, D-20
Mr. Tim Perry, J-1
Mr. David Takeyama, D-6
Mr. Jeremy Hillstrom, J-4
Mr. James Tanaka, D-24, D-10
Ms. Katie Nohina, D-24
Ms. Helen Ahia-Walrath
Ms. Paulette Tau-a, D-12
Mr. Keith Avery, D-10
Mr. Steven Albert, D-10
Ms. Madelyn D'Enbeau, D-10
Ms. R. Jessica Jones, D-10
Mr. Dick Mayer, D-10
Mr. Thomas Woods, D-10
Mr. Michael Matsukawa, D-20
Mr. Doug Gibson, J-1
Mrs. Sharon Gibson, J-1
Mr. Glen Au, D-6, J-4, D-24
Mr. Greg Vanderlan, J-4
Mr. Ed Lindsey, D-24, D-10
Ms. Patricia Nishiyama, D-24
Mr. Ke'eaumoku Kapu, D-24
Mr. Murphy Tau-a, D-12
Mr. Henry Curtis, D-10
Dr. Robert Wilder, D-10
Mr. Ron Sturtz, D-10
Mr. James Tierney, D-10
Ms. Charmaine Tavares, D-10
Mr. Ben Kudo, D-20
Ms. Sandra-Ann Wong, D-20
Ms. Teresa Tico, J-1
Mr. Walton Hong, D-14
Mr. Jensen Yoshimoto, D-22
Mr. James Riley, D-24
Mr. Nelson Armitage, D-24
Ms. Thelma Kaawaloa, D-24
Mr. Bob Horcajo, D-24
Mr. John Kahiamoe, D-12
Mr. Warren Bollmeier, D-10
Mr. Kal Kobayashi, D-10
Mr. Sean Lester, D-10
Mr. Justin Tombe, D-10
Mr. Dan Grantham, D-10
Mr. Warren Lee, D-20
Mr. Mahi Cooper, D-20

ITEM A-1: APPROVAL OF THE BRIEFING MINUTES OF JANUARY 28, 2000

Unanimously approved as submitted (Matsumoto/Kokubun).

ITEM A-2: APPROVAL OF THE MINUTES OF FEBRUARY 25, 2000

Unanimously approved as submitted (McCrorry/Inouye).

ITEM J-1: AUTHORIZATION TO SELL AT PUBLIC AUCTION A LEASE OF GOVERNMENT LANDS FOR MARITIME PURPOSES SITUATED AT NAWILIWILI BOAT HARBOR, ISLAND OF KAUAI, BEING A PORTION OF TMK: 3-2-03

Mr. John Hino, Program Manager for DOBOR, presented the staff submittal and recommended that the Board approve the sale of the lease through public auction, subject to the following conditions: 1) that the lease document be submitted to the Attorney General for review and approval as to form., and 2) other terms and conditions as may be required by the Chairperson.

Mr. Doug Gibson, Chairperson of the Board of Directors for the Nawiliwili Yacht Club, said their hope is to be the successful bidder for the subject lease and to build a much needed facility that will be open to the public. He indicated that the improvements will not be done through financing and that they could probably build the facility for much less than \$30,000, through donations from several of the yacht club members. He said a 35 year lease term is requested for a long term storage place for their boats and a permanent location for the yacht club.

Ms. Teresa Tico, representing the Nawiliwili Yacht Club, provided written testimony in favor of staff's recommendation and gave some background information about the Nawiliwili Yacht Club, which has been in existence since 1977.

Mr. Tim Perry, Volunteer for the Nawiliwili Yacht Club, said he currently serves as the Vice-Commodore. He primarily teaches the hands-on sailing classes, coaches the junior sailing program, and runs a lot of the activities that reaches out to the community. He indicated that membership is not restricted, the dues are extremely low, and activities are open to anyone who wants to participate.

Mrs. Sharon Gibson, Secretary/Treasurer of the Nawiliwili Yacht Club, expressed her desire for the yacht club to have a permanent place to run their functions and activities out of.

Member McCrorry requested that the method of payment be changed to semi-annual installments and the rental reopening be redetermined at the end of the 10th year of the lease term.

There was some concern by the Board about the proposed 35 year lease term, in that it may limit the flexibility the department might have, to do other things in the harbor in the future.

Member McCrory made a motion to approve staff's recommendation with the following amendments:

- 1) Term: Fifteen (15) years.
- 2) Method of Payment: Annual rent shall be paid in semi-annual installments, in advance.
- 3) Rental Reopening: The annual lease rent shall be redetermined at the end of the tenth (10th) year of the lease term in the manner prescribed by law.
- 4) Recommendation:
 3. Prior to public auction, the qualification questionnaire must be submitted to the Board for approval.
 4. All uses of the facility shall be open to the public free of charge.

Unanimously approved as amended (McCrory/Matsumoto).

ITEM J-2: ISSUANCE OF REVOCABLE PERMIT TO FORWARD ONE LLC AT THE ALA WAI SMALL BOAT HARBOR, ISLAND OF OAHU

Mr. Hino presented the staff submittal and recommended that the Board approve the revocable permit as requested, subject to the following conditions: 1) that the revocable permit document be submitted to the Attorney General for review and approval as to form., and 2) other terms and conditions as may be required by the Chairperson.

Member Inouye made a motion to approve staff recommendation with an amendment that the rent be set according to staff appraisal but no less than \$1,800 per month.

Unanimously approved as amended (Inouye/McCrory).

ITEM D-14: CONSERVATION DISTRICT USE APPLICATION (CDUA) NO. KA-2966 FOR THE AFTER-THE-FACT APPROVAL OF A PRIVATE TRANS-PALI STAIRWAY AT KAUAPEA BEACH (SECRET BEACH), KAUAI, TMK: (4) 5-2-05: 36

Mr. Uchida presented the staff submittal and recommended that the Board approve this after-the-fact application for Private Trans-Pali Stairway at Kauapea Beach, Kauai, subject to 12 conditions.

Mr. Walton Hong, representing the applicant, responded to questions raised by the Board. He stated that the stairway is not to provide public access to and from the beach, however, if an emergency occurred on the beach they will not stop anyone from using the stairway to get to the nearest residence where telephone communication is available. He indicated that his client has committed

to removing all wooden steps and supporting material within the 40-foot shoreline setback area as conditioned in the County of Kauai Planning Department, Special Management Area Minor Permit.

Member McCrory made a motion to approve staff's recommendation with an amendment to condition no. 6:

6. The applicant shall maintain the stairway in the interest of public safety for the time that the stairway is extant, provided that the applicant or land owner shall mitigate all impacts of stairway maintenance according to the methods outlined in the permit and the applicant shall not place any obstructions at the bottom or top of the stairway to prevent access;

Unanimously approved as amended (McCrory/Kennison).

ITEM D-6: CDUA NO. KA-2953 FOR THE BRENNECKE BEACH SHORE PROTECTION PROJECT, POIPU, KOLOA, KAUAI, SEAWARD OF TMK: 4TH/2-8-18: 20

Mr. Uchida presented the staff submittal and recommended that the Board approve this application for the Brennecke Beach Shore Protection Project, subject to 16 conditions.

Mr. David Takeyama, Oceanit Laboratories, Inc., consultants for the County of Kauai, was present to answer questions.

Mr. Glen Au, on behalf of the Native Hawaiian Community, asked if heiaus in the area have been identified. He was informed that the Historic Preservation Division had recommended that an archeological and cultural monitor be on site during the work, to record, treat, and report on any significant historic sites that might be present.

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-22: REQUEST TO ENTER INTO A LICENSE WITH THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL ON BEHALF OF THE DEPARTMENT OF HEALTH AT HONOULIULI, OAHU, TMK: (1) 9-1-75: PORTION OF 39

Mr. Uchida presented the staff submittal and recommended that the Board approve the request to enter into a license agreement with Campbell Estate on behalf of the Department of Health, subject to 3 conditions.

Mr. Jensen Yoshimoto, Department of Health, was present to answer questions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM J-4: REQUEST FOR PRELIMINARY APPROVAL TO ADOPT HAWAII ADMINISTRATIVE RULES (HAR), SECTION 13-256-56, SOUTH SHORE KAUAI OFFSHORE PARASAIL AREAS

Ms. Carol She', Boating Regulation Planner for DOBOR, presented the staff submittal and recommended that the Board grant preliminary approval to conduct a public hearing on the proposed amendments to HAR, Section 13-256.

Member McCrory stated that she received a phone call from the Sierra Club, informing her that they do not support any parasailing activities on Kauai.

Mr. Jeremy Hillstrom distributed copies of his written testimony in support of allowing parasailing on the South Shore of Kauai. He indicated that his family has been working on this issue since October of 1995 and have been pushing this along ever since. He said they did a presentation for the Koloa Neighborhood Board, and have been trying to present their business idea to other community organization, however, these organizations feel it should go to public hearing first.

Mr. Greg Vanderlan, owner of UFO Parasail, testified in favor of staff's recommendation and expressed his concern about the public auction provisions.

Mr. Au testified against any parasailing activities on Kauai.

Member McCrory made a motion to approve staff recommendation with an amendment to add condition no. 4:

4. Authorize DOBOR to hold 2 community meetings, one in the Poipu-Koloa area, and the other in the Hanapepe-West Side area. Specifically inviting Poipu Beach Resort Association, Koloa Community Association, Hanapepe-West Side Community, and any other group staff feels appropriate.

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-17: RESCIND PRIOR BOARD ACTION OF JULY 24, 1998, AGENDA ITEM D-15 (INVOLVING A CONSENT TO ASSIGN GENERAL LEASE (GL) NO. S-4212 TO SILVERHAWK DEVELOPMENT CORPORATION); CONSENT TO ASSIGN GL NO. S-4212, FROM TOWA SHINYO MAUI, INC., ASSIGNOR, TO WESTERN APARTMENT SUPPLY AND MAINTENANCE CO., DBA MAUI OCEANFRONT INN, ASSIGNEE; AND CONSENT TO MORTGAGE GL NO. S-4212, KAMAOLE, WAILUKU, MAUI, TMK: 3-9-04: 29

ITEM D-18: SALE OF LEASE AT PUBLIC AUCTION FOR PARKING LOT PURPOSES, CANCELLATION OF REVOCABLE PERMIT NO. S-6914 WITH TOWA SHINYO MAUI, INC. AND ISSUANCE OF REVOCABLE PERMIT TO WESTERN SUPPLY AND MAINTENANCE CO., KAMAOLE, WAILUKU,

MAUI, TMK: 3-9-04: PORTION 01

Member Kennison requested that these items be deferred.

Unanimously approved to defer Items D-17 and D-18 (Kennison/McCrory).

ITEM D-24: ALLEGED CONSERVATION DISTRICT AND STATE UNENCUMBERED LAND VIOLATIONS: UNAUTHORIZED SHORELINE GRUBBING (MATERIAL REMOVING), DISRUPTION OF GEOLOGICAL FEATURES, SUBMERGED LAND DREDGING AND SHORELINE CONSTRUCTION AT OLOWALU, MAUI

Mr. Uchida presented the staff submittal and recommended that the Board assess a fine of \$6500 for 4 violations (\$2000 each for the 3 land use violations, \$500 for the unauthorized use of unencumbered state lands), and assess a fine of an additional \$805 to cover administrative cost in investigating this complaint.

Mr. James Riley, Managing Partner of Olowalu Elua Associates, admitted to 2 of the violations that he was directly involved in, the removal of the Hau tree and clearing of the land along the ocean. He could not justify the violations at Olowalu Wharf because one of the principal partners (a licensed physician) had undertaken the work.

Mr. James Tanaka, Na Kupuna O Maui, requested that the Board have the violators return everything back to its original state.

Mr. Ed Lindsey, Na Kupuna O Maui (an association of recognized elders throughout Maui whose primary goals are protecting the land and their cultural rights), recommended: 1) that the destroyed Hau tree be restored with an adult Hau tree planted in the same place, 2) that work stop until the tree has been replaced, 3) that all permits be stopped until segmentation for new project ceases, 4) that the ceded land issue be settled on which the Olowalu Wharf landing sits, and 5) community service for the people responsible for these violations. He relayed to the Board, on behalf of the kupunas who had to leave the meeting before having a chance to testify, to not take out anymore of the kamaaina or kupuna trees that were put there by the original owners of the land.

Mr. Nelson Armitage, Ms. Katie Nohina, Ms. Patricia Nishiyama, Ms. Thelma Kaawaloa, and Ms. Helen Ahia-Walrath were not present when called on to testify.

Mr. Ke'eaumoku Kapu was disappointed in the removal of the Hau tree and appalled that everything is being torn away from the Hawaiian culture.

Mr. Au said the violators made an honest mistake, apologize for it, and should pay their dues. The Hau tree was a landmark, a boundary for the ahupuaa, and used by his ancestors for wind direction.

There was some discussion by the Board. Member Kennison suggested amending staff recommendation as follows: 1) the Hau tree should be replaced with an adult Hau tree; 2) the fines to reflect \$2000 per violation, to the full extent of the violations that was effected; 3) any additional work should be through the permitting process; 4) complete restoration, in accordance with the plan approved by the department; and 5) cleanup of the heiaus, in conjunction with Na Kapuna O Maui. Member Inouye requested that condition no. 9 be changed to 30 days of today's date (April 14, 2000). Member Matsumoto suggested deferring condition no. 4, violation of the dredging of submerged lands, because there was insufficient facts at this time upon which to act. There was also an unresolved issue involving the removal of coral rubble in which the perpetrator was not present to respond to the nature of that violation. Chairperson Johns asked that a written notice of violation be sent to the violator as soon as a conclusion is reached before it's scheduled for Board action. Member Kennison brought up another issue, public access to the beach, and wanted to include this as one of the recommendations. The Board decided to move into executive session to discuss with the Attorney General the perimeters of the Board's jurisdiction and authorities.

A motion was made at 12:30 p.m. to move into executive session to consult with legal counsel (Inouye/Kennison). The meeting was reconvened at 1:00 p.m.

Member Kennison stated that in observance to discipline the violators, the Board was advised by the Attorney General that there are certain guidelines that needs to be followed. Staff recommendation was amended as follows:

1. Amended recommendation no. 3 to require that the trees be planted within 90 days;
2. Deferred action on recommendation no. 4;
3. Amended the fine in recommendation no. 5 to \$4,000 (\$2000 for the unauthorized work on the Olowalu Wharf, and \$2000 for the placing of cement on the state owned lands). Also, required that concrete be removed with 90 days. If concrete is not removed within 90 days, the applicant will be subject to an additional fine of \$2000 per day;
4. Amended recommendation no. 9 to require that the fines be paid within 30 days of the Board's action of April 14, 2000;
5. Added recommendation no. 11 that required the applicant to develop a Restoration Plan and file a new CDUA for the Restoration Plan, including other improvements, within 90 days of the Board's action of April 14, 2000.

Unanimously approved as amended (Kennison/McCrory).

ITEM D-13: EXTENSION OF 180-DAY PROCESSING PERIOD – CDUA NO. MA-2917 FOR SCHATZ SINGLE FAMILY RESIDENCE AND RELATED IMPROVEMENTS, NEAR LA PEROUSE BAY, MAUI, TMK: 2-1-04: 46 & 48

Mr. Uchida presented the staff submittal and recommended that the Board approve an extension of 180-days to the processing period for the subject CDUA.

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-19: CDUA NO. OA-2971 FOR THE CONSTRUCTION OF A 130' HIGH ENHANCED SPECIALIZED MOBIL RADIO (ESMR) ANTENNA FACILITY AT PUU PAPAA, KAILUA/KANEOHE, OAHU, TMK: 4-4-12: 01

This item was deferred to an Oahu meeting.

Unanimously approved to defer (McCrary/Kokubun).

ITEM I-1: REQUEST APPROVAL TO RENEW COOPERATIVE AGREEMENT WITH THE U.S. DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION

Mr. Gary Moniz, Administrator for the Division of Conservation and Resources Enforcement, presented the staff submittal and recommended that the Board approve the 2000 renewal agreement.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM J-3: REQUEST FOR PRELIMINARY APPROVAL TO AMEND HAR, SECTION 13-250-5, 13-254-13 AND 13-254-14, AS THEY RELATE TO RECREATIONAL ACTIVITIES AT POINT PANIC ON OAHU

Ms. She' presented the staff submittal and recommended that the Board approve the proposed rule amendments to restrict the Point Panic ocean waters to the use of handboards, without skegs.

Unanimously approved as submitted (Matsumoto/Kokubun).

ITEM K-1: ISSUANCE OF REVOCABLE PERMIT, INCONSISTENT USE, HONOLULU INTERNATIONAL AIRPORT, OAHU (SPECTRA-TONE PAINT OF HAWAII, INC.)

Mr. Peter Garcia, Property Management Officer for the Department of Transportation (DOT), presented the submittal and recommended that the Board approve the revocable permit for non-conforming use.

Unanimously approved as submitted (Inouye/Kennison).

ITEM K-2: ISSUANCE OF REVOCABLE PERMIT, INCONSISTENT USE, KONA INTERNATIONAL AIRPORT AT KEAHOLE, ISLAND OF HAWAII (VOICESTREAM PCS II CORPORATION)

Mr. Garcia presented the submittal and recommended that the Board approve the revocable permit for non-conforming use.

Unanimously approved as submitted (Kokubun/McCrory).

ITEM K-3: AUTHORIZATION TO NEGOTIATE FOR ACQUISITION OF PRIVATELY-OWNED LANDS, INCLUDING THE EXERCISE OF EMINENT DOMAIN, FOR KUHIO HIGHWAY, INTERSECTION IMPROVEMENTS AT KALIHIWAI ROAD, HANAIEI, KAUAI, PARCELS 1, 2 AND 3, PROJECT NO. 56D-01-99, AND SUBSEQUENT SET ASIDE AND TRANSFER OF SAID PARCELS BY GOVERNOR'S EXECUTIVE ORDER TO DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, FOR INTERSECTION IMPROVEMENTS

Mr. Garcia presented the submittal and recommended that the Board authorize DOT to negotiate the acquisition of the parcels, authorize DOT to obtain rights-of-entry from the land owners for site inspection, etc., and upon completion of the subject land acquisition, approve of the issuance of an executive order setting aside the parcels for highway purposes to DOT.

Unanimously approved as submitted (McCrory/Inouye).

ITEM K-4: REPORT OF REVOCABLE PERMITS ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

Mr. Garcia said this is a report for consistent uses by the Airports Division for the month of March 2000.

No action required.

ITEM K-5: ISSUANCE OF REVOCABLE PERMIT, PIER 42, HONOLULU HARBOR, OAHU (MS. YOLANDA G. BHATTI) TMK: (1) 1-2-25-11P

Mr. Garcia presented the staff submittal and recommended that the Board authorize the Director of Transportation to issue a revocable permit, to drop off, store and pick up government surplus materials.

Unanimously approved as submitted (Inouye/Kennison).

ITEM D-12: FORFEITURE OF GL NO. S-5275, MR. JOHN A. KAHIAMOE, SR, LESSEE, PUOLUA, (HUELO), MAKAWAO, MAUI, TMK: (2) 2-9-06: 06; 2-9-08: 13, 17, 18 AND 24, AND RESCIND PRIOR BOARD'S ACTION OF AUGUST 23, 1996, AGENDA ITEM D-16

Mr. Uchida said this is a request for forfeiture of GL No. S-5275 to Mr. Kahiamoe, Sr. The applicant has failed to keep lease payments current and failed to post the required insurance policy. The Board approved a request made by the lessee on August 23, 1996, to assign the lease to his grandson, Mr. Murphy Tau-a, however, staff has not been successful in contacting Mr. Tau-a. Staff's recommendation is that the Board authorize the cancellation of GL No. S-5275, subject to standard conditions.

Mrs. Paulette Tau-a, Power-of-Attorney for Mr. Kahiamoe, and Mother of Mr. Tau-a, indicated that they are prepared to pay the delinquent lease rental payments. She requested time to obtain the required liability insurance policy, and to remove the derelict vehicles and equipment from the pasture.

The Board decided to defer this item for 30 days to allow time for a new succession plan to be worked out. The lessee, as indicated, will pay the delinquent lease rental payments immediately. The lessee was given 30 days to secure the appropriate liability insurance for the lease, if not obtained in 30 days, the matter will be brought back to the Board for termination. The lessee was also allowed 6 months to remove all the derelict vehicles from the property and bring the property into compliance with the character of use.

Unanimously approved to defer (Kennison/Matsumoto).

The Board recessed for lunch at 1:15 p.m. The meeting was reconvened at 2:38 p.m.

ITEM D-10: CONSERVATION DISTRICT USE PERMIT (CDUP) APPLICATION FOR THE CONSTRUCTION AND OPERATION OF A 20 MEGAWATT (MW) WINDFARM AND ASSOCIATED FACILITIES TO SUPPLY WIND-GENERATED ELECTRICITY

Mr. Uchida said this item was deferred from the March 24, 2000 Board meeting to give some time to answer concerns raised by the Board, and also, knowing that the next Board meeting was going to be held in Maui, the Board wanted to have the decision making there. Staff was asked at the last meeting to research further the County of Maui's position that seemed to raise the visual impacts as being an unresolved issue. Subsequently, a letter was received from the County of Maui indicating that because of the mitigative measures proposed by the applicant, their concerns are resolved. Suggested modifications to the conditions made by the Board at the last meeting, are incorporated in the staff recommendation. In regards to the Nene impact, proposed revised language for condition no. 42 was subsequently received from the Division of Forestry and Wildlife. Staff recognizes that

this large project would have some visual impacts, but in looking at the overall benefit of getting off of fossil fuel and promoting alternative energy, staff has found that this project is worth pursuing. The applicant has mitigated almost all of the impacts in the conservation district. Staff's recommendation is that the Board approve the application submitted by Zond Pacific Inc., to construct and operate a 20 MW windfarm, subject to 45 conditions, with the amendment to condition no. 42 as requested by DOFAW.

Chairperson Johns noted that letters in support of the proposed windfarm have been received from the following: Representative Sol Kahoohalahala; Dr. Seiji Naya, Director of the Department of Business, Economic Development & Tourism; Mr. John Crouch; Ms. Elisabeth Bluml; Mr. Sean Lester; and Mr. Patrick O'Malley, Apollo Energy Corporation.

Mr. Keith Avery, Vice-President of Zond Pacific, Inc., recalled at the last meeting that the Board wanted to give the community an opportunity to provide input. He responded to a question raised by the Board at the previous meeting regarding negotiations with Maui Electric Company, in that he recently received a letter from Maui Electric Company that says they agree to the pricing proposal. (Copies of this letter was distributed to the Board.) Mr. Avery said they look forward to being able to move ahead in developing this project.

In response to a question raised by Member Matsumoto regarding visual impacts, Mr. Avery said they did some computer simulation to show the best possible conceptual look at what these turbines would look like, a copy of which is in the environmental impact statement. He indicated that they have done a great deal of analysis to make it as aesthetically pleasing as possible.

Mr. Henry Curtis, Executive Director of Life of the Land, read through Representative Hermina Morita's written testimony in support of Zond Pacific, Inc.'s, request to construct and operate a 20 MW windfarm. He also read through his own written testimony in strong support of the project, and suggested a minor modification to condition no. 15, that would not allow the delay of the purchase power contract. Regarding the visual impacts, he felt that the windmills is a symbol of sustainability, that it's a good feeling that something is being done for our future, and that its better to look at as opposed to transmission lines tied to a fossil fuel plant.

Mr. Warren Bollmeier, President of Hawaii Renewal Energy Alliance, gave some background information about the alliance and testified in support of the windfarm.

Mr. Steven Albert, representing the Director of the Department of Business, Economic Development & Tourism, summarized Dr. Naya's written testimony in strong support of Zond Pacific Inc.'s conservation district use permit application for the construction and operation of the windfarm.

Dr. Robert Wilder, testified in strong support of Zond Pacific Inc.'s project. He felt that the windfarm would be an extremely attractive energy source and believed it would bolster Maui's tourist industry.

Mr. Kal Kobayashi, Energy Coordinator for the County of Maui, distributed copies and read through Mayor Kimo Apana's written testimony in support of Zond Pacific Inc.'s proposed windfarm at

Kaheawa Pastures. He also distributed written testimony from Councilmember Riki Hokama – Chairperson of the Economic Development Committee, and Subcommittee on Alternative Energy and Energy Conservation, in support of the windfarm.

Ms. Madelyn D'Enbeau, testified in support of Zond Pacific Inc.'s project. She commented on the visual impact issue, in that there will be no fumes or pollutants coming out of smokestacks, and that it should make people feel better about not having to rely on fossil fuel. She also expressed support of the project on behalf of Councilmember Wayne Nishiki.

Mr. Ron Sturtz, President of the Maui Neighborhood Association, testified in favor of this project for a step toward replacing the need for bringing in more fossil fuel dependence and more fossil fuel energy. He distributed a copy of a Resolution on Renewable Energy from the Maui Neighborhood Association – Board of Directors. He also distributed, although not representing them, a Resolution on Renewable Energy from the Kipahulu Community Association, and explained that a lot of the communities on Maui are doing this particular form of resolution because they want to be heard.

Mr. Sean Lester, Member of the Alternative Energy Subcommittee for the County of Maui, testified in support of this project.

Mr. Ed Lindsey, representing the Alliance for Energy of Self-sufficiency and Na Kupuna O Maui, supported the efforts by Zond Pacific Inc.

Ms. R. Jessica Jones, resident of Maui, felt that the windfarms would be attractive, economically feasible, and give hope for the future.

Mr. James Tanaka, testified in support of the project.

Mr. James Tierney and Mr. Justin Tombe, were not present when called on to testify, however, both left notes in favor of the proposed Zond Pacific Inc.'s windfarm project.

Mr. Dick Mayer, Faculty Member of Maui Community College, has been involved in many energy issues over the years. He testified in favor of the windfarm, because he felt the alternatives could do much more damage economically and environmental. He distributed a Resolution on Renewable Energy from the Kula Community Association – Board of Directors.

Councilmember Charmaine Tavares, testified in support of the Zond Pacific Inc.'s application. She felt the windmill project would have a positive effect on tourism.

Mr. Dan Grantham, testified in favor of the project and addressed the aesthetics, in that it should also be considered that the windmill project will not be using visual or physical pollution.

Mr. Thomas Woods, Project Manager of the Kamaole Windfarm at South Point on the Big Island, and representing Apollo Energy Corporation, testified in support of Zond Pacific Inc.'s project.

The Board amended the staff recommendation as follows:

15. "Any work to be done on the land shall be initiated within one year of the approval of such use, such one year term may be extended by the BLNR in order to accommodate any delays in the applicant's obtaining PUC approval and/or final Power Purchase Contract with Maui Electric Company. All work and construction must be completed within 3 years of the approval of such use.";
42. Replace existing condition with the following: "The applicant shall include techniques in the monitoring program to determine the potential risk of incidental take of endangered species and assess the need for a Habitat Conservation Plan and an Incidental Take Permit from the State and U.S. Fish and Wildlife Service."

Unanimously approved as amended (Kennison/Inouye).

ITEM D-20: CLARIFICATION OF PREVIOUS BOARD ACTION OF FEBRUARY 25, 2000, AGENDA ITEM D-28 INVOLVING APPLICABILITY OF HAR, SECTION 13-2-21(a)(15), TO CDUA NO. HA-487A

Mr. Uchida presented the staff submittal and recommended that the Board clarify that November 19, 1999 is the date upon which condition no. 15 of Hawaii Electric Light Company, Inc.'s (HELCO) default entitlement became effective, and that further, the Board provide that HELCO has until April 14, 2003 to complete all work and construction authorized under the default entitlement.

Chairperson Johns noted that testimony was received from Mr. Michael Matsukawa, Mr. Wayne Nasser, Ms. Sandra-Ann Wong, and Mr. Keichi Ikeda.

The Board decided at 4:30 p.m. to move into executive session to discuss with legal council their duties, liabilities and procedures. The meeting was reconvened at 4:45 p.m. (Inouye/Kokubun).

Mr. Ben Kudo, representing HELCO, introduced Mr. Warren Lee, President of HELCO. He provided oral and written testimony, requesting that the Board adhere to its February 25, 2000 decision, which denied the request to nullify and implicitly found that condition 15 was not operative because the Board never approved the use as requested by HELCO. He believed that this position is not only consistent with the Judge Ibarra's rulings and Chairperson Wilson's January 30, 1998 letter to HELCO, but also will allow HELCO to complete its project in a timely manner.

Mr. Michael Matsukawa, Attorney for the Keahole Defense Coalition & Ms. Peggy Ratliff, said his understanding of the previous Board action of February 25, 2000, was that the Board voted to deny the request of the petitioners because the Board lacked jurisdiction or authority of the subject matter, it was something for the court to decide and therefore it was left to the courts decision and resolution.

Ms. Sandra-Ann Wong, Waimana Enterprises Inc., provided oral and written testimony, and stated that HELCO is not waiving any of its objections in regards to whether or not this issue should even be before the Board.

Mr. Mahi Cooper, resident closest to HELCO's power facility, believed that HELCO's permit expired.

The Board withdrew this item when, after questioning both parties, it became evident that neither party requested that this matter come before the Board. They both felt that the courts should be deciding this issue and not the Board.

Unanimously approved to withdraw (Matsumoto/Kennison).

ITEM D-1: ISSUANCE OF REVOCABLE PERMIT TO MR. BAILON BATALION, PORTION OF GOVERNMENT LANDS OF HANAPEPE BEACH LOTS, HANAPEPE, KAUAI, TMK: 1-9-9: 6 AND 8

Mr. Uchida presented the staff submittal and recommended that the Board authorize the issuance of a revocable permit to Mr. Batalion for home gardening purposes, subject to standard conditions.

Unanimously approved as submitted (McCrary/Kennison).

ITEM D-2: CANCELLATION OF REVOCABLE PERMIT NO. S-7065 AND ISSUANCE OF REVOCABLE PERMIT TO MR. STEPHEN DORRIS, HONOPOU-HOOLAWA, MAKAWAO, MAUI, TMK: (2) 2-9-03: 08

Mr. Uchida presented the staff submittal and recommended that the Board authorize the cancellation of Revocable Permit No. S-7065, and issue a new permit to Mr. Dorris, for general agriculture purposes, subject to standard conditions.

Unanimously approved as submitted (Kennison/McCrary).

ITEM D-3: CONSENT TO SUBLEASE GL NO. S-3624, RAILROAD AVENUE PARTNERS, LESSEE, TO VARIOUS SUBLESSEES, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-1-12: 26

Mr. Uchida presented the staff submittal and recommended that the Board consent to the sublease to ProVision Technologies, Inc., and Mr. John Remke dba Hilo Kwik Lube, subject to standard conditions.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-4: CANCELLATION OF REVOCABLE PERMIT NO. S-6455 TO MR. DARRELL HORNER, SET ASIDE TO THE DLNR DIVISION OF AQUATIC RESOURCES, FRESHWATER AND MARINE FISHERIES DEVELOPMENT PROGRAM, AND ISSUANCE OF IMMEDIATE RIGHT-OF-ENTRY, PORTION OF GOVERNMENT LANDS OF HANAPEPE, WAIMEA (KONA), KAUAI, TMK: 1-9-5: PROPOSED LOT B

Mr. Uchida presented the staff submittal and recommended that the Board cancel Revocable Permit No. S-6455 to Mr. Horner, approve and recommend to the Governor the set-a-side of the site to the Division of Aquatic Resources, and authorize the issuance of an immediate right-of-entry to the Division of Aquatic Resources, subject to standard conditions.

Unanimously approved as submitted (McCrorry/Kennison).

ITEM D-5: REVISION TO SUBLEASE RENT PARTICIPATION POLICY

Unanimously approved to defer (Matsumoto/McCrory).

ITEM D-7: AMEND PRIOR BOARD ACTION OF MAY 8, 1999, AGENDA ITEM D-1, DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND DIRECT LEASE OF A SUBSTATION SITE, TO THE HAWAII ELECTRIC LIGHT COMPANY, SOUTH HILO AND KAU, HAWAII, TMKs: (3) 2-4-8: 01 & 09; 9-8-1: 03

Mr. Uchida presented the staff submittal recommending that the Board amend prior action of May 8, 1998.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-8: AFTER-THE-FACT GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF A CONSTRUCTION RIGHT-OF-ENTRY TO GTE HAWAIIAN TELEPHONE COMPANY FOR UTILITY PURPOSES AT HONUAPO, KAU, HAWAII, TMK: 3RD/9-5-14:42

Mr. Uchida presented the staff submittal and recommended that the Board authorize the issuance of a perpetual, non-exclusive utility easement to GTE, and grant an immediate construction right-of-entry to GTE, subject to standard conditions.

Unanimously approved as submitted (Kokubun/Kennison).

ITEM D-9: AUTHORIZATION TO ENTER INTO AN INTER-GOVERNMENTAL AGREEMENT BETWEEN THE STATE OF HAWAII AND THE HONOLULU BOARD OF WATER SUPPLY REGARDING THE PAYMENT OF WATER SYSTEMS FACILITY CHARGES

Mr. Uchida presented the staff submittal and recommended that the Board authorize to enter into an inter-governmental agreement with the Honolulu Board of Water Supply for water credits on state-sponsored projects.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-11: RESCIND PRIOR LAND BOARD APPROVAL OF MAY 15, 1998, ITEM D-5, AND SALE OF LEASE AT PUBLIC AUCTION FOR INTENSIVE AGRICULTURE PURPOSES, LOT 62, KAPAA HOMESTEADS, FIRST SERIES, KAPAA, KAWAIHAU (PUNA), KAUAI, TMK: 4-6-6:28 AND 29

Mr. Uchida presented that staff submittal and recommended that the Board rescind prior action of May 15, 1998, authorize the sale of a lease at public auction for intensive agriculture purposes, subject to standard conditions.

Unanimously approved as submitted (Inouye/Kennison) .

ITEM D-15: AMEND PRIOR BOARD ACTION FOR A SET ASIDE TO HAWAII HOUSING AUTHORITY FOR PUBLIC HOUSING PURPOSES AT WAIMANALO, OAHU, TMK: (1) 4-1-13: PORTION OF 23

Mr. Uchida presented the staff submittal and recommended that the Board amend prior action of September 10, 1993 by replacing Hawaii Housing Authority with Housing and Community Development Corporation of Hawaii, and delete the requirement on the 20% of the fair market fee value of the subject site to the Office of Hawaiian Affairs Trust.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-16: AMEND PRIOR BOARD ACTION FOR CONSENT TO ASSIGN GRANT OF NON-EXCLUSIVE EASEMENT BEARING LAND OFFICE DEED NO. S-27766 AND MORTGAGE AT HONOLULU, OAHU, TMK: (1) 2-5-5: 5

Mr. Uchida presented the staff submittal and recommended that the Board amend prior action of March 10, 2000 by consenting to a first mortgage not to exceed \$1,000,000 and consent to a second mortgage not to exceed \$500,000, subject to standard conditions.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-21: RESCIND PRIOR BOARD ACTIONS OF FOUR (4) EASEMENTS BY HAWAIIAN ELECTRIC COMPANY, INC. AT VARIOUS LOCATIONS ON OAHU

Mr. Uchida presented the staff submittal and recommended that the Board rescind prior action of 4 easements for direct awards of perpetual, non-exclusive easements.

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-23: DECLARATION OF INTENT TO DISPOSE OF EXPIRING LEASES AT PUBLIC AUCTION FOR VARIOUS TAX MAP KEYS, ISLAND OF MAUI, HAWAII

Mr. Uchida presented the staff submittal and recommended that the Board declare its intent to dispose of 8 leases for intensive agriculture and pasture purposes.

Unanimously approved as submitted (Kennison/Matsumoto).

There being no further business, Chairperson Johns adjourned the meeting at 5:30 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. Keliihoomalu

Approval for submittal:



TIMOTHY E. JOHNS

Chairperson

Board of Land and Natural Resources

