

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LAND
Honolulu, Hawaii 96813

October 28, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

PSF No: 10SD-193

Statewide

Conveyance of Portions of Government Lands State-Wide from the State of Hawaii, by its Board of Land and Natural Resources, to the Department of Hawaiian Home Lands, Tax Map Key: (1) 2-3-09:01(portion); (2) 4-5-21:23(portion), 3-8-08:8 and 35, 4-4-01:15, 4-4-02:38, 5-2-04:46, 4-9-02:01(portion), 4-9-02:01(portion), 5-3-01:2, 97 and 100; (4) 1-2-02:01(portion), 3-9-06:16 and 20, 4-5-11:26, 4-5-04:02(portion); (3) 2-2-58:27 and 28, 7-3-10:44, and 7-3-10:42(portion).

Withdrawal of Approximately 5.334 Acres of Land from Governor's Executive Order No. 0101 to the Department of Education, for McKinley High School Purposes, Honolulu, Oahu, Tax Map Key: (1) 2-3-09:01(portion).

Withdraw Approximately 50 Acres of Land from Governor's Executive Order No. 4007 to Agricultural Development Corporation for Agricultural Related Purposes, Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-02:01(portion).

APPLICANT:

Department of Hawaiian Home Lands ("DHHL")

LEGAL REFERENCE:

Sections 171-95 and 171-11 Hawaii Revised Statutes, as amended,
Act 14, Special Session Laws of Hawaii, 1995 ("Act 14")

LOCATION:

Portions of Government lands State-wide, further identified on Exhibit A, attached.

AREA:

817.072 acres, more or less (Exhibit A), as a full and final settlement of land owed to DHHL, pursuant to a 16,518-acre Settlement Agreement between DHHL and the Department of Land and Natural Resources (DLNR).

ZONING:

Various

TRUST LAND STATUS:

Identified on Exhibit A, attached

CURRENT USE:

Various

CONSIDERATION:

Gratis, the proposed conveyances are part of the final comprehensive resolution, addressing DHHL land and title claims, passed by the Legislature and signed into law as Act 14, Special Session Laws of Hawaii, 1995.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board proposes to transfer the fee simple interest of the government lands listed on Exhibit A to DHHL and does not constitute a use of State land or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, as amended, relating to environmental impact statements. Inasmuch as the Chapter 343 requirements apply to DHHL's future use of the lands, DHHL shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

DHHL shall be required to:

- 1) Process and pay for any and all costs associated with effectuating the land transfers, including but not limited to any and all costs associated with any county subdivision that may be required.
- 2) Address any issues regarding the cancellation of existing Governor's Executive Orders.

BACKGROUND:

In 1990 a governor's task force was formed to investigate the land and title claims by the Department of Hawaiian Home Lands (DHHL). The task force was composed of representatives from DHHL, the Department of the Attorney General, the Department of Land and Natural Resources, the Office of State planning, and a court appointed independent representative.

In 1995 the State Legislature passed Act 14 to resolve the DHHL land claims. One of DHHL's claims was that its land inventory contained 16,518 acres less than the 203,500 acres designated by the Hawaiian Homes Commission Act of 1920.

Pursuant to Act 14, at its October 28, 1994 meeting, under agenda item H-6, the Board approved a list of State lands (Exhibit B-1), mutually agreed upon by both departments, to be conveyed to DHHL. DHHL would select 16,518 acres from the list for transfer to its land inventory. The addition of these State lands to DHHL's land trust represents the shortfall between the 203,500 acres designated as Hawaiian Home lands by the Hawaiian Homes Commission Act of 1921 and its land trust inventory of 186,982 acres, as verified by the governor's task force.

Because the likelihood was great that not all of the lands selected by DHHL could be transferred for various reasons, it was agreed between the departments that any shortfall in the 16,518 acres would be replaced with State lands of up to 2,100 acres that would be withdrawn from the Palekoki Ranch lease in Lalamilo, island of Hawaii.

In early 2000 unexploded military ordnance from WWII was discovered within the 2,100 acres at Lalamilo, Hawaii. Consultation with the Army Corp of Engineers indicated the ordnance to be randomly scattered through out the 2,100 acres. Concerned about the liability in developing these lands and with the original list from which DHHL chose State lands exhausted, DHHL began selecting lands Statewide to make up the balance of acres still owed making it necessary to return to the Board another five (5) times for approval of the selections. A summary of the additional Board actions follows below.

Meeting Date (Agenda Item)	Summary of Approvals
April 9, 1998 (D-24)	The gratis conveyance of the fee simple interest, together with all existing encumbrances, in five parcels located in Kapalama, Kalawahine, Waimanalo, and Waianae, pursuant to Section 171-95, HRS, under the standard terms and conditions used for conveyances to government agencies. Moreover, BLNR added the condition that "[t]here shall be no further amendments to the 16,518 acre conveyance of property to DHHL, except for the transfer of the Wong lease in Waimanalo, and the transfer of an existing DOT lot along Nimitz highway next to the Kapalama property."
September 25, 1998 (D-17)	Authorizes the fee simple conveyance of a 34-acre portion of land in the Waimanalo Agricultural Subdivision, provided to the said 34 acres be subject to the operation of an existing lease and any subsequent withdrawal(s) affecting the area be made only with the prior written consent of the lessee.
August 27, 2004 (D-8)	(1) Authorizes the conveyance of the remaining 523.852 acres at the Villages of Laiopua to DHHL; (2) approves of and recommends to the Governor the issuance of an executive order canceling EO 3895 to HCDCH.

September 24, 2004 (D-14)	Authorizes the conveyance of 318 acres of land at East Kapolei
October 14, 2005 (D-5)	Amended action of August 27, 2004 by deleting approximately 172 acres of non-ceded land at the Villages of Laiopua from the conveyance to DHHL and authorizing the conveyance of land to HCDC for development of affordable housing.

Copies of the Board action and meeting minutes are attached as Exhibits B-2 through B-6.

Both departments, recognizing this approach would add considerable time to completing this long standing issue, agreed that a final list of 817 acres, more or less (balance owed DHHL), of State lands would be developed and brought to the Board for its approval and final resolution to the shortage of lands contained in DHHL's land trust. A copy of the final list is attached as Exhibit A.

REMARKS:

Prior to DHHL's selection of the Subject Lands, DLNR notified DHHL that certain Subject Lands requested by DHHL are currently encumbered by Governor's Executive Order, setting aside those lands for specific public purposes, and/or not legally subdivided.

Notwithstanding the above, DHHL is requesting BLNR approve recommending to the Governor the issuance of executive orders withdrawing certain lands from existing public purposes. Accordingly, DHHL shall be solely responsible to address any inquiries that may arise during the processing of the Governor's Executive Order, including but not limited to working with any agency or department that may be affected by any withdrawal of lands from an existing Executive Order. Moreover, DHHL shall be solely responsible for the processing and all costs associated with any required subdivision of land as a result of this BLNR action, including but not limited to all costs of infrastructure that may be required by the appropriate County or other government agency.

Subject to BLNR approval, the conveyance of the Subject lands shall commence as soon as possible, subject to any subdivision approvals and/or Governor's Executive Orders.

Although comments from government agencies were not solicited, government agencies having lands that are being considered for withdrawal from their respective jurisdictions have been notified.

RECOMMENDATION: That the Board

1. Approve the conveyance of +/- 817 acres of State land, as selected by DHHL and identified as Exhibit A as full and final settlement, under the terms and conditions

cited above, which are by this reference incorporated herein and subject further to the following:

- A. Compliance with applicable parts of Chapter 171-95, Hawaii Revised Statutes, as amended.
 - B. For those lands which have existing encumbrances [i.e., leases, permits, easements, etc.] and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances.
 - C. Subject to prior review and approval by the Chairperson, authorize DHHL to act on behalf of DLNR in obtaining all subdivision approvals as may be necessary.
 - D. There be no amendments to the final list.
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor issuance of an executive order withdrawing approximately 5.334 acres from the Governor's Executive Order No. 0101 issued to the Department of Education for a site for McKinley High School, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time.
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside.
 - C. Review and approval by the Department of the Attorney General.
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor issuance of an executive order withdrawing approximately 50 acres from the Governor's Executive Order No. 4007 issued to the Agricultural Development Corporation for agricultural related purposes, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time.

- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside.
 - C. Review and approval by the Department of the Attorney General.
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Acknowledges and finds that DHHL shall be solely responsible to address any inquiries that may arise during the processing of the Governor's Executive Order, including but not limited to working with any agency or department that may be affected by any withdrawal of lands from an existing Executive Order. Moreover, DHHL shall be solely responsible for the processing and all costs associated with any required subdivision of land as a result of this BLNR action, including but not limited to all costs of infrastructure that may be required by the appropriate County or other government agency.

Respectfully submitted,



for Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, CHAIRPERSON



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

October 13, 2010

To: Laura H. Thielen, Chairperson
Board of Land and Natural Resources

From:  Kaulana H.R. Park, Chairman
Hawaiian Homes Commission

Subject: Act 14 conveyance of 817.072 acres obligated to DHHL

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2010 OCT 18 A 10:17

RECEIVED
LAND DIVISION

The Department of Hawaiian Home Lands (DHHL) has identified the remaining balance of 817 acres of public land for conveyance from the Department of Land and Natural Resources (DLNR) to DHHL to finalize the State's commitment under Act 14, SpSLH 1995 (Act 14), on the conveyance of a total of 16,518 acres to DHHL.

DHHL and DLNR have verified the attached listing and therefore seeks the approval of the Board of Land and Natural Resources on the final balance of 817 acres to satisfy and close the obligation of Act 14 transfer of lands to DHHL.

Also attached is the map that shows a portion (127 acres) of the 424 acre parcel in Kalaoa TMK: 7-3-010: 042 that will be conveyed to DHHL. As evident this is not to scale, but gives an idea of the proximity of the 127 acres that will be combined with a previously identified 232 acres in Kalaoa that will be transferred to DHHL.

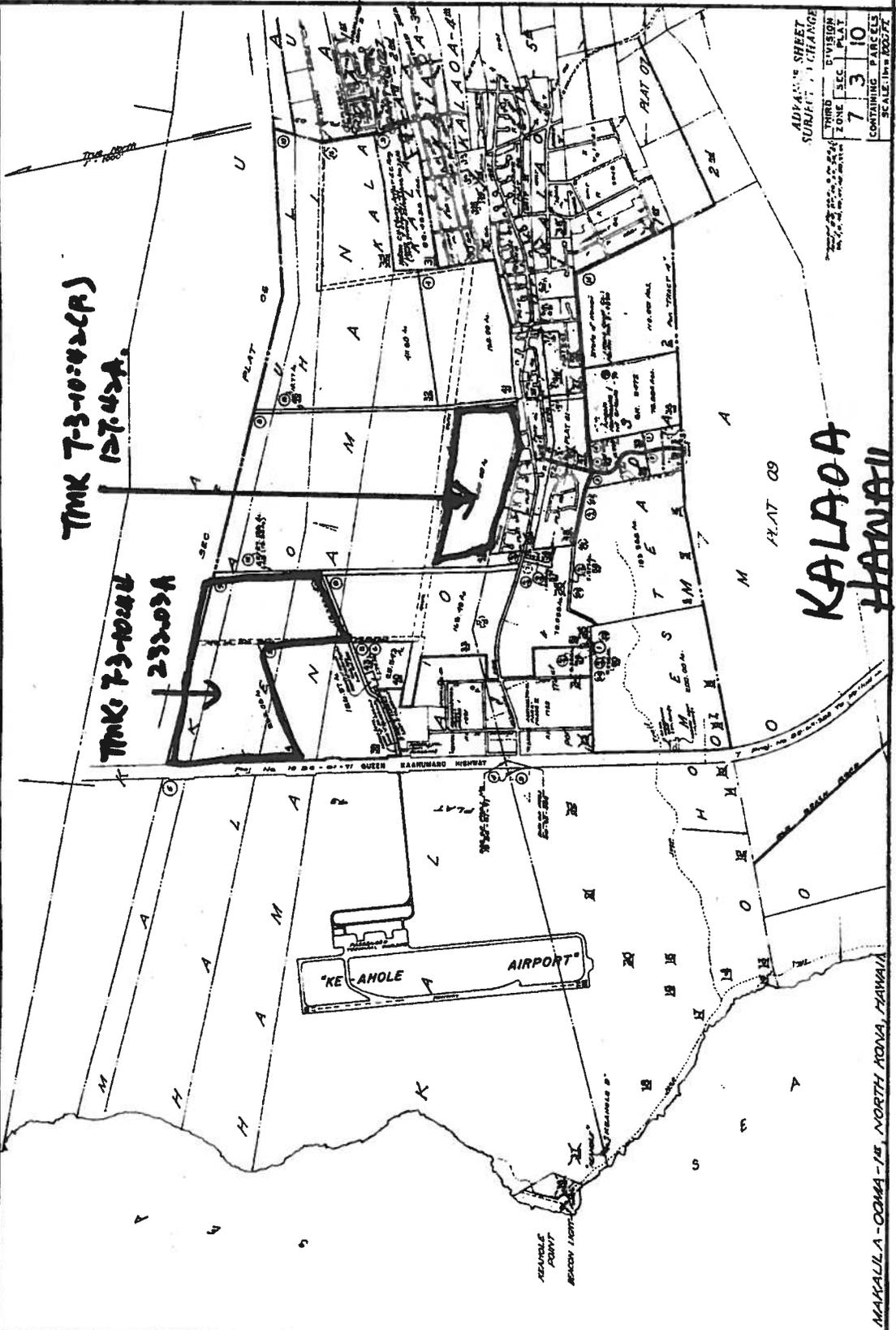
Mahalo for your support and we look forward to the October 28, 2010 Land Board submittal and action.

Enclosures

EXHIBIT "A"

	Location	Tax Map	Acres	Use
C & C	Honolulu/McKinley	2-3-009:001 (por)	5.334 acres	Revenue-Producing
			5.334 acres	
COUNTY OF MAUI	Wahikuli, Maui	4-5-021:023 (por)	209.800 acres	Homestead Residential
	Pu`unene, Maui	3-8-008:008	6.926 acres	Revenue-Producing
		3-8-008:035	97.433 acres	Revenue-Producing
	Honokowai, Maui	4-4-001:015	3.640 acres	Revenue-Producing
		4-4-002:038	0.560 acres	Revenue-Producing
	Ho`olehua, Molokai	5-2-004:046	42.313 acres	Homestead Community
	Lana`i City, Lana`i	4-9-002:001 (por)	15.240 acres	Homestead Community
		4-9-002:001 (por)	10.160 acres	Homestead Community
	Kaunakakai, MO	5-3-01:002	4.030 acres	Homestead Community
	Kaunakakai, MO	5-3-01:097	0.275 acres	Homestead Community
	Kaunakakai, MO	5-3-01:100	0.275 acres	Homestead Community
			390.652 acres	
COUNTY OF KAUAI	Kekaha	1-2-002:001 (por)	50.000 acres	Homestead Residential
	Wailua	3-9-006:016	1.769 acres	Revenue-Producing
		3-9-006:020	8.590 acres	Revenue-Producing
	Kapa`a	4-5-011:026	0.051 acres	Revenue-Producing
		4-5-004:002 (por)	0.350 acres	Revenue-Producing
			60.760 acres	
COUNTY OF HAWAII	Pana`ewa	2-2-058:027	0.438 acres	Revenue-Producing
		2-2-058:028	0.438 acres	Revenue-Producing
	Kalaoa	7-3-010:044	232.030 acres	Revenue-Producing
		7-3-010: 042(por)	127.42 acres	Revenue-Producing
			360.326 acres	
			817.072 acres	
		TOTAL		

7 3 30



ADJACENT SHEET
SUBJECT TO CHANGE

THIRD ZONE	DIVISION
7	3
PLAT	10

CONTAINING PARCELS
SCALE: 1/4" = 100.00'

PRINTED

By Source: *By Source: [illegible]*
 Date: *1/11/1958*
 Scale: *1/4" = 100.00'*
 Containing: *Parcels*
 Subject: *Change*

EXHIBIT A

Summary of DHHL Selected Lands

TMK	Location	Land Area (Ac.)	Trust Land Status	Comments
Oahu				
2-3-009:001 (por)	Kakaako	±5.334	5(a)	Subject ±5.334 acres is a portion of a larger 46-acre site set aside to the Department of Education (EO 101) for the McKinley High School campus in 1921. For the past several years, private construction companies have been allowed to use areas along the Kapiolani Boulevard for base yard purposes. Pursuant to HRS 171-11 "[w]henver lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county, or other political subdivisions of the State, or to the United States, are not being utilized or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department. The governor may withdraw public lands and, with the prior approval of the board of land and natural resources, set aside the withdrawn lands to another department or agency of the State, the city and county, county, or political subdivision of the State, or to the United States for public use or purpose, provided that no structure on such lands shall be built, demolished or altered until after the legislative action or inaction as herein below provided." The ±5.334 acre portion of land selected by DHHL will also require subdivision approval. DHHL shall be responsible for processing the proposed subdivision, as well as paying for any and all costs resulting from the subdivision process. Moreover, DHHL shall be responsible for addressing any and all questions pertaining to any recommendation to withdraw the subject area from EO 101.
Oahu Subtotal:		5.334		
Maui				
4-5-021:023 (por)	Wahikuli	209.800	5(b)	Subject 209.800 acres is a portion of a larger 303.720 acre site. DHHL shall be responsible for processing the proposed subdivision, as well as any and all costs resulting from the subdivision process.
3-8-008:008	Pu'unene	6.926	5(a)	Agricultural lot located along Mokulele Highway. Property is encumbered by Revocable Permit 7368 to Alexander & Baldwin
3-8-008:035	Pu'unene	97.433	5(a)	Agricultural lot located along Mokulele Highway. Property is encumbered by Revocable Permit 7368 to Alexander & Baldwin
4-4-001:015	Honokowai	3.640	5(b)	Vacant land along the mauka side of Honoapililani Hwy and in close proximity to the Lahaina Waste Water Reclamation Plant.
4-4-002:038	Honokowai	0.560	5(b)	Vacant land along the mauka side of Honoapililani Hwy and in close proximity to the Lahaina Waste Water Reclamation Plant.
Maui Subtotal:		318.359		
Molokai				
5-2-004:046	Ho'olehua,	42.313	5(b)	Formerly Hawaiian Home lands, returned to the Territory of Hawaii by HCC Resolution No. 61, dated 10/12/38
5-3-01:002	Kaunakakai	4.030	5(b)	Located on Kaunakakai Place at the entrance of Kaunakakai Warf. Currently vacant.
5-3-01:097	Kaunakakai	0.275	5(b)	Located on Kaunakakai Place at the entrance of Kaunakakai Warf. Currently vacant.
5-3-01:100	Kaunakakai	0.275	5(b)	Located on Kaunakakai Place at the entrance of Kaunakakai Warf. Currently vacant.
Molokai Subtotal:		46.893		

EXHIBIT A (Continued)

Lana'i	4-9-002:001 (por)	Lana'i	25.40	N/A	Subject consists of two separate un-subdivided portions of privately owned land. Pursuant to LUC Docket No. A89-649, the State Land Use Commission granted the reclassification of approximately 139 acres of land on Lana'i from Rural and Agricultural to Urban for the landowners resort and golf club. One of the conditions for LUC reclassification, together with subsequent Agreements to Convey between the landowner and State Office of Planning ("OP"), required the landowner to provide 25 acres of land to the State, including a 10 acre commercial site (located at the intersection of Kumalapai Hwy and Manele Rd) and a 15 acre industrial site (near the airport). DHHL will assume the State's interest in the 25 acres of land and shall finalize the conveyances of these sites from the private-landowner directly to DHHL, which will include legal subdivision of the two proposed lots.
	Lana'i Subtotal:		25.40		
Hawaii					
	2-2-058:027	Pana'ewa/ Waiakea	0.438	5(b)	One of two parcels currently leased (GL 4311) for general industrial uses thru June 22, 2025. Current annual rent for two combined lots is \$19,800, payable in equal quarterly installments.
	2-2-058:028	Pana'ewa/ Waiakea	0.438	5(b)	One of two parcels currently leased (GL 4311) for general industrial uses thru June 22, 2025. Current annual rent for two combined lots is \$19,800, payable in equal quarterly installments.
	7-3-010:044	Kalaoa	232.030	5(b)	Parcel is located along the mauka side of Queen Kaahumanu Hwy. across from the Keahole Airport in North Kona. Site is vacant.
	7-3-010: 042(por)	Kalaoa	67.420	5(b)	Subject is an approximate 67.42-ac portion of a much larger 500-acre parcel located mauka of Queen Kaahumanu Hwy near the Kona Palisades residential subdivision. Site is vacant. The ±67 acre portion of land selected by DHHL requires subdivision approval. DHHL shall be responsible for processing the proposed subdivision, as well as any and all costs resulting from the subdivision process.
	Hawaii Subtotal:		360.326		
Kauai					
	1-2-002:001 (por)	Kekaha	50.000	5(b)	Subject is an ±50-ac portion of a much larger parcel of land. The ±50 acres selected by DHHL is currently set aside (EO 4007) to Agribusiness Development Corporation for agricultural and related purposes. Consequently, the subject land areas will need to be withdrawn from EO 4007 and legally subdivided. DHHL shall be responsible for processing the proposed subdivision, including paying for any and all costs resulting from the subdivision process. Moreover, DHHL shall be responsible for addressing any and all questions pertaining to any recommendation to withdraw the subject area from EO 4007.
	3-9-006:016	Wailua	1.769	5(b)	Currently encumbered by GL 4647 for parking and landscaping purposes. GL 4647 expires July 25, 2029. Current annual rent is \$13,615, payable in equal quarterly installments.
	3-9-006:020	Wailua	8.590	5(b)	Currently encumbered by two leases. GL 3831 (2.497 ac) expires May 17, 2029 and current annual rent is \$107,725.00. GL 3840 (6.093 ac) expires July 5, 2029 and annual rent is currently \$199,562. Both leases provide the site to be used for resort-hotel purposes and accessory uses incidental to and customarily conducted within hotel areas.
	4-5-011:026	Kapa'a	0.051	5(b)	Located near the Lehua Street/Kuhio Highway intersection in Kapa'a Town. Site is vacant.
	4-5-004:002 (por)	Kapa'a	0.350	5(b)	Portion of a larger 1.039 ac road remnant lot having frontages along Akooa Road, Kuhio Highway and Pahih Road. DHHL does not want the entire parcel. The ±0.350-ac portion that DHHL has selected is located along the Akooa Road frontage. DHHL shall be responsible for processing the proposed subdivision, including paying for any and all costs resulting from the subdivision process.
	Kauai Subtotal:		60.760		

TOTAL **817.072**

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Hawaii Agricultural and Rural Redevelopment Program (HARRP)
Honolulu, Hawaii 96813

October 28, 1994

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

STATE WIDE

Subject: Conveyance of Land from the Department of Land and Natural Resources to the Department of Hawaiian Home Lands at Various Sites Statewide

STATUTE:

Chapter 171-95, Hawaii Revised Statutes

FOR:

The Department of Land and Natural Resources [DLNR] to convey approximately 16,518 acres of State-owned lands to the Department of Hawaiian Home Lands [DHHL].

ZONING:

State Land Use: Various

County Zoning: Various

LAND TITLE STATUS:

Various both Ceded and Non-Ceded lands are being conveyed.

ENVIRONMENTAL REQUIREMENTS:

The subject conveyance is an "Exempt Class of Action" pursuant to Title 11, Chapter 200, Hawaii Environmental Impact Statement Rules, Department of Health. The subject conveyance proposes "no expansion or change of use beyond that previously existing on the property."

REMARKS:

Background

The Department of Land and Natural Resources has been involved in the Governor's Task Force on DHHL Land and Title Claims since 1990. The Hawaiian Homes Commission Act of 1921 designate certain public lands as "available lands," totaling approximately 203,500 acres, for use by the DHHL. Currently, the DHHL land inventory contains approximately 186,982 acres of land. In the Governor's 1994 State of the State address, he expressed his intent to transfer +/-16,000 acres of land to the DHHL to "make their trust whole."

Our role on the Task Force has been to basically "verify" the various claims made by DHHL and where verified, participate in alternative solutions to correct and compensate DHHL. It is interesting to note that to our knowledge, this is the first time that the State or Territory has attempted to collectively verify/identify what is considered to be "Hawaiian Home Lands."

The Task Force will end on December 31, 1994 and will be submitting its findings during the next legislative session. A detailed report of DLNR's participation on the Task Force will be provided to the Board at a later date.

TO BE DISTRIBUTED

H-6

EXHIBIT " B-1 "

October 28, 1994

At the start of the Task Force, the DHHL Land Claims were as follows:

DHHL LAND CLAIMS

Acres

+/-203,500	LAND DESIGNATED AS "AVAILABLE LANDS" BY CONGRESS IN 1921
<u>186,982</u>	DHHL CURRENTLY CONTROLS TODAY [DHHL FIGURES]
+/- 16,518	UNACCOUNTED LANDS

Current Situation--Conveyance of 16,518 acres

The Task Force was attempting to resolve most, if not all, of DHHL's claims as soon as possible. The Task Force intent has always been to resolve, once and for all, what is/was Hawaiian Home Lands, correct any unauthorized use of Hawaiian Home Lands, and compensate DHHL for the unauthorized uses.

Through this process, the Task Force has resolved all of the Executive Orders and Governor's Proclamations that were considered to be unauthorized uses of Hawaiian Home Lands. Many of these Executive Orders and Governor's Proclamations were canceled in 1984. The Task Force addressed any continued use agreements and sought funding from the legislature to compensate DHHL for back rent on these lands. The back rent paid to DHHL amounted to \$12,000,000.00.

The Task Force also resolved two nominal lease rent issues with DHHL concerning the United States' government use of DHHL lands at Kekaha and Pohakuloa. Land exchanges for these two areas with DHHL have been approved by the Board and are currently in process.

Currently, DLNR and DHHL have major differences in the definition of certain remaining land claims.

Despite our different interpretations, and in recognition of the necessity to resolve the remaining claims in a manner that is responsible to both trusts, we do support the Governor's intent of "making the DHHL trust whole." Through the efforts of the Task Force, DHHL has confirmed that they currently have 186,982 acres in their control. Thus, in order to restore their trust to the 203,500 acres figure listed in the Hawaiian Homes Commission Act, the State proposes to convey 16,518 acres. Rather than hold the transfer of lands in abeyance until a legal resolution of our different interpretations is completed, the immediate transfer of lands to "make the DHHL trust whole" will enable DHHL to utilize these lands in their continuing effort to fulfill its mission. A listing of the lands being considered for the transfer is attached as Exhibit "A." The list contains more than the 16,518 acres and thus DHHL will choose from this final list the parcels that they want included in the 16,518 acres conveyance.

Furthermore, in certain instances, the transfer of lands that are part of of long standing title claims made by DHHL essentially renders their claims moot. However, this does not preclude DHHL from continuing with their claims on their "Ahupuaa Theory" with the courts for other title claims throughout the state that are not part of this conveyance.

In addition, the transfer of lands at Waimanalo are part of an agreement regarding title claims and counter claims between both DHHL and DLNR within the Ahupuaa of Waimanalo. As a part of this agreement, DLNR would: 1) quitclaim our interest in the Beach Parks, and 2) 127 DHHL lease lots that are presently on lands owned by DLNR. DHHL would: 1) quitclaim its interest in the former pasture lands [currently the location of Waimanalo Elementary School and Hawaii Housing Authority Subdivisions], and 2) quitclaim its interest in the third party alienation claims [grants sold by the Territory]. The Waimanalo lands listed on Exhibit "A" are only those lands which DLNR are quitclaiming to DHHL and are in addition to the 16,518 acres.

In another agreement on title claims and counter claims involving lands at Anahola, Kealia, Kamalomalo and Moloaa, DLNR would: 1) quitclaim our interest in the cane lands which have been confirmed as being DLNR lands, 2) quitclaim our interest in the fallow cane lands, pasture lands and reservoirs at Anahola and Kamalomalo which are the subject of competing title claims with DHHL. In turn, DHHL would: 1) quitclaim its interest in the third party alienation claims [grants sold by the Territory] at Anahola, Kamalomalo and Moloaa. The Anahola, Kealia, Kamalomalo lands listed on Exhibit "A" are only those lands which have been confirmed as DLNR lands and are being quitclaiming to DHHL as a part of the 16,518 acres. The lands which both DLNR and DHHL are claiming [approx. 1,150 acres] are being conveyed in addition to the 16,518 acres.

Finally, in compiling the list of properties for conveyance, we must also deal with the BLNR's "Public Trust Responsibility" on the management of state-owned lands. There are strong philosophical arguments on why the state should convey properties to DHHL in an effort to move their program forward. However, we do not want to create a situation where one "trust" is made whole at the expense of another. As such, in selecting the properties for transfer, we applied certain guidelines and principles that we believe strike an equitable balance between both public trust responsibilities.

The list contains certain selected parcels are part of larger existing parcels. In these instances, survey maps and descriptions will be required to delineate the lands available for selection, and the subsequent conveyance of these properties. Specific issues of surveying and subdivisions will be worked out by the DHHL and DLNR.

General Guidelines for Selecting Properties for Conveyance

I. Existing Government Users

Parcels currently used by other government agencies were excluded from the list of possible sites unless DHHL has obtained some type of approval by the agency that they have no objection to the transfer.

II. Existing Leases and/or Those Eligible to Obtain Long-Term Leases Pursuant to Act 237, SLH 1988

For those lands which have existing encumbrances and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances. DHHL will then act as the lessor on behalf of DLNR. Should DHHL require any of the lands encumbered by a lease prior to the expiration of the lease, DHHL will be able to use the standard "Withdrawal" provision in the lease to remove the lands; however, DHHL will be responsible for compensation, if due, to the lessee.

With respect to our existing tenants who may be affected by the conveyance of their lease lands to DHHL, all of our existing tenants received a letter from us informing them of the following:

This is to inform you that the Department of Hawaiian Home Lands has identified your subject area for possible transfer to the Department of Hawaiian Home Lands. ANY TRANSFER OF LANDS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF HAWAIIAN HOME LANDS WILL BE SUBJECT TO THE EXISTING ENCUMBRANCE (LEASE AND/OR PERMIT). In effect, if your area is transferred, your landlord will be the Department of Hawaiian Home Lands rather than the Department of Land and Natural Resources.

Once the list of properties has been finalized, we will inform all affected tenants of the transfer and lay out a process for the transition.

III. Revenue Generating Lands [Commercial/Industrial/Resort]

The conveyance of 16,518 acres of state lands to "make the DHHL trust whole" did not include a large amount of existing revenue generating lands. Usually, existing revenue generating lands do not involve large acreage and as such, transfer of these lands based entirely on acreage would, in our mind, be a disservice to the larger public trust.

The lands proposed for conveyance however, do contain some revenue producing lands and further, contain lands that we believe have income potential in the future. However, in order to realize revenue from these properties, DHHL will need to plan and develop these sites accordingly.

RECOMMENDATION:

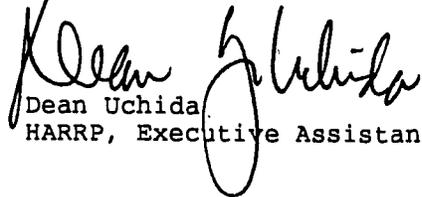
That the Board approve the conveyance of +/-16,518 acres of State land, as selected by DHHL from the list identified as Exhibit "A," subject to the following:

1. Compliance with the applicable parts of Chapter 171-95, Hawaii Revised Statutes, as amended.
2. For those lands which have existing encumbrances [i.e. leases, permits, easements, etc.] and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances.
3. On all of the intensive agricultural leases [i.e. sugarcane, pineapple] being transferred, the DHHL will encourage long-term use of these lands for intensive agricultural purposes as long as it is economically viable.
4. Authorize the Chairperson to finalize the details [selection of the lots] and logistics [i.e. survey maps/descriptions, subdivisions, deeds, etc.] on the transfer of these properties with the DHHL.
5. Allow the Department of Hawaiian Home Lands up to December 31, 1994 to select 16,518 acres from the parcels listed on Exhibit "A," after which, the Board may select the parcels.

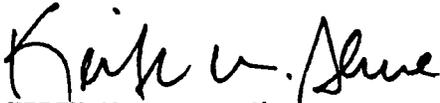
October 28, 1994

6. Authorize the Chairperson to resolve all boundary and/or area disputes regarding the final configuration of specific parcels to be conveyed.
7. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board.

Respectfully submitted,


Dean Uchida
HARRP, Executive Assistant

APPROVED FOR SUBMITTAL:


KEITH W. AHUE, Chairperson

STATEWIDE TOTAL

KAUAI	1,948.579
MAUI	2,625.522
MOLOKAI	518.198
LANAI	50.000
HAWAII	11,015.046
OAHU	441.138
TOTAL	16,598.483

KAUAI:

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kekaha	1-2-2-32	20.000	RP #5860 Pioneer Hi - Bred subject to a lease pursuant to ACT 237 SLH 1988
Hanapepe	1-8-8-35	5.777	Former Amfac Lumber yard -- Subject to direct lease to the County of Kauai
Wailua	3-9-2-3	43.920	Exclude GEO 2994 to County {15,410 sf Well Site and 6,378 sf access easement or .5 acres}
Wailua	3-9-2-12	320.192	RP #6327/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-2-17	9.960	GL #4585 Walter Palmeira -- Truck Crops
Wailua	3-9-2-24	12.353	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-25	67.000	GL #4412/LL #295 Lihue Plantation -- Pasture
Wailua	3-9-2-26	12.000	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-27	14.000	GL #4412/LL #295 Lihue Plantation -- Sugarcane/Pasture
Wailua	3-9-6-9	41.291	GL #0295/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-6-11	11.482	GL #4939 George Fernandez -- Sugarcane
Kapaa	4-5-5-6	1.871	Income potential
Kapaa	4-5-15-3	11.093	Income potential
Kapaa	4-5-15-34	5.700	Income potential
Kapaa	4-5-15-47	0.060	Income potential
Kapaa	4-5-15-48	0.060	Income potential
Kealia	4-7-2-4	994.120	* Co-mingled lands of Anahola/Kamalomalo
Kamalomalo	4-7-4-2	422.150	* GL #4576 Lihue Plantation covers 448.666 ac State & 545.454 ac DHHL
Kamalomalo	4-7-4-7	227.438	* Total area of 2,922.966 acres of which 963.40 confirmed DLNR lands
Anahola	4-8-2-1	643.735	* 809.20 DHHL lands with 1,150.366 acres of counter claims
Anahola	4-8-3-4	35.720	*
Anahola	4-8-3-6	360.204	*
Anahola	4-8-3-11	42.287	*
Anahola	4-8-3-18	38.710	*
Anahola	4-8-3-22	139.092	*
Anahola	4-8-3-29	19.510	*
Hanapepe	1-8-7-3	358.720	RP #6627 Olokele Sugar -- Sugarcane [Approx. 12 acres exchanged for Kekaha]
Anahola	4-8-1-1	62.200	Part of Existing DHHL Subdivision at Anahola Farm Lots
SUB TOTALS:		3,920.645	GEO NO. 2994
LESS		0.500	DHHL Lands at Anahola/Kamalomalo
		809.200	Conveyed in addition to the 16,518 acres
		1,150.366	Approximately 12 acres land exchange for Kekaha lands under lease to Army
		12.000	
TOTAL KAUAI		1,948.579	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Keanae	1-1-3-60	0.730	VACANT
Keanae	1-1-3-69	1.040	VACANT
Wailua	1-1-4-7	2,500	VACANT
Wailua	1-1-4-8	2,330	VACANT
Wailua	1-1-4-33	2,080	VACANT
Wailua	1-1-4-34	1,860	VACANT
Wailua	1-1-4-41	3,300	VACANT
Wailua	1-1-5-1	3,150	VACANT
Wailua	1-1-5-8	1,600	VACANT
Wailua	1-1-5-22	0.770	VACANT
Wailua	1-1-5-35	1,700	VACANT
Wailua	1-1-5-38	1,600	VACANT
Wailua	1-1-5-47	5,550	VACANT
Wailua	1-1-6-13	2,780	VACANT
Wailua	1-1-6-31	0.610	VACANT
Wailua	1-1-6-69	0.560	VACANT
Wailua	1-1-6-73	0.750	VACANT
Keanae	1-1-8-8	148,700	RP # 6700 Hansel Ah Koi --- Pasture
Keanae	1-1-8-14	59,910	GL #5274 Michael Adams --- Pasture
Keanae	1-1-8-25	0.750	VACANT
Hana	1-3-4-12	743,333	Exclude approx. 90 acres for Hana Cinder Pit --- Map is being prepared by DAGS --- Survey
Makawao	2-1-4-114	73,000	RP #4371 Ulepalakua Ranch --- Pasture
Makawao	2-1-4-15	21,340	RP #4371 Ulepalakua Ranch --- Pasture
Makawao	2-1-4-49	100,000	RP #4371 Ulepalakua Ranch --- Pasture --- REQUIRES SUBDIVISION FROM 999.87 ACRES
Makawao	2-1-4-94	20,820	VACANT
Makawao	2-1-8-50	2,005	RP #5963 Ulepalakua Ranch --- Pasture
Wailuku	3-4-11-31	0,846	RP #5000 Frank Makimoto --- Easement
Puunene	3-8-8-1	1,622,300	* * Part of a Master Plan being developed by the State {DOT/DLNR/DOD}, and County of Maui
Puunene	3-8-8-8	185,329	* * Total area 1,807,629 --- Area required for Government uses is approximately 1085 acres.
Puunene	4-4-2-3	165,207	* Exclude GEO #3349 to County of Maui [3,594 acres] lease to Maui Humane Society
Kaanapali	4-4-2-8	86,284	GL #3588 Pioneer Mill Co. --- Sugarcane --- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-9	4,690	GL #3588 Pioneer Mill Co. --- Sugarcane
Kaanapali	4-4-2-11	1,700	GL #4523 Pioneer Mill Co. --- Sugarcane
Kaanapali	4-4-2-15	12,850	GL #3588 Pioneer Mill Co. --- Sugarcane
Kaanapali	4-4-2-17	20,418	GL #3588 Pioneer Mill Co. --- Sugarcane
Kaanapali	4-4-2-18	292,740	GL #3588 Pioneer Mill Co. --- Sugarcane --- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-20	213,713	GL #3588 Pioneer Mill Co. --- Sugarcane --- Exclude GEO 3206 to Maui County
SUB TOTALS		3,806,845	
LESS		4,729	GEO 3206 to Maui County
		140,000	Puunene --- COM Government Uses
		175,000	Puunene --- COM Recreational Uses
		60,000	Puunene --- DOD Army National Guard
		510,000	Puunene --- DOT General Aviation Airport
		200,000	Puunene --- DLNR Income Potential Industrial Parks
		3,594	Exclude GEO #3349 to County of Maui --- Lease to Maui Humane Society
		90,000	Hana --- Cinder Pit
TOTAL MAUI		2,625,522	

MOLOKAI:

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kalamaula	5-2-10-2	1.831	DHHL water tank
Makoleiau	5-5-1-8	8.465	Kipapa Fish Pond
Makoleiau	5-5-1-10	19.768	Pahlomu Fish Pond
Ualapue	5-6-1-1	22.250	Ualapue Fish Pond
Ualapue	5-6-2-1	2.100	GL#4350 Anna King
Ualapue	5-6-2-24	2.260	Vacant
Ualapue	5-6-2-26	13.560	Vacant
Ualapue	5-6-2-27	1.221	Vacant
Ualapue	5-6-2-34	1.980	RP#6114 Richard Chock
Ualapue	5-6-2-36	1.221	Vacant
Ualapue	5-6-3-35	3.300	Ualapue Fish Pond
Ualapue	5-6-6-9	36.500	Fish Pond -- No Name
Ualapue	5-6-6-17	375.360	RP#6552 Michael DeCoite
Kupeke	5-7-6-18	1.450	Nahiole Fish Pond. State has only 1/2 interest of the 1.45 acre pond
Pukoo	5-7-7-22	13.800	Panahana Fish Pond
Kaluaha	5-7-10-31	6.670	Kaluaha Fish Pond
Honouliwai	5-8-1-2	4.910	Kaapohuku Fish Pond
Honouliwai	5-8-1-3	1.690	Ohalahala Fish Pond
Honouliwai	5-8-2-68	0.587	Fish Pond -- No Name
Lanai City	TBD	50.000	Required as part of Re-zoning by the Land Use Commission
SUB TOTAL MOLOKAI AND LANAI		568.923	
LESS		0.725	50% OF NAHIOLE FISH POND
TOTAL MOLOKAI		568.198	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Puna	1-5-10-36	100.000	VACANT
Kurtistown	1-7-7-41	0.500	State owned house on property -- Estimated value at \$75,000.00.
Kurtistown	1-7-7-42	0.600	VACANT
Kurtistown	1-7-7-44	0.600	VACANT
Olaa	1-8-11-12	100.000	VACANT
Olaa	1-8-11-16	99.170	RP #5115 Leslie Wung -- Pasture
Olaa	1-8-11-23	231.630	VACANT
Olaa	1-8-11-24	124.300	VACANT
Olaa	1-8-11-25	150.000	RP #5124 Jack Ramos -- Pasture
Olaa	1-9-2-6	33.000	VACANT
Olaa	1-9-2-7	27.000	VACANT
Olaa	1-9-2-8	42.000	VACANT
Olaa	1-9-2-9	42.000	VACANT
Olaa	1-9-13-2	1.103	VACANT
Keaukaha	2-1-11-2	1.505	VACANT
Hilo	2-1-12-1	43.594	VACANT
Hilo	2-1-12-29	184.820	VACANT
Hilo	2-1-12:Various	29.685	Exclude 5 acres for County of Hawaii -- Foreign Trade Zone
Hilo	2-1-12:Various		Exclude 13 acres for DLNR Potential Industrial Park Development
Panaewa	2-1-13-154	290.000	VACANT
Panaewa	2-1-13-155	367.000	VACANT
Keaukaha	2-1-17-46	0.554	VACANT
Keaukaha	2-1-17-47	0.575	VACANT
Keaukaha	2-1-17-48	0.596	VACANT
Keaukaha	2-1-18-8	1.198	VACANT
Keaukaha	2-1-19-20	0.540	VACANT
Keaukaha	2-1-19-29	0.540	VACANT
Keaukaha	2-1-19-30	0.540	VACANT
Keaukaha	2-1-19-31	0.488	VACANT
Kaumana	2-3-25-14	0.805	VACANT
Kaumana	2-3-25-15	0.697	VACANT
Kaumana	2-3-25-16	0.398	VACANT
Kaumana	2-3-25-17	0.453	VACANT
Kaumana	2-3-25-47	2.670	VACANT
Waiakea	2-4-24-138	0.235	VACANT
Waiakea	2-4-24-151	0.246	VACANT
Waiakea	2-4-24-154	0.248	VACANT
Waiakea	2-4-26-1	0.264	VACANT
Piihonua	2-4-28-1	0.370	VACANT
Waiakea	2-4-49-19	23.277	VACANT
Kaumana	2-5-4-27	3.684	VACANT
Kaumana	2-5-4-43	0.230	VACANT
Kaumana	2-5-4-47	0.689	VACANT
Kaumana	2-5-4-60	0.085	VACANT
Kaumana	2-5-4-61	0.269	VACANT

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Kaumana	2-5-5-1	0.269	VACANT
Kaumana	2-5-5-3	0.273	VACANT
Kaumana	2-5-5-5	0.273	VACANT
Kaumana	2-5-5-6	0.273	VACANT
Kaumana	2-5-5-7	0.273	VACANT
Kaumana	2-5-5-10	0.273	VACANT
Kaumana	2-5-5-28	0.258	VACANT -- Subject to electrical easement
Kaumana	2-5-5-29	0.272	VACANT -- Subject to electrical easement
Kaumana	2-5-5-30	0.230	VACANT
Kaumana	2-5-5-31	0.230	VACANT
Kaumana	2-5-5-32	0.230	VACANT
Kaumana	2-5-5-33	0.191	VACANT
Kaumana	2-5-5-72	0.383	VACANT
Kaumana	2-5-5-74	0.160	VACANT
Kaumana	2-5-5-77	0.743	VACANT
Kaumana	2-5-5-79	1.183	VACANT
Kaumana	2-5-5-80	5.339	VACANT
Piihionua	2-6-9-5	1,852.320	VACANT
Subject to General Lease #S-5220 to Wailuku Hydroelectric Exclude approximately 10 acres for the Piihionua Camp [RP #6793] (to be conveyed to County of Hawaii).			
Honoumou - Kahua	2-8-11-9	292.886	GL #3585 Mauna Kea Agribusiness Company
Honoumou - Kahua	2-8-11-11	475.609	GL #3585 Mauna Kea Agribusiness Company
Nienie	4-6-11-3	739.311	GL#4467 Richard Smart -- Pasture
Nienie	4-6-11-4	649.077	GL#4466 Honokaia Ranch -- Pasture
Nienie	4-6-11-5	93.419	GL#4466 Honokaia Ranch -- Pasture
Nienie	4-6-11-11	522.000	GL#4468 Richard Smart -- Pasture
Nienie	4-6-11-12	500.000	GL#4469 Richard Smart -- Pasture
Nienie	4-6-11-13	738.233	GL#4470 Richard Smart -- Pasture
Kawaihae	6-1-2-66	0.248	RP #6327 Randy Roberts -- Parking Lot
Kawaihae	6-1-4-3	1.955	VACANT
Kawaihae	6-1-4-41	6.940	VACANT -- Former Light House Site
Keoniki	6-5-1-10	230.127	GL #4663 Richard Smart -- Pasture
Lalaimilo	6-6-1-2	2,105.000	Subject to RP#6442 Palekoki Ranch eligible for direct lease pursuant to ACT 237 SLH 1988 Also withdraw area for proposed Mudlane Road, and Archeological Sites
Kona - Honokohau	7-4-8-3	643.069	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
Kona - Kailua	7-4-8-56	450.000	Recently acquired QLT lands
Waiohinu	9-5-5-2	262.410	GL #3617 Andrade/Okuna -- Pasture
Wailua	9-5-19-16	64.500	RP #6681 Kau Agribusiness -- Pasture
SUB TOTALS:		11,486.115	
LESS		5.000	Exclude 5 acres for County of Hawaii -- Foreign Trade Zone
		443.069	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
		13.000	Exclude 13 acres for DLNR Potential Industrial Park Development
		10.000	Exclude approximately 10 acres for the Piihionua Camp [RP #6793] (to be conveyed to COH)
TOTAL HAWAII		11,015.046	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Kapalama	1-5-20-6	2.750	GL #4643 Gems
Kapalama	1-5-20-14	0.137	RP #5362 KCCN Radio Tower Site
Kapalama	1-5-33:2,9,16,19,20	1.573	Income Potential -- Exclude 1.0 acres for Proposed Kapalama Wastewater Pump Station
Punchbowl	2-2-5-5	14.600	VACANT
Papakolea	2-2-14-15	0.423	VACANT
Papakolea	2-4-34-8	31.600	GEO #1529 BWS Pump Site/Direct Leases at Kalawahine/Proposed DHHL Kupuna Housing
Molili	2-7-8-18	0.918	GL #5106 Stadium Bowl-a-Drome
Molili	2-7-8-20	0.557	RP #5107 Stadium Bowl-a-Drome
Waimanalo	4-1-8-11	7.791	RP #6835 You Soukasen--Truck Crops
Waimanalo	4-1-10-33	5.106	VACANT
Waimanalo	4-1-23-65	1.777	RP #6835 You Soukasen--Truck Crops
Waianae	8-5-5-36	97.764	GL #4561 Waianae Kai Development Corporation--Camp Kaala [Eric Enos]
Nanakuli	8-9-2-1	30.000	Exclude for relocation site of Nanaikapono School 15 acres--Requires subdivision
Kapolei	9-1-16-25	200.000	Former Camp Andrews Military Reservation
Waiahole	4-8-7,8,9,10,11,12	60.830	Part of 1,300 acre land bank at Kapolei
		21.722	Vacant parcels in the Waiahole Agriculture Park and Residential lots
		477.548	7 Vacant Agricultural Lots [Average area 8.69 acres] EXACT AREA TO BE DETERMINED
		15.000	33 Vacant Residential Lots [Average area .658 acres] EXACT AREA TO BE DETERMINED
		6.000	Relocation of Nanaikapono School
		12.000	GEO #1529 BWS Pump Site
		2.410	Conveyed by separate action for Kupuna Housing
		1.000	Direct leases for Kalawahine residence
		441.138	Exclude 1.0 acres for Proposed Kapalama Wastewater Pump Station
			TOTAL OAHU

WAIMANALO

Waimanalo	4-1-2:1	10.490	HHL Lease to Texieria
Waimanalo	4-1-3:ALL	40.485	Waimanalo Beach Park
Waimanalo	4-1-14:2	26.080	Makapuu Beach Park
Waimanalo	4-1-14:5	20.800	Makapuu Beach Park
Waimanalo	4-1-14:6	8.176	Kaupo Beach Park
Waimanalo	4-1-14:7	82.733	HHL Lease to Texieria
Waimanalo	4-1-14:8	106.830	VACANT
Waimanalo	4-1-16:ALL	34.459	Waimanalo Residential Lots
Waimanalo	4-1-17:ALL	28.205	Waimanalo Residential Lots
Waimanalo	4-1-19:ALL	7.693	Waimanalo Residential Lots
Waimanalo	4-1-20:ALL	14.709	Waimanalo Residential Lots
Waimanalo	4-1-21:ALL	8.144	Waimanalo Residential Lots
Waimanalo	4-1-29:74 TO 108	6.083	Waimanalo Residential Lots
Waimanalo	4-1-31:18 TO 28	2.667	Adjacent to Blanche Pope Elementary School
		397.554	TOTAL WAIMANALO

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

DATE: Friday, October 28, 1994
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
1151 Punchbowl Street, Room 132
Honolulu, Hawaii

**ROLL
CALL**

Chairperson Keith W. Ahue called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

The Honorable John Waihee, Governor

MEMBERS: Mr. Herbert K. Apaka
Mr. Christopher Yuen
Mr. William Kennison
Mr. Michael H. Nekoba
Mr. Libert K. Landgraf
Mr. Keith W. Ahue

STAFF: Mr. Linford Chang
Mr. Ralston Nagata
Mr. Mason Young
Mr. Dean Uchida
Mr. Roger Evans
Mr. Dan Quinn
Mr. David Parsons
Ms. Geraldine M. Besse

OTHERS: Mr. Johnson H. Wong, Dept. of the Atty. General
Mr. Randall Young, Dept. of the Atty. General
Mr. William Tam, Dept. of the Atty. General
Mr. Peter Garcia, Dept. of Transportation
Mr. Hank Nawahine, Ms. Lea Albert, Ms. Lena Gardina, Mr. Ben Schaefer, and
Rep. Ululani Bierne (Item No. E-1)
Ms. Midge Oler (Item No. F-1)
Ms. Carol Hendricks (Item No. F-2)
Mr. Isaac Hall, Ms. Dana Hall, Mr. Leslie Kuloloio, Ms. Patricia Tummons, Mr. Ben Bland, Mr. Ben Bland, Jr., and Mr. Paul Achitoff
(Item No. F-3)

Mr. Jarvis Shiroma (Item No. F-6)
Mr. Chester Koga (Item No. F-7)
M. Chong (Item No. F-9)
Mr. Richard Wada, Bernie Lam Ho (Item No. F-12)
Mr. Bernie Lam Ho (Item No. F-14)
Ms. Nani Lee (Item No. H-2)
Mr. Isaac Hall (Item No. H-3)
Governor John Waihee, Ms. Hoaliku Drake, and Ms. Ululani Bierne (Item No. H-6)

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.

ADDED ITEM The following item was added to the agenda (Apaka/Kennison):

J-1--ISSUANCE OF SUBLEASE, MAALAEA BOAT HARBOR, ISLAND OF MAUI (FRESH ISLAND FISH CO., INC.)

MINUTES Unanimously approved the minutes of September 9, 1994, as submitted (Apaka/Landgraf).

ITEM C-1 APPROVAL OF AN INVITATION FOR BID PROCESS FOR THE HAMAKUA SUSTAINABLE FOREST PLANTATION PROJECT

ACTION Item withdrawn (Apaka/Kennison).

ITEM F-15 CONVEYANCE OF STATE-OWNED LANDS TO OFFICE OF HAWAIIAN AFFAIRS PURSUANT TO ACT 304, SESSION LAWS OF HAWAII OF 1990 AT MOANALUA, ILINUI AND KALIWA (KALIHI-KAD), HONOLULU, OAHU; TAX MAP KEYS (1) 1-1-03:3, 204, 205, 206 AND 207 AND 1-2-21-35, 36, 37, 39, 40, 41, 42, 43 AND 44; AND AT KALIA, WAIKIKI, HONOLULU, OAHU; TAX MAP KEY (1)2-3-37:6

and

ITEM F-8 GRANT OF NON-EXCLUSIVE TERM FOR FIBER OPTIC TELECOMMUNICATIONS EASEMENT TO AMERICAN TELEPHONE AND TELEGRAPH (AT&T), KEAWAULA, WAIANAE, KUAOKALA, KAENA, MOKULEIA, OAHU, TAX MAP KEY 8-1-01:14 (PORTION OF), TAX MAP KEY 6-9-03:02, 05 (PORTION OF), TAX MAP KEY 6-9-01:04 (PORTION OF), TAX MAP KEY 6-9-04:09 (PORTION OF) AND TAX MAP KEY 6-9-05:-7 (PORTION OF)

ACTION Mr. Young asked to withdraw and defer the above items to the next meeting. He said the elements of the F-15 proposal had not been completed, and the title of F-8 on the agenda may cause a problem with the Sunshine Law.

ITEM F-1 CANCELLATION OF GRANT OF EASEMENT NO. S-4098 AND DIRECT AWARD OF AN ACCESS EASEMENT IN CONFIRMATION OF KULEANA ACCESS RIGHT AT WAIOHINU GOVERNMENT REMNANT, PARCEL B, WAIOHINU, KAU, HAWAII, TAX MAP KEY 9-5-02:40

ACTION Unanimously approved as submitted (Yuen/Landgraf).

ITEM F-12 STAFF REQUESTS ADOPTION OF FIRST CIRCUIT FINDINGS, ZELLER V. STATE (ACCRETION CLAIM) AND REMEDIES TO CORRECT ENCROACHMENT, KANEOHE BAY, KAALAEA, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-41:SEAWARD OF 11

Mr. Young stated: the applicant submitted to the court a request to claim title by way of accretion of submerged lands. When the claim was filed with the court, the subject matter was referred to the Survey Office and the Division of Land Management for review and comment. It was found that there were continuous violations of encroachment, illegal construction, etc., so the State filed a complaint testing the claim. Mr. William Tam, deputy attorney general, explained the legal proceeding and distributed a copy of the court's July decision. He stated that the action involves a small parcel in Kaalaea, on the shoreline.

He explained that an accretion claim is a claim by an adjacent landowner that the land along the shoreline has grown and is natural and permanent. The presiding judge found that it could not have been "natural" if the Zellers were planting mangroves, placing cinder blocks and construction material, collapsing house trailers and attempting to induce the accretion. He circulated photographs, including an aerial photograph, showing the trailer on State property. Mr. Tam stated he was asking the Board to adopt the findings of the court, which found encroachment on the property. He stated that the court, in fact, indicated that the court itself would not order the eviction but asked the State to return to the Land Board to seek the encroachment ruling and asked that the Board order the Zellers to clean up all material makai of the shoreline and remove that portion of the building, the two-story steel structure, which runs into the State property approximately four to five feet. Mr. Tam indicated that about two-thirds of the trailer is on State land. At trial, the Zellers did concede that they placed the trailer on State land and collapsed it. Mr. Tam added that Mr. Kazu Saiki, the former State surveyor, and Paul Nuha, former State surveyor, have extensive documentation in their files. He further stated that the Army Corps of Engineers, the State and County have cited the Zellers.

Mr. Young distributed an amendment to the submittal because Mr. Zeller passed away and the submittal should reflect "Zeller, et al."

Mr. Richard Wada, attorney for Mr. Zeller, addressed the Board stating that the trial was held in July and the court Decision, Findings of Facts and Order on the accretion claim was made in August. He claimed that the point today was the request by the division to adopt the findings on an accretion matter to apply to a matter of encroachment. It was not appropriate: the submittal to the Board indicates that this matter has been going on for a number of years but at no time did the State file a complaint, citation or charge against the landowner regarding encroachment. There was a lot of correspondence relating to the encroachment advising his client to clear it up and in most cases Mr. Zeller did comply. He conceded that on some he may not have but at no time was there a formal charge or citation or complaint or notice of hearing to allow his client to come before the Board or some body to present his side on the encroachment issue. This sudden request to adopt Findings in an accretion matter for an encroachment matter is simply a way to bypass his client's right to some sort of process, due process of law, administrative hearing or procedure. He claimed the submittals were a one-sided presentation. He said he had not planned to attend the meeting to present the matter on encroachment when they had not been given the opportunity to research the matter for that purpose--he looked at it from the accretion perspective, which, he claimed, was an entirely different issue, and noted that the court essentially told the State--don't come to us with an encroachment matter; finish it up administratively; complete your administrative remedies before going to court on it. He pointed out the decision states--the State did not prove or show any evidence that this matter--on the encroachment issue--was ever brought before or completed or concluded in an administrative proceeding. Mr. Wada further stated that now the State is coming to the Board and saying, "disregard the administrative proceedings, disregard the court's order and just adopt what the court's findings on the accretion claim," and his client's position is that it violates his rights to some sort of process embodied in the laws, administrative procedure law. He asked that the Board deny the request, send it back to the Land Management Division.

Mr. Ahue commented that it appeared that the staff is recommending remedy resulting from the court ruling on accretion and calling it "encroachment." He asked whether if they were dealing with "accretion" would it be any different? Mr. Wada stated that that portion of the property from the shoreline to the developed area has always been to him a question of whose property is it. "Is it the State's land? Or is it some land that's there that's used by the landowner and which the landowner has rights? Until a period of 20 years passes, that landowner cannot be actually taken over, the property cannot be actually taken over, to the landowner, but there's a question as to whose property that is." Mr. Ahue asked whether the court had ruled on that. Mr. Wada answered "no." However, Mr. Tam explained that the court did rule it is State property until the accretion claim is proven. "The issue is closed. The Board has no choice. The due process was allowed at trial. They put on their case. We put on our case. That matter is foreclosed. This is State property. The plaintiffs admitted at trial they encroached on State property by putting the the drain there, by planting mangroves, by putting cylinder tiles on it. There's no issue before the commission or board on that point. That matter's decided. We're simply coming before you, and this is the process by which this is decided for the remedy of requiring removal. That's the only question here. The question of title was resolved. The question of encroachment, by definition, was resolved. The only issue before this Board is what remedy is this Board going to take--if it is to require that the Zellers remove this encroachment on State land. We've asked for a series of remedies . . . and that is what this issue is about."

Mr. Yuen asked Mr. Wada whether he had appealed the decision. Mr. Wada answered, "No, for financial reasons." Mr. Yuen noted that the court's Findings of Fact say that the Zellers placed the trailer so that it encroached on State land by approximately four and one-half feet and assumed it was an issue with the court and that there was an opportunity to address the issue. Mr. Wada stated when they proceeded it was strictly on the point of accretion; they were attempting to show that this land accreted naturally and is permanent. He considered the other matters outside of the accretion issue because the State did not file a counterclaim or any kind of complaint on encroachment, and it was his understanding that the court did make those findings but those findings were appropriate only in recusing to grant accretion rather than making a finding that was not an issue. The State did try to make it an issue, and the court took it under advisement, but in the decision portion of the findings and decision by the court the court did make a statement saying: as far as the encroachment matter, it had to be handled administratively first and not in the courts unless the plaintiff was given notice that the State would counterclaim with encroachment.

Mr. Nekoba commented that the court had determined it is State property; there was encroachment on State land.

Mr. Wada further explained that a complaint has never been brought as to whether it is an encroachment. His point was that the issue has not been decided; that the court is stating it but that was not a necessary issue to be decided by the court. Mr. Wada stated that the landowner has a right to argue the issue on encroachment. The encroachment issue, he said, had to be proven by the party bringing the complaint. On the accretion issue, he said, he had the burden of proving accretion. He stated that to say that the court has the authority to determine what is or is not State land is appropriate if the issue is in fact before the court; however, it was not the issue before the court.

Mr. Wada commented that the court stated that the accretion issue did not meet the issue of permanency and naturalness. Mr. Yuen stated that the remedy being requested is that his client clean all the debris from State land makai of the property line. Mr. Yuen explained that the court decided it was State land and now the State is asking that his client remove the building projecting four and one-half feet across the boundary line.

Mr. Wada explained that (1) the State owns land that existed and owns all the submerged lands. What happens when submerged lands become "unsubmerged" lands. Part of the property is no longer submerged. Mr. Yuen asked whether that wasn't the accretion claim. Mr. Wada stated accretion takes 20 years or longer but there's land that's been there for 19 years in the shore area. There's no law, Mr. Wada explained, that says it is State land. Mr. Tam commented that is the definition of State land. Mr. Wada explained he wanted to make a distinction between title to the land and the right to use the land. In accretion claims, the individual obtains title to the land. He claimed his client had the right to use the land. Mr. Yuen stated his client could walk across it, go fishing but only to that extent and not by putting a trailer on it. Mr. Wada stated that the questions needed to be looked at in the proper proceeding where a complaint for encroachment is filed and that it should be done before a

penalty is imposed. It was simple fairness, he said. Mr. Tam pointed out that this is what's before the Board; that Mr. Wada had the right to make his claims, and the State is asking for a remedy. He stated that the encroachment has been going on for 17 or 18 years.

Mr. Wada stated that the State granted shoreline certification and from his perspective if all of these things were unresolved problems the State should never have given the shoreline certification to his client and that "something was not quite right--with their coming in now and saying all these problems in the past, prior to 1990, the last shoreline certification given was in 1990, it seems to me that the State is saying, 'Well, we had all these problems going back to 1971, or whatever it was, but despite all these problems, we give you a shoreline certification.'" Mr. Tam explained that a shoreline certification does not determine title. "But all these problems that they're pointing out, going back beyond 1990, seems to me should have prevented the State from granting a shoreline certification. The reason is your rules state that if there is encroachment, there are problems on the property, no shoreline certification can be granted, but they did," Mr. Wada noted.

Mr. Bernie Lam Ho stated he lived in that area for 67 years, born and raised there. He said he told the State on two occasions that the high water mark is "right on the road, where the culvert is." He said when he walked to school and it was high tide they had to use the other side of the road because the water came over the road. The culvert is still there, he said. There is a lot of encroachment in that area, three-fourths of the lots. The State is not doing its job, he added. Mr. Tam noted it does present problems because a lot of seawalls have been built in the area.

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM F-7 GRANT OF NON-EXCLUSIVE TERM FOR FIBER OPTIC TELECOMMUNICATIONS EASEMENT TO AMERICAN TELEPHONE AND TELEGRAPH SUBMARINE SYSTEMS, INC. (A T & T SSD), KEAWAULA BAY, WAIANAE, OAHU, TAX MAP KEY 8-1-01

Mr. Young distributed copies of amendments should the Board grant the easement. Mr. Young stated the submittal contained a "consideration." However, he said it should be an annual rental instead, and the statutory requirements for disposition is spelled out in the amendments. He stated the amendments also included the method of payment and annual rental in the form of an automatic step-up each year of 4%. In addition, there would be reopening every ten years.

In answer to a question from Mr. Landgraf, Mr. Young stated he would check on the possible delinquency and suggested making the disposition subject to the delinquency.

Mr. Chester Koga, consultant, stated that considering it was a submarine cable, the 4% might not be appropriate in this case, unlike a cable on fast land or commercial land. The probability of the value of that submerged land increasing 4% per year is probably very unlikely. At the reopening, if the 4% is greater than the appraised value, would the lessee be

refunded that value from the period when it arrived at next value? Mr. Young replied that the law stipulates that at the time of reopening, should the reopened rent be less than the existing rent, then the rent for the 11th year should be the lower but there is no refund. Mr. Young added that in past cases the values of the easements have increased, and he has not seen any appraisals where the value has gone down or remained level. Mr. Young stated that as Mr. Nekoba had indicated values have been increasing at three to four percent per year.

Mr. Koga stated that having the 4% increase the Board is imposing would be an indirect tax to the consumer; the increase would be passed on to the consumer. He said his client would accept reopening at 10 years but without the 4% increase.

Mr. Landgraf stated that the department needs to look into innovative ways of disposition and leasing, in light of the sugar lands being returned to the State.

Mr. Koga stated that unlike other commercial ventures which are not regulated in the same way as utilities, they need to go to the PUC and FCC to ask for rate increases.

Mr. Nekoba commented on Mr. Koga's concerns regarding the 4% per year--that historically during the last 40 years, real estate prices have risen 3 to 4 % per year, that on a 65-year lease, he did not feel it would be out of line. Mr. Koga stated that traditionally submerged has risen one-half percent whereas fast land has varied approximately 3 to 12%. Mr. Yuen stated it was a difficult comparison because all of the evaluations for submerged land are based on appraisals or negotiations; that there is really no market to point to as to its worth.

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM H-2 CONSERVATION DISTRICT USE APPLICATION, AFTER-THE-FACT, FOR A SINGLE FAMILY RESIDENCE AT KEEKEE, SOUTH KONA, HAWAII; TAX MAP KEY: 8-1-4:13; APPLICANTS: WILLIAM AND RITA COWELL; AGENT: NANI RAPOZA, CADES SCHUTTE FLEMING & WRIGHT

Mr. Evans asked to defer. He stated that the expiration date, not shown on page 1, is November 25, 1994, and asked that the item be brought to the November 18th meeting. He stated that the staff did not foresee any changes to the present recommendation but from the process standpoint, the department has issued a preliminary negative declaration, which had been published, and the reviews completed. They are now in the process of publishing the final negative declaration and would like the declaration made before coming to the Board.

Ms. Nani Rapoza, representing the Cowells, stated she agrees with the deferral, has read the present submittal and has no objections.

Mr. Ahue commented that the recommendation rather than being for a single family residence may be for a nonconforming kuleana.

ACTION Unanimously approved to defer (Yuen/Landgraf).

ITEM H-3 **REQUEST TO AMEND CONSERVATION DISTRICT USE PERMIT MA-2663 FOR WATER TRANSMISSION LINE AT WEST MAUI FOREST RESERVE, KAHAKULOA, MAUI; TAX MAP KEYS: 3-1-16: 1 & 3; APPLICANTS: SUSAN AND JAMES BENDON**

Mr. Isaac Hall representing applicants stated he has reviewed the proposed change and agrees.

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM F-3 **CHAPTER 91, ADMINISTRATIVE PROCEDURE FOR PETITION FOR A CONTESTED CASE HEARING TO APPEAL THE DIRECT AWARD OF FIVE, FIFTY-FIVE (55) YEAR TERM, NON-EXCLUSIVE EASEMENTS FOR LANDSCAPING AND MAINTENANCE PURPOSES COVERING PORTIONS OF GOVERNMENT BEACH RESERVES ON MAUI**

Mr. Young stated that the Attorney General's office concurred that the petitioners do not have standing. Mr. Young circulated a report by Maui staff, and Mr. Young indicated he instructed his staff to inspect and cure violations. Photos were also circulated to the Board.

Mr. Landgraf asked whether the public access areas couldn't be added to the recreation maps. He suggested an addendum to recently-published maps.

In reply to Mr. Yuen's concerns on the signage, Mr. Young indicated that the signage would be uniform. Mr. Young assured Mr. Kennison that there is a withdrawal provision in the leases.

Mr. Hall representing petitioners said who wins are the adjoining property owners, who loses are the public. He stated he did not agree with Mr. Young. There are government beach reserves "up and down the Maui coast, which in fact are preferred in their natural state by local people because there are kiawe trees--they're natural. They're used. What's happening here is that because of these easements these properties have been privatized by these adjoining property owners. There are no signs; we've been there before April 8, and people are now going to testify to you about the existing conditions now. They are private; they are occupied as private property. No one thinks they can go on these properties; there are no signs. In fact, the private users have made access to these parcels as difficult as they can make. I haven't seen these pictures but I imagine they tried to make it look as good as it can be. I think the best thing that could occur would be for you folks to take a site inspection and go look for yourselves because I think if you go to any of these places and look, it'll be absolutely clear to you that they are not public; that they are not available to the public; they're being used as if it were private land and public access is being restricted so there's a loss here and that's why we want a contested case. I want to discuss with you but I think it would be far more effective if you allow me to discuss the legal issues after two of the intervenors come and talk to you about what actually exists on these parcels and what is actually happening to people."

Ms. Dana Hall stated that the responses in the staff submittal deal primarily with the Hui's arguments for a contested case and concludes that because staff is not in agreement with the position taken and the arguments made by the Hui that the Hui has no standing in the request for contested case in this matter. "It's the Hui's firm belief that the 55-year easements for the landscaping and maintenance of portions of government beach reserve lands in Kihei are granted by the Board in their currently proposed form, such approval will result in continued restriction on public and native Hawaiian uses of these lands for recreational and traditional customary purposes. I should say that the Hui and the individually-named Hui members do not relish the prospect of engaging in a contested case or having to appeal the decision of the Board to circuit court should the Board choose to deny our petition to intervene.

We are compelled to take these actions only because of the harm that these inadequately conditioned 55-year easements would cause to the beneficial uses of the shoreline lands and coastal resources. We also feel that enforcement of any conditions attached to the easements would not be adequate based on our historical experience unless the Board considers the approval of these easements in a more comprehensive context. By this I mean that the Board at its March 12, 1993, meeting apparently instructed Land Management Division to negotiate the long-term leases or easements at issue here. If the Board before granting any more 55-year easements would further instruct Land Management Division to undertake a comprehensive signing of the government beach reserve lands, clearly indicating the public nature, it would be an important step in ensuring that these lands are actually open and available to the public. This is especially imperative in places like Kihei. Most of the shoreline where the beach reserves are located are not visible from the nearest road, whether it is South Kihei Road or smaller road or interior street. The long expanses of resort condominium, vacation rental, commercial development and expensive new single-family residences that lie on the streets are interrupted at irregular and lengthy distances by County shoreline access signs. The problem is that anyone using the narrow public shoreline corridors would not know that once they arrive at the shoreline that public lands in the form of government beach reserves exist above the high wash of the waves. Without signs notifying the public of its right to use these lands, I can assure you from my own experience and the experience of the Hui, that there will be little or no use by the public or native Hawaiians. I'm aware of the easements will be conditioned by the Board to require placement of signs indicating that the areas are State-owned and open to the public; however, this condition will only be of use, obviously, if the easement holder complies with the condition, and the condition is vigorously enforced. This same signage condition was attached to a number of revocable permits, which the Land Management and the Board are seeking to convert to long-term easements. Not one of the approximately 16 permittees has complied in substantial measure with this condition. I don't believe that these particular tiny signs are adequately indicative of what's public. This particular sign, for instance, says 'public property.' It's right along the rocky shore there. The land, the government-owned land, actually extends into the grassy area where it appears that the public would think they were restricted to this rocky area. In fact, as recently as yesterday, Les Kuloloio visited again the Kihei government beach reserve land, some of them, and in the case of government beach reserve land makai of

the Flood property, to which the Board granted the first 55-year lease of non-exclusive easement on March 11, 1994, we can tell you that those signs have been posted identifying the public area.

"In addition, it appears that the Floods chose to landscape only a portion of the 18,000 square feet fronting their property. A band of relatively dense kiawe has been left untouched between the neatly grassed landscaped area and the shoreline. This band of thorny vegetation contributes to the private aspect of the portion of beach reserve lands landscaped by the Floods. For Board members who have not visited this area very recently, I can tell you that the landscaping of the Flood property, this portion only of the government beach reserve land, is seamless. It is all of the piece with no physical indication of the boundary between public and private lands. The Board is considering granting a similar 55-year easement for another private property owner in Kihei, Douglas Sherman. The landscaping of the Sherman property and adjacent beach reserve land is essentially the same as what I described in the Flood situation--seamless landscaping of public and private lands and no indication by way of required signage as to where the State-owned lands lie. There isn't time to discuss each permittee at this time; however, I would also note briefly that the Mana Kai is a large apartment-hotel complex whose property is greatly enhanced by its landscaping and use of adjacent beach reserve land. Mana Kai is clearly receiving a private benefit from government beach reserve lands while the public is effectively excluded from similar and equal use of these lands. The only signs visible at Mana Kai declare that the chairs and lounges which litter the State beach reserve lands are for the 'exclusive use of the registered guests' of Mana Kai. All parking is similarly restricted to guests and employees. It's not surprising that the only people enjoying the government land are guests of Mana Kai--not the general public and not the Hawaiians.

"Les Kuloloio will elaborate on shoreline uses in the Kihei area but let me say briefly using yesterday as one small example that the fishermen shoreline gatherers and general public recreational users we talked to and met up with have no idea that the government beach reserve land existed and were available for public use. Rather, all the members of the public we saw were carefully treading along and below the high water mark, unaware that they could also use mauka land as well. This is especially a problem along sections of rocky coastline. These portions receive even less public use because they are more difficult to traverse, especially for long distances. These rocky shorelines would be more accessible for various shoreline users if the government beach reserve lands immediately mauka clearly signed for public use. Two fishermen in the small boat ramp parking lot off Ilili Road in Kihei who had no boat were getting ready to swim their net out to a fishing spot yesterday. We informed them of the government beach reserve lands nearby available for their use; that they could walk all along the bluff overlooking the rocky shore getting a good view of the ocean and fishing spots before deciding where to enter the water to lay their net. They were reluctant to exercise the right to use these lands because there were no signs declaring the area open to the public. They had a long swim ahead of them.

"To return to my earlier point, the Hui would prefer not to engage in a contested case or appeal a decision of the Board to deny our request for intervention. We want what staff refers to in its report as a win-win situation. We just don't think we're there yet. We want to

make sure that the 55-year easements being contemplated by the Board don't result in the effective privatization of public lands and its restriction, if not virtual elimination of public recreational and traditional and customary uses. We prefer to work with Land Management and the Board to arrive at a reasonable agreement on the issues we have raised. I think Board Member Landgraf's suggestion should be part of this agreement that we come to. If, for instance, lease or easement rents are based on fair market value appraisal, keeping in mind that we are talking about some of the most valuable properties owned by the State, these monies may be used with other funding if necessary to properly sign all of Kihei government beach reserve lands. The individual lessees would still be required to sign property covered by their specific easements; otherwise, what we'll have is--will continue to have an unclear situation with respect to lands that are available for public use. Because if you look at the TMKs and the maps of these government beach reserve area, you will notice that all you have is just like an island that comes out. There'll be a couple of signs there but the beach reserves in most cases extends considerable distance to the north or south of where a particular easement may be granted so . . . it's kind of like of what's the sense of that--you have a tiny little inroad that's signed for public use but nothing else is signed that adjoins it so you're still, you have a kind of haphazard way of making this area available for public use so I guess our request is that--is there some way to work together? Is there some way to defer your decisionmaking on this? Or can we get some kind of agreement that will allow for meaningful public access and use and that will pretty much obviate enforcement problems. Nobody wants to be in the position of having to enforce conditions that private property owners are reluctant live by."

Ms. Hall in answer to a question from Mr. Yuen stated that correct signage would go a long way toward curing the problem, along with listing the areas on State maps. She further stated they could live with the landscaping so long as the area is properly signed.

Mr. Les Kuloloio stated he was a fisherman and was familiar with the south shore area of Maui. The 1980-82 storms eliminated Kamaole I and the shoreline lost from 0 to 30 feet of shoreline. There's no place to walk except in the water from St. Theresa's Church down. He said in one particular case the signage is "Crime Watch." There are no public access signs. He further stated that the southwest shoreline from Maalaea to Kihei is unique and should be developed but worked slowly, and that the Hui is willing to work hand-in-hand to educate the public.

Mr. Isaac Hall stated, "This matter first was put on your agenda on April 8, and it's now October 28, four and one-half months. I would have thought that somebody would have said, 'Hey, those guys filed the petition to intervene, let's get this situation straightened out before October 28.' You had four and one-half months to do something and so when Les and Dana went down there yesterday, and it's still exactly the same as it was April 8, you can see why we're a little bit, why we want a contested case because we don't feel, don't have any assurances that this ever is going to be any different, but if I put myself in your shoes I think somebody would have said, 'Go down, straighten this thing out,' but nobody did. We're still in the same place. I'll jump forward. You know, this business about there not being standing--I have to answer that to some extent. There's no way in the world, Johnson, that we don't have standing in this case. As people that use those areas that are being deprived of their use, there's

no way you could win on that, and I'll leave at that. I talked to Mason a while ago and suggested to him--why don't you folks defer this for one year. If we work something out and come up with a solution where those properties are actually used and are open to the public, then give it to them, but part of the problem is the lack of enforcement and part of the problem is the people using these easements because they have the wrong attitude, and I don't know how we're going to change that attitude. You're probably not going to be able to get them not to give Les 'stink eye.' I hope you can do that but there's no way that those people should think it's theirs. I went to the Mana Kai one. It's not just the no-signs; there's the obstacles. There's all kinds of ways they've made it look like it's not public. They put trash. They put trees, fallen trees where you can't get through to the public lands, and I think part of what Les is saying is that the signs they're using--they're sending the total contrary message in every subtle way they can. Those signs have got to come down. They say 'no swimming.' They know what that's meaning to somebody coming in the area--don't come here. When they put a sign out there saying, 'don't use these lawn chairs,' the message is 'don't come on this property.' Those signs got to go. All those contradictory signs, all the signs with contrary messages got to go. I do disagree with Dana a little bit about the seamless landscaping. I think when landscaping is used . . . you folks are well familiar with Carlsberg and . . . you have landscaping on your private property and then you add on on the government beach reserve. Anybody looking at that is going to think, 'that's your private property,' so I don't agree that landscaping--the landscaping got to be done in a way that does not convey a message that it's an extension of their property so there's got to be something in the landscaping. . . .

"I would ask that the Board defer action on these easements and there's no legal reason why you got to grant them now, I don't think. They're on revocable permits so they have authority to be there for a year, and defer action on our petition to intervene for a year and if we work something out along the lines we're all talking about here and I would add to that if in that one year people start actually going there because they now feel comfortable going there then give them the 55-year easement. . . . I think the signs are a good idea but what we're looking at is actual use be reinstated. I think if in that year's time actions have been taken to get rid of the trees, the thrash, the contrary signs, good signage goes up, people have begun to use it again, fine, they can have them but until that happens I don't think they ought to get it so I would formally ask that you defer this for a year and defer action on our petition for a year and as everybody said we are more willing to work with you folks to try to make sure that the public can use these areas and at that point I think they would be entitled to consideration for 55 years but not before that."

Mr. Nekoba suggested that it might be helpful for the Board to take a look at the area.

Ms. Pat Tummons testified that she wrote about the beach reserves earlier in the year. She made three tours of the area, with tax maps. She said if she had not had the maps it would have been "totally bewildering." She said there was not a single sign. She said another problem was that users of State lands on the makai side and in the case of Kihei Surfside and Mana Kai, both of those have beach reserve land on the mauka side of the property as well. She said they're using this even though it's not encumbered by an r.p. for overflow parking it's been

graded and dumping of garden waste and construction waste. She suggested enforcement action on that area.

Mr. Young explained there was no problem in deferring but wanted to take action on the contested case and let the staff work with the petitioners before disposition of the easements are given. He stated they are willing to work with the petitioners.

Mr. Yuen stated that if the Board rejects the contested case, the petitioners have 30 days to appeal. What if they withdrew their request, work with the division and if they're not happy later on they can file another contested case. Mr. Hall replied that if the Board denied their petition they would go to circuit court and hope to prevail. He stated that he didn't think it was worth putting themselves or the Board through that if the matter can be resolved in a year. He suggested deferral of action on the petition. Mr. Kennison suggested that the whole matter could be deferred. Mr. Young commented if the entire matter is deferred the cloud of the petition is still there.

ACTION Mr. Kennison moved for deferral of the item; seconded by Mr. Nekoba and unanimously approved.

RECESS The Chairperson called a recess from 11:07 to 11:33 a.m.

EXECUTIVE SESSION Mr. Kennison moved for an executive session to consult with legal counsel on Item No. H-5; seconded by Mr. Apaka and unanimously carried.

ITEM H-5 CONSERVATION DISTRICT USE APPLICATION FOR THE SUBDIVISION OF SUBMERGED LANDS AND FOR HARBOR IMPROVEMENTS AT MAALAEA SMALL BOAT HARBOR, MAALAEA, WAILUKU, MAUI; TAX MAP KEY: 3-6-01 (SEAWARD); APPLICANT: DEPT. OF LAND AND NATURAL RESOURCES, DIVISION OF BOATING AND OCEAN RECREATION

Mr. Evans recalled that this matter was deferred; the Board considered that at the Maui public hearing, the public testified on the entire project. When the proposal was circulated to agencies for comments, comments related to the entire project. The Board decided that the staff should evaluate the entire project, rather than only the question of subdivision and directed the staff to return to the Board with an analysis and recommendation on the entire project. The Department of the Attorney General expressed concern of that limitation. Mr. Evans pointed out page 8 of the submittal, that comments had been received from the Office of State Planning, the last paragraph pointed out that the U.S. Fish and Wildlife, for example, believed there were deficiencies in the draft EIS. OSP also pointed out secondary impacts to coral reefs. OSP states that these concerns are not addressed in the CDUA document. Mr. Evans stated that the project must comply with CZM and other enforceable policies; that on page 9, second paragraph, OSP states the CZM policies are to protect coastal resources uniquely suited for recreational activities. They also point out that while the harbor improvements may be qualifying as overriding public needs compensation for the unavoidable loss of recreational resources must be

provided. The final paragraph states that the project will require approval by the Army Corps of Engineers. A federal consistency certification from their office will be a prerequisite. They state that they have not received the application for approval and they may impose conditions on the project to assure compliance with the State CZM law.

Mr. Evans stated those comments were taken into consideration, as well as comments by Aquatic Resources, Land Management, and Historic Preservation. "The result of these comments, including those from Maui County Planning and those made at the public hearing relative to the entire project, we analyzed those. Based upon our analysis, we wrote a recommendation for you. The recommendation you see before you this morning on pages 28 and 29 is two-fold. The first part of our recommendation is relative to that request that the Board received on a contested case hearing. We reviewed that request and had consultations on that request. Based upon that request for a contested case hearing, the first part of our recommendation before you this morning relates to that request. We are recommending that the Board deny the request for contested case hearing on the basis of timeliness. By that we specifically mean--in our administrative rule relative to contested cases there are clear provisions for anyone to ask for a contested case. When a public hearing is held, that request for the contested case, according to the rules, must come by the close of the contested case hearing. If there is no public hearing held, then the request for the contested case must come at the time the Board makes its decision. If the Board will recall, the public hearing on Maui was rather extensive, many people talking about the project. All parties that asked to be heard by the Board were in fact heard by the Board. The public hearing was closed. There was no request from anyone by the close of the public hearing for a contested case. As a result, it is staff's opinion that a request coming to us subsequent to that specific requirement in the administrative rule is not timely.

"As a result, our recommendation this morning is in two parts: Part A on the request for contested case hearing, we recommend denial. Our specific reason for the recommendation of denial is timeliness. On Part B, we are recommending as you see on pages 28 and 29, we need to provide the Board with a caveat for the public record. Subsequent to the writing of this document, we received on . . . October 20 a document written on October 14, from the Office of State Planning. In that document, the Office of State Planning makes a statement to us. They deny the federal consistency requirement. They list the reasons for denial in the federal consistency requirement. They also state methods by which this denial may be overcome. We find ourselves at a minimum from an OCEA staff perspective, perplexed. The reason we're perplexed--if this Board will recall, OCEA does a rather rigorous analysis of all projects, including our department's own projects. In this case, the Division of Boating. We feel our analysis was rather rigorous. We, taking into consideration in that analysis drew upon the specific written statements made by the Office of State Planning relative to this specific federal consistency CZM issues. We relied on those public statements that were made as a part of our analysis that formulated our recommendation. As a result and considering from our perspective, which is somewhat biased, we do provide a rigorous analysis of all departmental projects, we feel to some degree that this last minute letter from OSP denying the CZM consistency is difficult to analyze. However, we can bring the Board some basics. We do not see the letter notwithstanding its content as one which would change our recommendation. If

the Board will take a look at our recommendation on page 28, Part B, where we recommend approval of this project, Condition No. 1 states in that approval that the applicant in this case, Boating people, shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments. We feel that notwithstanding the comments from OSP they are relative to a different federal, state or county government rule or regulation. As such, we feel that based upon what is written that we can, we see no basis that requires us to change our recommendation or the conditions as they are currently written."

Mr. Hall said he represented the Protect Maalaea Coalition, which includes surfers, who are concerned about the project's destruction of surf sites and the loss in quality of those surf sites; environmentalists, who are concerned with the destruction of the reef and the adverse impacts to endangered species, the degradation of ocean water quality all caused by the project; and surrounding landowners, who are concerned about the loss of the sandy beach, the traffic impact, and decrease in the quality of their living environment. With or without the petition to intervene, Mr. Hall stated, "This CDUA cannot be granted in any event for a number of reasons. First, there has been no SMA clearance for a CDUA permit for the whole project. On 11/19/93, there was a memo written from Chairperson Ahue to Mr. Parsons that indicated to Mr. Parsons that he would have to obtain an SMA clearance letter from the County of Maui. On March 17, 1994, the Planning Department wrote a letter back to Mr. Ahue which stated that since the submerged lands were outside of the SMA that no SMA permit was required for the submerged land but it said the proposed harbor improvements may require an SMA. That letter which actually appears on page 12 of your staff submittal notes that DOBOR has applied for SMA permits for harbor improvements in the past. I took the time yesterday to go to the Planning Department to research those SMA applications and, indeed, I found three. DOBOR applied for two SMA permits for the Keawekapu Boat Launching Ramp in Kihei, Docket Nos. 93-SM1-20 and Docket No. 93-SM1-32. DOBOR is currently processing an SMA application for a comfort station at Mala Wharf in Lahaina, and that's Docket No. 94-SMA-18. It's evident that DOBOR regards itself as being required to comply with SMA permit requirements. There are also commitments that appear as a matter of record that indicates that DOBOR must get an SMA permit for the Maalaea Harbor improvements. These are found in the final EIS which I'll brief you right now. The Planning Department on, this is found in the comments in the final EIS, on January 14, 1993, the Planning the Department wrote a letter that was passed on which said: Since not all the proposed facilities are in submerged lands, portions of the project falls within the county jurisdiction under CZM regulations. Because of this, the State would have to apply for an SMA permit for portions mauka of the shoreline. There's a response to that letter written by Army Corps dated August 15, 1994. In response to those permit questions, the Army Corps writes, 'An SMA application is in progress by the State Department of Transportation as agent for DLNR Division of Boating, DOBOR. Here's a statement that an SMA application is being applied for the harbor improvements. As you know, you don't ever grant SMA permits unless . . . you don't ever grant CDUA permits unless the SMA permit has been granted first or you get a letter from the County which says, 'You're cleared from this requirement.' In this case, you have no clearance from the County of Maui for the harbor improvements in general. You had a clearance from the County of Maui for the submerged, subdivision of submerged lands, but you don't have any clearance from the County of Maui for the harbor improvements themselves. What you had instead are indications from the County of

Maui that an SMA permit is required. You have admissions by DOBOR that they do apply for SMA permits. You have a commitment from the Army Corps that they are actually applying for an SMA permit for the harbor improvements. Until and unless an SMA permit is either applied for and received or you get a letter from the County of Maui clearing them from this SMA requirement for the harbor project as a whole, you can't grant this permit.

"The second reason why you can't do that is because you cannot at this point in time find that this project is consistent with the objectives and policies of the Coastal Zone Management Act. HRS 205A-4(b) says that the objectives and policies of the Coastal Zone Management Act are binding on actions in the coastal management area by all agencies, and that was amended recently in 205A-5(b) to say all agencies shall enforce the objectives and policies of the CZMA. Now, Mr. Evans has just supplied you with the letter from OSP, but I don't think he explained to you the real import of that letter. I have it here. One of the statements in that letter says, 'The proposal, which includes the preferred the Alternative Plan 1, and three alternative plans, is not consistent with the objectives and policies of the Hawaii CZM program and the Hawaii CZM law.' That finding prevents you from issuing this particular CDDA permit." Mr. Ahue advised Mr. Hall that Mr. Evans did point that out. Mr. Hall commented that he believed Mr. Evans said it did not necessarily have to do with the CDDA permit. Mr. Hall continued, quoting from the OSP letter, "The reason why this project conflicts with the Coastal Zone Management Act recreation policies is because of the destruction of at least one popular surf site, the reduction in quality of waves at a second surf site, and the elimination of a sandy beach within the harbor. To the extent that this project does those three things, is inconsistent with the recreational resource policies of the CZMA. Secondly, the letter indicates that CZM eco-system policies are violated by this particular proposal because and Mr. Parsons has accused me of making false and fallacious comments--not sure what that means but--it's not I that said some of these things. We're talking about the sober OSP people who have said the harbor improvements will destroy up to 13 acres of aquatic habitat and associated biological community. This isn't me; this is OSP--that's going to destroy 13 acres of an important aquatic habitat.

"Also, OSP notes concern of the adverse impact on the endangered humpback whale nursery area. And, again, it's not me, it's the U.S. National Marine Fisheries Service that raised that question.

"Finally, OSP says that this will cause water quality degradation in the area. That makes that inconsistent with the same policy. Now, it isn't as if you approve this in a way that's consistent with what OSP has said is necessary to do because OSP in its consistency objections has basically said, 'You've got to go find some other alternative.' They're here asking you to approve an alternative--that OSP in its letter says you can't do. And that is in paragraph one of page three of their letter. It says, 'Select an alternative design which will not destroy or affect any surf sites or sandy beaches and will have negligible impacts on marine resources.' It points out other alternatives that would accomplish those results. Basically, not doing the harbor improvements outside the harbor but improving the inside of the harbor. They say, 'That's OK because you're not going to destroy all these resources.' Provide equal surf sites of equal quality--there's been no talk about doing that. It also says, 'Replace the sand

beach.' There's no talk of doing that. 'Mitigate all impacts to marine resources so that the net effect of the project is negligible.' I'm a little disappointed because the staff submittal, I might have been able to live with this if there were some mitigation program you folks were asking for, but the only mitigation program you have in here is paragraph 9--all representations relative to mitigation set forth in the accepted application and the final Supplemental EIS are hereby incorporated as conditions. This is not a mitigation program. For your CDUA permits, you folks normally detail exactly what you want done. That's what's necessary in this case--detail it. How are you going to protect those surf sites? How are you going to protect the sandy beach? How are you going to protect the whales, etc.? There's nothing in here You can't, I don't think you folks should approve any CDUA for harbor improvements with something like this. You don't even know what it means. I don't know what it means. It says you're just accepting whatever's in the final EIS as a mitigation program? But, I don't think any of us know what that is. In any event, because of the OSP letter, because of your obligation, I disagree with Roger that this action you take doesn't have to be consistent with the Coastal Zone Management Act. It does, but you don't have any evidence this is consistent with the Coastal Zone Management Act, and you haven't adopted any mitigation measures that are going to protect coastal resources so for that reason no permit can be granted.

"The third reason is that the EIS process has not actually been completed yet. What we have--there are admissions throughout all the documents that the Army Corps and DOBOR are partners in this, and that's true. We have a federal agency that's a partner with a State agency. What's happened is that the State part of the EIS is completed; they did a joint EIS. I should back up--as partners they prepared a joint EIS. The State part ended with Governor Waihee's acceptance letter on August 31, but Bill Lennan is the source of this information here. The Army Corps, the federal part of this EIS has not been completed. What happens to complete the federal part is that it ends up with a record of decision. That's the end of the federal part of the EIS. No record of decision has been issued by the Army Corps of Engineers in this case. And in that record of decision, the Army Corps, they decide on what alternative to select. The Army Corps has not yet even got to the point of selecting a particular alternative in this case. They cannot under federal law. They have to finish their EIS, yet they're coming in and asking you to approve a particular alternative, and they, by law, cannot even select an alternative. Under NEFA and our State law, you can't approve a permit when the federal-state joint EIS process hasn't even been completed yet. I have a good example--Willie may remember--but this was with the Kahului Airport, where the State portion of the EIS was completed and then the DOT asked the Land Use Commission to grant a boundary amendment but the federal EIS wasn't done and wasn't completed, and I represented people in that case and, finally, we got the boundary amendment proceedings halted until the federal EIS was completed, and I put to you we're in the exact same situation here. You're being asked to approve a part of this project when the joint federal EIS isn't even completed yet and that would violate NEFA, I believe.

"Finally, I think that to transmute this application into one for harbor improvements for the harbor as a whole is really not 'kosher,' as somebody said at one time. The CDUA application that's been processed before you has been processed as one for submerged, subdivision of submerged lands only, and I reviewed the record on this. There's

a letter dated October 4, 1993, from Mr. Parsons to Mr. Evans making it clear that it's limited to submerged lands only. There's an 11/19/93 memo from Mr. Ahue to Mr. Parsons, where he accepts the application, the subdivision of submerged lands. On 11/19/93, Mr. Ahue sends to agencies request for comments on an application for the subdivision of submerged lands. There is a notice of the public hearing that was on February 14, 1994, which says the subject is the subdivision of submerged lands. There's a newspaper notice that appeared in the newspaper February 17, '94, which indicates the subject is 'subdivision of submerged lands.' There's a sign-up sheet for the public hearing dated March 10, 1994, which says the subject of the hearing is the subdivision of submerged lands. There's a 9/23/94 staff submittal which says, 'This project is limited to the subdivision of submerged lands.' There's a 9/23/94 agenda saying what's being discussed is the subdivision of submerged lands. There's an agenda for October 14, 1994, which says the subject is the subdivision of submerged lands. There's a 10/28/94 agenda. That is the agenda for this meeting, which says this is for the subdivision of submerged lands, and, for the first time ever, and 'harbor improvements.' This is the first time this CDUA has been transmuted into something's that for the approval, CDUA approval, of the harbor improvements. You can't do this without having a new public hearing, new agency review and doing this in a way that's been clear all along that this is an application for all the harbor improvements and not just subdivision of submerged lands, and there's been a lot said about the timeliness of the petition to intervene that I filed but since this is the first day that the application is for the harbor improvements themselves since this is the first day it appeared on your agenda I hereby request contested case on the issue of the harbor improvements as a whole. That could not possibly be an untimely request since this is the first time that you've ever put this matter on your agenda. For all those reasons, I think you could not grant the CDUA for the harbor project as a whole.

"Going back to the--I do want to answer one thing and that is . . . the staff submittal--for some reason people chose to put in there that DOBOR had said I had made false and otherwise fallacious statements about, in the petition to intervene. I want to go through those because I think that none of them are false or fallacious. In fact, the replies in there have misled you more than anything that I've ever said.

"The first one is that FEIS does not consider the impact of the project on the hawksbill turtle. This, again, goes back to a letter that's dated February 25, 1993. I wasn't referring to a letter, I'm not for lying on that, what happened after February 25, 1993, and your own Maui aquatic biologist was the person who reported it. After that, during the summer, two hawksbill turtles were found nesting at Maalaea, and one I guess hatched, there's one hawksbill turtle that was hatched in captivity, and one was hatched there on the beach, and there would be information tending to indicate that is a habitat for the hawksbill turtle, and that wasn't addressed. Mr. Parsons takes issue with my saying that the surf sites would be destroyed. That's one of the reasons why we asked for a contested case. As far as the surfers are concerned, those surf sites are going to be destroyed. Mr. Parsons takes issue with my statement that the project will eradicate a significant coastal reef. Again, if we go back to the more sober analysis of OSP--that's exactly what OSP is saying--it's going to destroy that resource. And the lack of the availability of the SEIS, I think I've addressed that earlier, but this matter seems to come up a lot but I'd like to quote from the guidebook for the Hawaii State

Environmental Process on page 9. OEQC implements the Hawaii environmental program and what they had to say about it I think is very important. Page 9 says: acceptance of an EIS is required before the proposed action or project can proceed to the permitting stage, which would make you believe that you couldn't even file an application until you had completed the EIS process, but even if you don't take it that way, this EIS process, which is a joint federal-state one, has certainly not been completed. I don't think it's sufficient that as it implies here that the draft EIS was available at the public hearing. That's not what this regulation talks about. The final EIS has to be available at least to the public and the decisionmakers, yourselves, prior to action on a permit like this. Going on to our petition, just with respect to submerged lands and the untimeliness. What your rules say is that if it's not filed on, not requested at the public hearing, it's untimely. It also says that for good cause, after that, as long as it is before you take final action, you can grant it so it's not an absolute situation where you're precluded from granting the intervention. This is a case which deserves a contested case. Too many important resources are going to get destroyed by this project. To just go 'willy-nilly' through it now and approve the harbor improvement--it's just too much at stake, too much at stake for surfers, too much at stake for environmentalists, too much at stake for the people living around the harbor. There's too many contested facts. There's no mitigation program. I would like--this Board usually addresses projects very carefully and carefully adopts mitigation program if it's going to adopt something. You guys don't even have a mitigation program yet. It's not your fault, but I mean, this takes some time. I think given the resources that are involved, this should happen. Documents continue to pour in, important documents, like OSP's document, and I think that justifies a late request for contested case. I don't want to belabor this but I think if you actually read the documents, important agencies--U.S. Fish and Wildlife Service, U.S. Marine and Mammal Protection Program, OSP--are all saying, 'hey, this is not your normal case. You're destroying important habitats, you're adversely affecting endangered species, you're going to adversely affect the community around you. This takes a more serious look and so I think that the petition, although on the submerged lands, although untimely filed, there's still good cause for granting it at this point and, again, to the extent that you are seeking to approve the harbor improvements themselves, then I just make a timely request for intervention."

ACTION Mr. Kennison moved for executive session based on information presented; seconded by Mr. Apaka and unanimously approved to consult with counsel. The Board was in executive session from 12:30 to 1:00 p.m.

Mr. Kennison moved to temporarily defer the item until further on in the meeting to take up Item No. H-6 as the Governor was present and requested to make a statement. Seconded by Mr. Apaka and unanimously approved.

ITEM H-6 CONVEYANCE OF LAND FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF HAWAIIAN HOMELANDS STATEWIDE

Mr. Uchida stated that the item was a "request to convey lands from the Department of Land and Natural Resources to the Department of Hawaiian Homelands. The Governor formed a task force back in 1990 to address title claims that Hawaiian Homelands

has had ongoing since the inception of the Act, back in 1921. Through the efforts of the task force--originally in 1921 Congress conveyed, designated, 203,500 acres of land to Hawaiian Homes. Currently, they have about 187,000 in their inventory. In the 1994 State of the State, the Governor expressed his intent to transfer approximately 16,000 acres of State lands to Hawaiian Homes to make their trust whole. Our involvement in the task force--the task force's main objective was to, first of all, determine what was Hawaiian Homes and what was or is Hawaiian Homelands, correct any unauthorized use of Hawaiian Homelands, and compensate Hawaiian Homelands for its unauthorized use. Through the efforts of the task force, we were able to resolve some of the unauthorized Governor's Executive Orders and Proclamations that were issued. We entered into continued use agreements or returned lands to Hawaiian Homes and also got funding from the Legislature paying Hawaiian Homelands back rent to the tune of \$12 million. The task force also resolved two nominal lease rent issues with Hawaiian Homelands regarding the U.S. Government's use of Hawaiian Homelands at Kekaha and Pohakuloa. The Board approved the land exchange, and currently those land exchanges are in progress between the two departments. Currently, DLNR and Hawaiian Homes have some major differences on the remaining, on certain of the remaining land claims that the task force is looking at right now. Despite our different interpretations and in recognition of the necessity to resolve the remaining claims in a manner that's responsible to both trusts, we support the Governor's intent in making the trust whole. Hawaiian Homes has been able to confirm through the efforts of the task force 186,982 acres of land that they currently own, and this less from the 203,500 acres that are supposed to be Hawaiian Homelands gives us a total of 16,518 acres that they're short of. The 16,500 acres are what we're talking about transferring or conveying to Hawaiian Homes in an effort to make the trust whole. Furthermore, in certain instances the transfer of these lands are part of long-standing title claims made by Hawaiian Homelands and will essentially render these claims moot; however, this action does not preclude Hawaiian Homelands from continuing their claims on the ahupuaa theory with the courts should they choose to at a later date. In addition to the 16,500 acres transfer, we're also are looking at two . . . smaller agreements that we've been able to reach with Hawaiian Homes. One involves approximately 400 acres at Waimanalo that we're asking the Board to quitclaim or convey to Hawaiian Homes as a part of a regional settlement in Waimanalo. The second part is 1150 acres of land at Anahola, Kealia, Kamamalu and Molowaa that we're asking the Board to convey as a result of claims within that area also. Part of the criteria we applied in compiling the list of the 16,518 acres, we excluded from the overall inventory of State lands all lands that were currently being used by government uses to prevent the situation we addressed in the task force about compensating Hawaiian Homes for government uses of Hawaiian Homelands. We also ask that the conveyance be subject to any existing encumbrances on the land. The Board and the Department are currently going through a permit-to-lease conversion pursuant to Act 237, which would convert month-to-month revocable permits into long-term leases. We've asked Hawaiian Homes, and they've agreed to take the lands, subject to any long-term lease issued on these properties. We've also informed all of the tenants of lands that were identified for the conveyance that their properties would possibly be given to Hawaiian Homes. The net effect of that would simply be a change in landlord--rather than DLNR being the landlord, Hawaiian Homes would be the landlord. Hawaiian Homes is in agreement. Once the list is finalized, they'll be notifying all of our existing tenants that they, in fact, should be paying Hawaiian Homes. Finally, we looked at revenue-generating lands, and you'll notice from the list that we

compiled there's not a large amount of currently commercial, industrial, resort properties that are currently generating revenue. We felt that to convey those lands with the existing encumbrances, existing tenants may be a disservice to our public trust responsibility and that we did convey lands that have income-producing potential, meaning lands that may be zoned or in close proximity to a currently zoned lands for commercial, industrial, resort uses.

"With that, I have a couple of . . . first, is an addendum to Exhibit A, page 6, of Exhibit A. In the list that's attached to the submittal, we had listed lands that we had acquired from QLT, Queen Liliuokalani Trust on the Big Island, and identified 450 acres of those lands to be included. We've subsequently been informed that HFDC has plans for approximately 300 of the 450 acres so we're reducing that amount of QLT lands to be conveyed to Hawaiian Homes to 150 acres, and we've added . . . 300 acres from a 2300 acre parcel north of Keahole Airport that we're going to be conveying in lieu of the 300 from the QLT lands." Mr. Uchida identified the 150 acres on the map.

"I have an amended recommendation here, too, and I think we're going to be amending it further so--the submittal currently doesn't list the conveyance of, the authorization to convey the lands at Anahola, Kealia, and Kamamalu, or the lands in Waimanalo in the original submittal so the amendment I passed out now includes those conveyances. In addition to the 16,000 we're adding, we're asking the Board to authorize the conveyance of lands at Waimanalo and lands at Anahola, Kealia and Kamamalu. The recommendation, the conditions 1 through 7 are the same as listed in the submittal that was passed out. I think we'd also like to, at this time, amend or add another condition, Condition 8, which would be specific to the Puunene parcel that's being considered for conveyance on Maui, and that condition would be that Hawaiian Homes agree to issue a long-term lease to A & B for sugar cultivation as long as sugar is economically viable."

Governor Waihee stated he appreciated all of the work being done. "I think the -what is especially satisfying for me is in a sense to be in on the beginning of the process and at the end and know that the people that have, were involved throughout it all, gave so much of their time and effort to meet a real need in the State of Hawaii. As was indicated earlier, the Congressional Act that established the Hawaiian Homes program talked about the conveyance of 200,003 acres more or less and for years that phrase 'more or less' has been plaguing the State and the Hawaiian Homes Program because in most instances, it meant 'less.' And in any attempt to resolve this over the past 80 years, or 70 years, has not resulted in any kind of resolution. In fact, in more cases than not, resulted in lands being lost to the Hawaiian Homes Program so this year we made an attempt to shift that to establish, to finally bring the acreage up to what the legislation called for and to see if anyone else wanted to challenge the 'more' or the 'less' would have the burden, rather than the Hawaiian Homes Program. So this is a very historic moment in the establishment of this trust. I think it is a historic moment in Hawaiian history when we bring these trusts back into satisfaction. That is what we set out as a goal in January in my State-of-the State. We would not be where we are today were it not for the people involved. There were countless numbers of individuals working hours, countless public hearings held, your staff has been incredible, and I want to thank them for bringing us this far. Obviously, I would urge that you complete this conveyance and transfer these lands to the

Hawaiian Homes Program. I need to assure you that, first of all, on a personal level, as a Native Hawaiian I think that this is a very satisfying day for me, personally, to see the Hawaiian Homes Trust made whole again and to see the trust have lands that could actually be used for homesteading rather than lands that are marginal to begin with. But, I think further, as Governor of the State of Hawaii, I know it's personally satisfying to me as I am in my own tenure that we are able to meet one of the major objectives of our State, which is the obligation to Native Hawaiians. I should also let you know that as Governor it is our intention to meet--there are a number of objectives that the State has--one objective and it is reflected in the very measured way that this was done to make sure that our pristine and forest lands be preserved as well so this is an exchange, setting up priorities, having DLNR take care of those things that are really pristine and important and transferring to Hawaiian Homes lands that people can settle on. Also, as Governor, I think, one of our priorities was to make sure that agriculture remains economically viable, and this exchange should in no way lessen agriculture activities in the State of Hawaii, and I don't think that's not the intention of Hawaiian Homes programs for those people who may be afraid that this would jeopardize their enterprises. And finally, we are very aware of the tenants on the land, and this is a long-term measure. What we have done is switch the ownership so that on the long-term we can unravel what in 70 years we have not been able to do so, again, I urge you to pass this conveyance today."

Rep. Ululani Bierne commented that during the work of the task force there was dialogue with the Governor, Mrs. Drake, and Mr. Ahue regarding lands in the 46th District and requested that the task force consider Waiahole-Waikane Valley, possibly Kahana Valley State Park, and lands on the Hauula Homestead Road. She said the Native Hawaiians not only live in Nanakuli, Waianae, and Waimanalo, and other areas on Kauai, like Anahola and Puunene, they do come from areas in the 46th District, as well.

Mrs. Hoaliku Drake said the lands were residential, agriculture and income-generating. She stated, "I know it is historical day for the people of Hawaii, not only for the Hawaiians, but I believe for the people of Hawaii in the decision which I hope will be rendered by this Board in allowing us to receive this 16,518 acres of land and that my Commission would be in on Tuesday will be in receivership of your motion and these particular parcels of land but, you know, I have never seen a group of men and women that have wholeheartedly during the last month work so closely with Hawaiian Homelands. I have been on helicopters, I have been down in taro patches, I have climbed mountains, I have been in valleys, and I assure you that I've inspected most of the lands we talk about today, and it has been a great joy for me to work with this young man here, who has given much of his time and efforts and to much of your staff on the outside islands and the island of Oahu but especially, Keith, for you and your leadership, for Dona, who has worked very diligently with Hawaiian Homelands and for you men who sit on this Board, I would like to convey my heartfelt appreciation and the appreciation of all our beneficiaries, and all of the Hawaiian people."

Mr. Ahue thanked Norma Wong for her work on the project.

ACTION Mr. Nekoba moved to approve as amended; seconded by Mr. Landgraf.

Mr. Yuen asked to add amendments with the consent of Mr. Nekoba and Mr. Landgraf relating to the Island of Hawaii.

"(1) We've identified several parcels, TMKS 1,9,2,6,7,8,9, totalling 144 acres at Volcano, which are native forest land, and in the process of doing this proposal that this issue has come up as probably not really suitable for the Hawaiian Homes Program and my amendment would be replace that with at least equivalent acreage in the Lalamilo Ahupuaa. The original list that went out had up to 2400 acres in Lalamilo. I think it was plus or minus, and apparently it's 2105 so that shortage can be made up in that ahupuaa.

"The second amendment would be a technical one that relates to this 300 acres in Kalaua that it's clear that the 300 acres is to be selected out of that larger parcel at a later date, and the reason for this amendment will be that the University, the future West Hawaii University site, is to be located in that area, as well as possible other governmental facilities. This is roughly a 2,000 acre parcel so that the planning for things like the selection of the University site should be finalized before the 300 acres is taken out.

"The third is a very technical point--that the highway corridor in Lalamilo for the future Waimea to Puako Highway is identified in the submittal as the 'mud lane,' and I don't think that that's really, that's not the 'mud lane,' and we need to, DLNR needs to retain the highway. I think everybody agrees that DLNR needs to retain that highway corridor in the Lalamilo Ahupuaa.

"The fourth point would be that there be reasonable access by the DLNR across these transferred lands to other lands that are retained by the DLNR. This is a technical thing that I'm sure will be worked out in the process of the conveyance but because we're dealing with so much land in a relatively compressed time frame, I'm not sure that all of the access issues have had a chance to be worked out. For example, there may be a road through a parcel that's going to Hawaiian Homes that leads to another parcel that's being retained by the DLNR. I think it only be reasonable that, that sorts of issues need to be dealt with."

Mr. Landgraf asked Mr. Yuen if he would consider a further amendment concerning the 130 acres in Volcano--rather than making that up in Lalamilo that there be some flexibility of somewhere else. Mr. Yuen said he was open to it to the extent that it was desired to get a certain acreage today Lalamilo was an area he suggested. If Hawaiian Homes, the people negotiating can identify somewhere else where the acreage could be made up, that would be fine.

ACTION Unanimously approved with staff's amendments; amendments by Mr. Yuen and the additional amendment by Mr. Landgraf.

ITEM H-5 CONTINUED

Additional testimony was presented by Mr. Ben Bland from the Maalaea Coalition. He said he was a firefighter for the County of Maui and a member of the surfing community. He said he got involved in the project when the Army Corps brought out their old EIS and indicated that this project would cause no adverse effect to surfing. At that time he and his young sons surfed at those sites. He stated he was confused by the statement and as it evolved another EIS was requested. He wrote to the Army Corp suggesting a way to resolve the problem internally in the harbor through wave baffling, etc., to solve the boaters's problems and still protect the surfing sites and the environment. They attended public hearings, asked for additional mitigation. These are surf sites used by the young people of Maui, he said, and the submerged lands affect those surf sites directly because the waves break as a result of the configuration. If the surf sites are lost, he claimed they would never recover.

Mr. Ben Bland, Jr., asked that none of the surfing sites be destroyed and it was important part in his growing up and gave him something constructive to do.

Mr. Paul Achitoff, staff attorney with the Sierra Club Legal Defense Fund, testified regarding the environmental impacts of the project on behalf of the Maalaea Coalition and Life of the Land. "I want you to know that the environmental impacts that are projected to result from this project are serious and they are not being mitigated. I am very familiar with the environmental impact statement that had been prepared on this project and the various mitigation measures that have been proposed and a close reading of those provisions shows that there are serious environmental impacts that either--there's no mitigation proposed whatsoever or whatever mitigation has been proposed is, there's really no commitment to those mitigation measures, such that we can have any confidence that they will be implemented and, in fact, it is apparent that the project proponents do not want to implement those mitigation measures. It is my view that the project as proposed would clearly conflict with federal law, Clean Water Act, Endangered Species Act, and procedurally with NEFA. I won't go into the details of the federal laws except to the extent that those laws show that the sorts of impacts that are going to result from this project have been deemed acceptable because they conflict with policy. As far as the--one of these impacts is water quality impacts. The project area includes two special aquatic sites, two types of special aquatic sites. Now, the Environmental Protection Agency in its guidelines for issuance of dredge and fill permits has said that degradation of special aquatic sites considered to be the most severe environmental impact covered by the EPA's guidelines and the guiding principle should be that degradation or destruction of special aquatic sites may represent irreversible loss of valuable aquatic resources. The two types of special aquatic sites that will be affected by this project are coral reef habitat outside the harbor which would be destroyed forever, acres of it, as well as vegetative shallows within the harbor. Under the Clean Water Act, legally to proceed as planned, the project proponents would have to show that no design that doesn't destroy these resources is practicable and the project proponents haven't even tried to make such a showing. They have made no serious effort to show that there is no other practical design. Also as far as water quality is concerned, the water quality at Maalaea has in recent years been routinely below State standards. DOH monitoring has shown that and this is taken from EIS: In three years of sampling criteria have consistently been exceeded for turbidity

in over one-third of all measurements. The project proponents admit that turbidity will increase not only temporarily as a result of the dredging and filling but permanently as a result of increased vessel travel. They have expressly refused to control, to even try to control increased turbidity as a result of their dredging and filling activities, and even if they did control it they admit that in the long-term the project will result in increases in turbidity and siltation as a result of increased vessel activity. There is no mitigation program whatsoever for water quality degradation so environmentally it is simply unacceptable and it isn't just unacceptable to me or to my clients but Fish and Wildlife Services pointed this out, Office of State Planning has pointed this out, and still nothing's being done about it. Fish and Wildlife Services on record as saying as follows: Maalaea Bay is a productive system that may be limited by the effects of siltation. The biota of Maalaea Bay has been described as unusual in that the abundance and diversity of marine species which are uncommon elsewhere in the Hawaiian Islands are common in the bay. The reasons for the special character of the biological resources of the bay are largely unknown and extreme caution in undertaking any action which would alter any aspect or condition of the bay has been urged. The maintenance of good water quality in Maalaea Harbor is of great importance since cumulative impacts to water quality could contribute to the degradation of the biological resources and ecological features of Maalaea. Therefore, the Service recommends the Corps develop measures to protect the quality of water in Maalaea Harbor, project related impacts and incorporate these measures as part of the proposed project. In spite of the urgings of Fish and Wildlife Service no such action has been taken and the Service remains opposed to the project as planned. There's another water quality issue--Water Act issue that proponents of this project have completely ignored. The Clean Water Act prohibits dredging and filling where sediments may contain toxic substances. It's not unlikely that the sediments in Maalaea Harbor contain toxics since sediments in other harbors of the State have been found to contain them. The EPA in its comments on the draft EIS called upon the proponents of the project to provide data on this issue. They have refused. In fact, they have--the proponents of the project have admitted that the accumulation of contaminants in the harbor waters and bottom sediments presents the potential for bioaccumulation in the marine life inhabiting the site. In addition, the presence of contaminants in the bottom sediments raises problems for disposal of maintenance dredged material through the life of the project so they admit that there's a problem but they have provided no analysis, no data, and no mitigation.

"Turning to another important impact of this project--Maalaea Bay is universally acknowledged as one of the most critical habitats of the endangered humpback whale in the entire world. No one questions this. Humpback whales come to Maalaea from all over the Pacific every winter, November through May, to calve and nurse. The National Marine Fisheries Service has gone on record as saying that increased vessel activity as a result of proposed harbor expansion may adversely affect humpback whales in Hawaiian waters. This determination was based on the likelihood of displacing humpback whales . . . and subsequently impeding recovery of the whale population. National Marine Fisheries Service has also said, and this is from their biological opinion, which is part of the EIS: Future development of new harbors and programs along the West Maui coast may likely exceed the jeopardy threshold for humpback whales. In other words, they're saying that if you continue to develop West Maui in this way you are likely to jeopardize the continued existence of humpback whales--as a species--forever, gone. Maalaea Bay is not only home to humpback whales but hawksbill,

endangered hawksbill turtles have been sited within the past year nesting here, as well as green sea turtles, which are threatened species. The threats to these endangered species are not only from the increases in vessel traffic resulting indirectly from the project, much of which, ironically, is going to be the result of vessels that are coming to Maalaea to make money from whale watching but also from the blasting, the dredging and filling of the project itself and although National Marine Fisheries Service has specifically asked that there be no blasting and filling during the winter months when the humpbacks are in Maalaea to calve there has been no commitment to do that. So in light of these environmental impacts, which are acknowledged by Fish and Wildlife Service, by National Marine Fisheries Service, by Office of State Planning, and even proponents of the project themselves to plunge ahead and grant this application seems remarkably ill advised at this point. Particularly when, as Mr. Hall pointed out, the environmental impact statement has, the final environmental impact statement process under NEFA has not been finalized. There's no record of decision. There's no official determination that the project's proponents are committed to going forward with the project and as has been pointed out, OSP has already found that this project, as planned, is not consistent with the CZM program. Unless and until that objection is successfully appealed by the Corps no federal permits can be issued for this project. And I want to point out that you're not faced with having to choose between the goal of this project, which is protecting vessels in the harbor from wave conditions or sacrificing vessel safety in favor of the environmental concerns and surf sites. It's just, that is a false conflict. It is entirely possible that a harbor improvement plan can be designed that can safeguard the vessels without destroying any of the surf sites or adversely affecting endangered species or tearing out acres of rich corral community. This is not just speculation. Fish and Wildlife Service has been urging that the Corps examine such an alternative and the Corps itself has generated scientific data showing that an internal modification of the harbor, which would not have these environmental impacts, would be safe for vessels, and it wouldn't destroy the environment and yet there has been stubborn refusal to fully analyze the possibility of doing that kind of internal harbor improvement plan so I urge you to deny the application and I also feel that Mr. Hall has done an excellent job of pointing out the legal hurdles procedurally under State law to going ahead with this permit at this time."

Mr. Evans clarified that there may have been some confusion relative to the law in the conservation district. "Specifically, several things were brought up that need clearance . . . and show why we took the position we took, vis-a-vis Maui County, the Maui County Planning Department's position is relatively consistent with us. We have a project, basically, the area here being mauka, the area here being sea. Now, on the question of the SMA, the Conservation District Use Application before you this morning, gentlemen, limits itself only to those areas makai--that's the area of interest for your staff. We're limited to the CDUA. That's not to say that Mr. Parsons' project is limited to this area, too. Mr. Parsons' may well have things that he may desire to do mauka; he may want to put in buildings, or whatever, but these buildings are not in the conservation district. This area here is all urban or some other zone. Our function in processing the conservation application was to limit our requirements to that area so when we go to the County and we ask the County for some kind of clearance, the County can come back and say, 'The project has a lot of things in it.' And some things and Mr. Parsons

may have to on other occasions apply to the County for SMA clearances because the SMA clearly involves this area here if the County tells us, but the County tells us that this area in conservation district is outside the SMA. That's clearance from County relative to the SMA. We limit our actions, or at least your staff, limit our actions to the area under concern by us, which was that of the conservation district. Mr. Hall's concerns about the environmental and EIS questions--when we do this conservation application because we are in the conservation district that triggers, that's what they call a category action under State law, and that category of action triggered an environmental requirement of some kind on the part of the applicant. In this particular case, State law requires a Supplemental EIS. The applicant then went through that process of complying with State law. In contrary to what the guidebook says, the statute, as we understand it, does say that: if you require an EIS, then the EIS must be accepted before you can approve the project--before you approve the project. In this particular case, a Supplemental EIS was required under Chapter 343. A Supplemental EIS was done. A Supplemental EIS was accepted by the Governor so our action which limits itself to the conservation district also limits itself environmentally to State law, and the State law here was Chapter 343. Now, if you gentlemen will look at Condition No. 1, we do not and did not intend to obviate the need for any other federal NEFA law or Clean Water Act, for example, which was brought up here this morning. There clearly may be requirements under those laws. We felt comfortable that by placing Condition No. 1, in our recommendation for approval, if you approve the submittal with that condition in it, that still requires the applicant to go out and get any other, any other statutes, to meet, federal or whatever, to comply with those statutes before, if that's what the statutes say, before they proceed. Relative to the request for another contested case hearing that Mr. Hall made before you this morning, Mr. Hall says to you that: this is the first time I've heard this before the Board that incorporates the whole project; therefore, I am now asking you for a contested case this morning. But if we take a look at Paragraph 11 on page 8 of Mr. Hall's request for a contested case, we will see on page 8, in paragraph 11, no. 1 that he himself refers the submerged lands outside the current Maalaea Small Boat Harbor are the part proposed to be blasted to construct a new channel entrance and a new 640 foot breakwater. And Mr. Hall, who previously has come in, and asked you gentlemen for a contested case, based that request on the entire project, which this morning he now is saying is the first opportunity he really has to address that. Relative to the concerns on cause, it is very difficult. 'Cause' is a subjective thing, and Mr. Hall does say in his request, notwithstanding all of this: I still feel that I've demonstrated good cause for the Board to hold a contested case. That really is an opportunity for him, from our perspective, to try to establish equity, if you will, from his perspective, and we really would not have one comment at this point for or opposed to that kind of a statement."

In answer to a question from Mr. Landgraf, Mr. Evans replied that as far as the breakwaters in the harbor the SMA would not be applicable based on comments of the Planning Department. Mr. Evans added that the SMA line delineated by the shoreline, would be consistent with the existing Executive Order.

Mr. Hall pointed out that DOT had filed for an SMA application for the Sea Flight Terminal so he did not agree with Mr. Evans that it was outside of the SMA area and that the County should be asked for a clearance. Mr. Ahue pointed out a letter from the County

stating that they reviewed the project and it didn't require an SMA. Mr. Hall claimed that the letter was in reference to the subdivision of submerged lands. Mr. Evans stated that the County did indicate that the area is not within the SMA. Mr. Hall pointed out a letter dated January 14, 1993, in the EIS where the County commented on the EIS saying that: Since not all of the proposed facilities are in submerged lands portions of the project falls within the County's jurisdiction under CZM regulations. Because of this the State would have to apply for an SMA permit for the portions mauka of the shoreline. Mr. Evans agreed that portions mauka of the shoreline and those would require an SMA. "The only issue before the Board today are those portions of the project that lie within the conservation district," Mr. Evans said. Mr. Hall commented that in every other case the Board has asked for a clearance letter from the County of Maui before proceeding and was not sure who was correct--that the Board has never granted a CDUA permit without a clearance from the County of Maui and until and unless is received did not believe the Board could grant the permit. He said the application was expanded to harbor improvements and there is no County approval for those improvements; he further stated that the County was probably unaware of the proposed improvements.

EXECUTIVE SESSION Mr. Kennison moved for executive session to consult with legal counsel.

The Chairperson allowed Mr. Hall further comment. "The EIS here was not just mandated as a matter of State law. Again, you are partners with the feds; it was a joint federal-state EIS. Just because there's compliance with State law, it doesn't mean you're off the hook and the whole process is complete--that's not true. The contested case, to the extent that you folks are expanding the application to include all the harbor improvements, I am now asking for a contested case on that so and, again, for the portions that had to do with the submerged lands, I still believe there's good cause for a contested case because I don't think the Board's prepared to act on this; there's no mitigation program you guys are ready to adopt and I think a contested case is the best way for you to exercise your responsibility to preserve what we can preserve and see if there is an alternative as has been mentioned that would allow the harbor to expand without destroying all these important sites."

Mr. Kennison's motion was seconded by Mr. Apaka and unanimously carried.
The Board was in executive session from 2:09 to 2:18 p.m.

Mr. Evans clarified:

(1) Questions have been raised concerning the title in the CDUA. He said staff is clarifying what the project encompasses; the title today currently reflects what has been under discussion throughout the entire process;

(2) Regarding the question of the SMA boundary, Maui County advised that lands makai of the shoreline are outside the SMA; lands mauka of the shoreline are in the SMA and applicant would be subject to any County requirements.

(3) Concerning Condition No. 9, should the Board sustain the staff recommendation, states: the representations made in the environmental document itself relative to mitigation, they're all incorporated as conditions to this particular project. Mitigation measures were proposed as indicated on page 24 by the Army Corps of Engineers, U.S. Fish and Wildlife Service, the contractors, the Environmental Protection Plan, the biological opinion of the National Marine Fisheries Service, as well as the Coastal Zone Management Program. Other representations regarding mitigation that were made that were not named are through Condition No. 9 incorporated as conditions of the approval.

Mr. Evans further stated in response to a question from Mr. Yuen that there would appear that there was a good faith effort on the part of the parties as in the case of the statement that they may or might create a new surf site.

Mr. Nekoba commented that the OSP notes the replacement sites as an option and the mitigating items would be incorporated into the CDUA. Mr. Parsons elaborated that the specific mitigation items in the final Supplemental EIS goes into more detail on each of those sites. For instance, he said, with respect to constructing a new surfing site, that was discussed and was considered "probably too expensive and maybe environmentally unacceptable because of the area that would have to be covered by the construction; however, it further states in the mitigation efforts that the east side of the new channel would be sculpted to provide a left break as an effort to replace 'Off the Walls' which must necessarily be destroyed in this action. The mitigation efforts within the final Supplemental EIS itself is in more detail. With respect to the Office of State Planning, we hope to have a meeting with them to discuss possible revision of some specific language in their recommendations that would allow us to proceed with some of the recommended mitigation efforts. We would especially like them to acknowledge in their letter that this project is fully in compliance with the Coastal Zone Management policy and objectives as relating to economic use, which was not mentioned in their letter."

ACTION Mr. Kennison moved to approve staff recommendation on A & B. Seconded by Mr. Apaka.

Mr. Evans, "Part A is understandable; now, before Part B, the question in my mind, there's been another request this morning for contested case hearing. Should the Board act on Part B before it adjudicates the second request for the contested case hearing, in fairness to the requestor of the contested case hearing, . . . I'm just trying to be fair. "

The Chairperson suggested taking one motion at a time; therefore, Mr. Kennison withdrew his motion.

Mr. Kennison moved to approve Part A; seconded by Mr. Apaka and unanimously approved.

Mr. Evans, "Now, we got a verbal request made today for contested case hearing."

Mr. Kennison moved to deny the verbal request for contested case hearing; seconded by Mr. Apaka; Mr. Landgraf abstaining; motion carried.

Mr. Kennison moved to approve Part B; seconded by Mr. Apaka; Mr. Landgraf abstaining; and no by Mr. Yuen; motion carried.

Mr. Hall asked for a certified copy of the decision.

ITEM F-9 REQUEST LAND BOARD APPROVAL FOR THE TERMINATION OF LEASE AGREEMENT BETWEEN DOLE FOOD COMPANY, INC., WAIALUA SUGAR COMPANY, INC. AND THE STATE OF HAWAII, HALEIWA WEINBERG VILLAGE, HALEIWA, OAHU, TAX MAP KEY 6-2-06:6(POR. OF), TAX MAP KEY 6-2-07(POR. OF)

and

ITEM F-10 REQUEST LAND BOARD APPROVAL FOR THE TERMINATION OF LEASE AGREEMENT BETWEEN THE CONSUELO ZOBEL ALGER FOUNDATION AND THE STATE OF HAWAII, CONSUELO ZOBEL, ALGER HOMELESS VILLAGE, WAIANAE, OAHU, TAX MAP KEY 8-5-35:24(POR. OF)

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-2 WAIMEA OUTDOOR CIRCLE REQUESTS DIRECT LEASE OF PARCELS 1 & 2, BEING PORTION OF THE GOVERNMENT LANDS AT WAIMEA, SO. KOHALA, HAWAII, TAX MAP KEYS 6-6-03:7 AND 6-6-08:ROAD RESERVE

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-6 RESUBMITTAL--REQUEST FOR EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE ON GENERAL LEASE NO. S-4095, OLOMANA GOLF LINKS, INC., WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-13:10

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-13 AMENDMENT TO PRIOR BOARD ACTION OF FEBRUARY 12, 1988 (AGENDA ITEM F-24) RELATING TO AN AGREEMENT TO PARTITION LAND AT NIU VALLEY, HONOLULU, OAHU; ACCEPT QUITCLAIM TO A PORTION OF PROPERTY, ISSUE QUITCLAIMS TO THE REMAINDER OF PROPERTY; AND SET ASIDE TO DIVISION OF FORESTRY AND WILDLIFE, TAX MAP KEY 3-7-04:1, 2 AND 20

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-14 AMENDMENT TO PRIOR BOARD ACTION OF MARCH 12, 1993 (AGENDA ITEM F-11) SETTING REVOCABLE PERMIT RENT INCREASES, WAIAHOLE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-8-01 AND 07

Mr. Bernie Lam Ho stated he represented the eight permittees and commented on the rental increases originally proposed and the actual land areas under the permits.

Mr. Young explained that the rate increases wouldn't be implemented and would be rolled back; whatever has been paid since January 1, 1994, will be refunded and this was the purpose of the action today.

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-1 PURSUANT TO A CONTESTED CASE HEARING UNDER CHAPTER 91, HRS, DECISION AND ORDER OF THE BOARD OF LAND AND NATURAL RESOURCES IN THE MATTER OF THE REQUEST FOR A ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI

ACTION Unanimously approved as submitted (Apaka/Kennison).

ITEM E-1 REQUEST OF KAHUKU HIGH AND INTERMEDIATE SCHOOL TO ESTABLISH AN ALTERNATE EDUCATION CENTER AT KAHANA VALLEY STATE PARK, OAHU

Mr. Hank Nawahine and Lea Albert, principal of Kahuku High School urged the Board to establish the center. Rep. Ululani Beirne spoke in support of the program; however, expressed her concern about the center being located in front of Lydia Dela Cerna's property. Mrs. Cerna was worried about the intrusion on her privacy but was informed that if any problems arose the students would be removed. Rep. Beirne suggested that maybe further review was necessary. Another concern was that the students would not have adequate time for cultural study because they needed to focus on core subjects in order to graduate. She also said that almost \$7,500 has been spent for the flooring and tent. She suggested that after the residents relocate to the new subdivision such a program at that time would be more favorable. She also recommended that the program be kept on one site.

Ms. Leona Gardina spoke in favor of the program.

Mr. Ben Schaefer pointed out that at a recent meeting of 13 residents, the majority support the program. Besides Mrs. Dela Cerna's concerns, concern was expressed about proper supervision of the students. The question he said was whether they should have the program in Kahana Valley at this particular time.

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-4 **REQUEST TO ACQUIRE EASEMENT FOR WATERLINE TO KING KEKAULIKE HIGH SCHOOL, MAKAWAO, MAUI, TAX MAP KEY 2-3-07:PORS. 1 AND 10**

ACTION Item deferred to the next meeting of the Board (Kennison/Apaka).

ITEM F-5 **DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM REQUEST ONE-YEAR EXTENSION OF RIGHT-OF-ENTRY COVERING INSTALLATION AND PERIODIC MAINTENANCE OF WIND AND STRATEGY PROJECT ON STATE LANDS AT KUAOKALA (KAENA POINT AREA), WAIALUA, OAHU; PULUHUNUI (OLD PUUNENE AIRPORT AREA) AND UKUMEHAME, WAILUKU, MAUI; AND LALAMILO, SO. KOHALA, HAWAII**

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-11 **DEPARTMENT OF ATTORNEY GENERAL REQUESTS APPROVAL OF AMENDMENT NO. 3 OF LAND OFFICE DEED LOPP-OA-141, DOWNTOWN, HONOLULU, OAHU, TAX MAP KEY 2-1-03:1**

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-16 **DIRECT AWARD OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR WATER METER PURPOSES, LOT 23, HANAPEPE TOWN LOTS, 1ST SERIES, HANAPEPE, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-9-05:07**

ACTION Unanimously approved as submitted (Yuen/Landgraf).

ITEM F-17 **WAIVER OF IMPROVEMENT BOND REQUIREMENT CONTAINED IN EXTENSION OF GENERAL LEASE NO. S-4654, NORTHRUP KING CO., KEKAHA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-02:35**

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-18 **AMENDMENT TO PRIOR BOARD ACTION OF JUNE 9, 1994 (AGENDA ITEM F-1-J), LAND LICENSE NO. S-328, KEKAHA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-02:1**

ACTION Unanimously approved as submitted (Nekoba/Yuen).

ITEM D-1 PERMISSION TO ENTER INTO OPERATION AND MAINTENANCE AGREEMENT, DRAINAGE IMPROVEMENTS, ALONG KAMEHAMEHA HIGHWAY, KAAAWA, OAHU

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-4 AMENDMENT REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA-811, SINGLE FAMILY RESIDENCE AT SOUTH KONA, HAWAII; TAX MAP KEY: 8-3-5:16; APPLICANT: BILL RUSH; AGENT: BILL WEIGANG, WEIGANG MARVICK & ASSOCIATES

Mr. Yuen stated the location and design hints of a bed and breakfast. The Chairperson noted a single-family agreement with the County, and Mr. Yuen questioned why that would be necessary when a home is modified.

ACTION Mr. Yuen asked to add that recorded permit approval be submitted to the Board, as well as a copy of the single-family dwelling agreement; no bed and breakfast, or rental (Condition No. 4A) with a copy of the CDUP to Virginia Goldstein, the Hawaii County Planning Director, and to the community association; seconded by Mr. Nekoba and unanimously approved as amended.

ITEM K-1 LEASES FOR LEI VENDING CONCESSION, HILO INTERNATIONAL AIRPORT, HAWAII (AH LAN HIRO, AH LIN LOO, ANNA KAMAHELE)

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM K-3 GIFT, PACKAGED FOODS, FLORIST, JEWELRY AND SUNDRIES CONCESSION, KAHULUI AIRPORT

ACTION Unanimously approved as submitted (Landgraf/Nekoba).

ITEM K-4 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 5230, KAPALUA-WEST AIRPORT, MAUI (MAUI LAND & PINEAPPLE CO., INC.)

ACTION Unanimously approved as submitted Landgraf/Nekoba).

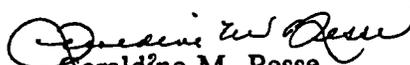
RESOLUTIONS

The following resolutions were adopted by the Board congratulating employees on their retirement:

- (1) Paul Kawamoto, Aquatic Biology Program Manager, 29 years of service;
- (2) Henry Y. Okamoto, Aquatic Biologist, 36 years of service;
- (3) Henry M. Sakuda, Aquatic Resources Administrator; 31 years of service;
- (4) Nobuko Nishimura, Aquatic Resources Clerk-Typist, 31 years of service;
- (5) Gary Allen Provencal, DOCARE Officer, 10 years of service; and
- (6) Kathy S. Laoron, Division of Forestry and Wildlife Secretary, 26 years of service.

ADJOURNMENT - There being no further business, the meeting was adjourned at 3:55 p.m.

Respectfully submitted,


Geraldine M. Besse

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON, Chairperson
Board of Land and Natural Resources

cy - DNR REQUEST
 Agenda 16,518 ac.
 - Crowned to DHHL 16,518 ac. (No future parcels to 16,518 ac)
 - except for usage. (Want to buy property)

BAA 16,518 ac.

STATE OF HAWAII
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 Land Division
 Honolulu, Hawaii 96813

Chris doesn't think that LO can be a joint development of the Nimitz property. - DOES NOT WANT TO GIVE US A CHANCE? - TOOK THEM TO DOR.

Board of Land and Natural Resources
 State of Hawaii
 Honolulu, HI 96813

OAHU

Request to Amendment Prior Board Action of October 28, 1994
 (Agenda Item H-6), Conveyance of Land from the Department of
 Land and Natural Resources to the Department of Hawaiian Home
 Lands at Various Sites, Statewide

BACKGROUND:

At its October 28, 1994 meeting, under agenda item H-6, the Board of Land and Natural Resources approved, as amended, the conveyance of 16,518 acres of State land to the Department of Hawaiian Homes Lands (DHHL), as selected from an appended list [See Exhibit A]. The addition of State lands into DHHL's land inventory represents the shortfall between the 203,000 acres designated for DHHL's use by the Hawaiian Homes Commission Act of 1921 and its inventory then of 186,982 acres, as verified by a Governor's Task Force formed in 1990 on DHHL Land and Title Claims.

The 16,518 acres was comprised of the following amounts of lands on each island:

Kauai	1,948.579	1.4% of total state land on island
Maui	2,625.522	2.2% of total state land on island
Molokai	399.533	Total for Maui County
Lanai	50.000	
Hawaii	11,053.228	1.3% of total state land on island
Oahu	<u>441.138</u>	<u>0.7% of total state land on island</u>
Total	16,518.000	

The conveyance of the individual parcels would require adjustments for subdivision and access, and in some cases, depended on availability of the property. Realizing this, two large lots were part of the conveyance [+/-500 acres at Keahole and 2,105 acres at Lalamilo] and were to be conveyed last. This would allow for final adjustments in the total acreage to reconcile the actual acreage conveyed from the other areas such that the total conveyance to DHHL was 16,518 acres.

In compiling the list of properties for conveyance, the department had to deal with the Board's "Public Trust Responsibility" on the management of state owned lands. There was strong philosophical arguments on why the state should convey properties to DHHL in an effort to move their program forward. However, the department did not want to create a situation where one "trust" is made whole at the expense of another. As such, in selecting the properties for transfer, the department applied certain guidelines and principles that we believed struck an equitable balance between both public trust responsibilities. The three guidelines and principles were:

1. ~~Existing Government Users~~ - Parcels used by other government agencies were excluded from the list of possible sites unless DHHL had obtained some type of approval by the agency that they have no objection to the transfer.
2. ~~Existing Leases and/or Those Eligible to obtain long-term leases pursuant to Act 237, SLH 1988~~ - For those lands which have existing encumbrances and/or were involved in the permit to lease conversion [Act 237], the transfer of the property would include the existing encumbrances. DHHL would then act as the lessor on behalf of DLNR.
3. ~~Revenue Generating Lands [Commercial/Industrial/Resort]~~ - The conveyance of 16,518 acres of state lands to "make the trust whole" did not include a large amount of existing revenue generating lands. Usually, existing revenue generating lands do not involve large acreage and as such, transfer of these lands based entirely on acreage would, in our mind, be a disservice to the larger public trust. The lands conveyed, however, did include some revenue producing lands and further, contained lands that we believed had income potential in the future. However, in order to realize revenue from these properties, DHHL would need to plan and develop these sites accordingly.

CURRENT REQUEST:

DHHL's selection of ~~80,552 acres at Waiahole~~, Oahu was later revised to 19.139 acres due to prior obligations by the Housing Finance and Development Corporation to other parties. Although clearly stated at the time of the conveyance that the exact area was to be determined and the conveyance to DHHL was for vacant lots within the Waiahole Agricultural Park, DHHL believes that they are entitled to select the State lands on Oahu to make up for the loss of the ~~63,413 acres~~. DHHL has identified the following properties on Oahu:

<u>LOCATION</u>	<u>TAX MAP KEY</u>	<u>ACRES</u>	<u>ZONING</u>
1. Kapalama	1-5-33:2,9,16,19,20	1.000	IMX-1
2. Kalawahine	2-4-34:Por. 8	4.500	Preservation
3. Waimanalo	4-1-10:32	4.147	Agricultural
4. Waianae	8-5-04:12	11.561	Agricultural
5. Waianae	8-5-29:2	8.264	Agricultural
	Total	<u>29.472</u>	

The above State lands, as shown outlined in red on the attached maps labeled Item B.1 - Item B.5, were selected by DHHL due to their 1) adjacent proximity to existing DHHL lands and consolidation for future development, and 2) high potential for homestead uses.

Item 1 was on the original list in 1994, however, a one (1) acre portion of the 1.573 acre site was reserved for a proposed City and County Wastewater Pump Station. The City and County, has since, found a better suited site for the pump station, making the one (1) acre portion available.

Item 2 adjoins DHHL land on three sides and would be incorporated as an integral part of its housing project now under design. This six acre site is under the operation of Governor's Executive Order No. 1529 (GEO No. 1529) issued to the City and County of Honolulu, Board of Water Supply. According to its July 24, 1997 letter from Raymond H. Sato, its Manager and Chief Engineer, the Board of Water Supply has no objection to the withdrawal of 4.5 acres from GEO No. 1529. The remaining 1.5 acres is sufficient for its proposed well site. Accordingly, if approved, the 4.5 acre portion for DHHL will have to be withdrawn from GEO No. 1529, subdivided, and subsequently, transferred to DHHL.

Item 3 adjoins a parcel selected for conveyance in 1994. It was formerly encumbered by General Lease No. S-3754, but recently cancelled for delinquent rent and misuse of the demised premises.

Item 4 and Item 5 adjoin DHHL land planned for housing since 1970. Both Items are encumbered by General Lease No. S-5326 issued to Mr. James R. Jones, pursuant to Act 237, SLH 1988, for diversified agriculture/residence purposes, with a term of 35 years commencing August 1, 1994, up to and including July 31, 2029.

Pursuant to Item H-6 of the Board's October 28, 1994 meeting, DHHL will honor any and all existing encumbrances, and any initiated prior to the documented transfer of the above selections.

DISCUSSION:

To date, a majority of the 16,518 acre properties have been conveyed to DHHL [see exhibit C]. Much of the remaining conveyances are in the process of securing the necessary government approvals for subdivision--i.e. access, minimum lot size, etc.

On Thursday, ~~March 12, 1998~~, the Board of Land and Natural Resources had an ~~informational briefing~~ on the background of the prior conveyance to DHHL as well as a presentation by DHHL on their current proposal. ~~Staff disagrees with DHHL's representation that the conveyance of the 16,518 acres represented a specified acreage on each island.~~ As indicated earlier, the exact acreage was unknown at the time of the conveyance. The Waihole Agricultural Lots were being disposed of by the Housing Finance Development Corporation [HFDC] which was required to follow a process for issuing leases to the residences in the area. That process, unfortunately, resulted in less land in the Agricultural Park to be conveyed to DHHL than was originally estimated.

As indicated at the briefing, Staff has two specific concerns regarding this proposal. The first is the more from a philosophical standpoint, questioning the wisdom of allowing DHHL to revisit and revise the list of properties to be transferred as a part of the 16,518 acre conveyance. ~~It has been and remains staff's position that the conveyance should not be revisited.~~ DHHL had the opportunity to select lands with very broad guidelines for selection. It would seem inappropriate to allow DHHL the opportunity to revisit their prior selections now or anytime in the future. We need to bring closure to the process and ~~honor the prior agreement~~ by allowing for the completion of the conveyances.

April 9, 1998

As stated at the briefing, staff's position on ~~preserving the prior agreement should in no way be viewed as an unwillingness to convey additional properties to the DHHL.~~ Staff firmly believes that requests such as these should be handled similar to requests made by other agencies for use of state owned lands. ~~If the requests do not conflict with our existing programs or plans, then the conveyance of the lands to the requesting agencies could occur. In this case, the conveyance could occur separate and apart from the on-going conveyance of the 16,518 acres.~~

In view of the fact that the ~~Chairperson agreed to bring this matter back to the Board for consideration, staff's other concern is developing an appropriate rational/criteria for determining what parcels should be conveyed.~~ Staff's position is that when considering a request by DHHL for additional lands, we should limit the selection to those lands that would be included in a ~~"Planned DHHL Housing Developments"~~ Other income properties and agricultural lease lots by themselves should not be allowed for consideration in any future conveyance as it competes with our programs on the leasing of public lands.

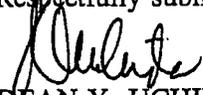
Under those conditions, Items 2, 4 and 5 could be transferred to DHHL due to their adjacent proximity and enhancement value to DHHL lands with long standing plans to be developed as homesteads. However, staff would like to retain Items 1 and 3 in the State land inventory as it does not meet the newly developed rational/criteria.

RECOMMENDATION:

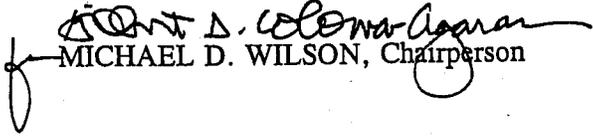
That the Board approve the conveyance in fee simple of Items 2, 4 and 5 above to the Department of Hawaiian Home Lands under the standard terms and conditions used for conveyances to government agencies which are by this reference incorporated herein and in addition to the following conditions:

1. All existing encumbrances between the existing lessee and the Department of Land and Natural Resources, on behalf of the State of Hawaii, on the conveyed property shall be honored by the Department of Hawaiian Home Lands;
2. Review and approval of the conveyance document by the Attorney General's Office;
3. The consideration for the conveyance shall be through a land exchange on an "acre for acre" basis, the terms and conditions for which shall be determined by the Chairpersons of the respective Departments, and subject to final approval by the Board of Land and Natural Resources;
4. Other terms and conditions that may be prescribed by the Chairperson.

Respectfully submitted,


DEAN Y. UCHIDA
Administrator

APPROVED FOR SUBMITTAL:


MICHAEL D. WILSON, Chairperson

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Hawaii Agricultural and Rural Redevelopment Program (HARRP)
Honolulu, Hawaii 96813

October 28, 1994

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

STATE WIDE

Subject: Conveyance of Land from the Department of Land and Natural Resources to the Department of Hawaiian Home Lands at Various Sites Statewide

STATUTE:

Chapter 171-95, Hawaii Revised Statutes

FOR:

The Department of Land and Natural Resources [DLNR] to convey approximately 16,518 acres of State-owned lands to the Department of Hawaiian Home Lands [DHHL].

ZONING:

State Land Use: Various

County Zoning: Various

LAND TITLE STATUS:

Various both Ceded and Non-Ceded lands are being conveyed.

ENVIRONMENTAL REQUIREMENTS:

The subject conveyance is an "Exempt Class of Action" pursuant to Title 11, Chapter 200, Hawaii Environmental Impact Statement Rules, Department of Health. The subject conveyance proposes "no expansion or change of use beyond that previously existing on the property."

REMARKS:

Background

The Department of Land and Natural Resources has been involved in the Governor's Task Force on DHHL Land and Title Claims since 1990. The Hawaiian Homes Commission Act of 1921 designate certain public lands as "available lands," totaling approximately 203,500 acres, for use by the DHHL. Currently, the DHHL land inventory contains approximately 186,982 acres of land. In the Governor's 1994 State of the State address, he expressed his intent to transfer +/-16,000 acres of land to the DHHL to "make their trust whole."

Our role on the Task Force has been to basically "verify" the various claims made by DHHL and where verified, participate in alternative solutions to correct and compensate DHHL. It is interesting to note that to our knowledge, this is the first time that the State or Territory has attempted to collectively verify/identify what is considered to be "Hawaiian Home Lands."

The Task Force will end on December 31, 1994 and will be submitting its findings during the next legislative session. A detailed report of DLNR's participation on the Task Force will be provided to the Board at a later date.

TO BE DISTRIBUTED

H-6

THHAR A

October 28, 1994

At the start of the Task Force, the DHHL Land Claims were as follows:

DHHL LAND CLAIMS

Acres

+/- 203,500	LAND DESIGNATED AS "AVAILABLE LANDS" BY CONGRESS IN 1921
186,982	DHHL CURRENTLY CONTROLS TODAY (DHHL FIGURES)
+/- 16,518	UNACCOUNTED LANDS

Current Situation - Conveyance of 16,518 acres

The Task Force was attempting to resolve most, if not all, of DHHL's claims as soon as possible. The Task Force intent has always been to resolve, once and for all, what is/was Hawaiian Home Lands, correct any unauthorized use of Hawaiian Home Lands, and compensate DHHL for the unauthorized uses.

Through this process, the Task Force has resolved all of the Executive Orders and Governor's Proclamations that were considered to be unauthorized uses of Hawaiian Home Lands. Many of these Executive Orders and Governor's Proclamations were canceled in 1984. The Task Force addressed any continued use agreements and sought funding from the legislature to compensate DHHL for back rent on these lands. The back rent paid to DHHL amounted to \$12,000,000.00.

The Task Force also resolved two nominal lease rent issues with DHHL concerning the United States' government use of DHHL lands at Kekaha and Pohakuloa. Land exchanges for these two areas with DHHL have been approved by the Board and are currently in process.

Currently, DLNR and DHHL have major differences in the definition of certain remaining land claims.

Despite our different interpretations, and in recognition of the necessity to resolve the remaining claims in a manner that is responsible to both trusts, we do support the Governor's intent of "making the DHHL trust whole." Through the efforts of the Task Force, DHHL has confirmed that they currently have 186,982 acres in their control. Thus, in order to restore their trust to the 203,500 acres figure listed in the Hawaiian Homes Commission Act, the State proposes to convey 16,518 acres. Rather than hold the transfer of lands in abeyance until a legal resolution of our different interpretations is completed, the immediate transfer of lands to "make the DHHL trust whole" will enable DHHL to utilize these lands in their continuing effort to fulfill its mission. A listing of the lands being considered for the transfer is attached as Exhibit "A." The list contains more than the 16,518 acres and thus DHHL will choose from this final list the parcels that they want included in the 16,518 acres conveyance.

Furthermore, in certain instances, the transfer of lands that are part of of long standing title claims made by DHHL essentially renders their claims moot. However, this does not preclude DHHL from continuing with their claims on their "Ahupuaa Theory" with the courts for other title claims throughout the state that are not part of this conveyance.

In addition, the transfer of lands at Waimanalo are part of an agreement regarding title claims and counter claims between both DHHL and DLNR within the Ahupuaa of Waimanalo. As a part of this agreement, DLNR would: 1) quitclaim our interest in the Beach Parks, and 2) 127 DHHL lease lots that are presently on lands owned by DLNR. DHHL would: 1) quitclaim its interest in the former pasture lands (currently the location of Waimanalo Elementary School and Hawaii Housing Authority Subdivisions), and 2) quitclaim its interest in the third party alienation claims (grants sold by the Territory). The Waimanalo lands listed on Exhibit "A" are only those lands which DLNR are quitclaiming to DHHL and are in addition to the 16,518 acres.

In another agreement on title claims and counter claims involving lands at Anahola, Kealia, Kamalomalo and Moloaa, DLNR would: 1) quitclaim our interest in the cane lands which have been confirmed as being DLNR lands, 2) quitclaim our interest in the fallow cane lands, pasture lands and reservoirs at Anahola and Kamalomalo which are the subject of competing title claims with DHHL. In turn, DHHL would: 1) quitclaim its interest in the third party alienation claims (grants sold by the Territory) at Anahola, Kamalomalo and Moloaa. The Anahola, Kealia, Kamalomalo lands listed on Exhibit "A" are only those lands which have been confirmed as DLNR lands and are being quitclaiming to DHHL as a part of the 16,518 acres. The lands which both DLNR and DHHL are claiming (approx. 1,150 acres) are being conveyed in addition to the 16,518 acres.

Finally, in compiling the list of properties for conveyance, we must also deal with the BLNR's "Public Trust Responsibility" on the management of state-owned lands. There are strong philosophical arguments on why the state should convey properties to DHHL in an effort to move their program forward. However, we do not want to create a situation where one "trust" is made whole at the expense of another. As such, in selecting the properties for transfer, we applied certain guidelines and principles that we believe strike an equitable balance between both public trust responsibilities.

The list contains certain selected parcels are part of larger existing parcels. In these instances, survey maps and descriptions will be required to delineate the lands available for selection, and the subsequent conveyance of these properties. Specific issues of surveying and subdivisions will be worked out by the DHHL and DLNR.

General Guidelines for Selecting Properties for Conveyance

I. Existing Government Users

Parcels currently used by other government agencies were excluded from the list of possible sites unless DHHL has obtained some type of approval by the agency that they have no objection to the transfer.

II. Existing Leases and/or Those Eligible to Obtain Long-Term Leases Pursuant to Act 237, SLH 1988

For those lands which have existing encumbrances and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances. DHHL will then act as the lessor on behalf of DLNR. Should DHHL require any of the lands encumbered by a lease prior to the expiration of the lease, DHHL will be able to use the standard "Withdrawal" provision in the lease to remove the lands; however, DHHL will be responsible for compensation, if due, to the lessee.

October 28, 1994

With respect to our existing tenants who may be affected by the conveyance of their lease lands to DHHL, all of our existing tenants received a letter from us informing them of the following:

This is to inform you that the Department of Hawaiian Home Lands has identified your subject area for possible transfer to the Department of Hawaiian Home Lands. ANY TRANSFER OF LANDS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF HAWAIIAN HOME LANDS WILL BE SUBJECT TO THE EXISTING ENCUMBRANCE (LEASE AND/OR PERMIT). In effect, if your area is transferred, your landlord will be the Department of Hawaiian Home Lands rather than the Department of Land and Natural Resources.

Once the list of properties has been finalized, we will inform all affected tenants of the transfer and lay out a process for the transition.

III. Revenue Generating Lands [Commercial/Industrial/Resort]

The conveyance of 16,518 acres of state lands to "make the DHHL trust whole" did not include a large amount of existing revenue generating lands. Usually, existing revenue generating lands do not involve large acreage and as such, transfer of these lands based entirely on acreage would, in our mind, be a disservice to the larger public trust.

The lands proposed for conveyance however, do contain some revenue producing lands and further, contain lands that we believe have income potential in the future. However, in order to realize revenue from these properties, DHHL will need to plan and develop these sites accordingly.

RECOMMENDATION:

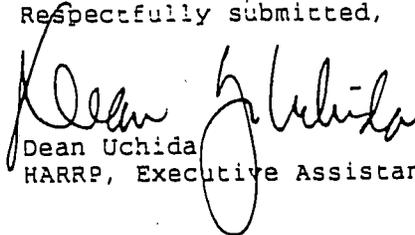
That the Board approve the conveyance of +/- 16,518 acres of State land, as selected by DHHL from the list identified as Exhibit "A," subject to the following:

1. Compliance with the applicable parts of Chapter 171-95, Hawaii Revised Statutes, as amended.
2. For those lands which have existing encumbrances [i.e. leases, permits, easements, etc.] and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances.
3. On all of the intensive agricultural leases [i.e. sugarcane, pineapple] being transferred, the DHHL will encourage long-term use of these lands for intensive agricultural purposes as long as it is economically viable.
4. Authorize the Chairperson to finalize the details [selection of the lots] and logistics [i.e. survey maps/descriptions, subdivisions, deeds, etc.] on the transfer of these properties with the DHHL.
5. Allow the Department of Hawaiian Home Lands up to December 31, 1994 to select 16,518 acres from the parcels listed on Exhibit "A," after which, the Board may select the parcels.

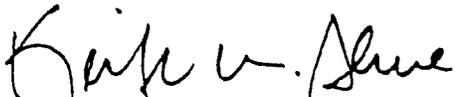
October 28, 1994

6. Authorize the Chairperson to resolve all boundary and/or area disputes regarding the final configuration of specific parcels to be conveyed.
7. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board.

Respectfully submitted,


Dean Uchida
HARRP, Executive Assistant

APPROVED FOR SUBMITTAL:


KEITH W. AHUE, Chairperson

STATEWIDE TOTAL

KAUAI	1,948.579
MAUI	2,625.522
MOLOKAI	518.198
LANAI	50.000
HAWAII	11,015.046
OAHU	441.138
TOTAL	16,598.483

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kekaha	1-2-2-32	20.000	RP #5860 Pioneer Hi - Bred subject to a lease pursuant to ACT 237 SLH 1988
Hanapepe	1-8-8-35	5.777	Former Amfac Lumber yard -- Subject to direct lease to the County of Kauai
Wailua	3-9-2-3	43.920	Exclude GEO 2994 to County (15,410 sf Well Site and 6,378 sf access easement or .5 acres)
Wailua	3-9-2-12	320.192	RP #6327/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-2-17	9.960	GL #4585 Walter Palmeira -- Truck Crops
Wailua	3-9-2-24	12.353	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-25	67.000	GL #4412/LL #295 Lihue Plantation -- Pasture
Wailua	3-9-2-26	12.000	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-27	14.000	GL #4412/LL #295 Lihue Plantation -- Sugarcane/Pasture
Wailua	3-9-6-9	41.291	GL #0295/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-6-11	11.482	GL #4939 George Fernandez -- Sugarcane
Kapaa	4-5-5-6	1.871	Income potential
Kapaa	4-5-15-3	11.093	Income potential
Kapaa	4-5-15-34	5.700	Income potential
Kapaa	4-5-15-47	0.060	Income potential
Kapaa	4-5-15-48	0.060	Income potential
Kealia	4-7-2-4	994.120	* * Co-mingled lands of Anahola/Kamalomalo
Kamalomalo	4-7-4-2	422.150	* GL#4576 Lihue Plantation covers 448.666 ac State & 545.454 ac DHHL
Kamalomalo	4-7-4-7	227.438	* Total area of 2,922.966 acres of which 963.40 confirmed DLNR lands
Anahola	4-8-2-1	643.735	* 809.20 DHHL lands with 1,150.366 acres of counter claims
Anahola	4-8-3-4	35.720	*
Anahola	4-8-3-6	360.204	*
Anahola	4-8-3-11	42.287	*
Anahola	4-8-3-18	38.710	*
Anahola	4-8-3-22	139.092	*
Anahola	4-8-3-29	19.510	*
Hanapepe	1-8-7-3	358.720	RP #6627 Olokele Sugar -- Sugarcane [Approx. 12 acres exchanged for Kekaha]
Anahola	4-8-1-1	62.200	Part of Existing DHHL Subdivision at Anahola Farm Lots
SUB TOTALS:		3,920.645	
LESS		0.500	GEO NO. 2994
		809.200	DHHL Lands at Anahola/Kamalomalo
		1,150.366	Conveyed in addition to the 16,518 acres
		12.000	Approximately 12 acres land exchange for Kekaha lands under lease to Army
TOTAL KAUAI		1,948.579	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Keanae	1-1-3-60	0.730	VACANT
Keanae	1-1-3-69	1.040	VACANT
Wailua	1-1-4-7	2.500	VACANT
Wailua	1-1-4-8	2.330	VACANT
Wailua	1-1-4-33	2.080	VACANT
Wailua	1-1-4-34	1.860	VACANT
Wailua	1-1-4-41	3.300	VACANT
Wailua	1-1-5-1	3.150	VACANT
Wailua	1-1-5-8	1.600	VACANT
Wailua	1-1-5-22	0.770	VACANT
Wailua	1-1-5-35	1.700	VACANT
Wailua	1-1-5-38	1.600	VACANT
Wailua	1-1-5-47	5.550	VACANT
Wailua	1-1-6-13	2.780	VACANT
Wailua	1-1-6-31	0.610	VACANT
Wailua	1-1-6-69	0.560	VACANT
Wailua	1-1-6-73	0.750	VACANT
Keanae	1-1-8-8	148.700	RP # 6700 Hansel Ah Koi -- Pasture
Keanae	1-1-8-14	59.910	GL # 5274 Michael Adams -- Pasture
Keanae	1-1-8-25	0.750	VACANT
Hana	1-3-4-12	743.333	Exclude approx. 90 acres for Hana Cinder Pit -- Map is being prepared by DAGS - Survey
Makawao	2-1-4-114	73.000	RP # 4371 Ulupalakua Ranch -- Pasture
Makawao	2-1-4-15	21.340	RP # 4371 Ulupalakua Ranch -- Pasture
Makawao	2-1-4-49	100.000	RP # 4371 Ulupalakua Ranch -- Pasture -- REQUIRES SUBDIVISION FROM 999.87 ACRES
Makawao	2-1-4-94	20.820	VACANT
Makawao	2-1-8-50	2.005	RP # 5963 Ulupalakua Ranch -- Pasture
Makawao	3-4-11-31	0.846	RP # 5000 Frank Makimoto -- Easement
Wailuku	3-8-8-1	1,622.300	* Part of a Master Plan being developed by the State (DOT/DLNR/DOD), and County of Maui
Puunene	3-8-8-8	185.329	* Total area 1,807.629 -- Area required for Government uses is approximately 1085 acres.
Puunene	4-4-2-3	165.207	* Exclude GEO # 3349 to County of Maui [3.594 acres] lease to Maui Humane Society
Kaanapali	4-4-2-8	86.284	Exclude GEO # 3588 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-9	4.690	GL # 3588 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-11	1.700	GL # 4523 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-15	12.850	GL # 3588 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-17	20.418	GL # 3588 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-18	292.740	GL # 3588 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-20	213.713	GL # 3588 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
SUB TOTALS		3,808.845	GEO 3206 to Maui County
LESS		4.729	Puunene -- COM Government Uses
		140.000	Puunene -- COM Recreational Uses
		175.000	Puunene -- DOD Army National Guard
		60.000	Puunene -- DOT General Aviation Airport
		510.000	Puunene -- DLNR Income Potential Industrial Parks
		200.000	Exclude GEO # 3349 to County of Maui -- Lease to Maui Humane Society
		3.594	Hana -- Cinder Pit
		90.000	
TOTAL MAUI		2,625.522	

MOLOKAI:

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
APPROXIMATELY 16,600 ACRES +/-
OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kalamaula	5-2-10-2	1.831	DHHL water tank
Makoleiau	5-5-1-8	8.465	Kipapa Fish Pond
Makoleiau	5-5-1-10	19.768	Pahlomu Fish Pond
Ualapue	5-6-1-1	22.250	Ualapue Fish Pond
Ualapue	5-6-2-1	2.100	GL#4350 Anna King
Ualapue	5-6-2-24	2.260	Vacant
Ualapue	5-6-2-26	13.560	Vacant
Ualapue	5-6-2-27	1.221	Vacant
Ualapue	5-6-2-34	1.980	RP#6114 Richard Chock
Ualapue	5-6-2-36	1.221	Vacant
Ualapue	5-6-3-35	3.300	Ualapue Fish Pond
Ualapue	5-6-6-9	36.500	Fish Pond -- No Name
Ualapue	5-6-6-17	375.360	RP#6552 Michael DeCoite
Kupeke	5-7-6-18	1.450	Nahiole Fish Pond. State has only 1/2 interest of the 1.45 acre pond
Pukoo	5-7-7-22	13.800	Panahana Fish Pond
Kaluaaha	5-7-10-31	6.670	Kaluaaha Fish Pond
Honouliwai	5-8-1-2	4.910	Kaapohuku Fish Pond
Honouliwai	5-8-1-3	1.690	Ohalahala Fish Pond
Honouliwai	5-8-2-68	0.587	Fish Pond -- No Name
Lanai City	TBD	50.000	Required as part of Re-zoning by the Land Use Commission
SUB TOTAL MOLOKAI AND LANAI		568.923	
LESS		0.725	50% OF NAHIOLE FISH POND
TOTAL MOLOKAI		568.198	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*	
Puna	1-5-10-36	100.000		VACANT
Kurtistown	1-7-7-41	0.500	State owned house on property--Estimated value at \$75,000.00.	VACANT
Kurtistown	1-7-7-42	0.600		VACANT
Kurtistown	1-7-7-44	0.600		VACANT
Olaa	1-8-11-12	100.000		VACANT
Olaa	1-8-11-16	99.170	RP #5115 Leslie Wung--Pasture	VACANT
Olaa	1-8-11-23	231.630		VACANT
Olaa	1-8-11-24	124.300		VACANT
Olaa	1-8-11-25	150.000	RP #5124 Jack Ramos--Pasture	VACANT
Olaa	1-9-2-6	33.000		VACANT
Olaa	1-9-2-7	27.000		VACANT
Olaa	1-9-2-8	42.000		VACANT
Olaa	1-9-2-9	42.000		VACANT
Olaa	1-9-13-2	1.103		VACANT
Olaa	2-1-11-2	1.505		VACANT
Keaukaha	2-1-11-1	43.594		VACANT
Hilo	2-1-12-1	184.820	Exclude 5 acres for County of Hawaii--Foreign Trade Zone	VACANT
Hilo	2-1-12-29	29.685	Exclude 13 acres for DLNR Potential Industrial Park Development	VACANT
Hilo	2-1-12:Various			VACANT
Hilo	2-1-12:Various			VACANT
Hilo	2-1-13-154	230.000		VACANT
Panaewa	2-1-13-155	367.000		VACANT
Panaewa	2-1-17-46	0.554		VACANT
Keaukaha	2-1-17-47	0.575		VACANT
Keaukaha	2-1-17-48	0.596		VACANT
Keaukaha	2-1-18-8	1.198		VACANT
Keaukaha	2-1-19-20	0.540		VACANT
Keaukaha	2-1-19-29	0.540		VACANT
Keaukaha	2-1-19-30	0.540		VACANT
Keaukaha	2-1-19-31	0.488		VACANT
Keaukaha	2-3-25-14	0.805		VACANT
Kaumana	2-3-25-15	0.697		VACANT
Kaumana	2-3-25-16	0.398		VACANT
Kaumana	2-3-25-17	0.453		VACANT
Kaumana	2-3-25-47	2.670		VACANT
Kaumana	2-4-24-138	0.235		VACANT
Waiakea	2-4-24-151	0.246		VACANT
Waiakea	2-4-24-154	0.248		VACANT
Waiakea	2-4-26-1	0.264		VACANT
Piihonia	2-4-28-1	0.370		VACANT
Waiakea	2-4-49-19	23.277		VACANT
Kaumana	2-5-4-27	3.684		VACANT
Kaumana	2-5-4-43	0.230		VACANT
Kaumana	2-5-4-47	0.689		VACANT
Kaumana	2-5-4-60	0.085		VACANT
Kaumana	2-5-4-61	0.269		VACANT

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Kaunana	2-5-5-1	0.269	VACANT
Kaunana	2-5-5-3	0.273	VACANT
Kaunana	2-5-5-5	0.273	VACANT
Kaunana	2-5-5-6	0.273	VACANT
Kaunana	2-5-5-7	0.273	VACANT
Kaunana	2-5-5-10	0.273	VACANT
Kaunana	2-5-5-28	0.258	VACANT -- Subject to electrical easement
Kaunana	2-5-5-29	0.272	VACANT -- Subject to electrical easement
Kaunana	2-5-5-30	0.230	VACANT
Kaunana	2-5-5-31	0.230	VACANT
Kaunana	2-5-5-32	0.191	VACANT
Kaunana	2-5-5-33	0.383	VACANT
Kaunana	2-5-6-72	0.160	VACANT
Kaunana	2-5-5-74	0.743	VACANT
Kaunana	2-5-5-77	1.183	VACANT
Kaunana	2-5-5-80	5.339	VACANT
Piihonua	2-6-9-5	1,852.320	Subject to General Lease #S-5220 to Waiuku Hydroelectric Exclude approximately 10 acres for the Piihonua Camp [RP #6793] (to be conveyed to County of Hawaii).
Honoumu - Kahua	2-8-11-9	292.886	GL #3585 Mauna Kea Agribusiness Company
Honoumu - Kahua	2-8-11-11	475.609	GL #3585 Mauna Kea Agribusiness Company
Nienie	4-6-11-3	739.311	GL#4467 Richard Smart -- Pasture
Nienie	4-6-11-4	649.077	GL#4466 Honokaia Ranch -- Pasture
Nienie	4-6-11-5	93.419	GL#4468 Honokaia Ranch -- Pasture
Nienie	4-6-11-11	522.000	GL#4468 Richard Smart -- Pasture
Nienie	4-6-11-12	500.000	GL#4469 Richard Smart -- Pasture
Nienie	4-6-11-13	738.233	GL#4470 Richard Smart -- Pasture
Kawaihae	6-1-2-66	0.248	RP #6327 Randy Roberts -- Parking Lot
Kawaihae	6-1-4-3	1.955	VACANT
Kawaihae	6-1-4-41	6.940	VACANT -- Former Light House Site
Keoniki	6-5-1-10	230.127	GL #4663 Richard Smart -- Pasture
Lalamilo	6-6-1-2	2,105.000	Subject to RP#6442 Paleokiki Ranch eligible for direct lease pursuant to ACT 237 SLH 1988 Also withdraw area for proposed Mudlane Road, Archeological Sites, and future public uses
Keahole	7-3-10-33	2,329.583	Exclude 2,023.583 acres for West Hawaii University Campus and other government uses
Kona - Honokohau	7-4-8-3	643.069	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
Kona - Kailua	7-4-8-56	450.000	Exclude 300 for HFDC Villages of Laiohua
Waichinu	9-5-5-2	262.410	Exclude 2,023.583 acres for West Hawaii University Campus and other government uses
Waialau	9-5-19-16	64.500	Exclude 13 acres for DLNR Potential Industrial Park Development GL #3617 Andrade/Okuna -- Pasture RP #6681 Kau Agribusiness -- Pasture
SUB TOTALS:			13,815.698
LESS			5.000
			443.069
			300.000
			2,029.583
			13.000
			10.000
TOTAL HAWAII			11,015.046

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL
 APPROXIMATELY 16,600 ACRES +/-
 OCTOBER 28, 1994

District	**Tax Map Key**	*Acres*	*COMMENTS*
Kapalama	1-5-20-6	2.750	GL # 4643 Gems
Kapalama	1-5-20-14	0.137	RP # 5362 KCCN Radio Tower Site
Kapalama	1-5-33:2,9,16,19,20	1.573	Income Potential - Exclude 1.0 acres for Proposed Kapalama Wastewater Pump Station
Punchbowl	2-2-5-5	14.600	VACANT
Papakolea	2-2-14-15	0.423	VACANT
Papakolea	2-4-34-8	31.600	GEO # 1529 BWS Pump Site/Direct Leases at Kalawahine/Proposed DHHL Kupuna Housing
Moliiili	2-7-8-18	0.918	GL # 5106 Stadium Bowl - a - Drome
Moliiili	2-7-8-20	0.557	RP # 5107 Stadium Bowl - a - Drome
Waimanalo	4-1-8-11	7.791	RP # 6835 You Soukasen - - Truck Crops
Waimanalo	4-1-10-33	5.106	VACANT
Waimanalo	4-1-23-65	1.777	RP # 6835 You Soukasen - - Truck Crops
Waianae	8-5-5-36	97.764	GL # 4561 Waianae Kai Development Corporation - - Camp Kaala [Eric Enos]
Nanakuli	8-9-2-1	30.000	Exclude for relocation site of Nanaikapono School 15 acres - - Requires subdivision Former Camp Andrews Military Reservation
Kapolei	9-1-16-25	200.000	Part of 1,300 acre land bank at Kapolei
Waiahole	4-8-7,8,9,10,11,12	60.830	Vacant parcels in the Waiahole Agriculture Park and Residential lots
		21.722	7 Vacant Agricultural Lots [Average area 8.69 acres] EXACT AREA TO BE DETERMINED 33 Vacant Residential Lots [Average area .658 acres] EXACT AREA TO BE DETERMINED

SUB TOTAL	477.548
LESS	15.000
	6.000
	12.000
	2.410
	1.000
TOTAL OAHU	441.138

WAIMANALO

Waimanalo	4-1-2-1	10.490	HHL Lease to Texteria
Waimanalo	4-1-3:ALL	40.485	Waimanalo Beach Park
Waimanalo	4-1-14:2	26.080	Makapuu Beach Park
Waimanalo	4-1-14:5	20.800	Makapuu Beach Park
Waimanalo	4-1-14:6	8.176	Kaupo Beach Park
Waimanalo	4-1-14:7	82.733	HHL Lease to Texteria
Waimanalo	4-1-14:8	106.830	Waimanalo Residential Lots
Waimanalo	4-1-16:ALL	34.459	Waimanalo Residential Lots
Waimanalo	4-1-17:ALL	28.205	Waimanalo Residential Lots
Waimanalo	4-1-19:ALL	7.693	Waimanalo Residential Lots
Waimanalo	4-1-20:ALL	14.709	Waimanalo Residential Lots
Waimanalo	4-1-21:ALL	8.144	Waimanalo Residential Lots
Waimanalo	4-1-29:74 TO 108	6.083	Waimanalo Residential Lots
Waimanalo	4-1-31:18 TO 28	2.667	Adjacent to Blanche Pope Elementary School
TOTAL WAIMANALO		397.554	

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 OCTOBER 28, 1994

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Kaunana	2-5-5-3	0.273	VACANT
Kaunana	2-5-5-5	0.273	VACANT
Kaunana	2-5-5-6	0.273	VACANT
Kaunana	2-5-5-7	0.273	VACANT
Kaunana	2-5-5-10	0.273	VACANT
Kaunana	2-5-5-28	0.258	VACANT -- Subject to electrical easement
Kaunana	2-5-5-29	0.272	VACANT -- Subject to electrical easement
Kaunana	2-5-5-30	0.230	VACANT
Kaunana	2-5-5-31	0.230	VACANT
Kaunana	2-5-5-32	0.230	VACANT
Kaunana	2-5-5-33	0.191	VACANT
Kaunana	2-5-5-72	0.383	VACANT
Kaunana	2-5-5-74	0.160	VACANT
Kaunana	2-5-5-77	0.743	VACANT
Kaunana	2-5-5-79	1.183	VACANT
Kaunana	2-5-5-80	5.339	VACANT
Piikoi	2-6-9-5	1,852.320	Subject to General Lease #S-5220 to Waiuku Hydroelectric Exclude approximately 10 acres for the Piikoi Camp [RP #6793] (to be conveyed to County of Hawaii).
Honouliuli - Kahua	2-8-11-9	292.886	GL #3585 Mauna Kea Agribusiness Company
Honouliuli - Kahua	2-8-11-11	475.609	GL #3585 Mauna Kea Agribusiness Company
Nihoa	4-6-11-3	739.311	GL #4467 Richard Smart -- Pasture
Nihoa	4-6-11-4	649.077	GL #4466 Honokaiia Ranch -- Pasture
Nihoa	4-6-11-5	93.419	GL #4466 Honokaiia Ranch -- Pasture
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Nihoa	4-6-11-13	738.233	GL #4470 Richard Smart -- Pasture
Kawaihae	6-1-2-66	0.248	RP #6327 Randy Roberts -- Parking Lot
Kawaihae	6-1-4-3	1.955	VACANT -- Former Light House Site
Kawaihae	6-1-4-41	6.940	VACANT -- Pasture
Keonani	6-5-1-10	230.127	GL #4663 Richard Smart -- Pasture
Lanai	6-6-1-2	2,105.000	Subject to RP #6442 Palekoki Ranch eligible for direct lease pursuant to ACT 237 SLH 1988 Also withdraw area for proposed Mudlane Road, Archeological Sites, and future public uses
Kealahou	7-3-10-33	2,329.583	Exclude 2,023.583 acres for the existing Honokohau Small Boat Harbor and Future Expansion
Kona - Honokohau	7-4-8-3	643.069	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
Kona - Kaiua	7-4-8-56	450.000	Exclude 300 for HFDC Villages of Laipoua
Waiohinu	9-5-5-2	262.410	Exclude 2,023.583 acres for West Hawaii University Campus and other government uses
Waiau	9-5-19-16	64.500	Exclude 13 acres for DLNR Potential Industrial Park Development
SUB TOTALS:		13,815.698	Exclude approximately 10 acres for the Piikoi Camp [RP #6793] (to be conveyed to COH)
LESS		5.000	
		443.069	
		300.000	
		2,029.583	
		13.000	
		10.000	
TOTAL HAWAII		11,015.046	

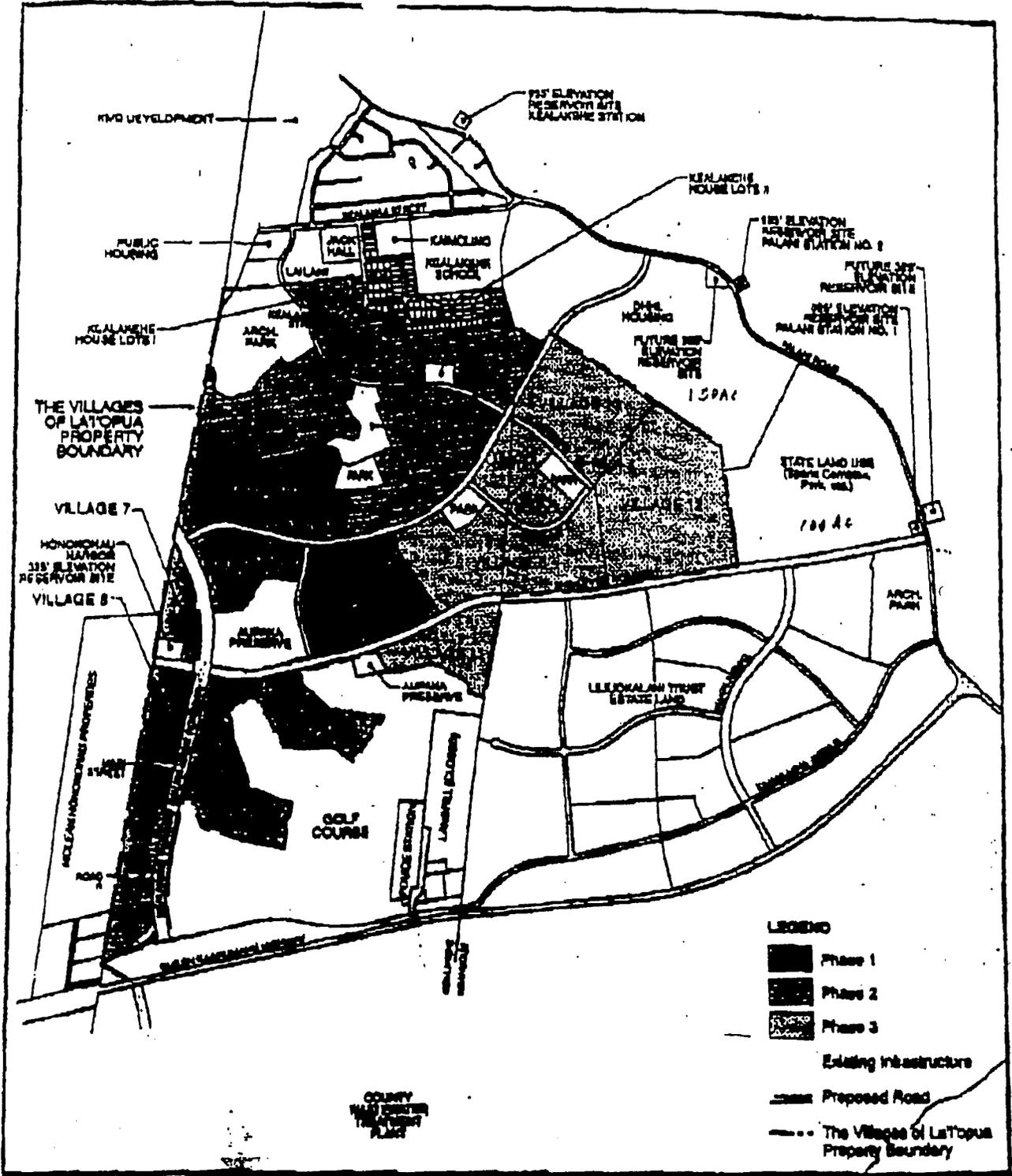
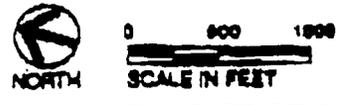


Figure 2
HOUSING DEVELOPMENT PHASING

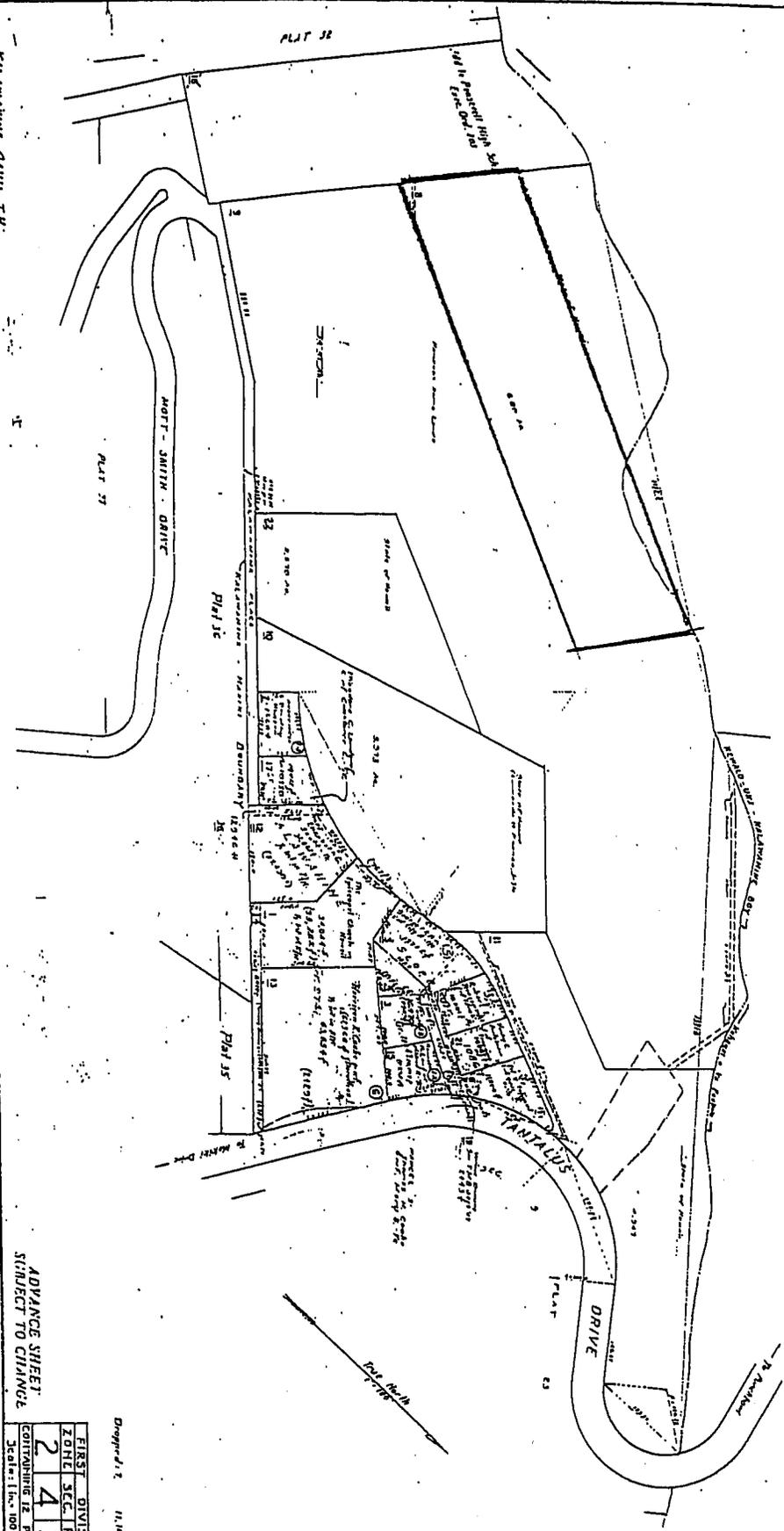
The Villages of LaTopua
Possible Water System Master Plan
Bob Collins Hawaii



No. 100
 Date
 Author
 Title
 Scale
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 No. 100
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 Author
 Title
 Scale
 Date

App. by: _____
 Made by: _____
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KALAWAHINE, OAHU, T.H.



S12

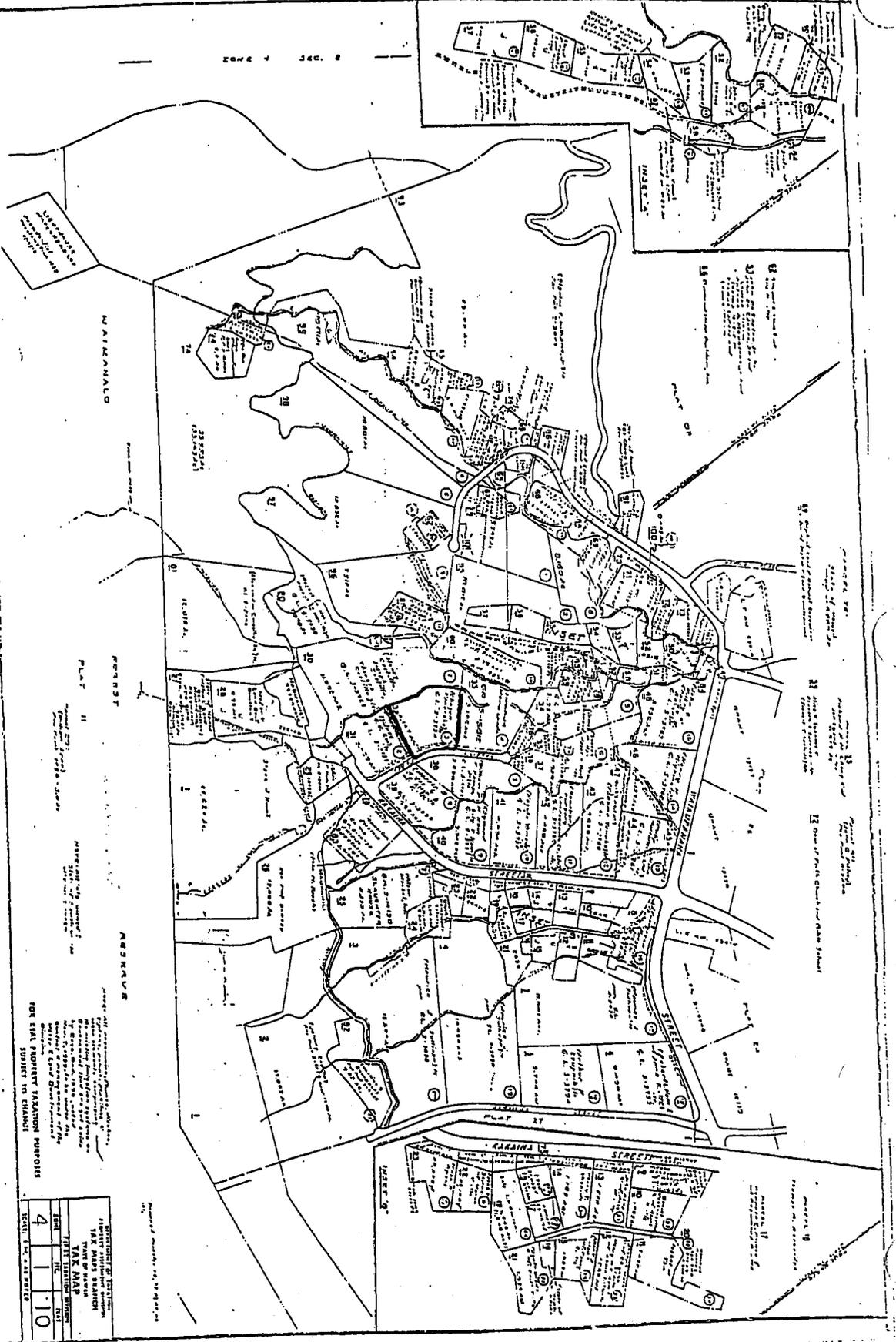
ADVANCE SHEET
 SUBJECT TO CHANGE

Designed 11.18.18.4

FIRST DIVISION	2
ZONE SEC. PLAT	4 34
CONTAINING 12 PARCELS	
Scale: 1 in. = 100 ft.	

DWS, MO. 1225
 HONOLULU, HAWAII, 1954
 FOR THE HONOLULU CITY ENGINEERING DEPARTMENT
 BY THE HONOLULU CITY ENGINEERING DEPARTMENT

FOR THE HONOLULU CITY ENGINEERING DEPARTMENT

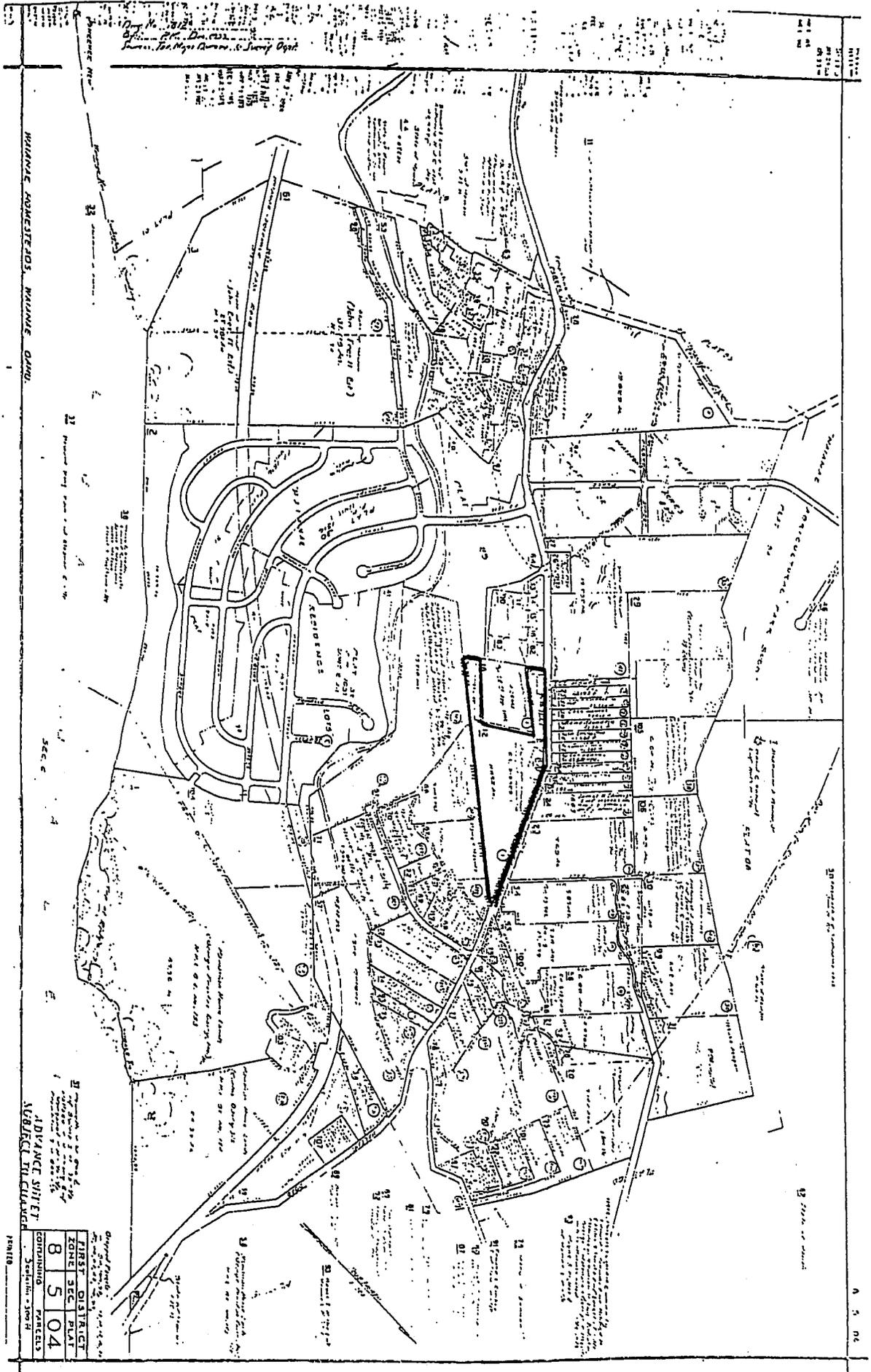


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FOR THE HONOLULU CITY ENGINEERING DEPARTMENT
 HONOLULU, HAWAII, 1954
 FOR THE HONOLULU CITY ENGINEERING DEPARTMENT
 BY THE HONOLULU CITY ENGINEERING DEPARTMENT

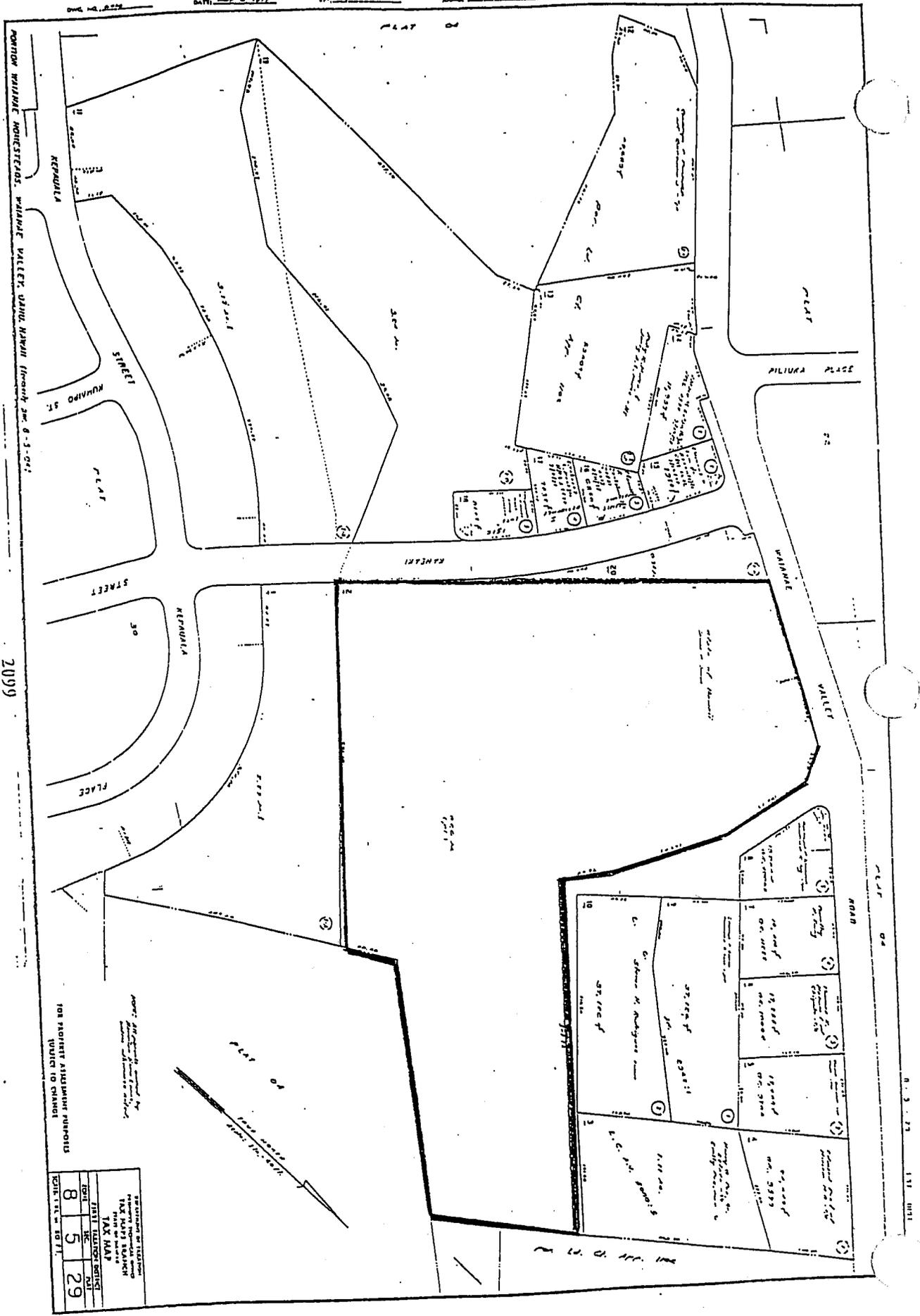
FOR THE HONOLULU CITY ENGINEERING DEPARTMENT	4
HONOLULU, HAWAII, 1954	10
FOR THE HONOLULU CITY ENGINEERING DEPARTMENT	
HONOLULU, HAWAII, 1954	

B-3



2074

BB BA



2099

FOR FURTHER ASSIGNMENT PURPOSES
 SUBJECT TO CHANGE

DEPARTMENT OF TELEPHONE	
TAX MAPS SECTION	
TAX MAP	
DATE	FILE NUMBER
8	5
	29

B-5

STATUS OF DLNR-DHHL LAND TRANSFERS
As of January 31, 1998

<u>Island</u>	<u>Acs. Authorized</u>	<u>% of Total</u>	<u>Acs. Conveyed</u>	<u>%Conveyed</u>
Hawaii	11,054	67%	7,549	68%
Maui	3,047	18%	1,259	41%
Kauai	1,949	12%	1,572	81%
Oahu	<u>441</u>	<u>3%</u>	<u>159</u>	36%
Totals	<u>16,518</u>	<u>100%</u>	<u>10,539</u>	64%

EXHIBIT C

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

DATE: THURSDAY, APRIL 9, 1998
TIME: 1:00 P.M.
PLACE: MAALAEA BOATING AND FISHING CLUB
(BELOW BUZZ'S RESTAURANT)
MAALAEA HARBOR
WAILUKU, MAUI, HAWAII 96793

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 1:28 p.m. The following were in attendance:

MEMBERS:

Mr. Michael D. Wilson	Mr. Colbert Matsumoto
Mr. Christopher J. Yuen	Ms. Lynn P. McCrory
Mr. William Kennison	Ms. Kathryn W. Inouye

STAFF:

Mr. Dean Uchida, Land Division	Mr. Bill Devick, Division of Aquatic Resources (DAR)
Mr. Phil Ohta, Land Division	Ms. Aulani Wilhelm, Public Information Office (PIO)
Mr. Howard Gehring, Division of Boating and Ocean Recreation (DOBOR)	
Mr. Charles Penque, DOBOR	

OTHERS:

Mr. Edwin Kamauoha, Department of the Attorney General (AG's)	Mr. Eric Brown, J-1
Mr. Kali Watson, Department of Hawaiian Home Lands (DHHL), D-24	Mr. Jack Mueller, Maalaea Community Association, J-1
Mr. Buddy Nobriga, D-16	Ms. Lisa Hamilton, Kipahulu Community Association, D-17
Mr. Kalei Luuwai, Maalaea Boat and Fishing Club, J-1	Mr. Edward Smith, D-17 & D-22
Mr. James Service, Hawaiian Charters, J-1	Mr. Brendan Balthazar, D-37
Ms. Lucianne deNaie, Sierra Club, J-1	Mr. Randall Fujiki, Building Department, City and County of Honolulu, D-22
Mr. James Gomes, Maalaea Boat and Fishing Club, J-1	Dr. Pat Sullivan, Oceanit Laboratories, Inc., D-22
Mr. Skip Price, Silent Lady Charters, J-1	Mr. Ed Pskowski, Leo A. Daly, D-22
Mr. Douglas MacCluer, Central Maui Soil and Water Conservation Districts, J-1	Mr. Blake Oshiro, Sierra Club and Kaimana Beach Coalition, D-22
Mr. James Housh, Maalaea Community Association, J-1	Mr. Ernie Dias, Ceatech, USA, D-32
	Mr. Paul Bienfan, Ceatech USA, D-32

HAWAIIAN ISLAND HUMPBACK WHALE NATIONAL MARINE

Before the April 9, 1998 meeting of the Board of Land and Natural Resources was convened a site visit was held on that day at 9:00 a.m. at the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) located at 726 South Kihei Road, Kihei, Hawaii. The nature of this visit to the Sanctuary was for an orientation briefing and to receive the interim report prepared by Mr. Eric Brown, Pacific Whale Foundation, on his data collection at the Honolua Bay Marine Life Conservation District (MLCD).

The Board was briefed about the known biology and behavior of Humpback Whales. The Sanctuary is part of the Federal Government's National Oceanic and Atmospheric Administration (NOAA) and was the latest to receive full designation in the country. Last year, Governor Ben Cayetano officially made the designation as a Sanctuary, balancing concerns between Sanctuary advocates and those who felt the Sanctuary would compromise their livelihood. Recognizing Hawaii as the "Ocean State," the Governor was interested in the State becoming a partner. Chairperson Wilson is looking forward to the Partnerships with the release of funds (appropriations for the Sanctuary will come from the Federal Government - annual budget for FY98 is \$900,000 of which \$200,000 is for capital improvements) in order to make the State Partnership a reality. The Co-managers (two DLNR staff on-site) will provide a beginning to that Partnership, in representing what Hawaii's goals are for the Sanctuary.

Research goals that were guided by the Sanctuary Advisory Council:

- Establish advisory council to advise sanctuary managers;
- Establish baseline parameters for Humpback Whales and their habitat;
- Identify research needs, priorities, data and information;
- Establish a long-term ecological monitoring program to detect Humpback Whale population and their habitat; and
- Facilitate communication and coordination between researchers, educators, resource managers and the general public.

The Board was also briefed on the Honolua Bay MLCD. Established in 1973, this is one of the better developed reefs. Corals that normally do not occur together are present in unusual assemblages within the Bay, making it unique. Because of its characteristics, Honolua has become a popular site for tourist and commercial activities. There are concerns about the siltation/sedimentation that has been increasing due to upland development and the seasonal wave actions which move sediments around in the Bay. Research has shown that in over 10 years, coral has decreased and the fish population has increased, for reasons unknown.

ITEM D-24: REQUEST TO AMEND PRIOR BOARD ACTION OF OCTOBER 28, 1994 (AGENDA ITEM H-6), CONVEYANCE OF LAND FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE

DEPARTMENT OF HAWAIIAN HOME LANDS AT VARIOUS SITES,
STATEWIDE

Mr. Dean Uchida, Acting Administrator of the Land Division stated that on October 28, 1994, the Board approved the conveyance of 16,518 acres to the Department of Hawaiian Home Lands (DHHL). On March 12, 1998, DHHL and the Land Board had a briefing covering the background of the conveyance. As indicated at the briefing, DLNR staff had some philosophical questions about allowing DHHL to revisit the list of properties to be transferred as part of the 16,518 acre conveyance. Staff feels that this transaction should be completed, and any other request from DHHL should be considered outside of this transaction. He said the matter before the Board is to amend the 16,518 acre conveyance and add some additional parcels that were not conveyed in the Waiahole Agricultural Park to DHHL. He stated that this matter was brought before the Board at the request of the Chairperson, to follow-up on the request made by DHHL for the conveyance of 5 parcels covering approximately 29 acres, 3 of these parcels involve lands that are part of a "Planned DHHL Housing Development." He said staff had applied some basic rational/criteria for determining what parcels should be conveyed, and at this point staff is willing to look at conveying additional lands for the Planned DHHL Housing Development. He said parcels 2, 4 and 5 meet that criteria as they are part of the master plan development for DHHL, whereas parcels 1 and 3 do not. Staff's recommendation is that the Board approve the conveyance of parcels 2, 4 and 5, to DHHL under standard terms and conditions.

In response to Member Christopher Yuen's question regarding the difference between a land exchange for the DHHL's planned use and another government agency asking for a set-aside, Mr. Uchida stated that in this case, we are conveying 16,000 acres to complete the 200,000 acre Hawaiian Homes Trust inventory. DHHL is asking for an addition to that to be part of the Hawaiian Homes Trust and DLNR will not be managing the land anymore, as opposed to the land not leaving the Trust and just being set-aside to another government agency for a particular use.

Mr. Kali Watson, Director of the DHHL, testified in opposition to the staff recommendation. He asked for the Board's support in transferring all 5 parcels, instead of 3 as recommended by staff. He explained his rationale for obtaining the 2 parcels that staff is recommending against. He said the Kapalama parcel (parcel 1), is a 1-1/2 acre parcel that was originally transferred to DHHL, with a reservation for a wastewater treatment facility for the City and County of Honolulu (C&C). DHHL has been able to convince the C&C to go elsewhere. He said DHHL was planning to consolidate this parcel with an existing parcel that they have in the area, as well as work with the Bishop Estate to consolidate another larger parcel that would be more

suitable for commercial or industrial development. He explained that besides doing homesteading, DHHL also needs to generate revenues for their programs. He said the Waimanalo parcel (parcel 3), is a 4 acre parcel that adjoins another parcel selected for conveyance in 1994, and the intent is strictly for homesteading and not for anything else. He said DHHL is not interested in a land exchange, and that they are requesting that this be part of the original 16,000+ acre transfer and not in addition to, as this would be a replacement to the 63 acres that was lost in Waiahole and the transfer would be pursuant to Section 171-95 Hawaii Revised Statutes, which allows the Board to make transfers without requiring consideration for land exchange. He said the encumbrances as reflected in the proposed motion would be retained with respect to the administration of the general lease. He mentioned another parcel, the Wong property. He said the Wong's have some concerns that they would like their lawyer to look into, and as soon as this case is resolved, DHHL will be coming back to the Board in the future to consider the complete transfer which would clearly layout that the Department is precluded from early withdrawal, unless there is a mutual agreement.

Member Colbert Matsumoto asked if there will be any further request in the future, or will this be a final resolution. Mr. Watson stated that this will be the final resolution with a few exceptions, the Wong property, and an adjacent parcel at Kapalama that DHHL is trying to get transferred over from the Department of Transportation (DOT). DHHL would like to subtract this from the Lalamilo parcel, if the Board is agreeable.

Member Lynn McCrory said her position is that she would prefer to see our own income or revenue-generated lands kept in DLNR. She stated that DHHL's primary role is for homesteading and getting people back on the land. She said she would like to see what staff is recommending occur. Mr. Watson explained that their program is two faceted in that they do their homesteading but also do revenue producing activities. He stated that DHHL would like to become more self-sufficient by generating their own revenue, rather than going to the Legislature every year with their hands out. He said that is why this 1 acre site in Kapalama (parcel 1) is critical so that DHHL can continue to generate money for their programs.

A motion was made to approve Item D-24 with the following amendments:

That the Board approve the conveyance in fee simple of the following parcels to DHHL:

	Location	Tax Map Key	Acres
1.	<u>Kapalama</u>	<u>1-5-33:2, 9, 16, 19, 20</u>	<u>1.000</u>

2.	Kalawahine	2-4-34: Por 8	4.500
3.	<u>Waimanalo</u>	<u>4-1-10:32</u>	<u>4.147</u>
4.	Waianae	8-5-04:12	11.561
5.	Waianae	8-5-29:2	<u>8.264</u>
			29.472

under the standard terms and conditions used for conveyance to government agencies which are by this reference incorporated herein and in addition to the following conditions:

1. Compliance with the applicable parts of Section 171-95, Hawaii Revised Statutes, as amended, without consideration;
2. All existing encumbrances between the existing lessee and DLNR, on behalf of the State of Hawaii, on the conveyed property shall be honored by DHHL;
3. Review and approval of the conveyance document by the Department of the Attorney General;
4. Other terms and conditions that may be prescribed by the Chairperson.
5. There shall be no further amendments to the 16,518 acre conveyance of property to DHHL, except for the transfer of the Wong lease in Waimanalo, and the transfer of an existing DOT lot along Nimitz Highway next to the Kapalama Property.

Unanimously approved with amendments (Yuen/Inouye).

ITEM D-16: REQUEST FOR RESCINDMENT OF THE BOARD'S MAY 24, 1996, AGENDA ITEM D-6 ACTION, WITHDRAWAL AND SET ASIDE OF LAND UNDER GENERAL LEASE NO. S-4197 BY EXECUTIVE ORDER FOR THE PROPOSED MAUI LIVESTOCK QUARANTINE AND STAGING FACILITY AND OTHER RELATED PURPOSES, AND AN IMMEDIATE RIGHT-OF-ENTRY FOR SITE CONTROL PURPOSES TO THE DEPARTMENT OF AGRICULTURE, TMK: 3-8-08: PORTION 01 OF PULEHUNUI AND WAIKAPU, WAILUKU, MAUI

Mr. Uchida said on May 24, 1996, the Board took action on this request and identified a 6.00 acre parcel that is presently encumbered by general lease to A&B Hawaii, Inc. He said through subsequent discussions, A&B Hawaii, Inc. was not agreeable to relinquishing on this site, causing the Department of Agriculture (DOA) to abandon its efforts to secure the 6.00 acre site and find

a new one. DOA has found a 4.9 acre site that A&B Hawaii, Inc. is amenable to. Staff's recommendation is that the Board rescind its action of May 24, 1996 for the 6.00 acre withdraw and set aside, and instead, authorize the withdrawal of the 4.9 acres from General Lease S-4197, and recommend to the Governor, to authorize the issuance of an Executive Order setting aside the area, and grant a right-of-entry to the DOA for site control purposes, subject to our standard conditions.

Mr. Buddy Nobriga testified on behalf of the Maui Cattle people and the DOA, and in support of staff's recommendation. He said the thought was to get an area as close as possible to the docks and this 4.9 acre site would be the best way to go about it at the least expense. He stated that with the Board's assistance, we could get this Maui livestock quarantine and staging facility built.

Unanimously approved as submitted. (Kennison/Yuen)

ITEM J-1: BRIEFING, MA'ALAEA HARBOR SILTATION

Briefing minutes - see attached.

The following people testified in support of staff's request for the Board's assistance and active participation in holding those responsible - accountable for their part in the Maalaea Harbor siltation problem:

- 1) Mr. Kalei Luuwai representing the Maalaea Boat and Fishing Club
- 2) Mr. James Service representing the Hawaiian Charters
- 3) Ms. Lucianne deNaie representing the Sierra Club, Maui
- 4) Mr. James Gomes representing the Maalaea Boat and Fishing Club
- 5) Mr. Skip Price representing the Silent Lady Charter
- 6) Mr. Douglas MacCluer representing the Central Maui Soil and Water Conservation District
- 7) Mr. James Housh representing the Maalaea Community Association
- 8) Mr. Eric Brown
- 9) Mr. Jack Mueller representing the Maalaea Community Association

ITEM D-17: REQUEST FOR A RIGHT-OF-ENTRY BY THE COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS, FOR DESIGN PURPOSES ON LAND UNDER GENERAL LEASE NO. S-5485, TMK: 1-6-08: PORTION 08, KIPAHULU, HANA, MAUI

Mr. Uchida presented the staff submittal recommending the Board's approval to grant the County of Maui, Department of Public Works, the right-of-entry for design purposes to replace the existing bridge crossing Koukouai Stream on

Hana Highway, subject to standard conditions.

Ms. Lisa Hamilton of the Kipahulu Community Association testified in opposition of staff's recommendation. She said the bridge is noted as being one of the first on the Island of Maui with a unique concrete arch design and feels that the bridge does not need to be replaced. She read a letter from the President of the Kipahulu Community Association requesting that the Board not grant the County of Maui a right-of-entry until these issues have been discussed more thoroughly through a public meeting.

Member Matsumoto asked if there was a representative from the County of Maui. Mr. Uchida stated that there was no representative present. Member William Kennison suggested deferring this item, until such time that the County of Maui could come forward to answer questions.

Mr. Edward Smith testified in opposition of staff's recommendation. He said the County of Maui should give more proper notice to let the community know what their plans are, and to give the community a chance to discuss what they want.

Unanimously approved to defer Item D-17 (Kennison/Matsumoto).

ITEM D-36: CANCELLATION OF GENERAL LEASE NOS. S-3844, S-3918, S-4196, S-4240, S-4579 AND S-4854 ISSUED TO THE UNIVERSITY OF HAWAII ENCUMBERING STATE LANDS ON THE ISLAND OF HAWAII, MAUI, OAHU AND KAUAI, AND THE SUBSEQUENT SET ASIDE OF THOSE LANDS TO THE UNIVERSITY OF HAWAII, TOGETHER WITH THE WAIMEA AGRICULTURE EXPERIMENT STATION SITE AND THE PROPOSED SITE OF THE HAWAII COMMUNITY COLLEGE ON THE ISLAND OF HAWAII

Mr. Uchida said this request is to cancel several General Leases issued to the University of Hawaii (UH) and convey by way of a set-aside these lands back to UH. He gave some background information and went through proposed amendments to the staff submittal. The first amendment was to add 2 additional parcels, TMK: 2-4-1: parcels 10 and 11; the second amendment was a change to Condition 3. from "directly resolved" to "negotiate"; the third amendment was to change Condition 4. to read: "UH shall not rent or sublet the whole or any portion of the premises, for uses that are inconsistent with the purpose and intent of the set aside, without the prior consent of the Board"; and the fourth amendment was to add an additional Condition, reserving 2 road right-of-way parcels to be determined by DOT and UH for their future planning of the Hilo Campus. Staff's recommendation is that the Board proceed and convey these lands to UH for general university and

community college purposes.

There was some discussion about changing "directly resolved" to "negotiate" in Condition 3. Member Matsumoto was concerned that the University should hold DLNR harmless with respect to any claims on activities that they undertake on the property if the ceded lands issue is not resolved. Mr. Uchida suggested adding it to the Condition. Member Matsumoto agreed and said it would be fair since DLNR is not going to be the ones causing the situation with the Office of Hawaiian Affairs (OHA). He said any financial compensation that is going to be owed to OHA should be paid out of the UH's budget and not out of the General Fund budget.

Member Yuen was concerned about the addition of the 2 parcels to the Hawaii Community College sites. He did not think we should include anything that is not in the Board submittal.

A motion was made to approve Item D-36 with the following amendments:

3. With regard, to any commercial activities on the ceded lands, the UH shall negotiate with the OHA, the matter of entitlement as provided for in Chapter 10, Hawaii Revised Statutes, as amended, and UH shall hold the State of Hawaii harmless from liability on any financial compensation paid to OHA based on any ceded lands claims against UH arising from this transaction.
4. UH shall not rent or sublet the whole or any portion of the premises, for uses that are inconsistent with the purpose and intent of the set aside, without the prior consent of the Board;
6. DLNR reserves 2 road right-of-way parcels, the location of which will be determined at a later date, within the properties being conveyed as a part of the UH Hilo Campus, and that once determined, the road right-of-ways will be conveyed to DOT.

Unanimously approved as amended (Yuen/Inouye).

EXECUTIVE MEETING

1. THE BOARD WILL MEET IN EXECUTIVE MEETING UNDER SECTION 92-4, HAWAII REVISED STATUTES (HRS AND PURSUANT TO SECTION 92-5(a) (4), HRS TO CONSULT WITH LEGAL COUNSEL ON QUESTIONS AND ISSUES PERTAINING TO POSSIBLE LITIGATION ARISING FROM THE SILTATION OF MA'ALAEA HARBOR

A motion was made at 3:55 p.m. to go into Executive Session to consult with

legal counsel (Kennison/Matsumoto). The meeting was reconvened at 4:45 p.m.

Chairperson Wilson commended the DOBOR staff on all their effort in trying to work out this situation. He said communications took place during a period of almost a year where there appeared to be illegal grading in violation of the Special Management Area (SMA) permit. He stated that the testimony given today, by the Central Maui Soil and Water Conservation District, was very important, as they did their best to try and deal with this erosion problem and even communicate with the County of Maui, as well as the other parties involved. He commended the boaters of Maalaea for their consideration and understanding in continuing to work with DLNR and the continuing dialogue and encouragement given to try and bring this to some sort of resolution. He stated that conversations with Oahu Construction were not constructive and that at some point, the State has to take action in order to protect the resources of the State of Hawaii. He said the overture that was made in the dredging in the amount of 500 cubic yards to be withdrawn no longer seems to be a reasonable solution and is far and apart too much of a conservative approach at this point, and that the Department of the Attorney General office has been very considerate in taking a look at this issue. He stated that the negotiations should be concluded at this point and it is important to have some communication with the boaters at Maalaea to see the extent for which they might be willing to join the State of Hawaii in a lawsuit. He said there will be a lot of factual issues as we pursue the lawsuit, a lot of the boaters could be witnesses and that the most efficient way to pursue this is to file a variety of lawsuits together.

Member Yuen also commended the DOBOR staff for there diligence in pursuing this topic. He was pleased that they worked so hard on it but was amazed that they were not able to get a more favorable response from the parties that are at fault here.

Member Matsumoto said when this matter previously came before the Board, issues regarding run-off were of great concern to the Board and a number of assurances and representations were made in connection with the approval of this permit. He said based on his review of the situation, it seems that those assurances and representations were not satisfied and as a result appropriate remedies ought to be pursued by the State.

Member McCrory said she is in agreement with filing the lawsuit. She found it difficult to believe that the developers or construction companies that hope to continue work in Hawaii, and who are treated as part of the community, accept permit requirements and recommendations in terms of how they should be dealing with the land, choose not to abide by it, and then choose afterwards

not even to recognize, or try to mitigate it.

Member Kathryn Inouye said she is very concerned about what appears to be a very casual disregard of the conditions of the SMA permit. We need to send some message to the landowners, developers and general contractors.

Member Kennison said he concurred with the Board's decision, not only because of the siltation, the damage to the boats and the misery the boaters had to go through, but the total disregard for any authority. He stated that they have been talked to, they have been given a chance to try and remedy the situation and as I read the letter, it is total disregard. He said they do not want to take responsibility and this is something we cannot and will not accept.

Chairperson Wilson asked Mr. Charles Penque, Maui District Manager for the DOBOR, to set up a meeting so that he can speak to the boaters and their representatives about the nature of the lawsuit that will be filed. He thanked everyone who came to testify.

ITEM D-37: REQUEST FOR CONSIDERATION OF RENT ADJUSTMENT UNDER GENERAL LEASE NO. S-5276 BY MR. BRENDAN BALTHAZAR, TMK: 1-8-01: 03, NAKULA, KAUPU, HANA, MAUI

Mr. Uchida said on February 25, 1993, General Lease No. S-5276, was sold at public auction for pasture purposes for a term of twenty five (25) years to the highest bidder, Mr. Brendan Balthazar. The subject land is approximately 1,500 acres in size and situated at Nakula, Kaupo, Hana, Maui. Mr. Balthazar is requesting that his lease rent be adjusted downward, claiming that he was misinformed by the former District Land Agent of the location of the east boundary and based on this, he would not have bid as high as he did. He is also claiming that after the completion of the soil and water conservation plan for the property, he discovered that 26% of the lease property was unusable. Mr. Uchida informed the Board of the following significant points: 1) Based on the estimated carrying capacity of about 157 animal units and the price of cattle at that time, staff came up with an upset bid price of \$5,099/year. Mr. Balthazar's bid on this lease was \$20,000/year; 2) In 1994, after the lease was signed by Mr. Balthazar, a settlement was offered to him by waiving all the rent and interest charges from the start of the lease (3/27/93 to 12/31/94). The offer was accepted by Mr. Balthazar on 11/18/94 and there was no Board approval for that settlement; 3) On 2/23/96, the Board approved the waiver of the performance bond for the amount of improvements that Mr. Balthazar had invested on the property; 4) There is no mention of the alleged misrepresentation of the eastern boundary by the former District Land Agent in correspondences by Mr. Balthazar; 5) This lease was sold prior to the

current process used to pre-qualify potential lessees that was initiated in the fall of 1996. This would have hopefully prevented this type of occurrence if someone is bidding beyond the price of the property. Mr. Uchida said Mr. Balthazar, the Chairperson and OHA have met to discuss Mr. Balthazar's concerns and upon subsequent discussion with the Chairperson, staff is bringing this matter before the Board. Staff's recommendation is that the decision to consider Mr. Balthazar's request for a rent adjustment under General Lease No. S-5276, be left to the Board's discretion.

In response to Member Matsumoto's question regarding the Departments standpoint in withdrawing some areas adjoining the Kahikinui Forest Reserve for hunting access and the area below Piilani Highway for fishing access, Mr. Phil Ohta, District Land Agent of the Land Division, stated that he was not familiar with the hunting access issue. He said regarding the fishing area below Piilani Highway, Mr. Balthazar's Insurance Company advised him to fence off the area and gate it off, due to liability problems. Mr. Ohta said it became known to us later that this was a popular fishing area for local fishermen, and therefore a meeting was set by Mr. Balthazar, the County of Maui, the Fishermen's Association and myself in which Mr. Balthazar agreed to leave the gate unlocked on the condition that the fishermen would help with the cleaning up and monitoring of the area. Mr. Balthazar did not want to give that area up in the lease. Mr. Ohta said if we do withdraw the land, DLNR would have the sole liability problem and that the Land Division is not prepared to manage it.

Member Yuen said his concern is about the other person who dropped out at the public auction because he did not want to pay \$20,000/year. He said the Board is being asked 4 years later to give a rebate or reduction in rent, but what about the other guy who was bidding on the property who was willing to pay us, maybe \$19,500/year.

Mr. Balthazar said when he first went to look at the property he had asked Mr. Alan Tokunaga, then District Land Agent of the Land Division, approximately where are the boundaries, and that Mr. Tokunaga said it was from the Pahihi Gulch to the Kahalulu Gulch. He said he bid up to \$20,000/year based on the fact that he would be able to raise approximately 250 cattle there. He said after the lease was awarded, the State finally sent someone to survey the property and he found out that the 700 acres on the side of Kahalulu Gulch was not part of the lease. He said he usually keeps 125 cattle on the property and based on good calf crop (80 calves per year at \$200 per calf), that comes out to only \$16,000 that is generated on the property, in order to pay a \$20,000 lease. He said this has been a hardship and would not be the case if he had the additional 700 acres. He stated that he didn't think it was misrepresented or a malicious attempt by the State to confuse him, but

just an honest mistake that everybody thought the boundary was where it was not.

Member Inouye asked when he did his estimate on how many cattle he can raise, was it based on a visual estimate or per acre. Mr. Balthazar said it was based on per acre because he could not visualize where the land was until the land agent told him where it was. He said he did not read any letters from the pre-bidding times that say the property can sustain 157 cattle.

In response to Member Matsumoto's question regarding the extent of reduction that is being sought, Mr. Balthazar said the only fair way to do it is to take the 1,500 acre land and divide it by \$1.00 per acre and then translate that to the 700 acres that he cannot use.

Member Matsumoto inquired as to whether access is being denied to hunters who want to hunt in the forest reserve. Mr. Balthazar said it's too steep for the hunters to go up there. He explained that the forest area where the hunters go for hunting is on the other side towards Polipoli.

Member Kennison asked if there were any others requesting for a rent reduction, his concern was the other bidder who lost out at the public auction. He said if we do approve this we need to address other ramifications. Mr. Uchida said there was a similar situation on Kauai in which one of our tenants bid too high, asked for relief and we ended up defaulting in mutual cancellation. He said everytime somebody bids up too high, either innocently or on purpose, and we allow tenants to come back and revisit the rent after its been done through public auction, the Board will be subject to this constant coming in to ask for a reduction.

Member Inouye said in this particular case it appears that the reason Mr. Balthazar is coming in for relief is based on some misrepresentations that staff made. She asked if they concurred with what Mr. Balthazar is saying. Mr. Ohta said while the surveyors were still on the bottom portion surveying, Mr. Tokunaga and I went up to the more mauka area on the Gulch. He said he took it as an impression that that was where the boundary was but when the survey was done, we found out that it was less than that. Member Inouye asked how much was spent on improvements today for the property. Mr. Balthazar said \$231,000. Member Inouye said her personal feeling is that we should have an exception in this case. She said she has a serious concern about what staff recommended and there should be reason for reconsideration.

Member Kennison said instead of reducing the rent he would be open to mutual cancellation. His concern was that by reducing the rent we will be opening doors that will be hard to shut later on.

A motion was made to deny the request and ask for mutual cancellation.
(Kennison/Yuen).

Member Matsumoto suggested that instead of acting on this request, he would like to have this deferred until some of the issues that were raised by DLNR Deputy Director Gilbert Coloma-Agaran is more thoroughly addressed.

Member Kennison withdrew his previous motion to deny the request.

Unanimously approved to defer Item D-37 (Kennison/Yuen).

ITEM D-22: CONSERVATION DISTRICT USE APPLICATION (OA-2874) TO
CONSTRUCT TWO GROINS EXTENDING FROM THE WAIKIKI
NATATORIUM, TO IMPROVE WATER CIRCULATION AND QUALITY
WITHIN THE POOL TMK: SEAWARD OF 1-3-28: 11

Mr. Uchida said this is a re-submittal of a Conservation District Use Application (CDUA) from the March 27, 1998 Land Board meeting. He briefed the Board on what had happened previously. On Monday, March 30, 1998, staff met with the C&C, Dr. Gerritsen, the Project Consultant and the Project Engineer. They were asked to go through the staff report and pick out all the problem areas and respond to the issues in writing by Wednesday, April 1, 1998, in order to allow staff to prepare the report and get it on the Land Board agenda to be published on Friday, April 3, 1998. As of Wednesday evening, April 1, 1998, no response was received so staff proceeded on writing up the report without any written response from the C&C. He said the C&C subsequently brought in the response on Thursday morning, April 2, 1998, but it was too late for staff to do anything so they just appended it to the staff submittal. The C&C was contacted again on Monday, April 6, 1998, and asked if they wanted to meet to discuss the current recommendation and analysis and no response was received from the C&C until Wednesday, April 8, 1998, at 5:00 pm when they faxed a 20-page letter that we handed out this morning. He said staff has tried to be more objective in the presentation of this submittal, but the C&C's comments that were faxed last night shows that they are still not satisfied with staff recommendation and analysis.

Mr. Uchida said based on issues that emerged from discussions at the March 27, 1998 Land Board meeting, staff's concerns are as follows: 1) Legislative Intent - Copies of resolutions and committee reports from the Legislature state that they support the full restoration of the Natatorium, however, staff was unclear whether that meant, with no groins or to make the pool operable, which would require groins. 2) Impacts on the Surrounding Environment - The first area is the impact on the Waikiki Marine Life Conservation District

(MLCD). Staff is still concerned about the potential impact to the Waikiki MLCD and the Ewa groin, and believes that there has not been enough information provided that would justify construction of the groins in the MLCD. The policy question raised is, "Under what circumstances should the Board allow any activity in the MLCD?". The second area is the potential alteration or destabilization of Sans Souci Beach by the Diamond Head groin that could result from a blockage due to the rate of accretion that was estimated about 75 cubic yards per year or 1.5 cubic yards per week on the average. The flushing may impact or promote erosion on Sans Souci Beach. The third area is the Diamond Head groin, trapping sand migrating along the shore line. 3) Visual and Aesthetic Impacts - Staff's concern is the visual impact based on the construction of the groin. The question raised was "Are these impacts consistent with keeping the spirit of restoring the Natatorium Restoration Fund?". 4) Public Health and Safety Issues - There are 2 areas of concern on the swimming pool itself. The first does not seem to be a problem because the C&C agreed to comply with the Department of Health (DOH), that the bottom of the swimming pool needs to be visible in order for it to be open. The second is the biological water quality which is a big problem because DOH has no standard for salt water swimming pools and there is no biologically approved way in testing for the Staphylococcus virus. The current condition based on the models that were done by the consultants, projected that with the groins and the increase in the pipe, it would be 3.9 to 15 times per day flushing. At the meeting of March 30, 1998, Dr. Gerritsen was asked, "What would the groins provide as far as increasing or enhancing the flushing?" Dr. Gerritsen estimated that the groins will improve the flushing by 20-30%. Staff's computation was that if it was reduced by 20% it would be 3.1 to 12 times per day, and if it was reduced by 30% it would be 2.73 to 10.5 times per day. The question becomes, "Are these flows adequate to achieve ambient conditions outside of the Natatorium?". 5) Modeling and the Design Assumptions - The C&C took over this project from the State, and the State initially started the Environmental Impact Statement (EIS) for this project, under the direction of the State. The Consultant ruled out mechanical flushing for some reason. Whether it was a cost component or a decision in keeping with the full restoration idea of the Natatorium, it was unclear from staff at this time. The 5 models that were used to visualize the flow patterns raised some concern. One of the models is an "as is" by looking at the existing Natatorium with no improvements. The other 4 models looked at all groins with different configurations. There was no modeling done, just increasing the opening sizes on both sides of the pool and no groins. This is one of our major concerns in looking at what was done to identify alternatives for the groins. In conclusion, staff finds that the groins occur in the protective subzone of the Conservation District, one in the MLCD and the other in the Fisheries Management Area (FMA). Staff's position is that it would be irresponsible to commit Conservation District resources of this scale, and that

the success and impacts of the project have not been thoroughly evaluated. Staff feels it is possible to continue restoration without the groins at this time, and if the flushing does not improve to some pre-determined level, alternatives such as groins or mechanical pumping could be considered at that time. Based on staff findings and discussions with the C&C, the proposed project does pay a substantial risk to the existing stabilized beach in the area and does raise a risk of degrading the coastal water quality and there's an unknown public policy implication of allowing this type of construction in a MLCD. Staff's position is that C&C proceed with the restoration of the Natatorium without the groins.

Mr. Randall Fujiki, Director of the Building Department, C&C of Honolulu, said he is here to request the Board's approval of the CDUA to construct 2 groins for the restoration of the Waikiki War Memorial. He explained some of the key issues in terms of the staff's analysis. He said regarding the Legislative Intent, in their letter there are a number of findings that clearly says it should be restored. In regards to the Visual and Aesthetic Impacts, he said the C&C has showed pictures and photographs to staff on what the impact of the groin on the wall would be, and also notes that DLNR's Historic Preservation Division has reviewed the proposed restoration including the groins and strongly endorsed the design. He stated that the current condition that the Memorial is in, has a much greater visual impact to the surrounding area. He said there are 3 conclusions in terms of the staff's recommendation. Staff is concerned about the risk and impacts of the following items: 1) The alteration of the littoral currents and sand transport mechanisms that have lead to the establishment of a stable sand beach. He said this clearly states that the staff is basing their conclusion on knowledgeable intuition. Staff is saying that if the flow could be more sufficient to help maintain a open swimming area, it certainly may be strong enough to cause erosion or destabilization of San Souci Beach. Dr. Gerritsen has not contended as indicated in the report that the water flow will be sufficient to carry away any sand and sediment that settles either into the outflow channels or the area of the outflow. He is on record as saying that it is possible that small amounts of sand will accumulate from the Memorial's sand traps. Dr Gerritsen instead indicated that the typical flow which is studied and calculated to being 10-30 centimeters per second would be sufficient to carry suspended sediments by reducing the buildup near the outflow openings. He has further stated that such a slow rate of flow while sufficient to flush the Memorial and carry suspended sediments is not expected to cause any erosion or destabilization of Sans Souci Beach. Furthermore, our statements at the Board meeting clearly indicate that we do not believe that the sand will accumulate in the traps. He said the C&C are more than prepared to ensure that the traps are cleared as appropriate and noted that the decks above of the sand traps were designed to openness and insure easy access, and that regular monitoring and clearing of the sand traps

will be conducted in order to ensure that sand will be removed before large quantities have the opportunity to accumulate. He stated if this issue remains a concern of the Board, they are more than willing to make appropriate maintenance practices a condition of their permit. 2) The likely degradation of the coastal water quality at a widely-used recreation area, and 3) the unknown public policy implications of establishing a precedence of permitting a major construction project within an established MLCD and FMA. Mr. Fujiki stated that the crumbling concrete of the seawall falling into the ocean poses a danger to the public. The restoration activities are necessary and would further enhance the use of the FMA and the MLCD. He said the Division of Aquatic Resources (DAR), in its written response to the EIS, stated that the project is not expected to have long-term adverse impacts on aquatic resources in the area. He pointed out the last sentence of the staff report which states, "Finally, staff believes DOH's strong concerns and their statement about not permitting the operation of the pool, even if the groins are built, sheds light on serious problem with this proposal." He said staff is contradicting that there are serious health hazards and yet they would recommend proceeding without the groins. He stated that the C&C is committed to providing a safe environment for the swimmers to use the Waikiki Memorial pool and the adjacent Sans Souci beach and are continuing to work with DOH towards resolution of this issue. He said they are also proposing to ensure the system of best management practices during the construction, as well as during the operation of the pool and that these procedures are being developed currently with a number of ocean scientists, including Dr. Roger Fujioka. He said if health concerns raised by DOH are deemed relevant to the Board's decision, the C&C believes that appropriate conditions, such as meeting DOH's approvals and standards can be placed upon the approval of this application as a condition. He said the experts feel confident that this will work and it would not be his responsibility to proceed on a project if he did not believe it would work. He mentioned that his consulting team was present to answer any questions and urged the Board to make the common sense decision and allow the C&C to continue this important project.

Chairperson Wilson referred back to the March 27, 1998 Land Board meeting, in which Dr. Gerritsen said it would work without the groins but would not work as well. Mr. Ed Pskowski of Leo A. Daly, said the gist of that conservation was about the flow only, Dr. Gerritsen was also very clear that the groins played an important role in protecting the openings from storms and wave action. He said subsequent to that he had several conversations with Dr. Gerritsen, and that Dr. Gerritsen was very clear that the wave action and storm surf would enter through the openings without the groins, a very good likelihood that it would destroy the inner walls and a phenomenon known as wave uplift would destroy the deck around the pool and the wave resource

would damage the floating docks inside the pool. Chairperson Wilson asked whether or not it would work with just the Diamond Head groin. Mr. Pskowski said both he and Dr. Gerritsen has agreed that it will not work.

Member McCrory asked for an opinion on the groins impact to the MLCD. Dr. Pat Sullivan, President of Oceanit Laboratories, said they are sort of building little mini habitats, and the net value to marine life would increase rather than decreases.

Member Matsumoto asked what happens if you are not able to address the turbidity concerns raised by the DOH. Mr. Fujiki said when we do not meet the standards of DOH in our operation standards, we will close the pool, just like how we close beaches in certain areas because of high surf. He said they will measure the quality of the water and will test to make sure the bottom is visible.

Mr. Blake Oshiro representing the Sierra Club and the Friends of Kaimana Beach Coalition testified in favor of the staff's recommendation. He felt the application should be denied because there is no factual basis for ruling contrary to the staff's recommendation. In response to Member Matsumoto question regarding the group's position if the proposal were to demolish the whole Natatorium structure, Mr. Oshiro said he would have to address this in 2 levels, the Friends of Kaimana Beach Coalition are in favor of getting rid of the pool and putting a beach, or making a volleyball court, or something similar to that, and the Sierra Club is opposed to the groins and any kind of destruction that would effect the War Memorial or any of the marine life.

Mr. Edward Smith representing the Friends of the Waikiki Natatorium testified in opposition to the staff's recommendation. He said the best utilization would be to turn it into a safe swimming pool and the way to do this is to control the sand by putting the groin in and that will be a 30% more guarantee that the pool will be cleaned.

Mr. Bill Devick, Acting Administrator of the Division of Aquatic Resources (DAR), submitted written comments clarifying DAR's position regarding this project. Member McCrory asked if DAR's position was to put the groin in when the EIS was being prepared. Mr. Devick said yes and we have to take our resources much more seriously as has been in the past. He said the MLCD's (1 of 10 in the State) is suppose to be under the highest level of protection that the Division categorizes and divides. He referred back to a prior CDUA on Lanai where construction was allowed in the MLCD. DAR objected to that use rather strenuously, but in that case a higher public purpose was deemed acceptable. He said in this case, certainly the restoration of the Natatorium ranks as a high public purpose. Member Yuen asked (from

a biological point of view), whether or not the habitat is degraded by the addition of the rock walls in that location. Mr. Devick said the location is already in a seriously degraded habitat. Member Matsumoto asked what is DAR's position, for the proposed alternative plan. Mr. Devick said they are opposed to that plan.

Member Inouye asked if staff recommendation #1 and #2 is based on staff's opinion or some experts testimony. Mr. Uchida said staff's opinion.

There was some discussion about construction within a MLCD. Member Yuen said he respects what Mr. Devick has said, and Mr. Devick should take this position at all times. He said he is taking a different prospective and the reason is he wants to see more MLCD, and the main purpose is so that the fishes have a place to hide and grow and reproduce and live. He stated that if we take an absolute position that we are not going to allow construction in an MLCD, then there is going to be more opposition for establishing MLCD's in the future. His concern was that when there is a situation where there is really no harm to the resources and the habitat is not being destroyed, then we should be entertaining these kinds of proposals when there is a public purpose. He said the MLCD in the protective subzone are entitled to the highest degree of protection and respect. Chairperson Wilson said he had some difficulty with the groins being put in the MLCD. He was concerned about being able to maintain a public policy to hold certain areas aside so that they do not have construction in them. He did not feel that there was enough evidence that the groin on the Diamond Head side is going to cause some kind of destabilization of Sans Souci Beach. He said to say that we should allow construction in the MLCD, because we think there is a particular public purpose and that there is not a sensible way to approach this. Member McCrory concurred with Chairperson Wilson regarding the groins being put in the MLCD.

Member Inouye said she respects the amount of time that staff has put in and with that more information has been given to us with consideration. She stated that the applicant has hired probably the worlds best ocean and civil engineers to look at the design and we as lay-people are trying to make changes to the design which is not something that could be done overnight. There are several factors that are considered in coming up with the engineering of the groins and the flushing and the calculations that they make. She suggested a condition that DOH's concerns to assure public health and safety, should be met.

Member Kennison stated that he has been to 2 meetings and listened to all the discussions, pro and con. He said he listened to the experts and felt the Natatorium should be restored and the groins should go in.

Member Matsumoto said the principles that Chairperson Wilson supports with

respect to the MLCD is very important. However, the Board is granted a certain amount of discretion to exercise with respect to the management in those areas, having been entrusted with that discretion, we need to exercise it prudently. He stated that when he looked at the application that has been presented and the extent of the intrusion into that area, he considered it to be minimal and it will not really undermine the concept of the MLCD. He did not agree that the Natatorium should be restored in the manner that is being proposed and his personal preference is to see the beach expanded and the beach alternative implemented. He said he will support the approval of the application with a condition that the C&C is required to maintain the regular maintenance program with respect to sand accumulation and shall coordinate any removal of sand with the Department's Coastal Lands Program.

Member Yuen said among the conditions that should be imposed would be DAR's letter of November 24, 1993 which sets out basic mitigation measures in the construction period.

Chairperson Wilson mentioned that the statement by Dr. Gerritsen about the Natatorium working without the groins and the destabilizing of the Natatorium from heavy wave action, are concerns that are addressed primarily by the Diamond Head groins. He said the lost of wave action seems to be coming in from the Diamond Head direction, and this project could go forward with 1 groin. He stated that the MLCD should not be subjected to the construction even though the habitats in the area are not productive at the moment.

Member Yuen made a motion to approve the request by the C&C for the construction of the 2 groins, subject to the following:

1. All applicable standard conditions for CDUA's in Section 183C, HRS, and Chapter 13-5, Hawaii Administrative Rules;
2. The applicant shall comply with all mitigative conditions mentioned in the Final EIS for the project;
3. The applicant shall comply with the conditions listed in the memorandum from the DAR dated November 24, 1993;
4. The applicant shall comply with all DOH rules and regulations and obtain any necessary permits from the DOH prior to initiating construction on the project;
5. The applicant shall submit a plan for maintenance of the Diamond Head Groin Sand Trap, and shall coordinate any removal of the sand with the Department's Coastal Lands Program;

6. Other such terms and conditions as maybe imposed by the Department.

Vote: 4 in favor (Yuen/Matsumoto/Inouye/Kennison)
2 opposed (Wilson/McCrory)

ITEM D-32: ISSUANCE OF REVOCABLE PERMIT TO CEATECH USA, INC., AND IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY, POR, KEKAHA, WAIMEA, KAUAI, TMK: 1-2-2: POR. 1

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-1: AMEND GENERAL LEASE S-5374 ASSIGNED TO KAPAPALA RANCH GENERAL PARTNERSHIP AT KAU, HAWAII, TMKS: (3) 9-8-1-PORION -3, -9, -10 AND 9-7-1-PORION

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-2: ISSUANCE OF LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD 3310 & 6673 TO MANU, POR. OF WAIMEA VALLEY, WAIMEA, KAUAI, TMK: 1-6-3: 41

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-3: SALE OF FOUR (4) TWENTY (20)-YEAR PASTURE LEASES AT PUBLIC AUCTION, AND ISSUANCE OF REVOCABLE PERMITS UPON EXPIRATION OF LEASE, TMKS: VARIOUS, KAUAI

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-4: DECLARATIONS OF INTENT TO DISPOSE OF LEASES AT PUBLIC AUCTION, TMKS: VARIOUS, KAUAI, HAWAII

Unanimously approved as submitted (McCrory/Kennison).

ITEM D-5: PARTIAL RESCISSION OF PRIOR BOARD ACTION OF AUGUST 23, 1996 (AGENDA ITEM D-12), CONSENT TO SUBLEASES UNDER GENERAL LEASE NO. S-3602, LOT 40, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SOUTH HILO, ISLAND OF HAWAII - TMK: 3RD/2-2-49:14

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-6: AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 30, 1997 (AGENDA ITEM D-4), ISSUANCE OF A REVOCABLE PERMIT TO CLARK HATCH FITNESS CENTER FOR A PASSIVE PEOPLE AND PET THEME PARK AT FORT RUGER, DIAMOND HEAD, HONOLULU, OAHU, TMK: 1ST/3-1-42: 12

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-7: CONSENT TO SUBLEASE, LOT 2, BLOCK 39 WAIAKEA HOUSE LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-37:56

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-8: ASSIGNMENT OF GENERAL LEASE NO. S-5039, LOT 84, KOKEE . CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-4-: 55

Unanimously approved as submitted (McCrory/Inouye).

ITEM D-9: DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES ON BEHALF OF GTE HAWAIIAN TELEPHONE COMPANY, INC. (GTE), HAWAII ELECTRIC LIGHT COMPANY, INC. (HELCO), AND COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY REQUEST FOR AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE UTILITY EASEMENTS SERVING THE UNIVERSITY OF HAWAII-HILO, UNIVERSITY PARK INFRASTRUCTURE IMPROVEMENT, PHASE 1B, SITUATE AT WAIAKEA, SOUTH HILO, HAWAII, TMK: 2-4-01: POR. 7

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-10: REQUEST BY HILO MEDICAL INVESTORS, LTD. FOR AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE WATER METER EASEMENT, IN FAVOR OF COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY, PIIHONUA, SOUTH HILO, HAWAII, TMK: 3RD/2-3-31: POR. 01

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-11: AMENDMENT TO PRIOR BOARD ACTION OF MAY 9, 1997, AGENDA ITEM D-41 CONCERNING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT FOR LANDSCAPING, SIGNAGE AND BEAUTIFICATION PURPOSES TO DUKE'S PARTNERSHIP, NAWILIWILI HARBOR LOTS, LIHUE, KAUAI, TMK: 3-2-4: POR. 47

Unanimously approved as submitted (McCroory/Inouye).

ITEM D-12: AUTHORIZE IMPLEMENTATION OF A FORESTRY APPLICATION AND QUALIFICATION QUESTIONNAIRE PROCESS FOR PROSPECTIVE BIDDERS INTERESTED IN LEASES SOLD AT PUBLIC AUCTION

Member Yuen made a motion to defer Item D-12.

Unanimously approved to defer Item D-12 (Yuen/Kennison).

ITEM D-13: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO. AND GTE HAWAIIAN TELEPHONE AND CONSTRUCTION RIGHT-OF-ENTRY AT WAIAKEA, HAWAII, TMK: (3) 2-4-1-POR. OF 5

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-14: PERMISSION TO HIRE CONSULTANT TO CONDUCT DAM SAFETY INSPECTIONS

Unanimously approved as submitted (McCroory/Yuen).

ITEM D-15: PERMISSION TO ENTER MEMORANDUM OF UNDERSTANDING TO PROVIDE ENGINEERING SERVICES TO THE DEPARTMENT OF AGRICULTURE'S AGRICULTURAL PARKS AND IRRIGATION SERVICES PROGRAMS

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-18: ISSUANCE OF A REVOCABLE PERMIT TO ROSLINDALE, INC. PARKING PURPOSES SITUATE WAIANAE-UKA, WAHIAWA, OAHU, TMK: 7-3-012: 11 (POR)

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-19: ACCEPTANCE OF LAND FROM THE COUNTY OF HAWAII BY WAY OF A QUITCLAIM DEED BEING A PORTION OF THE OLD PAHOA-KALAPANA ROAD INCLUDED IN THE AREA LEASED TO KALAPANA OHANA ASSOCIATION UNDER STATE GENERAL LEASE NO. S-5531, TMK: 3RD/1-2-06: 081

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-20: DIRECT ISSUANCE OF A PERPETUAL NON-EXCLUSIVE AFTER-THE-FACT EASEMENT TO THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU, FOR WATER PIPELINE PURPOSES AT HONOWAI ELEMENTARY SCHOOL, HOAEAE, WAIKELE, EWA, OAHU, TMK: 1ST/9-4-53: 117 (PORTION)

Unanimously approved as submitted (Inouye/Yuen).

ITEM D-21: ISSUANCE OF A REVOCABLE PERMIT TO PACIFIC AIRLIFT FOR LIVESTOCK HOLDING AND TRANSFER PURPOSES AT THE KAPOLEI FEEDLOT, KAPOLEI, OAHU, TMK: 9-1-31: 01 (POR)

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-23: AMEND PRIOR BOARD ACTION FOR REVOCABLE PERMIT TO MID-PACIFIC HAWAII FISHERY, INC., WAIAKEA, HAWAII, TMK: (3) 2-1-12-41

Mr. Uchida presented the staff submittal recommending that the Board amend a prior Board action of August 21, 1997 to include an area that they are presently using subject to standard conditions.

In response to Member McCrory regarding a change in the monthly rent, Mr. Uchida suggested a condition be added to review the rent for the additional area.

A motion was made to amend the staff recommendation to include Condition No. 3 to read as follows:

3. That the staff appraiser will review the rent in this case with the

additional acreage and adjust the rent if necessary.

Unanimously approved as amended (Yuen/McCrory).

ITEM D-25: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO., AND GTE HAWAIIAN TELEPHONE AND CONSTRUCTION RIGHT OF ENTRY AT KAWAIHAE, HAWAII, TMK: (3) 6-2-2-PORION OF 8

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-26: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO GARY J. HORWITZ AND MARYANN HORWITZ/BROYLES AND CONSTRUCTION RIGHT OF ENTRY AT KAOHE, HAWAII, TMK: (3) 4-1-10-PORION OF 7.

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-27: DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII ELECTRIC LIGHT CO. AND GTE HAWAIIAN TELEPHONE CO. AT LALAMILO, HAWAII, TMK: (3) 6-2-2-PORION OF 1

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-28: SET ASIDE TO THE COUNTY OF HAWAII FOR PARK AND RECREATIONAL PURPOSE AT KOHALA, HAWAII, TMK: (3) 5-5-3-PORION OF 19 AND 25

Unanimously approved as submitted (Yuen/McCrory).

ITEM D-29: AMEND PRIOR BOARD ACTION FOR DIRECT LEASE TO QUALIFIED HAMAKUA/NORTH HILO PERMITTEES OF AGRICULTURAL REVOCABLE PERMITS ON THE ISLAND OF HAWAII

Mr. Uchida presented the staff submittal recommending that the Board amend a prior Board action of January 24, 1997 for the direct lease to qualified Hamakua/North Hilo permittees. He said at the January 16, 1998 Land Board meeting, the Board inquired if a requirement was placed on the lessee to comply with DOA requirements to participate in the irrigation system. In

consultation with DOA staff, they want to require the lessee to comply. Staff's recommendation is that the Board amend this authorization and include a requirement that the lessee comply with Chapters 167 and 168, Hawaii Revised Statutes.

Member Yuen stated that the whole area is not serviced by the Hamakua District System.

A motion was made to amend the staff recommendation to include the following condition:

3. That the amended language be included in only those leases that would be serviced by the Hamakua Ditch System.

Unanimously approved as amended (Yuen/Inouye).

ITEM D-30: STAFF REQUEST TO RESCIND THE BOARD'S APPROVAL OF AGENDA ITEM D-12, FEBRUARY 23, 1996, AMENDING THE BOARD'S JANUARY 14, 1994 AGENDA ITEM F-6, AND REQUEST FOR CONSENT OF ASSIGNMENT OF PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT ON GOVERNMENT LAND IDENTIFIED AS TMK: 2-9-11: POR. 08, SITUATE AT HANAWANA, HAMAKUALOA, MAKAWAO, MAUI

Unanimously approved as submitted (Kennison/Yuen).

ITEM D-31: SALE OF LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES AT KOHALA, HAWAII, TMK: (3) 5-5-3-4, -5 AND -6

Unanimously approved as submitted (Yuen/Inouye).

ITEM D-33: ASSIGNMENT OF GENERAL LEASE NO. S-4979, LOT 13, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-3-: 8

Unanimously approved as submitted (McCroory/Yuen).

ITEM D-34: AMENDMENT TO PRIOR LAND BOARD ACTION OF JUNE 13, 1996, AGENDA ITEM F-14 CONCERNING THE SALE OF A PORTION OF KAMEHAMEHA IV ROAD SITUATED BETWEEN PARCELS 37 AND 38 OF TMK: 1ST/1-3-02 AND BETWEEN NORTH KING STREET AND THE

INTERSTATE HIGHWAY AT KALIHI, HONOLULU, OAHU, TMK:
1ST/1-3-02 (PORTION)

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-35: ISSUANCE OF A REVOCABLE PERMIT AND IMMEDIATE RIGHT-OF-ENTRY TO THE HARRY & JEANETTE WEINBERG FOUNDATION, INC. FOR PARKING PURPOSES AT KUWILI, IWILEI, HONOLULU, OAHU, TMK: 1-5-08: 5

Unanimously approved as submitted (Inouye/Yuen).

There being no further business, Chairperson Wilson adjourned the meeting at 7:55 p.m.

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

Transcribed and submitted,



Kimberly C. Kelihoomalau

Approved for submittal:


MICHAEL D. WILSON

Chairperson

Board of Land and Natural Resources

BBB

7/27/98

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 25, 1998

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

OAHU

Request to Amend Prior Board Action of October 28, 1994, (Agenda Item H-6), as Amended on April 9, 1998, Conveyance of Land from the Department of Land and Natural Resources to the Department of Hawaiian Home Lands at Various Sites, Statewide

At its October 28, 1994 meeting, under agenda item H-6, the Board of Land and Natural Resources approved, as amended, the conveyance of 16,518 acres of State land to the Department of Hawaiian Home Lands (DHHL). The addition of these State lands to DHHL's inventory represents the shortfall between the 203,000 acres designated for DHHL's use by the Hawaiian Homes Commission Act of 1921 and its inventory then of 186,982 acres, as verified by a Governor's Task Force formed in 1990 on DHHL Land and Title Claims.

Then, at its April 9, 1998 meeting, under agenda item D-24, the Board amended item H-6 of its October 28, 1994 meeting by adding five (5) State-owned properties on Oahu, having a total of 29.472 acres, to the list of State lands approved for conveyance to DHHL. This action was in response to DHHL's request for additional State lands to replace the 63+ acres it lost at Waiahole Agricultural Park and Residential Lots Subdivision due to prior obligations by the Housing Finance and Development Corporation to other parties. However, the Board deferred taking action on a requested 6th parcel, same being a 34 acre portion of the 52 acres under General Lease No. S-5376, until DHHL contacted the State's lessee to explain its intentions for the property and to gain the lessee's support for the transfer of a portion of the leased premises to DHHL. During their discussions, the lessee indicated that his main attorney concern was that his lease could be cancelled or the term shortened if DHHL wanted to use the demised premises for uses other than farming. In a April 24, 1998 letter DHHL assured the lessee it would honor the conditions contained in General Lease No. S-5376 between himself and the Department of Land and Natural Resources and that any withdrawal of land from the lease would not occur without his approval.

The subject 34 acre parcel was chosen by DHHL for inclusion in its homestead program because of its adjacent proximity to existing DHHL homestead lands on three (3) of its boundaries.

By letter dated July 27, 1998, DHHL informed the Land Division that the lessee supported the transfer of the 34 acre portion of General Lease No. S-5376 to DHHL, subject to certain conditions. Except for the condition that the Board consent to the assignment of the said lease to also include his wife, which will be processed as a separate request, all the other conditions of the lessee's support are listed in the recommendation that follows.

Accordingly, the Board's favorable consideration of this request by DHHL would be in order.

RECOMMENDATION:

That the Board amend its action of October 28, 1994, under agenda item H-6, as amended, and further amended on April 9, 1998, under agenda item D-24, by authorizing the fee simple conveyance of a 34 acre portion of Lot 51, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Tax Map Key:4-1-08:Por. 79, subject to the following:

1. Compliance with the applicable parts of Section 171-95, Hawaii Revised Statutes, as amended;
2. DHHL is authorized to act on behalf of DLNR in obtaining final subdivision approval from the City & County of Honolulu for the subject 34 acres of State-owned land;
3. The subject 34 acres shall be conveyed to DHHL subject to the operation of General Lease No. S-5376 and any subsequent withdrawal(s) affecting the 34 acres shall be made only with the approval of the lessee;
4. Review and approval of the conveyance document by the Department of the Attorney General; and
5. Such other conditions as may be prescribed by the Chairperson.

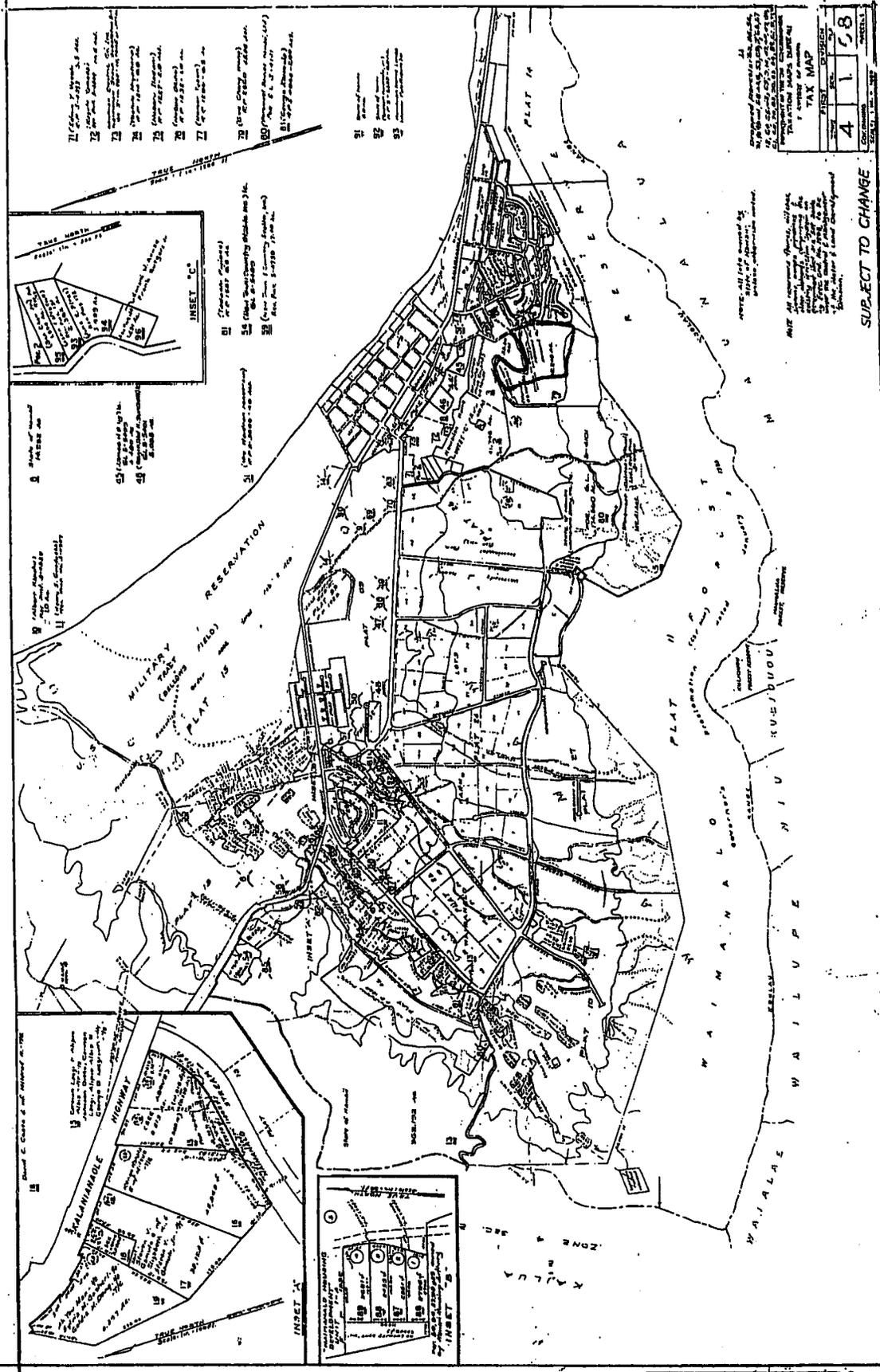
Respectfully submitted,

Gary Martin

GARY MARTIN
Land Agent

APPROVED FOR SUBMITTAL:

Michael D. Wilson
MICHAEL D. WILSON Chairperson



Prepared Pursuant to Act No. 21, Session Laws of 1957, Chapter 21, Section 21-10, Hawaii Revised Statutes, as amended.
 This map is subject to the provisions of Act No. 21, Session Laws of 1957, Chapter 21, Section 21-10, Hawaii Revised Statutes, as amended.
 INFORMATION MAPS, HAWAII
 A COMPANY, INC.
 HONOLULU, HAWAII

TAX MAP	
LOT	AREA
4	1.58

NOTE: All easements, rights, and interests shown on this map are subject to the provisions of Act No. 21, Session Laws of 1957, Chapter 21, Section 21-10, Hawaii Revised Statutes, as amended.
 SUBJECT TO CHANGE

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

DATE: Friday, September 25, 1998
TIME: 9:00 a.m.
PLACE: Natural Energy Laboratory
of Hawaii Authority
Conference Room
73-4460 Queen Kaahumanu Hwy
Kailua-Kona, Hawaii 96740

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS:

Mr. Michael D. Wilson
Ms. Lynn P. McCrory
Mr. William Kennison
Ms. Kathryn W. Inouye

STAFF:

Mr. Dean Uchida, Land Division
Mr. Harry Yada
Ms. Charlene Unoki

OTHERS:

Mr. Edwin Kamaoha, Esq.
Deputy Attorney General
Mr. Carl Caliboso, D-28
Ms. Ruth Makai, D-2
Mr. Joe Chu, D-16 & D-17
Mr. Bill Hornemann, D-14
Mr. Bob Siarot, D-11 & D-12
Mr. Randall Yamada, D-18
Mr. Ernie Dias, D-28
Ms. Pamela Larson, D-28
Mr. Ben Kudo, D-4
Mr. Eric Guinther, D-13
Mr. Alfredo Evangelista,
D-16 & D-17
Ms. Karen Chun, D-11 & D-12
Ms. Regina Kawamura, D-22

Business:

EXECUTIVE MEETING:

EXECUTIVE MEETING PURSUANT TO SECTION 92-4, SECTION 92-5(a)(4), HRS, TO CONSULT WITH LEGAL COUNSEL ON QUESTIONS AND ISSUES PERTAINING TO THE BOARD'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES, AND LIABILITIES ARISING FROM THE ALLEGATIONS CONTAINED IN THE LAWSUIT OHA V. HFDC, ETAL.

Chairperson Wilson stated that the executive meeting pertaining to the OHA lawsuit would be rescheduled.

ITEM A-1 APPROVAL OF THE MINUTES OF THE JULY 9, 1998 BRIEFING

The minutes were unanimously approved as submitted (McCrorry/Kennison).

ITEM D-28 REQUEST TO APPROVE SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE FOR SUNKISS SHRIMP COMPANY LIMITED, GL S-5367, WAIMEA, KAUAI, TMK 4TH/1-2-02: 22 (TO BE DISTRIBUTED)

Mr. Uchida presented the staff submittal requesting the approval of a subordination agreement and estoppel certificate for Sunkiss Shrimp Company Limited, GL S-5367, Waimea, Kauai. Mr. Uchida informed the Board that on August 27, 1998, the Chairperson of the BLNR approved the consent to mortgage between Sunkiss Shrimp Company and Bank of America (BOA) in the amount of \$3 million. He stated that the BOA is currently asking that the Board consider an agreement to subordinate the State's interest in the personal property on the Sunkiss leasehold. He noted that the state is interested in trying to assist the start-up company and thus, willing to consider subordinating its interest in the personal property as outlined in the staff recommendation. Mr. Uchida highlighted two conditions of the staff's recommendation:

- 1) Condition #3, requiring that the applicant post a security or performance bond, in an amount to be determined, in order to protect the State's interest in the event of bankruptcy or the state's need to clean the property. He noted that the current bond is only twice the annual rent of \$800/year; staff is asking that the bond be posted in the amount of \$25,000 - \$50,000.
- 2) Condition #4, cancelling the subordination provision should a breach occur wherein neither the lessee nor the bank elect to step in to cure the breach. The specific instance of concern involved a situation in which the state defaulted on the said lease, notified the lender, and the lender chooses not to step in and take possession of the property. Although the bank has indicated that it still wants an opportunity to come back and take control of personal property even if it chooses not to step forward and cure the breach under default, the state's position is that, should they choose not to step forward and cure the breach and take possession of the property, they have no right to the property once the lease is terminated.

ITEM D-28 (cont.)

Mr. Uchida reiterated that the state is supportive of this new industry on Kauai and would like to accommodate them as best possible; at the same time, the state is not willing to jeopardize its position as landowner.

Member McCrory questioned the exact nature of what was being subordinated; Mr. Uchida responded that the applicant should be able to provide a better answer.

Ms. Pamela Larson, representing Sunkiss Shrimp Co., Ltd. provided some background on the project:

Ms. Larson testified that Sunkiss Shrimp Company was in the process of building a large scale aquaculture farm on Kauai to raise shrimp. She testified that the subordination is being requested on a 5 acre parcel, the Sunkiss parcel, that is fully developed and operational. Ms. Larson noted that the operation also involves over 100 acres of Department of Agriculture (DOAG) lands which are adjacent to the Sunkiss property and will be used in conjunction with the whole project. Ms. Larson stated that the company has put in over \$3 million of equity money into construction and needs an additional \$3 million for completion of the project. She stated that one of the conditions imposed by both the USDA and BOA is that each have first lien on the property. Ms. Larson informed the Board that the DOAG has agreed to subordinate with respect to its leases on the larger parcel; by way of the subject submittal, the same request was being made of the DLNR for the 5-acre parcel. Ms. Larson testified that the lessee had no problem with respect to condition #3, however, she noted that the company did not use any hazardous materials in its operation. With regards to condition #4, Ms. Larson testified that the situation described was, in fact, the very instance why the subordination was being requested. She acknowledged the Land Division's concern regarding the situation of having to secure and care for personal property while the bank decided what they are going to do. Ms. Larson stated that the lessee was willing to take responsibility for all property within a period identical to the cure periods, ie. thirty days for rent, or 60 days for other breaches. Ms. Larson further offered a guarantee by the parent company (CEATECH) as additional security and offered to increase the cash bond from two years of minimal rent to cover the entire seven year period.

ITEM D-28 (cont.)

Mr. Ernie Dias, CEATECH, testified that the site will be used only to do breeding. He stated that stock is then moved to the DOAG site for grow out. Mr. Dias stressed that the subordination would exclude all the "hard" assets that is put on the leasehold.

In response to Member McCrory's question regarding the \$3 million, Mr. Dias responded that the \$3 million would be used to build out the entire site. Mr. Dias informed the Board that, should the company default the state was in the position of taking control of four 1/4 acre ponds, two 200-ft. deep wells, a water reservoir, a 200,000 sq. ft. block building, a smaller concrete block structure for storage, and the hatchery building.

Carl Caliboso, representing the Bank of America, stated that the Bank generally supports the recommendations for approval except for condition #4. He noted that the bank only wants subordination on the personal property, and is not asking for subordination on DLNR's lien on the buildings and improvements. Mr. Caliboso informed the Board that the DOAG subordination agreement required the bank to remove all personal property within 30 days after being given notice.

Chairperson Wilson recommended that the item be deferred until later in the agenda to give staff and the applicant time to work out mutually agreeable language.

Member Inouye further recommended that staff and the applicant also discuss the amount of the bond to be posted for the hazardous waste clean-up.

Discussion on Item D-28 resumed following Item D-22.

Deputy Attorney General Ed Kamauoha proposed that the Board resolve into executive session to discuss legal matters relating to Item D-28. The Board resolved into executive session at 10:05 a.m. (McCrory/Inouye)

Chairperson Wilson reconvened the meeting at 10:25 a.m.

Mr. Uchida stated that, in reference to condition #3, the applicant has agreed to post a \$15,000 performance bond which staff feels is sufficient. Regarding condition #4, Mr. Uchida stated that staff is agreeable to allow the subordination agreement to continue for 30 days after the lease is terminated. Mr. Uchida stated that the bank will be required to take responsibility for the personal property within 30

ITEM D-28 (cont.)

days or forfeit the property to the state. He further noted that the bank also agreed to absolve the state of any liability for the property during the thirty day period.

By a unanimous vote of the members present, Item D-28 was approved as amended (McCrory/Kennison).

ITEM D-4 DIRECT SALE OF PORTION OF THE MAMALAHOA TRAIL REMNANT AT KONA, HAWAII, TMK: (3) 7-4-8-PORTION OF 2

Staff submittal recommended approval of the direct sale of a portion of Mamalahoa Trail. Mr. Uchida stated that the subject portion was a remnant piece, isolated and separate from the main trail system, and located within the applicant's private property. He noted that the Historic Preservation Division and the Na Ala Hele program both agree with the staff recommendation. Mr. Uchida informed the Board that staff had received a fax from Mr. David Frankel, Sierra Club, objecting to the sale. He stated that staff had discussed Mr. Frankel's letter with Na Ala Hele, and that Na Ala Hele stands by their statement that sale of the remnant would not affect the trail system.

No public testimony was presented.

By a unanimous vote of the members present, Item D-4 was approved as submitted (Inouye/McCrory).

ITEM D-2 REQUEST BY THE COUNTY OF MAUI FOR ISSUANCE OF AN AFTER-THE-FACT PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AND AN IMMEDIATE RIGHT-OF-ENTRY FOR SITE CONTROL PURPOSES OVER, UNDER AND ACROSS GOVERNMENT LANDS SITUATE AT LAHAINA, MAUI, FURTHER IDENTIFIED BY TMK: (2) 4-6-07: POR. 02

Staff submittal recommended the issuance of an after-the-fact perpetual easement and immediate right-of-entry to the Department of Public Works, Maui County, for lands encumbered under an executive order for Lahaina Park. Mr. Uchida stated that, in 1979, the Second Circuit Court ordered an easement be granted to the landowner/plaintiff, however, the county never followed up. The subject submittal involves landowners of another affected parcel who are currently in the process of selling their property, and need the easement question settled before escrow can be closed.

ITEM D-2 (cont.)

Ms. Ruth Mukai, Maui Realty Company, speaking on behalf of Mr. and Mrs. Kaoru Tamura, the owners of the subject parcel, reiterated the need for the easement.

By a unanimous vote of the members present, Item D-2 was approved as submitted (Kennison/McCrory).

ITEM D-13 TIME EXTENSION REQUEST - CONSERVATION DISTRICT USE PERMIT MA-2741 FOR THE MAUI OCEAN CENTER, MAALAEA, MAUI

Staff submittal recommended the approval of a time extension to add additional pipeline for the intake system for the Maui Ocean Center. Mr. Uchida informed the Board that the Maui Ocean Center is seeking to try and improve the water quality of its intake system by extending the current 720-ft pipeline to the CDUA allowed total of 1400 feet.

Eric Guinther was present to answer questions.

In response to Chairperson Wilson's question whether the proposed length of pipe would be sufficient to improve water quality, Mr. Guinther stated that, because the Center was unable to determine the exact cause of the poor water quality, it could not answer the Chair's question. He noted, however, that, because of time constraints which require the Center to try and improve the water quality immediately, and the fact that it is known that water quality improves further from shore, the Center is requesting the approval of the time extension to extend the pipes.

By a unanimous vote of the members present, Item D-13 was approved as submitted (Kennison/Inouye).

ITEM D-16 CONSENT TO THE ASSIGNMENT OF GENERAL LEASE NO. S-5376, LOT 51, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-8: 79

Mr. Uchida stated that the subject consent would, basically add Mr. Wong's wife to the lease. No public testimony was presented.

by a unanimous vote of the members present, Item D-16 was approved as submitted (Inouye/Kennison).

ITEM D-17 REQUEST TO AMEND PRIOR BOARD ACTION OF OCTOBER 28, 1994 (AGENDA ITEM H-6), AS AMENDED ON APRIL 9, 199, CONVEYANCE OF LAND FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF HAWAIIAN HOME LAND AT VARIOUS SITES, STATEWIDE

Mr. Uchida provided board members with general background as discussed in staff's submittal. Staff recommended that the Board approve the Department of Hawaiian Home Lands (DHHL) request to transfer the subject parcel.

Mr. Fred Evangelista, Esq., representing the lessees of the subject parcel, testified that the lessees concurred with staff's recommendation, however, further requested that condition 3 be amended to require the prior written consent of the lessee.

Mr. Joe Chu, DHHL, stated that Hawaiian Home Lands had no objections to the requested amendment.

By a unanimous vote of the members present, Item D-17 was approved as amended (Inouye/Kennison).

ITEM D-14 REQUEST FOR DIRECT ISSUANCE OF LAND LICENSES TO HAWAIIAN CEMENT CO. AND AMERON MAUI HAWAII FOR MINING AND SALE OF CINDER FROM THE OLOWALU CINDER PIT, IMMEDIATE RIGHT OF ENTRY FOR MINING AND SALE OF CINDER PURPOSES, AND STAFF REQUEST TO WITHDRAW PARTIAL LAND FROM EXECUTIVE ORDER NO. 2972, WITH THE COUNTY OF MAUI FOR INCLUSION IN THE LAND LICENSE, TMK: 4-8-03: 04 AND PORTION 39, OLOWALU, MAUI

Mr. Uchida informed the Board that the subject submittal had been previously deferred by the Board due to concerns regarding the fees, premiums, etc. attached to the license. Mr. Uchida stated that, after researching the issue, staff formulated four alternatives to funding; the preferred alternative was Alternative 3: Annual royalty only of \$2.75/cubic yard.

No public testimony was presented.

By a unanimous vote of the members present, Item D-14 was approved as submitted (Kennison/McCrory).

ITEM D-11 REQUEST FOR PARTIAL WITHDRAWAL OF LAND UNDER A PENDING REVOCABLE PERMIT WITH A&B HAWAII, INC., SET ASIDE AND ISSUANCE OF AN EXECUTIVE ORDER TO THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION FOR HIGHWAY PURPOSES, AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES OVER, UNDER, ACROSS AND ON GOVERNMENT LAND, IDENTIFIED BY TMK: 1-1-02: PORTION 02, KEANAE, KO'OLAU, HANA, MAUI

Staff submittal recommended authorization of the withdrawal of approximately one acre from the permit and approve the recommendation for an executive order for the Department of Transportation for improvements to Hana Highway. No public testimony was presented.

By a unanimous vote of the members present, Item D-11 was approved as submitted (Kennison/McCrory).

ITEM D-12 CONSERVATION DISTRICT USE APPLICATION (MA-2899) FOR THE HANA HIGHWAY REALIGNMENT/REPAIR AT HONOMANU, HANA, MAUI, TMK: 1-1-01: 44 (POR.)

Staff submittal recommended approval of the CDUA for improvements to portions of Hana Highway currently experiencing extensive erosion and cracking. Mr. Uchida informed the Board that the Department of Transportation would be moving the right-of-way 170 feet mauka. He noted that, because Hana Highway would be closed during different periods of the day, the roadwork will cause some inconvenience to travelers in the area. No public testimony was presented.

By a unanimous vote of the members present, Item D-12 was approved as submitted (Kennison/McCrory).

ITEM D-18 SALE OF ABANDONED FLUME RIGHT-OF-WAY REMNANT, KAIELE HOMESTEADS, SOUTH HILO, HAWAII TMK: 3RD/2-7-05: 68

Staff submittal recommended the approval of the sale to the landowner of record. Mr. Uchida stated that, for reasons unknown, the remnant was not included in the original sale to the present owners (Abel and Yoshie Wakida). The Wakidas, in turn, are currently in the process of selling the property and wished to include the portion of the ditch in the sale. No public testimony was presented.

By a unanimous vote of the members present, Item D-18 was approved as submitted (Inouye/Kennison).

ITEM D-22 REQUEST ACCEPTANCE AND APPROVAL OF THE PUUNENE AIRPORT CONCEPTUAL MASTER PLAN, LICENSE AGREEMENT CONSENT AND IMMEDIATE RIGHT OF ENTRY FOR THE COUNTY OF MAUI, TMK: 3-8-08: PORTION 01, PORTION OF PULEHUNUI AND WAIKAPU, WAILUKU, MAUI

Mr. Uchida that acceptance of the conceptual master plan would allow the county to proceed with Chapter 343 provisions. He noted that the area would eventually provide some benefit to the state -- a proposed industrial park, a baseyard, and a DOCARE training facility.

In response to questions by Member Kennison, Mr. Uchida stated that the DOCARE training facility would be required as part of today's action, but that infrastructure development would determine how soon the Department could move on construction.

Regina Kawamura, County of Maui, voiced the County's support of staff's recommendation.

By a unanimous vote of the members present, Item D-22 was approved as submitted (Kennison/McCrory).

Item D-28 was revisited at this time. (See Item D-28).

ITEM D-1 CANCELLATION OF LOD S-28,275 ISSUED TO MASANORI KUSHI AND SUMIE KUSHI AT PONAHAHAWAII, HAWAII, TMK: (3) 2-5-36-PORTION OF 57

No public testimony was presented.

By a unanimous vote of the members present, Item D-1 was approved as submitted (McCrory/Inouye).

ITEM D-3 REQUEST ISSUANCE OF A LAND PATENT IN CONFIRMATION OF THE AWARD ON LCA #3758 LOCATED AT LALAMILO, HAWAII, TMK: (3) 6-9-2-12

Mr. Uchida requested that this item be withdrawn.
No public testimony was presented.

By a unanimous vote of the members present, Item D-3 was withdrawn (McCrory/Kennison).

ITEM D-5 WITHDRAWAL FROM MALAMA-IKI FOREST RESERVE AND SET ASIDE TO THE DIVISION OF STATE PARKS FOR THE MACKENZIE STATE PARK, PUNA, HAWAII, TMK: (3) 1-3-7-PORTION 26

No public testimony was presented.

By a unanimous vote of the members present, Item D-5 was approved as submitted (Kennison/McCrory).

ITEM D-6 RELEASE OF RESTRICTIONS - LAND PATENT GRANT NO. 13,140, LOT 7, HAUKALUA HOMESTEADS, HAUKALUA 2ND, SOUTH KONA, HAWAII, TMK: 3RD/8-7-04: 04

No public testimony was presented.

By a unanimous vote of the members present, Item D-6 was approved as submitted (Kennison/McCrory).

ITEM D-7 RESCISSION OF PREVIOUS BOARD ACTION ON SALE OF PAPER ROADS TO BIG ISLAND COUNTRY CLUB ESTATES LIMITED PARTNERSHIP, FORMERLY ROYAL VISTA ESTATES AND COUNTRY CLUB, PUU ANAHULU HOMESTEADS, NORTH KONA, HAWAII, TMK: 3RD/7-1-05: PAPER ROADS

Mr. Uchida informed the Board that the prior action was done with the understanding that the county did not own the roads; subsequently, the county has since claimed ownership of the roads.

No public testimony was presented.

By a unanimous vote of the members present, Item D-7 was approved as submitted (McCrory/Kennison).

ITEM D-8 AUTHORITY TO DISPOSE OF NEGOTIATED LEASE FOR SUGAR CAN DIVERSIFIED AGRICULTURAL AND AQUACULTURAL PURPOSES, KEKAHA, KAUAI

Member Inouye questioned the rental amounts and its relationship to the uses. Mr. Uchida stated that the rents are based only on the sugar operation, and that any other uses (shrimp farm, etc.) would be handled through a sub-lease arrangement.

No public testimony was presented.

By a unanimous vote of the members present, Item D-8 was approved as submitted (McCrory/Kennison).

ITEM D-9 DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ROADWAY AND UTILITY PURPOSES AT NORTH KOHALA, HAWAII, TMK: (3) 6-6-1-PORION 2

No public testimony was presented.

By a unanimous vote of the members present, Item D-9 was approved as submitted (Kennison/McCrory).

ITEM D-10 CONVEYANCE OF LOT 25-A KAPAKA ROAD TO THE COUNTY OF KAUAI AND LOTS 4 AND 4-A TO THE DEPARTMENT OF TRANSPORTATION, KALIIHIKAI, AND HANAIEI, HALELEA, KAUAI

No public testimony was presented.

By a unanimous vote of the members present, Item D-10 was approved as submitted (McCrory/Kennison).

ITEM D-15 DIRECT ISSUANCE OF PERPETUAL, NON-EXCLUSIVE UNDERGROUND POWERLINE AND ACCESS EASEMENTS TO HAWAIIAN ELECTRIC COMPANY, INC. IN CONJUNCTION WITH THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU'S WELL PROJECT AT MAAKUA, HAUULA, KOOLAULO, OAHU, TMK: 1ST/5-4-05: 01

No public testimony was presented.

By a unanimous vote of the members present, Item D-15 was approved as submitted (Inouye/Kennison).

ITEM D-19 REQUEST BOARD APPROVAL FOR THE DIRECT ISSUANCE OF PERPETUAL NON-EXCLUSIVE EASEMENTS FOR SANITARY SEWER PURPOSES AND ACCESS PURPOSES TO THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENVIRONMENTAL SERVICES, SAND ISLAND INDUSTRIAL PARK SUBDIVISION, SAND ISLAND, OAHU, TMK: 1-5-41

No public testimony was presented.

By a unanimous vote of the members present, Item D-19 was approved as submitted (Inouye/Kennison).

ITEM D-20 ISSUANCE OF REVOCABLE PERMIT FOR LOTS 2 AND 3, POR. OF HANAPEPE, WAIMEA, KAUAI, TMK: 1-8-8: 49 AND 50

No public testimony was presented.

By a unanimous vote of the members present, Item D-20 was approved as submitted (McCrory/Inouye).

ITEM D-21 REQUEST BOARD APPROVAL FOR THE DIRECT ISSUANCE OF PERPETUAL NON-EXCLUSIVE EASEMENTS FOR WATERLINE AND WATER METER PURPOSES TO THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU, SAND ISLAND INDUSTRIAL PARK SUBDIVISION, SAND ISLAND, OAHU, TMK: 1-5-41

No public testimony was presented.

By a unanimous vote of the members present, Item D-21 was approved as submitted (Inouye/Kennison).

ITEM D-23 REQUEST FOR CONSENT TO WAREHOUSE LEASE AGREEMENT FOR THE DEPARTMENT OF PUBLIC SAFETY, KAKAOKO, HONOLULU, TMK: 2-1-30: 15

No public testimony was presented.

By a unanimous vote of the members present, Item D-23 was approved as submitted (Inouye/Kennison).

ITEM D-24 AMEND PREVIOUS BOARD ACTION TO SELL LEASE AT PUBLIC AUCTION FOR PASTURE PURPOSES, LOT 62, KAPAA HOMESTEADS, FIRST SERIES, KAWAIHAU (PUNA), KAUI, TMK: 4-6-6: 28 AND 29, AND ISSUANCE OF INTERIM REVOCABLE PERMIT

No public testimony was presented.

By a unanimous vote of the members present, Item D-24 was approved as submitted (McCrorry/Kennison).

ITEM D-25 CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS (HAMAKUA AND WAIAKEA)

Staff submittal recommended the appointment of Millicent Kim, director of the Hamakua district, and the certification of election of Stanley Watanabe, director of Waiakea district. No public testimony was presented.

By a unanimous vote of the members present, Item D-25 was approved as submitted (McCrorry/Kennison).

ITEM D-26 REQUEST TO SET ASIDE HALE O LONO HARBOR AND ACCOMPANYING ACCESS ROAD BY EXECUTIVE ORDER TO THE DIVISION OF BOATING AND OCEAN RECREATION, AND AN IMMEDIATE RIGHT OF ENTRY FOR SITE CONTROL PURPOSES, TMK: 5-1-02: 12, 23 AND 30, KALUAKOA, MOLOKAI

Mr. Uchida stated that the Division of Boating and Ocean Recreation had requested deferral of Item D-26 until the October 9, 1998 Board meeting.
No public testimony was presented.

By a unanimous vote of the members present, Item D-26 was deferred (McCrorry/Inouye).

ITEM D-27 RESCIND PRIOR BOARD ACTION OF DECEMBER 28, 1984 (AGENDA ITEM F-8), STAFF RECOMMENDATION FOR STANDARDIZATION OF RELOCATION CLAUSE CONTAINED IN GRANT OF EASEMENT DOCUMENTS.

No public testimony was presented.

By a unanimous vote of the members present, Item D-27 was approved as submitted (Inouye/Kennison).

There being no further business, Chairperson Wilson adjourned the meeting at 10:45 a.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.

Transcribed by,

Gail Y. Murayama
Gail Y. Murayama

Approved for submittal:

Michael D. Wilson
MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 27, 2004

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 04HD-229

HAWAII

Conveyance of the Remainder of the Villages of Laiopua to the Department of
Hawaiian Home Lands, Kealakehe, North Kona, Hawaii, TMK: 7-4-08, 20 and 21

APPLICANT:

The Department of Hawaiian Home Lands (DHHL).

LEGAL REFERENCE:

Section 171-95(a)(1), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of the Government Land of Kealakehe and a portion of Land Commission Award 8452, Apana 12 to A. Keohokalole (Royal Patent 6851) acquired by the State from the Liliuokalani Trust Estate, situated at Kealakehe and Keahuolu, North Kona, Hawaii, identified by Tax Map Key: 7-4-08, 20 and 21, as shown on the attached map labeled Exhibit A.

AREA:

The Villages of Laiopua consists of the following:

1.	Government lands covered under File Plan 2128:	768.648 acs.	
2.	Land acquired from the Liliuokalani Trust:	201.700 acs.	
3.	Portion Mauka-Makai Rd. not included in File Plan 2128:	15.400 acs.	
4.	DOT set back from Queen Kaahumanu Hwy:	<u>30.800 acs.</u>	
	TOTAL		1,016.548 acs.

Less the following:

1.	Village 3 previously conveyed to DHHL:	51.324 acs.	
2.	Village 4 previously conveyed to DHHL:	60.433 acs.	
3.	Portion Village 8 set aside to County of Hawaii (COH):	7.000 acs.	
4.	Village 9 and 10 hold for future hospital and residential:	57.500 acs.	
5.	Golf Course set aside to COH:	193.547 acs.	
6.	Kealakehe H.S. set aside to DOE:	50.200 acs.	
7.	Road Lots E and D dedication to COH:	1.256 acs.	
8.	Road Lots 26, 27, 30 and 32 dedication to COH:	11.951 acs.	
9.	Reservoir Sites 1 and 2 set aside to COH:	5.642 acs.	
10.	Easements 7 -16 set aside to COH:	0.006 acs.	
11.	Mauka-Makai Rd./Queen K. Hwy set back set aside to DOT:	<u>53.852 acs.</u>	
	TOTAL		492.711 acs.
	REMAINDER – subject to confirmation by DAGS, Survey Division		<u>523.837 acs.</u>

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 27, 2004

ITEM D-8
EXHIBIT " B-4"

The above 523.237 acres remaining at the Villages of Laiopua, based on its master plan, consists of Villages 1, 2, 5, 6, 7, 8 (portion), 11, 12, 13 14, various undedicated roadways, 3 neighborhood park sites, Village Center site, elementary school site, archaeological park, Uhi Uhi preserve, archaeological preserve (burials) and a commercial site.

The remaining acreage at the Villages of Laiopua includes 201.700 acres acquired from the Liliuokalani Estate Trust at a cost to the State of \$3,731,450.

ZONING:

State Land Use District: Urban and Agricultural
County of Hawaii CZO: RS-15 (Residential) and Unplanned

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act and a portion are lands acquired since statehood.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

The Kealakehe High School opened in September 1997 as construction of its first phase was completed in July 1997. Construction of all phases was completed in December 2003.

DHHL completed the development of 225 single-family homes on the Village 3 site in the fall of 2002. The sales of the homes are to the qualified native Hawaiian beneficiaries pursuant to the Hawaiian Homes Commission Act.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This request before the Board to transfer the ownership of State land is an administrative action and does not constitute a use of State land or State funds, and therefore, is exempt from the provisions of Chapter 343, HRS, as amended. Inasmuch as the Chapter 343 environmental requirements apply to the Applicant's use of the land, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

At its March 13, 2004 meeting the Board of Directors of the Housing and Community Development Corporation of Hawaii (HCDCH) authorized its staff to begin negotiations with DHHL on its offer to acquire HCDCH's interest in Village 8 at the Villages at Kapolei, Lots 1A and 1B at the Villages of Leialii and the remainder of the Villages of Laiopua. Then at its June 17, 2004 meeting the HCDCH Board of Directors authorized its staff to enter into a Transfer Agreement with DHHL for the purchase, by DHHL, of its interest in the above Villages with the addition of the Waiahole Valley Agricultural Park and Residential subdivision.

DHHL has offered HCDCH \$33 million to acquire its interest in the above housing projects. It would be paid in equal annual payments over a fifteen (15) year term with no prepayment penalty and no interest charged on the remaining balance over the payment term.

HCDCH's interest in Village 8 at Kapolei includes the development rights, infrastructure and the fee

simple interest in the land. The State conveyed, in fee simple, 887.999 acres of land for the development of the Villages at Kapolei, to HCDCH by Land Office Deed Nos. S-27778 and S-27810, dated January 4, 1990 and July 9, 1990, respectively. The consideration charged HCDCH was \$17.225 million, which was the cost to the State to acquire the land from the Campbell Estate by way of condemnation.

HCDCH's interest in Lots 1A and 1B at Leialii includes the development rights, infrastructure and the fee simple interest in 75.475 acres of land. Land Patent Grant No. 15792, dated November 11, 1994, conveyed 543.725 acres of State-owned lands to HCDCH for the development of the Villages of Leialii, pursuant to Item IIB contained in a Memorandum of Understanding, dated January 4, 1993. According to Item IIB "DLNR shall convey the housing project lands to HFDC for a consideration of One Dollar (\$1.00)."

HCDCH's interest in the Waiahole Valley Agricultural Park and Residential Subdivision includes 64 residential leases, 41 agricultural leases, 2 commercial leases, 3 reservoir lots, 4 open space lots, infrastructure and the fee simple interest in the underlying land. Land Patent Grant Nos. 15793 and 15795, both dated December 31, 1993, conveyed 104.355 acres of State land to HCDCH for the development of the Waiahole Valley Agricultural Park and Residential Subdivision at gratis.

HCDCH's fee simple interest in the lands underlying the above leases will be transferred to DHHL when the leases expire.

HCDCH's interest in the remainder of the Villages of Laiopua includes the development rights and the infrastructure. The State still owns the lands that comprise the Villages of Laiopua, less Villages 3, 4, the road parcels dedicated to COH and road parcel D when dedicated to COH.

The \$33 million purchase price will be applied by HCDCH as reimbursement of its infrastructure cost for the above projects.

By letter dated July 2, 2004, DHHL requested the fee simple conveyance of the remaining land (523.237 acres) at the Villages of Laiopua be made directly to it under the same terms contained in the above item IIB.

However, the remaining State lands at the Villages of Laiopua (523.837 acres) and Leialii (75.475 acres) and the 104.355 acres of State land at Waiahole Valley Agricultural Park and Residential Subdivision will not be available to the general public for the purposes originally intended, once conveyed to DHHL. Also, because of those intended purposes, DLNR received no compensation for the lands.

Therefore, staff recommends, in lieu of monetary consideration to DLNR, that the 523.837 acres, 75.475 acres and 104.355 acres, totaling 703.667 acres be applied to reduce the 1,000+ acres remaining to be conveyed to DHHL under a Settlement Agreement between DLNR and DHHL. Under the Settlement Agreement DLNR would convey 16,518 acres of State land to DHHL to bring its land trust up to the 203,500 acres designated by the Hawaiian Homes Commission Act.

The Villages of Laiopua is a mixed-use master planned community consisting of residential, educational, governmental, commercial and recreational facilities. A portion of the residential dwelling units was to be developed, by HCDCH, its master developer, as affordable housing. The balance of the residential would be market priced. This was one of the conditions placed on the project by the Land Use Commission when it approved HCDCH's application, on December 18, 1990, to amend the district boundary for 727 acres of the Villages of Laiopua by including the said

acreage in the Urban District.

HCDCH did not develop any of the residential Villages at Laiopua due to the ceded lands lawsuit filed by the Office of Hawaiian Affairs. The only residential units developed to date were by DHHL with the completion of its Village 3. However, various public facilities have been completed and include the Mauka-Makai road (Kealakehe Parkway) by DOT, Highways Division, several interior roads by COH and the Kealakehe High School by DOE. HCDCH completed sufficient infrastructure to service the high school, golf course, commercial site and six (6) residential villages.

The following is a list of the Villages of Laiopua dispositions to date and the areas to be retained for future development by HCDCH. Reference is made to items 1 to 11 under the AREA section on page one (1):

1. Land Patent Grant No. S-15,900, dated May 12, 1997, conveyed Village 3 to DHHL. The conveyance was legislatively mandated by passage of Act 95, SLH 1996. The land price of \$3.336 million was credited against the State's IOU to DHHL. This 225-home subdivision is the only residential development to date at the Villages of Laiopua.
2. Land Patent Grant No. S-15,939, dated December 1, 2000, conveyed Village 4 to DHHL. The land price of \$1.816 million was paid to HCDCH to reimburse its Homes Revolving Fund.
3. Governor's Executive Order No. 3952, dated October 25, 2002, set aside 7 acres at Village 8 to COH for the West Hawaii County Office Building. Under the Village 8 Transfer Agreement between HCDCH, DLNR and COH, the County rezoned the entire Village 8 for general commercial use.
4. Villages 9 and 10 will be held by HCDCH for future hospital and residential development. The Hawaii Health Systems Corporation has indicated an interest in constructing a regional hospital on the Village 9 site, according to HCDCH.
5. Governor's Executive Order No. 3665, dated July 18, 1995, set aside the Kealakehe Wastewater Reclamation Field and North Kona Golf Course to COH. Development of the golf course has not occurred pending resolution of a dispute between COH and its golf course developer.
6. Governor's Executive Order No. 3662, dated July 18, 1995, set aside the Kealakehe High School to DOE.
7. Land Patent Grant No. S-15,959, dated March 25, 2004, conveyed Road Lot E (Road G) to COH. Road Lot E was constructed by McClean Honokohau Properties (McClean) at its own cost.

McClean will also construct Road Lot D (Main Street) at its own cost, pursuant to a February 11, 2002 Development Agreement between HCDCH and McClean. When completed DLNR will convey Road Lot D to COH.

Road Lots E and D connect the McClean property to the north with the Kealakehe Parkway within the Villages of Laiopua, which then connects with the Queen Kaahumanu Highway.

8. Land Patent Grant No. S-15,889, dated September 2, 1997, conveyed Road Lots 26, 27, 30

and 32 (Villages of Laiopua interior roads) to COH.

9. Governor's Executive Order No. 3698, dated February 6, 1997, set aside Reservoir Sites 1 and 2, together with access and utility easements to COH for maintenance and repair of the potable water system for the Villages of Laiopua.
10. Governor's Executive Order No. 3697, dated February 6, 1997, set aside easements 7 - 16 to COH for maintenance and repair of drainage channels at the Villages of Laiopua.
11. Governor's Executive Order No. 3702, dated April 3, 1997, set aside the Mauka-Makai Road and the Queen Kaahumanu Highway set back area to DOT.

A 38-acre portion of Village 6 is under a Development Agreement between HCDCH and the Hawaii Youth Patrons (HYP), a Hawaii non-profit corporation. Under the Agreement HCDCH would lease a portion of Village 6 to HYP to develop a youth center, YMCA and neighborhood park. In anticipation of the lease Village 6 was set aside to HCDCH by Governor's Executive Order No. 3895 on January 26, 2002.

However, HYP was not able to raise the necessary development funds and DLNR was informed by HCDCH that it was terminating the Development Agreement with HYP. Accordingly, the cancellation of Governor's Executive Order No. 3895 would be in order.

RECOMMENDATION: That the Board

1. Authorize the conveyance of the remaining 523.852 acres at the Villages of Laiopua to DHHL under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The standard terms and conditions of the most current Land Patent Grant form, as may be amended from time to time, with respect to the Government Lands.
 - b. The standard terms and conditions of the most current quitclaim deed form, as may be amended from time to time, with respect to the acquired lands.
 - c. Any payments that may be assessed by the Office of Hawaiian Affairs because of the subject conveyance of ceded land, pursuant to Act 318, SLH 1992 and all costs incurred in complying with the provisions of the Act shall be the responsibility of DHHL.
 - d. Docket No. A90-660, Decision and Order of the Land Use Commission dated December 18, 1990, as may be amended.
 - e. Review and approval by the Department of the Attorney General.
 - f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order canceling Governor's Executive Order No. 3895, subject to:
 - a. The standard terms and conditions of the most current executive order form as may

be amended from time to time.

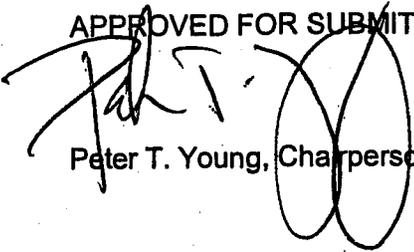
- b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the executive order.
 - c. Review and approval by the Department of the Attorney General.
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State
3. Authorize the application of 523.852 acres, 75.475 acres and 104.355 acres at the Villages of Laioipua, Leialii and Waiahole Valley Agricultural Park and Residential Subdivision, respectively, as an acre for acre reduction of the remaining acreage necessary to be conveyed to DHHL in satisfaction of a Settlement Agreement between DLNR and DHHL to bring DHHL's land trust up to the 203,500 acres designated by the Hawaiian Homes Commission Act.

Respectfully Submitted,

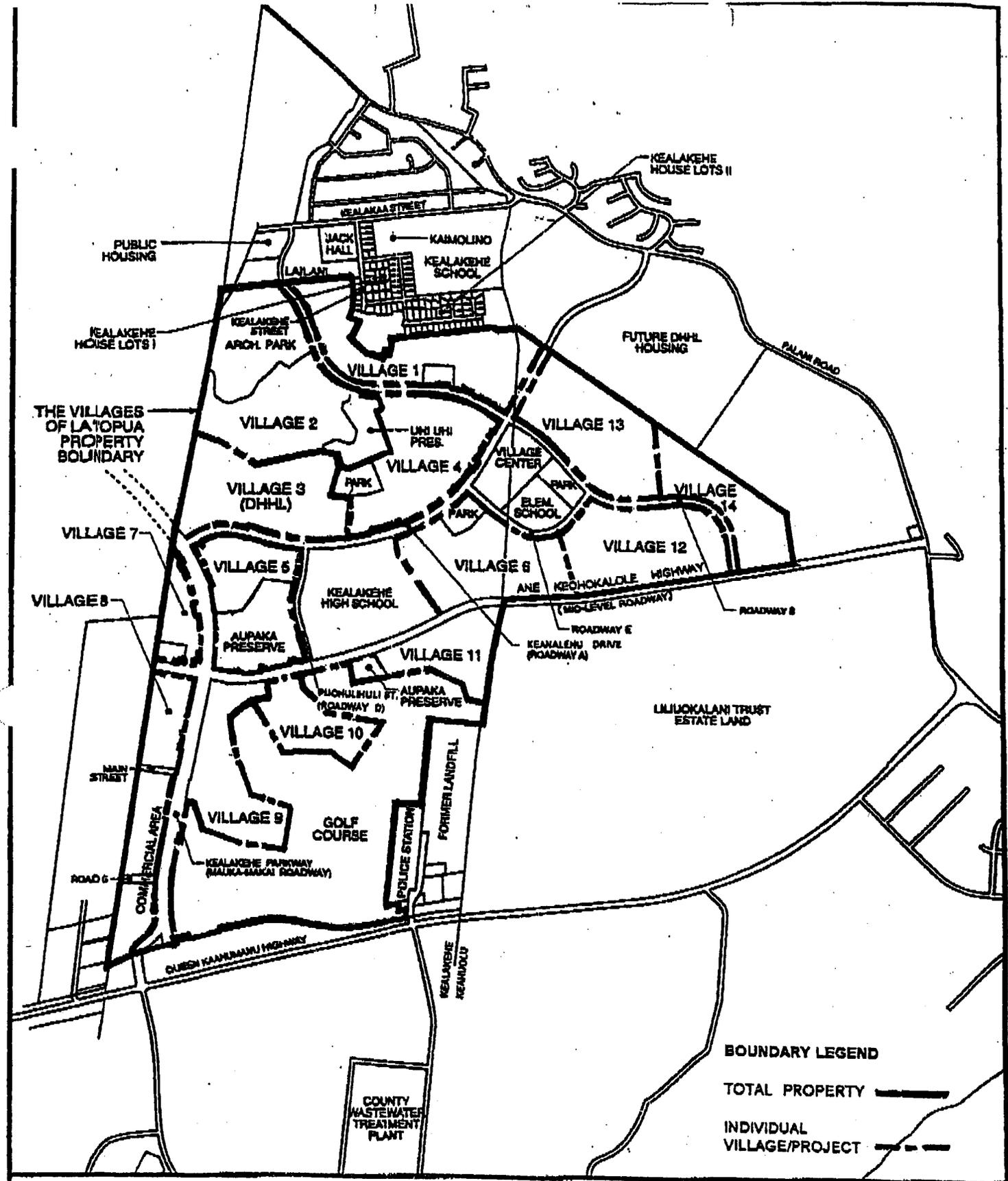


Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



PROJECT STATUS
 Villages of La'opua
 JAN 1998

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

DATE: FRIDAY, AUGUST 27, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Gerald DeMello

Mr. Timothy Johns
Mr. Ted Yamamura

STAFF

Ms. Dede Mamiya, Land
Mr. Paul Conry, DOFAW
Mr. Larry Kitamura, Eng

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, State Parks

OTHERS

Ms. Linda Chow Deputy Attorney General
Mr. Micah Kane, D-8

Mr. Ryan Akamine, K-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of August 13, 2004

The Board made the following changes:

Page 2, eight line

The first phase of the project will be to [~~drench~~] dredge . . .”

Page 6, first paragraph, ninth line

“Mr. Kennedy made [~~in~~] it known on April 14, 2004, the Department sent out letters . . .”

Page 6, second paragraph, fourteenth line

“A third incident took place at 1:10 p.m. at which time Mr. Luciano was observed [~~existing~~] exiting the ocean . . .”

Page 7, first paragraph second line

“ He spoke of the vulgar language he encountered while dealing with some of the department’s [~~personal~~] personnel.”

Page 7, fourth paragraph, first line

“Mr. John Luuwai came forward to [~~testified~~] testify but was told by the Chairperson . . .”

Page 9, item K-3, second paragraph, second sentence

“Mr. Kama pointed out his great grandfather gave the subject lands to him and his [~~tree~~] three brothers.”

Page 11, second paragraph, first line

“Lee Sichter, [~~principle~~] principal planner with Belt Collins Hawaii . . .”

Unanimously approved as amended (Johns/Inouye).

Item D-8: Conveyance of the Remainder of the Villages of Laiopua to the Department of Hawaiian Home Lands, Kealakehe, North Kona, Hawaii, TMK: 7-4-8, 20 and 21.

Dede Mamiya, Administrator of the Land Division informed the Board the State is completing the transfer of the remainder of the Villages of Laipoua excluding Villages 3 and 4, which were previously conveyed. The Department of Hawaiian Home Lands (DHHL) has offered the Housing and Community Development Corporation of Hawaii (HCDCH) \$33 million to acquire their interest in the subject housing project. Payments will be made annual over fifteen years with no prepayment penalty and no interest

charged. The \$33 million collect from DHHL will be applied by HCDCH as reimbursement of its infrastructure cost for the project. In lieu of monetary considerations for the transfer of the lands, the state is asking that these lands be counted towards the state settlement agreement in which DLNR would convey 16,518 acres of State land to DHHL. Ms. Mamiya recommended the Board authorize the conveyance of the remaining 523.852 acres at he Villages of Laiopua to DHHL under the terms and conditions listed in staff's submittal.

The Board made the following change to condition 4 on page 4 to read as follows:

“Villages 9 and 10 will be held by [~~HCDCH~~] HCDCH for future hospital and residential development. The Hawaii Health Systems Corporation has indicated an interest in constructing a regional hospital on the Village 9 site, according to HCDCH.”

Micah Kane represent DHHL was present.

Unanimously approved as amended (DeMello/Inouye).

Item K-1: Request to Extend the Processing Period for an Additional 55-days for Conservation District Use Application (CDUA) HA-3065 for the Keck Outrigger Telescopes Project at Mauna Kea Science Reserve, District of Hamakua, Island of Hawaii.

Member DeMello recused himself.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands reminded the Board the University of Hawaii is currently asking for its ninth extension of this Conservation District Use Permit. At present the applicant is in a contested case mode and therefore Mr. Lemmo is recommending the Board approve this request to extend the processing period for CDUA HA-3065 an additional 55-days (until November 1, 2004) to allow sufficient time to complete the contested case hearing process.

Ryan Akamine representing the University of Hawaii was present to answer any questions.

Approved as submitted by the remaining Board Members (Johns/Inouye).

Item E-1: Request to Amend Board Submittal of June 18, 2004 (Item E-4); to Publish and Award Concession Lease via Sealed Bid Process to the Highest Bidder, Wailua Marina Restaurant, Wailua State Park, Kauai.

Dan Quinn, Administrator of State Parks acknowledged at the June 18, 2004, meeting the Board recommended some changes be made to staff's submittal. After review by the Deputy Attorney General's office staff is recommending the Board approve: 1) a fixed

rent for the first 5 years of the 15-year term. The rental amount will be the result of a sealed bid; 2) At the end of the 5th year and every 2 years after that rent adjustment based on the average monthly rent for the previous 24 month period, but ever less than the current existing rent; and 3) After the reappraisal of the guaranteed minimum annual rent in the 10th year there shall be adjustments in the 12th year and 14th year. The lease will terminate in the 15th year.

Unanimously approved as submitted (Johns/Yamamura).

Item D-6: Consent to Assign General Lease No. S-4447, Larry T. Kimura, Trustee, Assignor, to Jerry Hunter and Carolyn Lee Hunter, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:07.

The Board amended the Title to read

“Consent to Assign General Lease No. S-4447, Larry T. Kimura, Trustee, Assignor, to [Jerry Hunter] Donald J. Hunter and Carolyn Lee Hunter, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:07.

Unanimously approved as amended (DeMello/Johns).

Item D-7: Cancellation of Revocable Permit No. S-6587 and Issuance of Revocable Permit to Hawaii Community Development Authority, Kakaako, Honolulu, Oahu, TMK: 2-1-51:09.

Motion to withdraw.

Unanimously approved to withdraw (Inouye/Johns).

Item D-1: After-the-Fact Approval of Lease of Federal Property with the U.S.A., Secretary of the Army on Behalf of the Department of Education for Public School Purposes, Fort Shafter Military Reservation, Honolulu, Oahu, TMK: 1-1-08:por. 05.

Item D-2: Grant of After-the-Fact Perpetual, Non-Exclusive Easement to The Gas Company, LLC for Gas Transmission Pipeline Purposes, Kapalama, Honolulu, Oahu; TMK: (1) 1-5-042:002.

Item D-3: Cancellation of Revocable Permit No. S-7058 to Kau Agribusiness Co., Inc. and Issuance of Month-to-Month Revocable Permit to ML Macadamia Orchards, L.P. for Orchard Purposes; Makaka, Kau, Hawaii, TMK: (3) 9-6-02:55.

Item D-4: Amend Prior Board Action of March 22, 2002 under Item D-5, Sale of Remnant to Jeff Hill, Kapaa, Kawaihau, Kauai, TMK: (4) 4-5-12:por.03.

Item D-5: Amend Prior Board Actions of September 12, 1997 (Agenda Item D-7) and February 24, 1989 (Agenda Item F-4) Direct Sale of Perpetual, Non-Exclusive Easement to the Water Board of the County of Hawaii (formerly Water Commission), Hawaii Electric Light Company, Inc. and Verizon Hawaii Inc. (formerly GTE Hawaiian Telephone Company Incorporated) for Access and Utility Transmission Purposes at Waiohinu, Kau, Hawaii, TMK: (3) 9-5-02:27, 28, 29, Por. 02 & Por. of 20-Foot Paper Road.

Unanimously approved as submitted (Yamamura/DeMello).

Item C-1: Annual Progress briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu.

Paul Conry, Administrator for the Division of Forestry and Wildlife went over staff's submittal. He indicated as part of the Board's approval for the management of Pu'u Wa'awa'a staff was required to conduct annual progress briefings. He noted an advisory council was established which was comprised of ten members. At the end of their term, which was in November 2003, the council added six new members and established additionally sub-committees in 1) Grazing management; 2) Recreational use; and 3) Kiholo Bay. Mr. Conry went on to speak of the expertise each of the council members possessed and the objectives they hope to accomplish. As a summary of future challenges, Mr. Conry pointed out the council hopes to identify the funding, resources and partnerships required to implement this 10-year plan as well as developing a strategy for implementing recreational use objectives.

The Board told staff it would be helpful if they were told of staff's objectives and a plan to help reach this goal. They also told staff to include each of their objectives and indicated what partnerships they would be entering into to accomplish their goals.

No Action.

Item K-2: Conservation District Use Application for the Reconstruction of a Comfort Station at Kaaawa Beach Park.

Mr. Lemmo pointed out that Kaaawa Beach Park has experienced chronic erosion since 1949 with at least 75 feet recession of the shoreline. The existing comfort station and rock revetment juts out and has a convex headland orientation. He went on to say the certified shoreline defines an area of 343 square feet of erosion to the North of the beachfront area of the comfort station, and 983 square feet of erosion to the South. Due to site constraints improvements to the comfort station are confined to the proposed area. There are no other options to site improvements due to the limited space and setback requirements. Mr. Lemmo communicated the proposed project received community

support and the City Council unanimously adopted a Special Management Area Use Permit and Shoreline Variance for the replacement of the comfort station. Although Mr. Lemmo believes that the decision to authorize this structure in an erosion prone area is not consistent with the objectives and purposes of resource conservation and long-term coastal conservation, he is recommending, with reservations that the Board approve this project subject to the conditions listed in staff's submittal.

The Board was concerned that no one from the County showed up to answer questions regarding the subject submittal. The Board questioned how the County would be able to fulfill condition 3) of staff's submittal.

**Approved as submitted (Inouye/DeMello).
Member Johns voted No.**

Item L-1: List of Low Bidders for ADA Projects Under \$100,000.00.

Larry Kitamura an Engineer with the Engineering Division pointed out staff will not be awarding Project No. J00CH11A for Hulihe'e Palace, ADA Barrier Removal as State Parks anticipates expanding the size of the current structure.

No Action.

Item L-2: Permission to Hire Consultants for Land Division – Land Maintenance Fund Projects.

Item L-3: Approval for Award of Construction Contract – Job No. H09C806A Ka Iwi Shoreline Roadway Guardrail Improvements Kalaniana'ole Highway, Oahu, Hawaii.

Item L-5: Certification of Election and Appointment of Molokai-Lanai Soil and Water Conservation District Directors.

Item L-6: Appointment of Hana Soil and Water Conservation District Director.

Item L-7: Appointment of Ka'u Soil and Water Conservation District Director.

Unanimously approved as submitted (Johns/Yamamura).

Item L-4: Approval for Award of Construction Contract – Job No. J00CF70A, Sand Island Recreation Area ADA Barrier Removal, Honolulu, Oahu, Hawaii.

Motion made at 9:55 a.m. by Member Yamamura and second by Member Johns to move into Executive Session to consult with the board's attorney on questions and issue pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Motion to move into Executive Session.

Unanimously approved to go into Executive Session (Yamamura/Johns).

The meeting was resumed at 10:25 a.m.

Unanimously approved as submitted (Inouye/Johns).

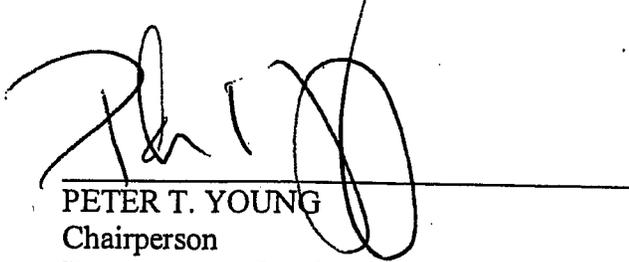
There being no further business, Chairperson Young adjourned the meeting at 1:30 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii

September 24, 2004

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 04OD-251

OAHU

Conveyance of State-Owned Land to the Department of Hawaiian Home Lands
Located at East Kapolei, Honouliuli, Ewa, Oahu, Tax Map Key: 9-1-17: 71 and 88

APPLICANT:

Department of Hawaiian Home Lands (DHHL)

LEGAL REFERENCE:

Section 171-95(a)(1), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Lot 10079, Map 765 of Land Court Application No. 1069, situate at Honouliuli, Ewa, Oahu, identified by Tax Map Key: 9-1-17: Portion 71 and 88 as shown on the attached map labeled Exhibit A.

AREA:

404 acres less 56 acres for set aside to the Department of Transportation (DOT), Highways Division (drainage channel and retention basin) and less 30 acres for future set aside to the Department of Education for an elementary school site (12 acres) and a middle school site (18 acres) leaving 318 acres, more or less, for conveyance to DHHL, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
City and County of Honolulu: A-1, Restricted Agriculture

TRUST LAND STATUS:

Non-ceded. Government land acquired after statehood from the Estate of James Campbell, Deceased (Campbell Estate), by Final Order of Condemnation, dated August 22, 1994, under Civil No. 90-1704-06 filed in the Circuit Court of the First Circuit.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 24, 2004 *kk*

ITEM D-14
EXHIBIT " " R-5

CURRENT USE STATUS:

Parcel 88 of TMK: 9-1-17 is encumbered month-to-month under Revocable Permit No. 7152 issued to Aloun Farms, Inc. for agriculture purposes.

Parcel 71 of TMK: 9-1-17 is vacant and unencumbered.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This request before the Board to transfer the ownership of State land is an administrative action and does not constitute a use of State land or State funds, and therefore, is exempt from the provisions of Chapter 343, Hawaii Revised Statutes (HRS), as amended. Inasmuch as the Chapter 343 environmental requirements apply to the Applicant's use of the land, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

The subject 318 acres of State land requested by DHHL is a portion of the 1,100 acres, located on the Ewa Plain, acquired by the State at a cost of \$31.7 million, or \$28,819/acre, from the Campbell Estate by condemnation. The prorated cost to the State of the subject 318 acres is \$9.16 million. The 1,100 acres, plus another 200 acres obtained from the Campbell Estate through a land exchange, serve as a State land bank site at East Kapolei for future development as a part of Oahu's master planned second city.

Campbell Estate's Ewa Plain consists of approximately 32,000 acres most of which were leased to the Ewa Plantation Company, beginning in 1929, for the cultivation of sugarcane. The lease was subsequently assigned to the Oahu Sugar Company, Ltd. (OSC). OSC ceased its sugar operations in April 1995. Its last sugarcane fields to become fallow were in an area known as the Golden Triangle because of its high crop yields. The State land bank at East Kapolei comprises a portion of the Golden Triangle.

Subsequent to the closure of the OSC the Campbell Estate, in October 1997, completed its Kapolei Area Long Range Master Plan. The Plan proposed the development of the City of Kapolei as well as its surrounding areas for commercial, recreational, resort, industrial and residential uses.

The Final Order of Condemnation, dated August 22, 1994 restricts the use of the 1,100 acres transferred to the State to agriculture, housing, public facilities, State or municipal golf courses and neighborhood convenience commercial. Accordingly, the East Kapolei Master Plan Development Project, completed in April 1998, for the Housing and Community Development Corporation of Hawaii (HCDCH), is a mix of commercial, single and multi-family housing with supporting public facilities that include school sites, parks, open space and recreational uses. It mastered planned the East Kapolei land bank primarily as a residential community with the commercial, parks and school sites sized in response to community needs. It is consistent with the intent of the Campbell Estate's Kapolei Area Long Range Master Plan.

HCDCH's East Kapolei Master Plan projected between 4,300 to 5,800 single-family residential units and 2,100 to 2,600 multi-family residential units would be developed on the 1300-acre East Kapolei land bank based on a 20-year absorption period. However, these totals will be reduced significantly due to the conveyance of 500 acres, from the East Kapolei land bank, to the University of Hawaii (University) for its West Oahu campus. The 500 acres were mastered planned by HCDCH for single-family and multi-family developments less 24 acres for two elementary school sites and a 3-

3-acre park site. The University is considering residential development on about 140 to 150 acres with the balance of 323 to 333 acres devoted to campus operations.

The subject site abuts a 56-acre drainage channel/retention basin along the entire length of its western boundary. The drainage channel/retention basin is a portion of the North/South Road reserve that will be set aside to DOT, Highways Division by Governor's Executive Order. The basin's purpose is ground infiltration of the increased storm water runoff caused by the additional impermeable surfaces such as roadways, parking areas and buildings that will result when the land is developed. DOT, Highways Division will maintain the retention basin as a grassed open space area.

Botanical surveys, conducted in 1996 on the East Kapolei land bank site, discovered four clusters containing a total of 86 *Abutilon Menziesii* plants scattered over the site. The *Abutilon Menziesii*, more commonly known as "red ilima", is of the Mallow Family and a federally listed endangered species since 1986. It is protected under the federal Endangered Species Act of 1973, as amended, and Chapter 195D, Hawaii Revised Statutes, as amended.

The largest cluster, containing 61 plants, is located on the subject site near its southwest boundary impacting both the subject site and the North/South Road. At its April 8, 2004 meeting the Board approved the Division of Forestry and Wildlife's (DOFAW) Habitat Conservation Plan (HCP) that provides for the protection and preservation of the *Abutilon Menziesii*.

Several plants, found growing in the North/South Road reserve, threatened to delay the start of the road's construction. The Board's approval of the HCP allows the construction of the North/South Road to commence, as scheduled, at the end of this year.

The HCP establishes an 18-acre, more or less, conservation easement around the largest cluster of the plants located on the subject site. The 61 plants, protected by the easement, will remain undisturbed. The remaining 25 plants, scattered in clusters over the land bank site, will be relocated to a minimum of three offsite wild plant locations on Oahu. Except for the location of the conservation easement on the subject site, development plans for the other locations where the plants were formerly located will not be delayed.

The HCP duration period is about 20 years and is tied to the accomplishment of the measurable goals of the Plan that include establishment of self-sustaining offsite populations at three locations and re-establishment of the species in the developed open spaces of the East Kapolei land bank site. The early success of the offsite populations would shorten the Plan's duration period. When the HCP duration period ends, the conservation easement affecting the subject site would be extinguished.

Near the subject site's Northern boundary about two-thirds the distance in the direction of the subject's Eastern boundary was the location of OSC's pesticide mixing plant. At this location pesticides were mixed to control the insects detrimental to sugarcane cultivation. An initial environmental assessment by the Department of Health found the grounds in the immediate proximity and close proximity of the pesticide plant to be contaminated. The area of the contamination was fenced to prevent the employees of Aloun Farms, Inc. and others from entering onto the contaminated area. Currently, AMEC Earth and Environmental Co. is conducting more extensive tests to determine the chemical composition and level of the contamination and the required mitigation action. The Department will be conveying the property as is.

The Department of Education (DOE) recently requested three school sites of 12 acres, 18 acres and 50 acres be reserved at the East Kapolei land bank site for a future elementary, middle and high school.

HCDCH's East Kapolei Master Plan includes a 12-acre elementary school site and 18-acre middle school site for the subject area requested by DHHL. DHHL is familiar with the master plan and aware of the school sites located within the subject area and have no objection to their location.

Regarding DOE's requested 50-acre high school site, staff recommends that it be located within the 145 acres of the land bank site between Farrington Highway and the H-1 Freeway for the following reasons:

1. The new high school is intended to ease the over crowding at the existing Mililani High School as well as the existing Kapolei and Campbell High Schools. Being bounded by the H-1 Freeway to the North and the University's 500-acre site across Farrington Highway to the South the recommended site will not route the Mililani and Waipio traffic into the residential areas of East Kapolei.
2. DHHL has far more applicants on Oahu then land to accommodate them on with residences. Accordingly, obtaining additional land on Oahu is a high priority for DHHL in accomplishing its objective of providing every qualified applicant on its waiting list an opportunity to accept a residential lease award.
3. The 145 acres are currently unencumbered.

RECOMMENDATION: That the Board

1. Authorize the conveyance of the subject 318 acres at East Kapolei, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The standard terms and conditions of the most current quitclaim deed form, as may be amended from time to time.
 - b. DHHL shall provide a conservation easement in accordance with the Abutilon Menziesii Habitat Conservation Plan in favor of the Division of Forestry and Wildlife and include said easement when subdividing the subject area.
 - c. DHHL shall pay HCDCH \$181,413, which sum represents the prorated cost of the Kapolei Interceptor Sewer Line for the subject area (318 acres of 600 acres is 53% times \$342,288)
 - d. The subject 318 shall be conveyed as is.
 - e. DHHL shall be responsible for any and all costs of mitigating the contamination caused by pesticides at the location of the former pesticide plant and any subsequent claim or demand for loss or liability, including claims for bodily injury or wrongful death resulting from its failure to maintain the property in a safe condition.
 - f. Review and approval by the Department of the Attorney General.

- g. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

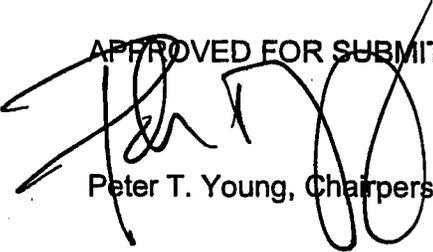
- 2. Authorize the application of the subject 318 acres as an acre for acre reduction of the 1,170 acres remaining to be conveyed to DHHL in satisfaction of a Settlement Agreement between DLNR and DHHL to bring DHHL's land trust up to the 203,500 acres designated by the Hawaiian Homes Commission Act.

Respectfully Submitted,



Gary Martin
Land Agent

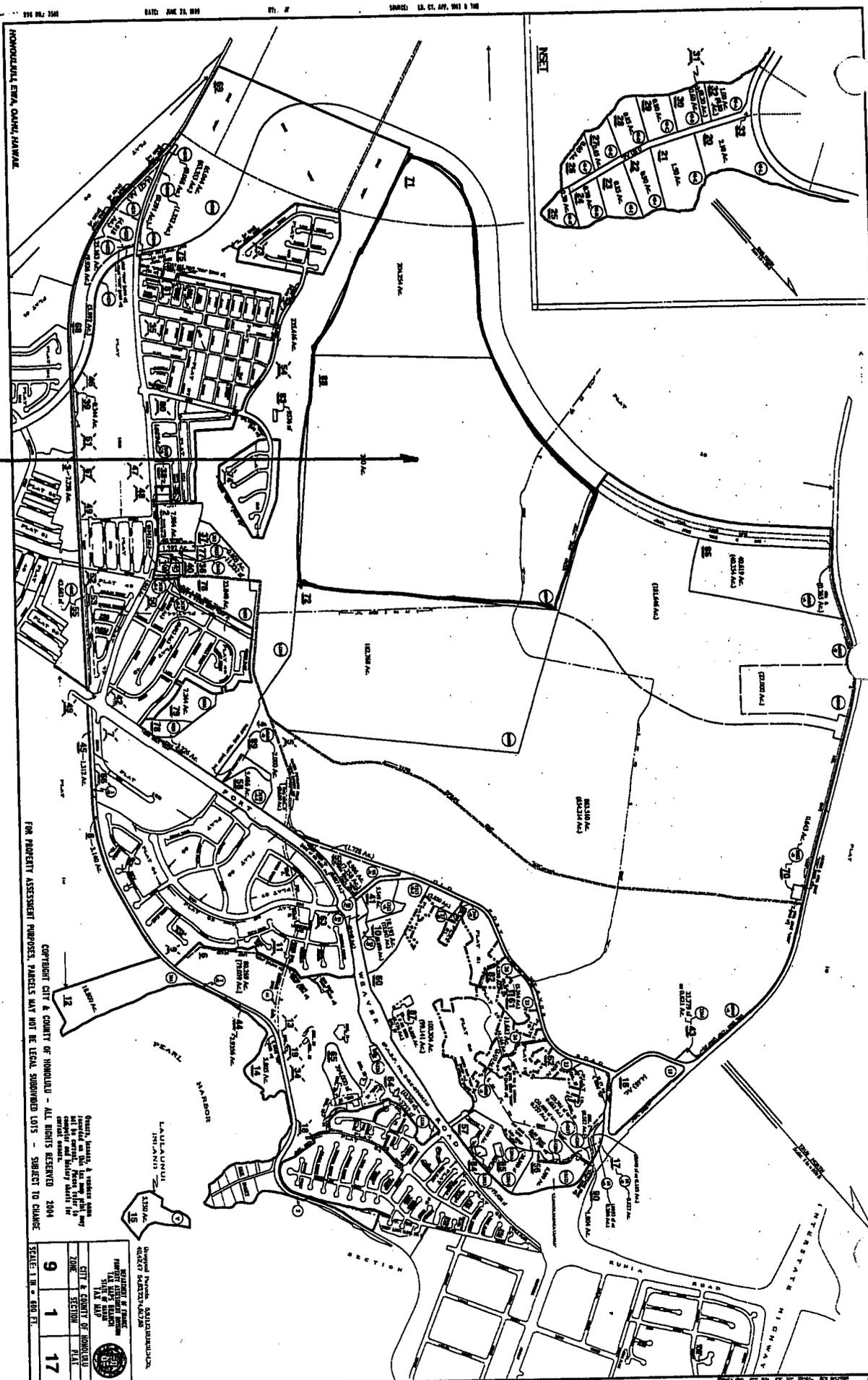
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Approved as amended. The Board amended the Recommendation Section by adding a new subparagraph 1.h. to read as follows:

"1.h. Access rights along the boundary between the subject properties and the properties comprising the North-South Road shall be reserved to the State Department of Transportation (DOT) provided that for the subject properties (designated as Tax Map Key Nos. 9-1-17:71 and 9-1-17:88), one access point to the North-South Road will be permitted at a location agreed to by the DOT and the DHHL."



Subject

FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGAL SUBDIVISIONS
 CAPTIONED CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2004

Parcels, Areas, & Indices shown
 are based on the last map filed and
 may be subject to change without
 notice.

Department of Finance Planning & Development City & County of Honolulu State of Hawaii 15th Floor 215 Ala Moana Blvd. Honolulu, HI 96813		
City & County of Honolulu Planning & Development 15th Floor 215 Ala Moana Blvd. Honolulu, HI 96813	Department of Finance Planning & Development City & County of Honolulu State of Hawaii 15th Floor 215 Ala Moana Blvd. Honolulu, HI 96813	
9	1	17

EXHIBIT A

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

DATE: FRIDAY, SEPTEMBER 24, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young	Mr. Timothy Johns
Ms. Kathryn Inouye	Mr. Ted Yamamura
Mr. Gerald DeMello	Mr. Ron Agor

STAFF

Ms. Dede Mamiya, Land	Mr. Paul Conry, DOFAW
Mr. Mike Constantinides, DOFAW	Mr. Sam Lemmo, OCCL

OTHERS

Mr. Vince Kanemoto, Deputy Attorney General	
Mr. Larry Sumida, D-14	Mr. Micah Kane, D-14
Mr. Dale Suzuki, D-11	Mr. Douglas Halbert, D-9
Ms. Barbara Bell, D-6	Mr. Ted Middleton, D-16
Ms. Lynn Maunakea, D-7	Mr. John Howell, D-12
Mr. Ralph Kiessling, D-8	Mr. William Fernandes, D-4
Mr. Lloyd Jones, C-1	Ms. Sheree Stewart, K-2
Ms. Lena Soliven, D-15	Ms. Ululani Beirne, D-15

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of September 10, 2004

The Board made the following changes:

Page one, "Others" section, last line and page 10, fourth paragraph

"Ms. Kat [~~Brody~~] Brady"

Page 6, Item K-7, third paragraph, second sentence

"Mr. Chandler assured the board he has worked very hard to fulfill the conditions . . ."

Page 7, Item D-13, line 7

"1) Where there is a County or State beach park, set aside the beach from the high water mark to the low [~~low~~] water mark . . .3) [~~Grate~~] Create a new division or office within the Department;"

Page 9, first paragraph letter "C", third line

". . . Conservation District Use Application (CDUA[~~0~~]) with the DLNR for continued [~~sue~~] use of the seawall"

Page 11, Item D-2:

Item D-2: Set Aside to the Department of Human Services for Health and Human Services, Piihonua, Hawaii, TMK: (3)2-3-15:56.

Unanimously approved as amended Johns/Inouye).

Item D-14: Conveyance of State Owned Land to the Department of Hawaiian Home Lands Located at East Kapolei, Honouliuli, Ewa, Oahu, TMK: 9-1-17:71 and 88.

Dede Mamiya, Administrator of the Land Division informed the Board the conveyance of the State owned land will include 404 acres less 56 acres for set aside to the Department of Transportation (DOT) and less 30 acres for future set aside to the Department of Education (DOE) for an elementary school site and a middle school. Thereby leaving 318 for the conveyance to the Department of Hawaiian Home Lands (DHHL). The subject lands were acquired through condemnation of lands owned by Campbell Estate, which restricts the use of the lands to agriculture, housing, public facilities, State or municipal golf courses or a neighborhood convenience commercial. Ms. Mamiya mentioned that the Abutilon Meniesii plant is scattered along the subject site and currently the Division of Forestry and Wildlife has established a Habitat Conservation Plan to protect this plant. Lastly she told the Board the Department would also be conveying the OPCS pesticide mixing plant to the Department of

Hawaiian Home Lands. In closing Ms. Mamiya recommended the Board authorize the conveyance of the subject 318 acres at East Kapolei and authorize the application of the subject 318 acres as an acre for acre reduction of the 1,170 acres remaining to be conveyed to DHHL in satisfaction of a Settlement Agreement between DLNR and DHHL.

Micah Kane and Larry Sumida representing the Department of Hawaiian Home Lands were present. Mr. Kane thanked staff and the Department of Transportation for all the work they've done in preparing this submittal.

The Board amended the Recommendation to add the following.

"1.h. Access rights along the boundary between the subject property and the properties comprising the North-South Road will be reserved to the State Department of Transportation (DOT) provided that the subject properties (designated Tax Map Key Nos. 9-1-7:71 and 9-1-7:88), one access point to the North-South Road will be permitted at a location agreed to by DOT and DHHL."

Unanimously approved as amended (Johns/Inouye).

Item D-11: Rescind Prior Board Action of July 24, 1998 (Agenda Item D-13); Set Aside to Department of Transportation, Highways Division for Highway Purposes and Issuance of a Construction Right-of-Entry; Cancellation of Revocable Permit Nos. S-7329 and S-7152; and Issuance of New Revocable Permits to A.M. Enterprises, LLC and Aloun Farm, Inc., Honouliuli, Ewa, Oahu.

Ms. Mamiya reminded the Board they previously granted approval of this item but because some changes needed to be made she would like to rescind the prior approval. The changes made to the submittal include changes to the ownership and the area. Ms. Mamiya recommended the Board rescind the prior Board action of July 24, 1998 under agenda item D-13, authorizing the issuance of a construction right-of-entry to the Department of Transportation, Highways Division and their contractors covering the subject area and authorize the Cancellation of Revocable Permit Nos. S-7329 and S-7152 and the re-issuance of revocable permits to A.M. Enterprises, LLC and Aloun Farm, Inc for agriculture purposes.

Dale Suzuki representing the Department of Transportation was present.

Unanimously approved as submitted (Inouye/Johns).

Item D-9: Set Aside to County of Maui for a Veterans Center and Community Support Activities, Kihei, Wailuku, Maui, TMK: (2) 3-9-07:03.

Ms. Mamiya made it known the Veterans of Foreign Wars has occupied the subject premises since December 1972 under a Revocable Permit. Throughout the years the Veterans has cleared the land, planted grass and maintained the area. At present the County of Maui plans to gain control over the subject property and negotiate a long-term lease with the Veterans of

Foreign Wars to utilize this facility. Ms. Mamiya recommended the Board approve of and recommend to the Governor the issuance of an Executive Order setting aside the subject lands to the County of Maui under the terms and conditions listed in staff's submittal.

Douglas Halbert representing the Veterans of Foreign Wars noted his support of staff's recommendation.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-6: Cancellation of Governor's Executive Order No. 3975, 2432 and 284; Set Aside to County of Hawaii for Solid Waste Landfill, Transfer Station, Disposal, Recycling and Related Purposes; Set Aside to County of Hawaii for Road and Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-13: 11, 142, 150, 152, 156, 162, 167, 168 and portions of Road Right-of-Ways.

Ms. Mamiya conveyed to the Board that staff is requesting to cancel three Governor's Executive Orders and together with other sites set aside the lands to the County of Hawaii for a Solid Waste Landfill. The current estimate of the existing South Hilo Sanitary Landfill's capacity predicts that it will reach its capacity and be closed within the next year or so. As a result, the county has completed an EIS and has plans for a major recycling facility. She also made it known a revocable permit has been issued for one of the subject parcels to Kiyosaki Tractor Works, Inc for their base yard facilities. Ms. Mamiya is recommending that the Executive Order be subject to the existing conditions of revocable permit No. 6977 until the County notifies the lessee they require use of the area for their purposes. Another revocable permit has also been issued to the Department of Transportation, Airports Division for the purpose of an access easement and again staff is requesting that the Executive Order to the County be subject to this revocable permit easement and a possible long-term easement to Kamehameha Schools and their quarry licensees. Ms. Mamiya recommended the Board approve of and recommend to the Governor the Issuance of an executive order canceling Governor Executive Order No. 3975, 3432 and 2841, approve of and recommend to the Governor the issuance of an executive order setting aside the same areas in addition to the TMK's listed in staff's submittal and authorize a construction and management right-of-entry to the County of Hawaii for the entire area to be set aside subject to the conditions listed in the submittal.

Barbara Bell of the County of Hawaii, Department of Environmental management was present.

The Board amended:

- 1) **The Purpose Section by adding the purpose of a second executive order to "road and utility purposes."**
- 2) **The Recommendation Section by amending paragraph 2 to read as follows:**

- "2. Approve of and recommend to the Governor the issuance of [an] two executive orders setting aside the same areas in addition . . ."**

Unanimously approved as amended (DeMello/Johns).

Item D-16: Resolution of Certain Improvements Constructed on State Land at the Hilton Waikoloa Village, Anaehoomalu, South Kohala, Hawaii, TMK: (3) 6-9-07:14.

Chairperson Young recused himself.

Ms. Mamiya recommended the Board defer this item as the documents were not available with sufficient time for the public to make comment on it.

Ted Middleton, Senior Vice President of Hilton Hotels Corporation spoke of the history of his company's acquisition of their interest in the hotel. In May 2002 Hilton became the majority owner of the hotel. He clarified it is the interest of Hilton Hotels to remain proactive in trying to accomplish a long-term solution to the ceded lands issue. In the past, Mr. Middleton has met with interested parties in hopes of understanding their views and arriving at some type of resolution. Mr. Middleton noted that currently they have entered into a revocable permit with the State regarding the subject parcel.

Motion to Defer

Unanimously approved to Defer (DeMello/Yamamura).

Item D-7: Amendment of General Lease No. S-5108, City & County of Honolulu, Lessee, Honolulu, Oahu, TMK: (1) 1-5-09:01.

Ms. Mamiya informed the Board the current lease to the City and County of Honolulu is being utilized as community facility for the urban homeless "street people" and is run by the Institute for Humans Services. After review of the lease documents Ms. Mamiya noted that the Board intended for the rent to remain nominal therefore she is recommending the Board delete the phrase "Rent shall be reopened and determined at the end of the 20th, 30th, 40th and 50 years of the lease."

Lynn Maunakea was present for this item.

Unanimously approved as submitted (Inouye/Johns).

Item D-12: Set Aside to Department of Human Services for Health and Human Services, Honolulu, Oahu, TMK: (1) 2-1-39:19.

Ms. Mamiya pointed out this lease is one of several non-profit leases with outstanding reopening due to the board discussion regarding leasing to non-profits including the amount

of rent each should pay. Currently the Department of Human Services is requesting a set aside of the lands so they will be able to manage the lease and determine the lease rent of \$1.00 per year. Ms. Mamiya recommended the Board approve of and recommend to the Governor the issuance of an Executive Order setting aside the subject lands to the Department of Human Services and authorize the amendment of General Lease No. S-4560 as listed in staff's submittal

John Howell was present for this item.

Unanimously approved as submitted (Inouye/Yamamura).

Item D-8: Grant of 55-year Non-Exclusive Easement for Concrete Boat Ramp to Ralph and Margaret Kiessling, Kalokohanahou, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-47:49 seaward.

Ms. Mamiya made it known the applicants who are participating in the Kaneohe Piers Amnesty Program are seeking a non-exclusive easement for a concrete boat ramp. The boat ramp has encroached approximately 180 feet onto State lands. The Office of Conservation and Coastal Lands staff has determined the issuance of an easement would have no adverse impacts on natural resources. Ms. Mamiya recommended the Board impose a \$500 fine for illegal encroachment and authorize the issuance of a 55-year term, non-exclusive easement to the applicants covering the subject area.

Ralph Kiessling the applicant was present to answer any questions.

Unanimously approved as submitted (Inouye/Johns).

Item D-4: Forfeiture of General Lease No. S-3674, William Kimo Fernandes, Lessee, Wailua, Kawaihau (Puna), Kauai, Hawaii, TMK: (4) 3-9-02:21.

Ms. Mamiya conveyed to the Board the lessee was served a Notice of Default for failure to keep his rental payments current. The cure period of August 29, 2004 has since expired. Currently Mr. Fernandes owes \$4250.00 (which includes late payment fees), of that amount \$1200.00 is in default. Ms. Mamiya recommended the Board authorize the cancellation of General Lease No. S-3674, authorize the retention of all sums theretofore paid or pledge under General Lease No. S-3674, terminate the lease and all rights of the lessee and all obligations of the lessor effective as of 9/24/04 and authorize the Department of the Attorney General, the Department of Land & Natural Resources or their agents to collect all monies due the State of Hawaii under General Lease S-3674.

William Kimo Fernandes testified that his lease has increased over 600%. He spoke of the limited canoe use he has (he is only able to use four and six men canoes). He notes his customers prefer using two man kayaks. Due to this problem he has had to turn away a lot of business. He made it known his family has invested over \$200,000 into this business and would like to see their operation continue. Mr. Fernandes spoke of using kayaks that have a

more Hawaiian design and look but the Department eventually instructed him that he was not allowed to use these kayaks (2 man). He went on to tell the Board at the time staff came out to re-appraise his rent he was using the two men kayak and he believes the increase in the rent was based upon this use.

When asked by the Board how long it would take him to become current with the lease rent, Mr. Fernandes replied six months.

The Board asked for clarification of "Allied Uses" as stated on the 2/25/00 board submittal listed under agenda item D-1. The Board wanted to make sure staff was in compliance with the terms of the lease.

The Board deferred this item to later in the meeting to give staff time to research the "Allied Uses" of the subject lease.

Item C-1: Approval to go out to Public Hearing to Amend Hawaii Administrative Rules Chapter 104, §13-104-22 commercial harvest permits, to increase permit value, period of validity, and frequency.

Paul Conry, Administrator of the Division of Forestry and Wildlife and Michael Constantinides, Forestry Program Manager appeared before the Board to go over staff's submittal. Mr. Conry communicated the commercial harvest permit provides the Division the flexibility and capability to effectively administer small-scale commercial timber sales, salvage dead or dying timber resources and recover value from trees that threaten fences, roads and buildings and trees that can be removed in pursuit of other management goals. The current rule limits any given person, group, organization or association three permits annually each not to exceed \$1,000 and each valid for no more than 14 days. The reason the division is seeking to amend the current rule is because it is restrictive in relation to the Division's capability to effectively salvage native timber resources from forest reserves. The proposed rule would allow up to six permits annually, each not to exceed \$10,000 per permit, and each valid for no more than 14 or 30 days, for permit values setup to \$1,000 or \$1001-\$10,000 respectively. Mr. Conry recommended the Board approve for the Division of Forestry and Wildlife to go out to public hearings to amend Hawaii Administrative Rules Chapter 104 § 13-104-22 Commercial Harvest permits to increase the permit value, period of validity and frequency as detailed in the submittal.

Mr. Constantinides made it known the current rule would apply to both agriculture and conservation zoned forest reserve lands. Also the current rule does not require a conservation district use application or permit for this activity.

Unanimously approved as submitted (Johns/DeMello).

Item K-2: Contested Case HA-05-01 Waive Written and Oral Request for Contested Case Hearing, and Appoint and Select a Hearing Officer to Conduct All Hearings for a Contested Case.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands conveyed the Petitioner in case No HA-0501 is asking the Board for a contested case hearing. Approximately two weeks after the August 27, 2004, Land Board meeting staff received a letter from the Attorney of the alleged requesting a contested case hearing. Because an oral request was not made upon the completion of the August 27, 2004 meeting, Mr. Lemmo is asking the Board to waive this issue as it has that option. Mr. Lemmo recommended the Board waive the petitioners' failure to make an oral request and the lack of written request for a contested case hearing by the close of the board meeting at which the matter was scheduled for disposition, authorize the appointment of a Hearing Officer for CC HA-05-01 and that the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

The Board questioned as to why the request for a contested case hearing was turned in by the petitioners' attorney after the deadline.

Sheree Stewart of Cades Schutte representing the petitioners told the Board it was her understanding that Mr. Kamai was not accurately informed of his right to a contested case hearing. She made it known they were four days late in turning their request but she assured the Board as soon as they received the case they worked diligently in processing the necessary paperwork. Ms. Stewart made it known if the Board decides to deny this request before them, they have filed an appeal to the circuit court to appeal the Board's decision.

The Board amended staff's recommendation as follows:

- 1) That the Board [waive] deny the petitioner's failure to make an oral request and the lack of written request for a contested case hearing by the close of the Board meeting at which the matter was scheduled for disposition;**
- 2) That the Board [authorize] deny the appointment of a hearing Officer for CC HA-05-01 and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and**
- ~~{3) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.}~~**

Unanimously approved as amended (DeMello/Johns).

Item K-1: Enforcement File HA-02-24 Regarding Alleged Unauthorized Construction of Two (2) House Structures, and Removal of Hala Trees, Carl. C. Green, P.O. Box 1152, Paho, Hawaii 96778, Subject Parcel TMK: (3) 1-4-028:036, Waa Waa Subdivision, Puna District, Hawaii.

Motion to Defer

Unanimously approved to defer (DeMello/Johns).

Item M-1: Issuance of Lease – Airport Surveillance Radar-11 and Moving Target Indicator (MTI) Federal Aviation Administration United States of America (USA), Kahului Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-4: Item D-4: Forfeiture of General Lease No. S-3674, William Kimo Fernandes, Lessee, Wailua, Kawaihau (Puna), Kauai, Hawaii, TMK: (4) 3-9-02:21.

(continued from earlier in the meeting).

Ms. Mamiya informed the Board this lease was auctioned and the specific character of use states for "Hawaiian Museum and allied uses." Because this lease was auctioned the Board cannot go ahead on their own and change the use of the lease. Ms. Mamiya also pointed out under "allied uses" it states that the kayaks used by the lessee are not considered "allied uses" were as traditional outrigger Hawaiian canoes (4-man or 6-man) are allowed under the terms of the lease.

The Board gave the Lessee 30 days to pay the delinquent rent (\$1200) otherwise the lease shall be automatically terminated.

Unanimously approved as amended (Agor/Johns).

Item D-15: Resubmittal: Rescind Prior Board Action of January 11, 2002, Agenda Item D-34, for the Cancellation of Revocable Permit No. S-7245 to Lena P. Soliven and Troy Wallace, and Issuance of Revocable Permit to Lena Soliven, Kahana Valley State Park, Oahu, TMK: 5-2-02:por. of 01.

Ms. Mamiya reminded the Board previously they approved a cancellation of six revocable permits and the issuance of five new permits. One of these permits being Revocable Permit S-7245, which was in default for failure to post the required liability insurance. Since that time Lena Soliven has posted the required liability insurance. Ms. Mamiya informed the Board Ms. Soliven has paid all late rental payments and she is also requesting that the Board waive the late fees as she believes the applicants have contacted staff in the past to resolve the rent issue but for some reason staff did not react. At present the rent is current.

Ms. Ululani Beirne, mother of Troy Wallace came forward to testify. She told the Board if they rescind their prior board action it would affect two households – Lena Soliven and her son Troy Wallace who both occupy separate homes on the subject parcel. She made it known her family has occupied and taken care of the land for the past sixty years. She noted State Parks does not have the necessary manpower to manage the land. She feels it is not fair to remove one member of her family while the other is allowed to remain on the subject parcel. In closing she asked the Board to allow her son, Troy Wallace to remain on the parcel.

Lena Soliven one of the permittees of Revocable Permit S-7245 informed the Board she has been to the Fiscal Office six times within the last two years to resolve this issue of delinquent payments.

The Board denied staff recommendations. The Board waived all late fees and directed staff to record the explanation for the waiver in Lena's file.

Unanimously approved as submitted (Inouye/Johns).

Item D-5: Confirming that the Department of Transportation Shall Record its Land Conveyance Document at the Bureau of Conveyances Pursuant to Section 171-24, HRS.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Inouye).

Item D-1: Issuance of Land Patent in Confirmation of Land Commission Award No. 6643 to Nahaka situate at Nania, Waimea, District of Kona, Kauai, TMK: (4) 1-5-02:26.

Item D-2: Withdrawal from Governor's Executive Order No. 1641 & 1223; Sale of Remnant and Right-of-Ways to County of Hawaii in Connection with Kawaihine Street Improvements, Waiakea Homesteads, South Hilo, Hawaii, TMK: (3) 2-4-12:43, 2-4-02:por. of 01 & 128.

Item D-3: Mutual Cancellation of General Lease No. S-3001 between the County of Maui and the Maui Produce Processing Cooperative, and Authorization of Bill of Sale to the County of Maui of the Kula Vacuum Cooler Plant, Omaopio, Makawao, Maui, TMK: (2) 2-3-03:23.

Item D-10: Withdrawal from Governors Executive Order No. 570, Kalihi, Honolulu, Oahu, TMK: (1) 1-2-26:road.

Item D-13: Set Aside to the Department of Land and Natural Resources, Commission of Water Resources Management, for Monitor Well and Access and the Issuance of a Construction Right-of-Entry, Waimalu, Ewa, Oahu, TMK: (1) 9-8-11:06 por.

Unanimously approved as submitted (Johns/DeMello).

Item L-4: Approval for Cancellation of Award – Job No. B75DO71A, Waianae Boat Harbor Pier Repair and Improvements, Oahu, Hawaii.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Yamamura).

Item L-1: Certification of Election and Appointment of Mauna Kea Soil and Water Conservation District Directors.

Item L-2: Appointment of Hana Soil and Water Conservation District Director.

Item L-3: Approval for Cancellation of Award – Job No. J00CB46A, Lahaina Small Boat Harbor, ADA Barrier Removal Project Maui, Hawaii.

Unanimously approved as submitted (Johns/Yamamura).

Motion to Add Item D-17:

Unanimously approved to add item D-17 (Johns/Inouye).

Item D-17: Amend Prior Board Action of July 30, 2004, Item D-12, Cancellation of Governor's Executive Order No. 3258 to the Department of Accounting and General Services for Multi-Agency complex site and Reset Aside to the county of Kauai for Adult Transition Facility, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-8-05:01.

Unanimously approved as submitted (Agor/Inouye).

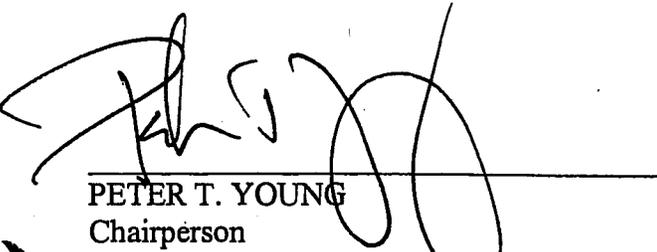
There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 14, 2005

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

PSF: 04HD- 224
05HD- 218
HAWAII

Amend Prior Board Action of August 27, 2004, under Agenda Item D-8:
Conveyance of Remainder of the Villages of Laiopua to the Department of
Hawaiian Home Lands, North Kona, Hawaii, TMK: (3) 7 - 4 - 08: 20, 21 and 56

On June 17, 2004 the Housing and Community Development Corporation of Hawaii (HCDCH) Board of Directors authorized its staff to, among other things, negotiate an agreement to transfer its development rights for the remaining undeveloped portion of the Villages of Laiopua, Villages 9 and 10 excepted, to the Department of Hawaiian Homes Lands (DHHL). Approximately 324 acres of the undeveloped portion are ceded lands and 200 acres are non-ceded lands.

Subsequently, at its August 27, 2004 meeting, under agenda item D-8, the Board of Land and Natural Resources approved the fee simple conveyance of the 524 undeveloped acres of land at the Villages of Laiopua to DHHL.

Village 9 was retained as a site for a full service medical center being proposed by the Hawaii Health Systems Corporation. Village 10 was retained by HCDCH as a site for a future affordable housing development.

The 200 acres of undeveloped non-ceded land at the Villages of Laiopua are a portion of a 450-acre acquisition by the State from the Queen Liliuokalani Trust in 1992 for residential, educational and recreational purposes. Another 150 acres of the acquisition were previously conveyed to DHHL as partial settlement to an agreement between DLNR and DHHL that will eventually transfer up to 16,518 acres of State land to DHHL. The remaining 100 acres of the acquisition are currently vacant and unencumbered. The purchase price of \$8,325,000 for the 450 acres was funded by legislative appropriation through Act 316, SLH 1989, Item 28.

Lawsuits filed by the Office of Hawaiian Affairs in 1994 against HCDCH and the State to stop the sale of ceded lands have prevented HCDCH from developing any of the 3,300+ residences that were master planned for the Villages of Laiopua development. However, HCDCH did complete much of the infrastructure necessary to service the development.

HCDCH is now requesting the fee simple title to the 200 acres of non-ceded lands at the Villages of Laiopua, less 28 acres to be retained by DHHL for the purpose of keeping Villages 1 and 6 and the Village Center intact. Also, HCDCH will relinquish its development rights for Village 10 to DHHL. DHHL has no objection to this request but with the added recommendation that the subdivision of the parcel by HCDCH include a proposed school site to be set-aside to the Department of Education.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 14 2005

EXHIBIT " B-B-6 " D-5

Additionally, HCDCH is requesting the fee simple title to the remaining 100 acres of non-ceded land, acquired from the Queen Liliuokalani Trust, which are currently vacant and unencumbered.

The conveyance to HCDCH of the 172 acres of non-ceded land at the Villages of Laiopua (200 acres, less 28 acres for retention by DHHL) plus the additional 100 acres of non-ceded land adjacent to the Villages of Laiopua development would allow it to develop some affordable housing for the West Hawaii area.

RECOMMENDATION: That the Board

- A. Amend its prior action of August 27, 2004, under agenda item D-8, by deleting approximately 172 acres of non-ceded land at the Villages of Laiopua from the conveyance to DHHL, subject to the following:
1. Concurrence by the Hawaiian Homes Commission.
 2. The 21.5 acres comprising Village 10 shall be included in the conveyance of the undeveloped portion of the Villages of Laiopua to DHHL.
 3. Except as hereby amended all other terms and conditions in agenda item D-8 of the Board's August 27, 2004 meeting remain applicable.
 4. Review and approval by the Department of the Attorney General.
 5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the fee simple conveyance of the 172 acres in "A" above plus the adjacent 100 acres of former Queen Liliuokalani Trust land to HCDCH for the purpose of developing affordable housing, subject to the following:
1. A school site within the premises be reserved for the Department of Education.
 2. Approval by the HCDCH Board of Directors.
 3. Consideration is gratis.
 4. The standard terms and conditions of the most current quitclaim deed form, as may be amended from time to time.
 5. Review and approval by the Department of the Attorney General.

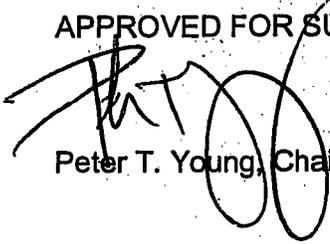
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

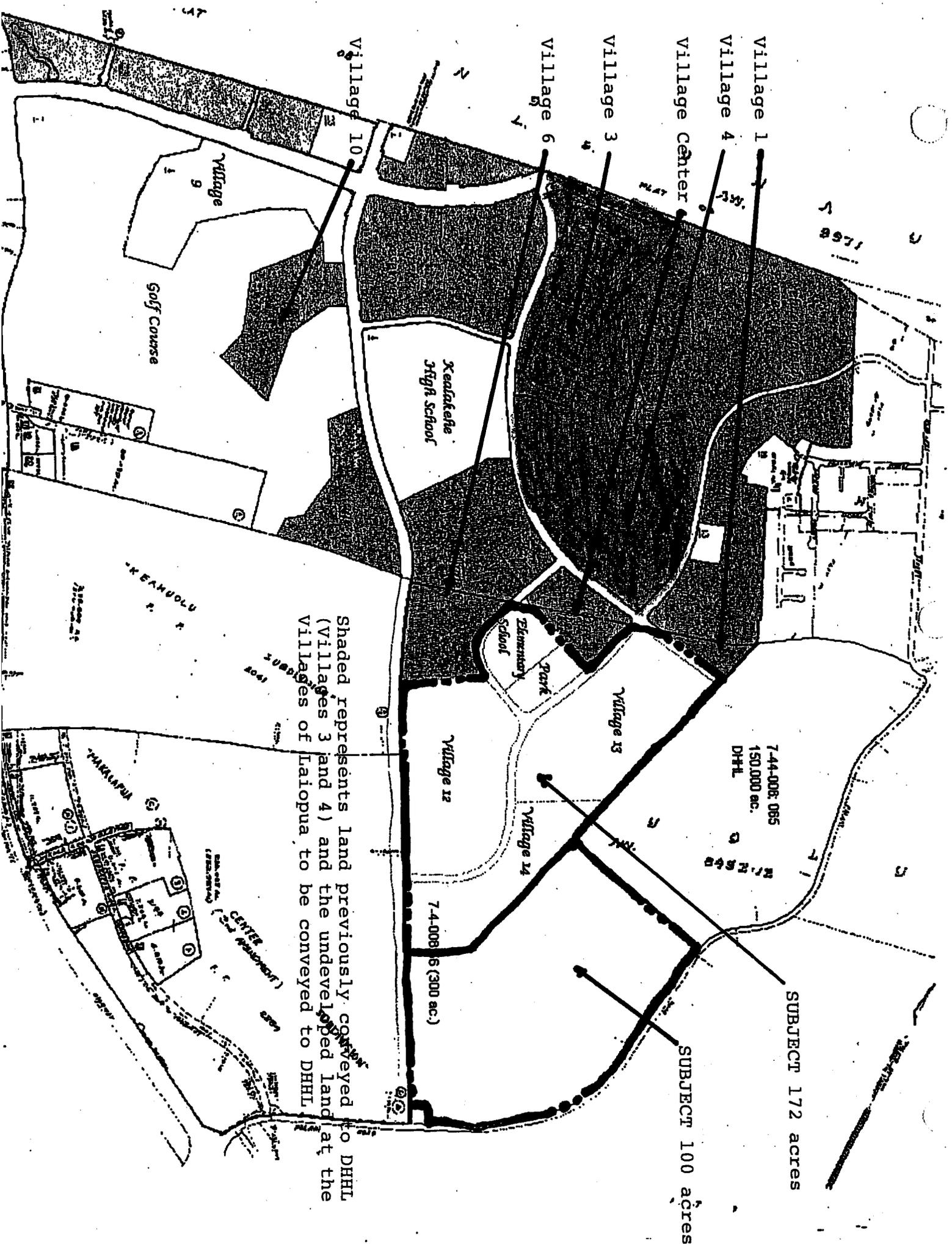
Gary Martin

Gary Martin, Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



Shaded represents land previously conveyed to DHHL (Villages 3 and 4) and the undeveloped land at the Villages of Laloopua to be conveyed to DHHL.

SUBJECT 172 acres

SUBJECT 100 acres

7-4-008-065
150,000 ac.
DHHL

7-4-008-06 (300 ac.)

Golf Course

Keaiakehe High School

Elementary School
Park

K EAHUOLU

KAIKAIAPU

CENTER (2nd Addition)

15971

47

Village 10

Village 6

Village 3

Village 4

Village 1

Village Center

Village 9

Village 12

Village 13

Village 14

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

DATE: FRIDAY, OCTOBER 14, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:03a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Ron Agor

Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Russell Tsuji, Land
Mr. Bill Andrews, DOBOR
Mr. Dan Pohlemus, DAR

Mr. Richard Rice, DOBOR
Ms. Tiger Mills, OCCL
Ms. Karen Motosue, Parks

OTHERS

Ms. Julie China, Deputy Attorney General
Ms. Sandra Song, D-4
Mr. Stan Fujimoto, D-5
Mr. Darrell Ing, D-5
Mr. Hank Mulligan, J-1

Mr. Calvin Choy, D-6, D-8
Mr. Larry Sumida, D-5
Mr. Jerrold Kguben, D-2
Ms. Joelle Kane, M-3

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of September 9, 2005

Unanimously approved as submitted (Agor/Johns).

Item A-2: Minutes of September 23, 2005

Unanimously approved as submitted (Johns/DeMello).

Item D-4: Waiver of Use Restrictions – Land Office Deed S-19,941, Dr. William C. Bergin and Mrs. Patricia C. Bergin, Lot 22-B, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, TMK: (3) 6-6-5:13.

Member Johns recused himself.

Russell Tsuji, Administrator of the Land Division noted the subject parcel has a deed restriction, which restricts its use to agriculture, which is defined as truck and orchard crops. The applicant is requesting a waiver of the use restriction under 171-63A. Mr. Tsuji indicated the attorney for the applicant is asking that staff's submittal be amended to be broader and include a waiver of the subdivision restriction. Upon consultation with the Attorney General's office staff was advised that they are limited to waiving only the use restriction under 171-63A. Mr. Tsuji recommended the Board find the restriction on agricultural use, number of dwellings, requirements for consent and approval of building plans, and options to repurchase are not in the public interest and authorize the waiver of use restriction contained in Land Office Deed identified as LOD. No. S-19,941 subject to review and approval by the Department of the Attorney General.

Sandra Song, attorney representing the applicants asked the Board for a waiver of the agricultural restriction on the parcel. She pointed out a land patent for the parcel was issued in 1963 before the land use law was adopted. Ms. Song went on to communicate that due to the restrictive conveyance on the parcel, landowners in the Lalamilo Farm Lots currently need to come before the Board for approval of a use, to subdivide their lot or any building plans due to the restrictive use on the property. Ms. Song further requested that the subdivision restriction be eliminated but due to the opinion issued by the Attorney General's office she is willing to work with them and have today's Board approval be subject to their review and approval.

Mr. Tsuji had concerns with the Department waiving the subdivision restriction as this waiver could eliminate the State's repurchase option.

The Board amended the following

1. Recommendation 1)

"Find that the restrictions on agricultural use, subdivision, number of dwellings, requirements for consent and approval of building plans and options to repurchase area not in the public interest pursuant to Chapter 171-63, HRS;"

2. Subject to the Applicant fulfilling all of the requirements listed above, authorize the waiver of the use restriction and the restriction on subdivision and connected repurchase option contained in Land Office Deed identified as LOD. No. S-19,941;"

3. Add Recommendation 5)

"5. The waiver on the restriction on subdivision and connected repurchase option shall be subject to the review and approval of the Department of the Attorney General, and specifically on the Department of the Attorney General revisiting that certain advice letter dated November 29, 2004 stating that the Board does not have the authority to waive any other restrictions in the Lalamilo Deeds, except for the use restriction in accordance with HRS 171-63 (a); and

4. Add Recommendation 6)

"6. If the Department of the Attorney General does not approve the waiver or other modification of the subdivision restriction and related repurchase option, then the Board's waiver herein shall be limited to only the use restriction as aforesaid."

Unanimously approved by the remaining Board members (DeMello/Yamamura).

Item D-6: Grant of Term, Non-Exclusive Easement to Hawaiian Telecom, Inc. for Access Purposes, Haleakala, Makawao, Maui, TMK: (2) 2-2-7:5 portion.

Unanimously approved as submitted (Yamamura/Johns).

Item D-8: Amend Prior Board Action of July 8, 2005 (Item D-16), Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Limited and Hawaiian Telecom, Inc. for Utility Purposes, Kahakuloa, Maui, TMK: (2) 3-1-01:por. 01.

Member Johns recused himself.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item D-5: Amend Prior Board Action of August 27, 2004, under Agenda Item D-8: Conveyance of Remainder of the Villages of Laiopua to the Department of Hawaiian Home Lands, North Kona, Hawaii, TMK: (3) 7-4-08:20, 21 and 56.

Unanimously approved as submitted (Johns/Agor).

Item D-2: Consent to Assign, General Lease No. S-4323, Tri-K Investments, LLC, Assignor, to 888 Kalaniana'ole Avenue, LLC, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-10:33.

Member Schuman recused herself.

Mr. Tsuji commented on the fact that the applicant Tri-K Investments, LLC has gone through bankruptcy proceeding, which is detailed in staff's submittal. Mr. Tsuji recommended the Board consent to the Assignment of General Lease No. S-4323, Tri-K Investments, LLC, the Assignor, to 888 Kalaniana'ole Avenue, LLC or its designee as the assignee subject to the terms and conditions listed in the submittal.

Jerrold Kguben testified on behalf of the Assignee. Mr. Kguben disclosed that he believed there would be a change in the designation of the assignee from 888 Kalaniana'ole Avenue, LLC to the name of the individual.

The Board amended page 4, third paragraph of staff's submittal

"The Assignee (888 Kalaniana'ole Ave., LLC) has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The principal owner of [~~Assignor~~] Assignee (Jim McCully) has two other State leases in the Hilo area and has shown to be a good quality tenant."

Unanimously approved as amended by the remaining Board members (DeMello/Johns).

Item J-1: Issuance of Revocable Permit to Hawaii Yacht Club (HYC), a Hawaii non-profit corporation, located at 1739-C Ala Moana Boulevard, Honolulu, Hawaii, for a limited number of permit parking stalls at the Ala Wai Small Boat Harbor, TMK: (1) 2-3-037:12 portion of 12.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) and Bill Andrews, Property Manager appeared before the Board. Mr. Rice went on to point out that the Hawaii Yacht Club is a non-profit corporation with a lease from the Department for operations within the Ala Wai Small Boat Harbor. Currently, its members cannot obtain individual parking permits. Mr. Rice reminded the Board in February they approved the beginning of a public process to allow permits to be given to the Hawaii Yacht Club members with the quantity to be determined. The submittal before the Board today is a "test" period, which will determine the correct number of future, permits to be assigned to the Yacht Club. Mr. Rice communicated the number of parking permits issued to the Hawaii Yacht Club will be reviewed on a quarterly basis. Mr. Rice recommended the Board approve the issuance of a Revocable Permit to Hawaii Yacht Club to provide seventy two (72) parking permits for the Hawaii Yacht Club for a period not to exceed one (1) year and subject to quarterly review by the Division.

Written testimony was received from Hank Mulligan.

Unanimously approved as submitted (Johns/Schuman).

Item M-3: Issuance of Direct Lease Dorvin D. Leis Co., Inc. Honolulu International Airport.

Unanimously approved as submitted (Johns/DeMello).

Item M-1: Issuance of Lease of Non-Exclusive Easement Hawaiian Telcom, Inc. Honolulu International Airport.

Item M-2: Consent to Assignment of Lease No. DOT-A-93-0007 Jay D. Whiteford dba Air Survey Hawaii to Hawaii Aviation Contract Services, Inc.

Unanimously approved as submitted (Johns/DeMello).

Item C-1: Request for Approval to Enter into a Joint Funding Agreement with U.S. Geological Survey (USGS) to Operate and Maintain Gaging stations.

Unanimously approved as submitted (Johns/Schuman).

Item F-1: Request for Approval to Enter into a Contract with the University of Hawaii (UH) to Implement the Hawaii Fisheries Disaster Relief Program – Cooperative Research Development and Outreach (To Terminate on June 30, 2007).

Unanimously approved as submitted (Johns/Schuman).

Item E-1: Request from the Federation of American Natives to Hold the First Annual Hilo Inter-Tribal PowWow on Portions of Wailoa River State Recreation Area, Hilo, Hawaii.

Item E-2: Permission to Solicit for Bids and Entry into a Services Agreement for Entry Fee Collection at Diamond Head State Monument, Oahu.

Item E-3: Request for after-the-fact permission to allow mobile food concessions, solicit bids, and award and enter into mobile food concession agreements, through the Chairperson, as follows: Wailua River State Park, Kauai, to H & M Partners; Nuuanu Pali State Wayside, Oahu, to Curtis Hong, dba Paradise Shrimp & Burger; Diamond Head State Monument (Interior), Oahu, to Curtis Hong, dba Paradise Shrimp & Burger; and Diamond Head State Monument (Exterior), Oahu, to Sri Ram Society; and for authority to amend the agreement with H&M Partners to reduce rent for October 2005 based on the delayed execution date of the agreement.

Unanimously approved as submitted (Johns/DeMello).

Item K-1: Conservation District Use Application (CDUA) OA-3230 Temporary Bypass Road and Bridge for the Kamehameha Highway North Kahana Bridge Replacement Project by the State Department of Transportation, Highways Division, Located at Ahupua'a O Kahana State Park, Oahu, TMK:(1) 5-2-005:003.

Unanimously approved as submitted (Johns/Agor).

- Item L-1:** Approval for Award of Construction Contract – Job No. J00CF60A Palaaau State Park ADA Barrier Removal, Molokai, Hawaii.
- Item L-2:** Approval for Award of Construction Contract – Job No. J00CF61A Waahila State Recreation Area ADA Barrier Removal, Honolulu, Oahu, Hawaii.
- Item L-3:** Approval for Award of Construction Contract – Job No. J00CF67A Polipoli Spring State Monument ADA Barrier Removal, Maui, Hawaii.
- Item L-4:** Approval for Award of Construction Contract – Job No. J00CF78A Polihale State Park ADA Barrier Removal, Waimea, Kauai Hawaii.
- Item L-5:** Approval for Award of Construction Contract – Job No. J00CF51B Puu Ualakaa State Monument ADA Barrier Removal Honolulu, Oahu, Hawaii.
- Item L-6:** Approval for Award of Construction Contract Job No. J00C101A Makiki Baseyard Facility ADA Barrier Removal Honolulu, Oahu, Hawaii.

Unanimously approved as submitted (Johns/DeMello).

- Item D-9:** Rescind Prior Board Action of May 23, 2003, Agenda Item D-48, Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access Purposes, Diamond Head State Monument, Fort Ruger, Honolulu, Oahu, TMK: (1) 3-1-42:por. 14.

Member Johns recused himself.

Unanimously approved as submitted (Yamamura/DeMello).

- Item D-1:** Rescind Land Board Approval of 12/10/04, **Item D-20:** Consent to Assignment of General Lease No. S-5057, from Paul S. and Maile F. Hurley, and Dane K. and Frances H. Oda, assignors, to Michael S. McElgunn, assignee, Lot 11, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, TMK: (4) 1-4-02:12.
- Item D-3:** Issuance of Direct Land Licenses to Yamada and Sons, Inc. and Kiyosaki Tractor Works, Inc. for Quarrying, Crushing, Removal and Stockpiling of Rock Aggregate, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-13:161 & 163.
- Item D-7:** Cancellation of Revocable Permit Nos. S-7208 and S-7200; Issuance of a New Revocable Permit to Raycom National, Inc. dba KHNL/KFVE-TV, Makawao, Maui, TMK: (2) 2-2-07:14 and 15.
- Item D-10:** Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Lease to Samuel C. Kaomea for Private Non-commercial Pier Purposes

Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK; (1) 4-6-23:46.

Item D-11: Amend Prior Board Action of April 25, 1969, Item F-18; Acquisition of Land for New Mililani High and Intermediate School, Waipio, Ewa, Oahu, TMK: (1) 9-5-01:54 & 55.

Item D-12: After-the fact Approval of Lease of Federal Property with the Secretary of the Air Force on Behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 portion.

Unanimously approved as submitted (Johns/Schuman).

There being no further business, Chairperson Young adjourned the meeting at 9:33 a.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,

Terry Crowell

Terry Crowell

Approved for submittal:

Peter T. Young

PETER T. YOUNG

Chairperson

Department of Land and Natural Resources