

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

DATE: FRIDAY, MAY 25, 2001
TIME: 9:00 A.M.
PLACE: I.L.W.U. CONFERENCE ROOM
896 LOWER MAIN STREET
WAILUKU, MAUI, HI 96793

Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS:

Mr. Gilbert Coloma-Agaran
Ms. Lynn McCrory
Dr. Fred Holschuh

Mr. William Kennison
Ms. Kathryn Inouye

STAFF:

Mr. Harry Yada, Land Division
Mr. Sam Lemmo, Land Division
Mr. Dean Uchida, Land Division

Mr. Michael Buck, Division of Forestry & Wildlife
Mr. Dan Quinn, Division of State Parks
Mr. Gary Moniz, Division of Conservation &
Resources Enforcement

OTHERS:

Ms. Dawn Chang, Department of the
Attorney General
Mr. Darrell Stokes, C-1
Mr. Alex Franco, D-12
Mr. Mark Sheehan, D-12, D-5
Ms. Alice Takehara, E-3
Mr. Ellsworth Fontes, E-1
Ms. Verna Nahulu, E-1, D-5
Mr. Roy Gomes, E-1
Mr. Stan Fujimoto, D-10
Mr. Stephen Sico, D-7
Mr. Steve Holaday, D-5
Mr. Ron Sturtz, D-5
Mr. Mark Andrews, D-5
Mr. James Chester, D-5
Mr. Charley Villalon, D-5

Mr. Peter Garcia, Department of
Transportation
Ms. Rosalyn Baker, D-2
Ms. Sally Raisbeck, D-12, D-5
Mr. Charles Maxwell, D-12, D-5
Mr. Stan Wachi, E-3
Mr. Glenn Shepherd, E-1, D-5
Ms. Gladys Nahupu, E-1
Ms. Patricia Iolana-Clark, E-2
Ms. Sharla Manley, D-10, D-5
Ms. Meredith Ching, D-5
Mr. Garrett Hew, D-5
Mr. Carl Christensen, D-5
Ms. Elaine Wender, D-5
Mr. Moses Haia, D-5
Mr. Francis Torres, D-5

Ms. Terryl Vencl, D-5
Ms. Stephanie Whalen, D-5
Mr. Rick Volner, Jr., D-5
Mr. Mark Vaught, D-5
Mr. Kalei Luuwai, D-5
Mr. James Tanaka, D-5
Mr. Ed Reinhardt, D-5
Mr. Jeffrey Parker, D-5
Ms. Vivian Scott, D-5
Ms. Neola Caveny, D-5
Ms. Lucienne deNaie, D-5
Mr. Isaac Hall, D-5
Mr. Mike Nobriga, D-5
Mr. Nikhilananda, D-5
Ms. Lynne Woods, D-5
Mr. David Johnston, D-5

Mr. Jerry Ornellas, D-5
Ms. Mae Nakahata, D-5
Mr. Carl Alexander, D-5
Mr. Doug Sheehan, D-5
Mr. Anders Lyons, D-5
Ms. Elliott Krash, D-5
Ms. Miranda Camp, D-5
Mr. Ed Wendt, D-5
Ms. Kelly Arbor, D-5
Mr. Eric Yoshizawa, D-5
Ms. Joyce Kainoa, D-5
Mr. Hugh Starr, D-5
Mr. Ed Lindsey, D-5
Mr. Will Garvin, D-5
Mr. Daniel Grant, D-5

The Board recognized Mr. Colbert Matsumoto, Member of the Board of Land and Natural Resources for the past 6-1/2 years, who has recently left to serve as a Board of Trustee for the Employees' Retirement System. He was recognized as an influential Member of the Board, and with his assistance, knowledge, perseverance, and patience, many changes have been made to the Department for the better.

ITEM A-1: APPROVAL OF THE APRIL 12, 2001 MINUTES

Member Inouye recused herself.

Member Holschuh made the following amendments:

Page 1, amend the PLACE to read:

"Hilo State Office Building
1st Floor Conference Rooms A, B, & C
75 Aupuni Street
Hilo, Hawaii 96720"

Page 13, amend the 7th paragraph to read:

"... fighting fires in the area and how cattle are needed to keep the grass down."

Page 15, amend the 3rd paragraph to read:

"Mr. Steve Hurt, representing the ..."

Page 17, amend the bottom of the page, list of names, by: deleting Mr. Bob Jacobsen. The same person was erroneously listed twice.

Page 18, amend the top of the page, continuation of the list of names, column 3, third name from the top, to read: "Mr. John Ray".

Unanimously approved as amended (Kennison/McCrory).

ITEM C-1: REQUEST APPROVAL OF CONTRACT WITH CASTLE & COOKE RESORTS, LLC TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM

Mr. Michael Buck, Administrator of the Division of Forestry and Wildlife, briefed the Board and recommended that the Board approve the contract with Castle & Cooke Resorts, LLC and the Department of Land and Natural Resources, Division of Forestry and Wildlife, to participate in the implementation of the State Forest Stewardship Program.

Mr. Darrell Stokes, Castle & Cooke Resorts, LLC, was present to answer questions.

Unanimously approved as submitted (Kennison/Inouye).

ITEM D-2: CONSENT TO DEPARTMENT OF AGRICULTURE REQUEST TO ASSIGN, EXTEND AND AMEND GENERAL LEASE NO. S-3001, ISSUED TO MAUI PRODUCE PROCESSING COOPERATIVE AT OMAOPIO, KULA, MAUI, TMK: (2) 2-3-03: 23

Mr. Harry Yada, Land Agent for the Land Division, amended the first page of the staff submittal, no. 3, by replacing the word "and" with "including". Staff's recommendation is that the Board consent to the Department of Agriculture's request, as amended, subject to terms and conditions.

Ms. Rosalyn Baker, County of Maui, Office of Economic Development, testified in support of staff's recommendation.

Unanimously approved as amended (Kennison/Holschuh).

ITEM D-12: RESUBMITTAL FOR THE EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, GENERAL LEASE NO. S-4531, KAUPU RANCH, LTD., LESSEE, KAUPU, HANA, MAUI, TMK: 1-7-03: 24 AND 27

Mr. Yada briefed the Board and recommended that the Board authorize the extension, and consent to mortgage, subject to terms and conditions.

In response to questions raised by the Board, Mr. Alex Franco, Manager of Kaupo Ranch, indicated that they have met with the community and addressed their concerns, and understands that the lease will now be for 15-years. He submitted a letter from the Kipahulu Community Association supporting the 15-year extension.

There were some concerns raised by Ms. Sally Raisbeck, Mr. Mark Sheehan, and Mr. Charles Maxwell, regarding the amount of the current annual rent being assessed, and whether the Office of Hawaiian Affairs (OHA) and the Department of Hawaiian Homelands (DHHL) are getting due and proper rent for trust lands. Mr. Yada explained that this requires an immediate reopening, and it will be re-appraised at this point in terms of the rent.

Unanimously approved as submitted (Kennison/McCrory).

ITEM D-13: EXTENSION OF PROCESSING PERIOD – CONSERVATION DISTRICT USE APPLICATION NO. OA-2935 FOR MAUNALUA BAY DREDGING PROJECT AT HAWAII KAI, EAST HONOLULU (TO BE DISTRIBUTED)

Mr. Sam Lemmo, Staff Planner for the Land Division, briefed the Board and recommended that the Board approve the additional extension through the entire administrative hearing and contested case process and for 90 days after the findings of fact and conclusions of law decision and order is finalized.

Unanimously approved as submitted (Inouye/McCrory).

ITEM E-3: REQUEST FOR PERMISSION FOR THE INTERNATIONAL ASSOCIATION OF LIONS CLUBS TO CONSTRUCT AND DEDICATE PICNIC SHELTERS AT AIEA BAY STATE RECREATION AREA, AIEA, OAHU

Mr. Dan Quinn, Acting Administrator of the Division of State Parks, briefed the Board and recommended that the Board approve the construction of the picnic pavilions, and the dedication to Mr. Shizuo Onishi in coordination with the Division of State Parks, subject to conditions as may be imposed by the Department.

Ms. Alice Takehara, Aiea Resident and Member of the Neighborhood Board, testified in favor of staff's recommendation.

Mr. Stan Wachi, Chairman of the Ad Hoc Committee on the Proposed Mr. Shizuo Onishi Pavilion at the Aiea Bay State Recreation Area, explained the committee's tentative plans.

Unanimously approved as submitted (Inouye/Kennison).

ITEM E-1: REQUEST FROM THE 2001 BIG ISLAND MOTORCYCLE RODEO TO USE A PORTION OF THE OLD KONA AIRPORT STATE RECREATION AREA IN KAILUA-KONA, HAWAII, FOR A CONCERT AND MOTORCYCLE RODEO

Mr. Quinn briefed the Board and recommended the issuance of a Special Use Permit to the 2001 Big Island Motorcycle Rodeo to stage a fundraiser concert and motorcycle rodeo, to support the Toys for Tots program, on a portion of the Old Kona Airport State Recreation Area's runway, subject to 21 conditions.

Member McCrory suggested deleting condition no. 1, as done on past permits, because of the difficulty in having everything in script form, and to allow the function to charge and collect monies on the site.

Mr. Quinn, in response to a question raised by Member McCrory, indicated that the process for rule revisions permitting exchange of monies has begun and is presently at the Attorney General's Office for review.

There was some discussion about the beer garden being proposed as part of this event. Member Holschuh indicated that he has been very supportive of everything the biker groups have done for the Toys for Tots program over the years, but was concerned about the beer garden being proposed as he felt it incongruous for this event, which is centered on family and children. Mr. Ellsworth Fontes, Big Island Motorcycle Rodeo, explained that the beer garden is a benefit function in a very controlled and secured environment, and that he would prefer keeping this function, however, should it be something this Board could not agree upon, he could go either way. Mr. Glenn Shepherd, Ms. Verna Nahulu, and Ms. Gladys Nahupu, all testified against the proposed beer garden function. Mr. Roy Gomes, Street Bikers United, testified in favor of the proposed beer garden, and explained that the beer garden is separate from the children's entertainment, and that the people who do attend are responsible drinkers. Mr. Fontes indicated that their main cause is to raise money for the Toys for Tots Program, and they would never let the beer garden come in between their main goal.

Member Holschuh made a motion to amend staff's recommendation by deleting condition nos. 10 and 13 relating to the beer garden, and deleting condition no. 1 as suggested by Member McCrory.

There was further discussion. Member McCrory strongly believed that every adult's individual right and responsibility is to make choices in their life, whether it be to walk into a beer garden and take a drink or not. She did not support the motion to delete condition nos. 10 and 13. Member Inouye indicated that she is a supporter of MADD, but felt that the deletion of the conditions relating to the beer garden is a civil rights issue. She further indicated that if the applicant is willing to delete the conditions, and feels it's still a viable event without this function, she will support the motion. Mr. Fontes decided to delete the beer garden.

Approved as amended (Holschuh/Inouye).

Vote: 4 in favor (Holschuh, Inouye, Kennison, & Coloma-Agaran)

1 opposed (McCrory) to the deletion of condition nos. 10 and 13 only.

ITEM E-2: REQUEST FROM FRIENDS OF FITNESS TO USE A PORTION OF THE OLD KONA AIRPORT STATE RECREATION AREA IN KAILUA-KONA, HAWAII, FOR SUMMER FEST 2001

Mr. Quinn briefed the Board and recommended that the Board approve the issuance of a Special Use Permit to Friends of Fitness to stage Summer Fest 2001 on a portion of the beach at the Old Kona Airport State Recreation Area, subject to 18 conditions.

Ms. Patricia Iolana-Clark, Project Coordinator for Friends of Fitness, suggested that condition no. 1 be deleted, to allow them to accept beach entries for the surf contest, provide onsite concessions for the contestants and spectators, and to accept donations to cover the festivals costs.

The Board amended staff's recommendation by deleting condition no. 1.

Unanimously approved as amended (Holschuh/McCrory).

ITEM D-10: REQUESTS BY THE HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII (HCDCH) FOR 1) SET ASIDE PORTION OF VILLAGE 6, VILLAGES OF LAIOPUA, TOGETHER WITH NEIGHBORHOOD PARK TO HCDCH, 2) CONSENT TO THE DEVELOPMENT AGREEMENT BETWEEN HCDCH AND THE HAWAII YOUTH PATRONS, 3) CONSENT TO A LEASE BETWEEN HCDCH, AS THE LESSOR, AND HAWAII YOUTH PARTNERS, AS THE LESSEE, AND 4) MANAGEMENT RIGHT-OF-ENTRY TO HCDCH, KEALAKEHE, NORTH KONA, HAWAII, TMK: 7-4-21: 2 & 3

Mr. Yada briefed the Board and recommended that the Board approve the request by HCDCH, subject to terms and conditions.

In response to a question raised by Member Holschuh regarding testimony received from OHA, Deputy Attorney General Dawn Chang informed the Board that there has been no injunction on the State of Hawaii with respect to conveyance of ceded lands.

Mr. Stan Fujimoto, Private Manager of HCDCH, was present to answer questions.

Ms. Sharla Manley, Policy Analyst for OHA, provided written and oral testimony raising concerns for the Board's consideration regarding any action taken to develop the ceded land portions of the villages prior to settlement of the court case initiated by OHA against HCDCH.

Unanimously approved as submitted (Holschuh/Kennison).

ITEM D-7: FORFEITURE OF GENERAL LEASE NO. S-5563, MR. STEPHEN SICO, LESSEE, PORTION OF LOT 173, KAPAA HOMESTEADS, 3RD SERIES, KAPAA, KAUAI, TMK: 4-6-8: 1

Mr. Yada briefed the Board and recommended that the Board authorize the cancellation of General Lease No. S-5563 for delinquent rental payments, subject to terms and conditions.

Mr. Stephen Sico, indicated that he had \$800 available to pay the delinquent rental payment. He explained the hardships he's encountered and requested an extension of 30-days to cure the default.

Member McCrory was very concerned about the track record of default notices sent to the lessee. She informed the lessee that the Board has a reasonable responsibility to the public in getting reliable tenants on the land. She agreed to allow an extension of 30-days, and made it clear to the lessee that should there be another default, this will not come back to the Board.

Member Kennison concurred with Member McCrory, that the lease be automatically cancelled should there be another default.

Member Holschuh advised the lessee that the Board has a tremendous sense of responsibility and obligation to the public for the lands that are entrusted in their care.

Member Inouye was also concerned about the numerous default notices sent to the lessee since this lease was granted and the amount of staff time involved.

The Board approved a 30-day extension, in which all funds must be paid to the Land Division. If there is another default notice sent, it will not come back to the Board, it will be an automatic forfeiture.

Unanimously approved as amended (McCrory/Kennison).

ITEM D-5: DISCUSSION ON LONG-TERM DISPOSITIONS OF WATER LICENSES AND ISSUANCE OF INTERIM REVOCABLE PERMITS TO ALEXANDER & BALDWIN, INC. (A&B) AND EAST MAUI IRRIGATION COMPANY, LIMITED (EMI), FOR THE HONOMANU, KEANAE, HUELO AND NAHIKU LICENSE AREAS, HANA, MAUI, VARIOUS TAX MAP KEYS

Member Kennison recused himself from acting on this issue. He explained that he clarified with Legal Counsel and was assured that he does not have a conflict of interest, but because of the seriousness of this issue, the amount of people involved, and the fact that he will not be acting on this issue in the future since his term on the Board is almost completed, he decided to recuse himself.

Mr. Dean Uchida, Administrator of the Land Division, briefed the Board and recommended that the Board authorize the issuance of separate water permits to East Maui Irrigation Company, Limited, for the Honomanu, Huelo, and Keanae License areas, and Alexander & Baldwin, Inc. for the Nahiku License area, for the right, privilege and authority for the development, diversion and use of water from the

respective license areas, subject to terms and conditions. Mr. Uchida explained that the long-term disposition process is subject to discussion, that there is going to be a Chapter 343 requirement, and that the applicant will be required to prepare the necessary environmental documents.

Motion made at 10:55 a.m. to move into executive session to discuss the Attorney General's review on the compliance of Chapter 343, Hawaii Revised Statutes, as it related to the water leases (McCrorry/Inouye). The meeting was reconvened at 11:10 a.m.

Ms. Meredith Ching, Vice-President of A&B, introduced Mr. Steve Holaday, Vice-President of A&B and General Manager of Hawaiian Commercial & Sugar Company (HC&S), and Mr. Garret Hew, Vice President of EMI. She requested not only for the annual permits, but also that the Board approve the sale of a lease at public auction of the entire watershed with the basic conditions noted in their letter dated May 14, 2001. Three of the most important conditions were: 1) all bidders be required to prepare an Environmental Impact Statement (EIS) for their proposed use; 2) water must continue to be supplied to the Maui Board of Water Supply; and 3) the lease will be issued subject to any instream flow standards established in the future.

In response to some confusion by the applicants regarding the matter before the Board, Deputy Attorney General Chang clarified that the only matter before the Board for action is the issuance of the 4 interim revocable permits. The long-term lease is listed on the agenda for discussion only and cannot be acted on by the Board at this time.

Mr. Ron Sturtz, Vice-President of Maui Tomorrow Foundation Inc., and Member of the Maui Meadows Neighborhood Association, brought up a number of concerns, some of which were the low lease value with regard to OHA and DHHL entitlements, and his belief that Chapter 343 requires the State to process the EIS. He mentioned the contested case hearing requests recently filed, and believed that this requires the Board to cease all further consideration in dealing with these leases.

Mr. Carl Christensen, Staff Attorney for the Native Hawaiian Legal Corporation (NHLC), provided written and oral testimony on behalf of Na Moku Aupuni O Koolau Hui, a Native Hawaiian non-profit organization whose members reside in the Keanae/Wailuanui area, and several individual Native Hawaiians who would be effected by these licenses, who request a contested case hearing to challenge the legality of the proposed disposition of revocable permits, and/or subsequently a long-term lease. Some concerns raised were, the inappropriateness of asking the applicant to prepare Chapter 343 documents for the long-term lease when the process contemplates the possibility of multiple applicants, disposition of the short-term revocable permit inappropriately exempt from Chapter 343 process, the low existing rental rates, the Character of Use that authorizes increased diversions and development of water, the absence of a water use permit, OHA and DHHL entitlements, defective appraisal, and delegating the responsibility to the applicant of making findings as to the interests that were supposed to be protected. He indicated that he would be submitting a timely written petition.

Ms. Sally Raisbeck read through her written testimony in support of the contested case hearing request, and in opposition to having the bidders do the EIS. She also raised concerns about the public trust doctrine, the precautionary principle, and suggested an alternative to the current situation, that the County of Maui, Board of Water Supply, be given a license to control the water.

Mr. Mark Andrews, Resident of Kula, provided written and oral testimony in support of EMI/A&B being provided with water licenses for a period sufficient enough to warrant their continued and enhanced investment in the resources.

Ms. Elaine Wender, Owner/Occupant of land in Keanae, testified in opposition to the issuance of the water permits to EMI/A&B, and gave some history of her involvement with the water issues in the Keanae area within the past 20 years. Her main concerns were, that the instream flow standards should be set first, that the EIS should be completed by the State, and that there is a necessity of a buy back clause in the lease. She also read through written testimony on behalf of Ms. Gladys Kanoa, Taro Farmer in Keanae/Wailuanui/Kupau Valley for the past 22 years, in opposition to the issuance of the water permits to EMI/A&B because of the water needs of the taro farmers in the area.

Mr. James Chester testified in support of the issuance of the interim revocable permits and in favor of the future consideration of the long-term lease to EMI/A&B.

Mr. Moses Haia, Staff Attorney with NHLC, also offered oral and written testimony on behalf of their clients, Na Moku Aupuni O Koolau Hui, Ms. Beatrice Kekahuna, Ms. Marjorie Wallet, and Ms. Elizabeth Lapenia, asserting their property's appurtenant rights to water for taro farming. He also submitted written testimony of others clients in the Keanae/Wailuanui area who were unable to attend.

Mr. Charley Villalon, Descendant of Taro Farmers in the Keanae/Wailuanui/Hana areas, explained a nearly fatal sickness he had contracted from one of the Maui streams that was not flowing at its usual capacity. He requested that should EMI be granted the water rights against their native rights, that it be required that they be responsible for posting signs at every stream effected by the disease, because besides the degradation of lifestyle and cultural rights, there are serious health concerns for diverting the streams dry.

Mr. Francis Torres, Vice-Chairman of the Board of Directors of HC&S Federal Credit Union, provided written and oral testimony in support of the issuance of water permits to EMI/A&B.

Ms. Terryl Vencl, Executive Director of the Maui Hotel Association, urged the Board to give due consideration to the request by EMI/A&B and provide them the opportunity to continue to do business in Maui.

Ms. Sharla Manley, Policy Analyst for OHA, submitted oral and written testimony opposed to the issuance of separate water permits to EMI/A&B. Some concerns raised were, the protection of traditional and customary Native Hawaiian rights and practices, fair compensation for the use of public trust lands relating to OHA and DHHL entitlements, compliance with Chapter 343 and Chapter 171, Hawaii Revised Statutes.

Mr. Jerry Ornellas, President of the East Kauai Water Users' Cooperative, provided oral and written testimony in support of EMI/A&B's request for a 30-year water lease.

Ms. Stephanie Whalen, President and Director of the Hawaii Agriculture Research Center, presented oral and written testimony on behalf of the center, their research and support staff, and their members and clients, in strong support of EMI/A&B's request for a long-term water license to continue diverting water from East Maui.

Ms. Mae Nakahata, Member of the Executive Board of the Hawaii Farm Bureau, presented oral and written testimony on behalf of Mr. Warren Watanabe, President of Maui County Farm Bureau; Ms. Jamie Shishido, President of Maui Produce Processing Cooperative; and Mr. Ben Yamamoto, President of the Maui Onion Growers Association, in strong support of the issuance of the water permits to EMI/A&B, and in support of working towards a long-term lease.

Mr. Rick Volner Jr., Employee of HC&S, born and raised on Maui, urged the Board to approve the issuance of revocable permits and long-term water license, to ensure the future viability and continuation of the opportunities and advantageous available for the community of Maui.

Mr. Carl Alexander, Employee of HC&S, indicated that for their company to invest capitol into a continued operation there needs to be a guaranteed water source. He asked the Board to consider the plight of all farmers on Maui when the decision is made.

Mr. Mark Vaught, Employee of HC&S, urged the Board to take into consideration the request by EMI/A&B for a long-term water license.

Mr. Charles Maxwell, Kanaka Maoli from Maui, gave some cultural history on how water was preserved, protected, and restricted. He testified in full support of the sugar plantation and pineapple fields, but was concerned about the practicing of Kanaka Maoli gathering rights and the lack of water in the streams making it impossible to plant taro. He felt that OHA and DHHL have been shortchanged in receiving revenue deserved. He suggested that the Board lease the water to EMI and HC&S on a yearly basis, adjust the price to fit modern times, and insert a caveat in the lease that should the sugar industry fold the lease automatically expires.

Mr. Mark Sheehan, Maui Tomorrow, testified against the issuance of the water permits. He raised many concerns, some of which were, the EIS being the responsibility of the State and not the applicant, the planning of appropriate instream flow standards, the public trust doctrine and the precautionary principle.

Mr. Doug Sheehan, Resident of Upcountry Maui, urged the Board to grant a long-term license to EMI/A&B, who could better maintain and manage the system.

Mr. Kalei Luuwai, Employee of HC&S for 15 years, born and raised on Maui, testified in favor of the issuance of revocable permits, and/or a long-term water lease, to keep HC&S in business.

Mr. Anders Lyons, Maui Programs Director for The Nature Conservancy of Hawaii, provided written and oral testimony attesting to the committed efforts of EMI to protect the East Maui watershed. He strongly urged the Board to consider the track record of watershed protection by EMI/A&B in consideration of this application.

Mr. Glenn Shepherd, Retired Geologist, Member of the Maui County Watershed Advisory Committee, and A&B Stockholder, indicated that he was not in favor of seeing the cane fields go or a long-term lease issued for 30-years. He felt that the applicants should not be the ones preparing the environmental study, and that the Governor should be made aware of this problem that must be solved as most equitably as possible.

Mr. James Tanaka, Na Kupuna O Maui, commented on the need for water to grow taro. He felt that the water should be shared and not controlled by 1 company. He urged the Board to fairly distribute the water to the people who needs it to survive.

Ms. Elliott Krash, President of the Kula Community Association, provided written and oral testimony in support of a 1-year renewal of revocable permits to EMI/A&B. She did not support anything longer than that because of the conditions and contingencies discussed that need to be addressed. She encouraged the Board to consider the present and future needs of the entire community and balance the interests of all stakeholders in the decision-making process on this critical matter.

Ms. Verna Nahulu, Vice-President of the Kula Community Association, testified in favor of the 1-year renewal and against the long-term plan.

The Board recessed at 2:10 p.m. The meeting was reconvened at 2:25 p.m.

Mr. Ed Reinhardt, President of Maui Electric Company, testified in support of the long-term water license being requested by EMI/A&B.

Ms. Miranda Camp, Co-Chair of the Maui Group, Hawaii Chapter of the Sierra Club, testified in opposition to the granting of any long-term leases to EMI/A&B by the State until the legal issues are resolved.

Mr. Jeffrey Parker, Farmer in the Huelo License area since 1974, and Member of the Maui County Farm Bureau, indicated that although EMI has been very helpful to him and a lot of other local people, he believed that because of the many unresolved issues that have been raised, the sale of a 30-year lease should not be granted at this time.

Mr. Ed Wendt, representing Na Moku Aupuni O Koolau Hui, provided written and oral testimony against the issuance of permits and long-term license for East Maui. Some concerns raised were, extreme hardships on the taro farmers and subsistence gatherers and their mere existence being threatened, OHA involvement in the vested interest in part of the crown lands in the area, and the need for a more scientific data of the East Maui Watershed, stream by stream, to determine the affects the diversions have on the environment and their way of life.

Ms. Vivian Scott, daughter of Ms. Marjorie Wallet and niece Ms. Beatrice Kekahuna, submitted written testimony on their behalf in opposition to the issuance of a long-term 30-year lease.

Ms. Kelly Arbor, submitted oral and written testimony on behalf of Maui County Council Member Jo Anne Johnson, against the issuance of a long-term lease.

Ms. Neola Caveny, Resident of Maui, testified against the diversion of water by EMI/A&B.

A representative of Mr. Robert Parsons, President of Haiku Community Association, submitted written testimony recommending that the Board deny the request to extend water leases for more than a 1-year term. Some concerns raised were, fair market value determination for water withdrawals, proof that the lessee actually needs the entire amount of their withdrawals, reputable outside consultants to conduct an accurate survey of Maui's water resources both surface and groundwater, state and local agencies to gather accurate data on stream flow standards for the East Maui streams affected by the diversion process, consideration for the Native Hawaiian farmers whose families have lived in the area for centuries and are left with insufficient water to maintain their loi.

Mr. Eric Yoshizawa, General Manager of Ameron Hawaii, provided written and oral testimony in support of a long-term water license to EMI/A&B. He strongly believed that the intricate water transportation infrastructure developed by A&B and maintained by EMI serves the general Maui community best and the long-term stewardship of the island asset is threatened without a long-term agreement.

Ms. Lucienne deNaie, representing the Huelo Community, presented pictures of areas that are effected by the water leases. Her main concerns were, people who have farmed for generations on loi fields having to cut back because of insufficient water to keep them all going, the possibility of awarding a 30-year lease when a program for the 1-year permits haven't been figured out, the need for an EIS, priorities of the public trust doctrine, and the need for a realistic appraisal.

Ms. Joyce Kainoa, Keanae/Wailuanui Landowner, Kanaka Maoli, and Native Hawaiian Practitioner, testified in opposition to the 30-year lease, and any further diversion of water from East Maui. She was concerned about the farmers who have planted taro for generations and are left with insufficient water to maintain their loi. She requested for the restoration of streams as part of the 4 revocable permits, and a meter in the beginning and at the end of the watershed areas to keep track of the amount of water utilized by EMI/A&B.

Mr. Isaac Hall, representing The Coalition to Protect East Maui Water, and Maui Tomorrow, indicated that they join in the petition to intervene and request for a contested case petition proceeding on legal issues on the proposed short-term and long-term disposition, and will be submitting a timely written petition to intervene. Some concerns raised were, the Chapter 343 requirement, the de-watering of streams by EMI/A&B, the need for an outside independent appraisal, the need for a study on riparian and impertinent water rights and the need for a stream restoration program.

The Board recessed at 3:30 p.m. The meeting was reconvened at 3:40 p.m.

Mr. Hugh Starr, Resident of Makawao, read through his written testimony urging the Board to recommend an independent appraisal of fair market value of the 4 separate permits, and immediately

explore any and all possible mechanisms for directing the revenues derived from the sale of water out of the East Maui Watershed back into the protection and restoration of the watershed.

Mr. Mike Nobriga, Member of the County of Maui, Board of Water Supply, testified as a private citizen in support of the stewardship presented by A&B through EMI. He felt that further consideration should be given to EMI/A&B beyond the 1-year revocable permits, and also that the streams need to be restored immediately.

Mr. Ed Lindsey suggested, instead of having this get tangled up in legal matters, that everyone sit down and discuss this to identify the problems and to look for solutions.

Mr. Nikhilananda, Resident of Huelo, was pleased that the Board was not going to approve a 30-year lease. He wanted to see some water in their streams and the instream flow standard done before any long-term lease is issued. He indicated that it is appropriate for the State to prepare the EIS and strongly urged the Board to go back to the Governor and/or Legislature and ask for the funds needed. He suggested an amendment be added to any future leases that may be issued to EMI/A&B, that the water be used for agriculture purposes only. Mr. Lananda also serves as the Publicity Chair of the Haiku Community Association, and on their behalf made some presentations, that the association recommends the Board deny the request to extend the EMI/A&B water leases, determine a fair market value for the water withdrawals, require proof that the lessee actually needs the entire amount of withdrawals and is not water banking in expense of the community, bring in reputable outside consultants, instruct the department to gather accurate data on stream flow standards for the East Maui streams effected by the diversion, and prepare an EIS on the impacts of stream diversions based on these studies. The process or reform of this outmoded distribution of the vital public resources should be done immediately, as many of the community members depend on these water streams for personal water supply since they have no access to county water systems.

Mr. Will Garvin, felt that a 30-year lease may be more than what EMI/A&B really needs.

Ms. Lynne Woods, President of the Maui Chamber of Commerce, submitted written and oral testimony in support of the application by EMI/A&B for a long-term permit for the East Maui Water System.

Mr. Daniel Grant, offered a video tape from the residents of the Keanae and Haiku area who came to the water department hearings on stream restorations last year and expressed their feelings and history of the area.

Mr. David Johnston, testified in favor of having a 1-year lease.

Member Inouye made a motion to defer this item, and grant a holdover permit on a month-to-month basis, pending the results of the contested case hearing.

Deferred (Inouye/McCrory).

The following items were deferred – no quorum:

- ITEM C-2: REQUEST FOR APPROVAL OF SAFE HARBOR AGREEMENT AND INCIDENTAL TAKE PERMIT FOR THE REINTRODUCTION OF THE NENE TO PUU O HOKU RANCH, ISLAND OF MOLOKAI**
- ITEM C-3: REQUEST FOR THE BOARD TO APPROVE THE WILDLIFE CONSERVATION AND RESTORATION PROGRAM PLANS FOR FY2002 AND THE PUBLIC PARTICIPATION PROCESS OF THE PROGRAM**
- ITEM D-1: TIME EXTENSION REQUEST – CONSERVATION DISTRICT USE PERMIT MA-2837 FOR SINGLE FAMILY RESIDENCE, HONOLUA, LAHAINA, MAUI, TMK: 2/4-2-04: 32**
- ITEM D-3: CONSERVATION DISTRICT USE APPLICATION NO. OA-3016 FOR KAWAI NUI COMMUNITY PARK IMPROVEMENTS, KAILUA, OAHU, TMK: 1ST/4-2-16: PORs. 01 & 08**
- ITEM D-4: AMEND PRIOR BOARD ACTION ON JULY 14, 1995 (AGENDA ITEM F-12), GRANT OF TERM, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY TO INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL FOR ACCESS ROADWAY AND UTILITY PURPOSES, KANEOHE, KOOLAUPOKO, OAHU, TMK: (1) 4-5-23: 2 & 3**
- ITEM D-6: AMEND PRIOR BOARD ACTION OF DECEMBER 18, 1992 (AGENDA ITEM F-11), SET ASIDE TO THE DEPARTMENT OF AGRICULTURE FOR GOVERNMENT SERVICES PURPOSES, ISSUANCE OF A MANAGEMENT AND CONSTRUCTION RIGHT-OF-ENTRY, HONOLULU, OAHU, TMK: (1) 1-2-25: PORTION 11**
- ITEM D-8: FORFEITURE OF GENERAL LEASE NO. S-5028, WAIMEA GARAGE LTD. C/O WILL MIYAKE, LOT 58, KOKEE CAMP SITE LOTS, WAIMEA (KONA) KAUAI, TMK: 1-4-4: 24**
- ITEM D-9: FORFEITURE OF CERTIFICATE OF OCCUPATION NO. 115 TO NAMAKAEHA, LOT 44, ANAHOLA LOTS, ANAHOLA, KAUAI, TMK: 4-8-08: 02**
- ITEM D-11: AMEND PRIOR BOARD ACTION OF OCTOBER 13, 2000 (AGENDA ITEM D-6), ACCEPTANCE OF FEDERAL EXCESS LAND, SAME BEING A PORTION OF THE FORT RUGER MILITARY RESERVATION KNOWN AS THE CANNON CLUB SITE LOCATED AT KAPAHULU, HONOLULU, OAHU, AND THE PURCHASE OF THE IMPROVEMENTS THEREON, AND SET ASIDE TO THE STATE PARKS DIVISION, TMK: 3-1-42: 11**

- ITEM I-1: REQUEST BOARD APPROVAL TO ENTER INTO A REVISED COOPERATIVE ENFORCEMENT AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, UNITED STATES COAST GUARD, AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT**
- ITEM J-1: REQUEST FOR PRELIMINARY APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES, SECTIONS 13-230-8, 13-250-5, DEFINITIONS, 13-256-62, WAIMEA BAY RESTRICTED AREA, AND 13-256-63, SHARK'S COVE, THREE TABLES AND WAIMEA BAY OCEAN WATERS**
- ITEM K-1: CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (DFS GROUP, L.P./AIRPORT ELECTRONICS) TMK: (1)-1-03-1P**
- ITEM K-2: ISSUANCE OF REVOCABLE PERMIT TO AMERICAN BOXCAR COMPANY, INC., NEAR PIER 32, HONOLULU HARBOR, OAHU TMK: (1)-1-5-35-7**
- ITEM K-3: REPORT ON REVOCABLE PERMIT ISSUED OR RENEWED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 4:10 p.m.


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

Respectfully submitted,



Kimberly C. Kelihoomalu

Approved for submittal:



GILBERT S. COLOMA-AGARAN
Chairperson
Board of Land and Natural Resources



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