

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

DATE: FRIDAY, MARCH 11, 1994
TIME: 9:00 A.M.
PLACE: HGEA BUILDING, ROOM 207
2145 KAOHU STREET
WAILUKU, MAUI, HI

**ROLL
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 8:40 a.m. and the following were in attendance:

MEMBERS: Mr. Herbert Apaka
Ms. Sharon Himeno
Mr. Christopher Yuen
Mr. William Kennison
Mr. Michael Nekoba
Mr. Keith Ahue

STAFF: Mr. Roger Evans
Mr. W. Mason Young
Mr. Manabu Tagomori
Mr. Ralston Nagata
Mr. David Parsons
Mr. Alan Tokunaga
Mr. Phillip Ohta
Ms. Dorothy Chun

OTHER: Deputy Attorney General Johnson Wong
Mr. Tom Toyama, Department of Transportation
Ms. Nani Lee (Item H-8)
Mr. Don Medeiros (Item F-3)
Mr. Mark Pokini, Ms. Virginia Nary (Item H-1)
Mr. Neal Shinyama (Item H-6)
Mrs. Marilee Flood (Item F-5)
Mr. Isaac Hall (Item H-5)
Mr. Jim Niess (Item H-4)
Mr. Charles Boerner (Item F-1-a)
Mr. Martin Cooper, Mr. Paul Lucas, Ms. Awapuhi Carmichael, Mr. Virgil Day, Mrs. Gladys Kanoa and Ms. Elaine Wender (Item H-2)
Mr. Mark Harmer (Item H-3)

MINUTES The minutes of January 28, 1994 and February 25, 1994 were approved as circulated. (Yuen/Nekoba)

ADDED ITEMS: By motion of Mr. Kennison and second by Mr. Nekoba, the following items were added to the agenda:

ITEM E-1 Request From the Citizens For Justice To Use The Wailoa River State Recreation Area For A Fundraiser

ITEM E-2 Special Use Permit Request To Conduct Ho'okupu Ceremony At the Iolani Palace Grounds

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

ITEM H-7 PROPOSED SETTLEMENT OF RICHARD R. TREADWELL, ET AL. V. BOARD OF LAND AND NATURAL RESOURCES, CIVIL NO. 93-596 (THIRD CIRCUIT COURT)

Mr. Evans informed the Board that Item H-7 was a report to the Board for information. This report is a result of Board action that was taken several months ago relative to a Conservation Application on the Big Island in Kohala. The Board had approved a Conservation District Use Application subject to numerous conditions. There was concern expressed at that time to Condition No. 12.

Upon review of the matter by the Department of the Attorney General the parties have agreed to enter into a dismissal of the court action upon revising Condition No. 12, to read as follows:

"That provision of an easement for access and utilities shall not be used to increase the value of the applicants' property, should the State seek to condemn the property in the future; PROVIDED, HOWEVER, that the Applicants herein, being the Landowners of Parcels 3, 4, and 5 of Tax Map Key: (3)6-6-02, and/or their successors-in-interests, shall have the right to challenge in a court of law the validity and effect of Condition No. 12 of CDUA HA-4/7/93-2574, if and when the State of Hawaii commences with eminent domain proceedings to acquire either of said Parcels 3, 4, and 5 of TMK: (3)6-6002;".

The report was accepted by the members of the Board.

ITEM H-8 CONSERVATION DISTRICT USE PERMIT NO. HA-2574 FOR TEMPORARY ACCESS ROAD AND UTILITY EASEMENT FOR SINGLE FAMILY RESIDENTIAL USE AT LALAMILO, SOUTH KOHALA, HAWAII, TAX MAP KEY 6-6-02:31, PERMITTEES: MR. RICHARD R. TREADWELL, MR. TIMOTHY J. HOSBEIN; CONSULTANT: MR. ROY VITOUSEK

Mr. Evans explained, now that the Board has accepted the report of Item

H-7, he was presenting Item H-8 which now asks that the Board act upon the information that was given by the Attorney General's office and that the Board adopt the language that was agreed upon by the applicant's attorney and our Department of Attorney General. He explained that should the Board approve this item, Condition No. 12 will be revised to read as shown on page 2. (The revised condition is in quotes above in Item H-7.)

Ms. Nani Lee, attorney for the applicant said that the applicant had not filed a suit but had filed a notice of appeal. She said that they had worked with the State's Deputy Attorney General on the revised language of Condition No. 12 and have advised their clients to accept it if the Board approves it today.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-3 STAFF REQUEST SET ASIDE OF FORMER MAUI DETENTION HOME SITE (MAUI LIVE-IN CENTER) AT OWA AND KALUA, WAILUKU, MAUI, TO DEPARTMENT OF LAND AND NATURAL RESOURCES FOR ANNEX OFFICE PURPOSES, TAX MAP KEY 3-8-38:57

Mr. Don Medeiros of the Maui Economic Opportunity, Inc. was present and was agreeable to the conditions.

ACTION Unanimously approved as submitted. (Kennison/Apaka)

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A SINGLE FAMILY RESIDENCE AND LANDSCAPING AT HONOKALANI, HANA, MAUI; TAX MAP KEY 1-3-05:30, APPLICANT: MARK K. POKINI

Mr. Evans informed the Board that staff had requested comments and recommendations from Federal, State and County agencies. After staff's analysis, staff is recommending approval of Item H-1 subject to the 12 conditions on pages 5 and 6.

Mr. Yuen questioned whether a site visit was ever done by the Historic Preservation Office. Mr. Evans said that he wasn't sure whether it had been done.

Ms. Virginia Nary representing the applicant stated that an inspection was done on February 8, 1994 by Theresa Donham, archaeologist of the Division of Historic Preservation and according to her there was no concern over any historical sites at the property. She was supposed to submit a letter.

Mr. Evans added that they had not received any letter as yet. He

suggested that a condition could be included to say before any construction plans are approved or before any grading or landscaping activities are allowed that a letter from the Division of Historic Preservation must be received giving clearance.

Ms. Nary stated that the applicant had no problems with the conditions.

ACTION Unanimously approved as amended that a Condition No. 13 be added to state that before any construction plans were approved or any grading or landscaping activities are allowed that the concerns of the Division of Historic Preservation were satisfied. (Kennison/Apaka)

ITEM H-6 EXTENSION OF TIME REQUEST TO PROCESS CDUA MA-2653,
MAALAEA-LAHAINA THIRD 69KV TRANSMISSION LINE,
APPLICANT: MAUI ELECTRIC CO., LTD.

Ms. Himeno asked to be recused because a conflict of interest.

Mr. Neal Shinyama representing the applicant stated that they were going through the Environmental Impact Statement (EIS) process and they also will need to do an SMA permitting process for a portion of the line.

ACTION Unanimously approved as submitted. (Apaka/Kennison)

ITEM F-5 DIRECT AWARD OF A NON-EXCLUSIVE TERM EASEMENT FOR
LANDSCAPING AND MAINTENANCE PURPOSES COVERING
PORTION OF GOVERNMENT BEACH RESERVE, WAIOHULI-KEOKEA
BEACH LOTS, KIHEI, MAUI, TAX MAP KEY 3-9-07:POR. 5

Mr. Young asked that the Board include several amendments should they approve this item today. Under Recommendation add the following conditions:

1. Installation of a low voltage landscape light under the clusters of existing coconut trees;
2. Installation of a pop-up sprinkler system;
3. Removal of existing dead tree stumps and trash. Equipment to be used will be limited to light weight, hand-held weed eater type machinery;
4. Planting of grass between the natural vegetation area and the applicants' residential lot;
5. Appropriate signs to inform the public that the subject property is

for public use; and

6. No east to west or north to south hedge, fence or other barrier shall be planted or constructed on the subject premises.

Mr. Yuen commented that there was a need to make sure that the parcels are not being landscaped in the way that it does communicate to people that this is private property.

Ms. Marilee Flood, applicant, stated that currently her neighbor has some ironwood which extend on about 25 feet of State land.

Chairperson Ahue asked Ms. Flood if she understood the conditions being imposed should this be approved. Ms. Flood indicated that she understood.

ACTION Unanimously approved as amended. (Kennison/Himeno)

**CDUA FOR A WATER TRANSMISSION LINE AT KOHAKULOA, MAUI,
TAX MAP KEYS 3-1-1:3, 6, 15, 17, 37 AND 38; 3-1-6:1 AND 3;
ITEM H-5 APPLICANTS: JAMES AND SUSAN BENDON**

Mr. Evans stated that going through this case there were some difference in this issue as opposed to other water transmission lines. This particular case involves a rather important stream on the island of Maui which is recognized by a number of agencies. In terms of analysis, he referred to page 6, paragraph 2, line 1, the concern expressed is the statement made by staff, "The assertion that the pipelines do not increase the amount of water diverted into the auwai is untrue." On the one hand they were told by the applicant's representative that rather than taking water, this merely captures water. On the other hand, they are informed by staff they're told that it's one of the laws of physics that if you take water by one source and you add another pipe taking out of the same source then they'll be no more. They have been informed that in either case, both pipelines will be taking water from the auwai and not from the stream.

Mr. Isaac Hall, representing the applicant James and Susan Bendon, stated he wished to clarify that there was a prior application by the Nakoa family to use the auwai because they had a kuleana that was serviced by the auwai quite a distance away. The Bendons own the kuleana that adjoins it and they have been cooperating in this respect. He felt that there was some confusion with the auwai. He stated that the auwai was built in the higher 1896 off Makamakaole Stream to provide water to these kuleanas quite a distance away. Diversion works was built in the streams as the staff report said, many, many years ago prior to the CDUA laws, he said that they were not proposing to do anything

clear if the Board can make that determination today without their approval.

Mr. Evans stated that he appreciated the chairperson's enlightening and based on the latest information received, staff would feel comfortable in deleting Conditions 1., 2., 3. and modifying Condition 7.

Mr. Kennison felt that Condition 10. would suffice as it covered the need for the applicant to comply with all necessary statutes, ordinances, rules and regulations of the federal, state and county governments.

Mr. Kennison stated that he had no problem with deleting Condition No. 7. as he felt that Condition No. 10 would suffice.

Mr. Yuen felt that Mr. Kennison was making a good point in that based on the Chairperson's comments, he was now informing Mr. Hall that the Commission on Water Resources has an interest in water in the auwais but they're not sure.

Mr. Hall stated that he shares everyone's viewing of the importance of Makamakaole Stream. He stated that there are three other prior CDUA's that share the intake that's already approved.

Mr. Yuen stated that he felt clearly that the Water Resources Commission would need to be informed by letter that says, "We are planning to attach another pipeline in the existing intake in the lot. Do we need some kind of permit to do this?"

Mr. Hall stated that he would be amenable to deleting Conditions Nos. 1., 2., 3. and 7. and adding Condition 15.

ACTION Mr. Kennison moved for approval with the amendments to delete Conditions Nos. 1., 2., 3., and 7. and adding Condition 15. That would reflect that no new water intake be used. Seconded by Mr. Yuen, motion carried unanimously.

Chairperson Ahue suggested to Mr. Evans that he might be able to resolve the question with the Commission on Water Resources in-house if they saw the diagram that was presented to the Board by Mr. Hall.

ITEM H-4 REQUEST TO REPLACE/IMPROVE A SINGLE FAMILY RESIDENCE DESTROYED AS A RESULT OF HURRICANE INIKI AT HAENA, KAUAI, TAX MAP KEY 5-9-02:33; APPLICANT: MR. WAYNE ELLIS

At the end of his presentation, Mr. Evans stated that he would like to amend page 5 of the submittal under B. Application, that it will read, "That the Board approve the application subject to the conditions on

pages 5 and 6."

Mr. Apaka informed Mr. Evans that he had had the opportunity to meet with the applicant who informed him that he would not be able to attend this meeting because of a prior commitment. The applicant was agreeable to the recommendations and conditions in the submittal.

Mr. Jim Niess, architect for the applicant stated that the applicant was eager to comply.

ACTION Unanimously approved as amended by staff. (Apaka/Kennison)

Item F-1-a **Assignment of General Lease No. S-4529, Government Lands of Halemano, Illilipoko, Popoloa and Kaehoeho at Kipahulu, Hana Maui, Tax Map Keys 1-6-05:8, 21, 22 & 23 and 1-6-08:2 and 4**

Mr. Young made the presentation of Item F-1-a.

Mr. Charles Boerner asked that the Board act favorably on this item.

ACTION Unanimously approved as submitted. (Kennison/Himeno)

REQUEST TO EXPAND EXISTING EQUIPMENT AND STORAGE BUILDINGS AND INCREASE HEIGHT OF EXISTING BOARD-APPROVED TELECOMMUNICATIONS TOWER FROM 60 FEET TO 80 FEET TO ACCOMMODATE ADDITIONAL USERS AT THE PUU NIANIAU COHABITATION FACILITY, MAKAWAO, MAUI, TAX MAP KEY 2-3-05:04; APPLICANT: HARMER RADIO AND ELECTRONICS, INC.

ITEM H-3

During his presentation, Mr. Evans wished to clarify that any agreements that might have been made relative to this applicant and the Division of Conservation and Resource Enforcement (DOCARE) of this department was to ensure that our DOCARE people have an operational system on the mountain.

Mr. Mark Harmer, applicant stated that they were discussing use of the facility under expansion for the State forestry division. They were negotiating some service contracts and they will be able to co-exist. They had no problems with the conditions listed.

ACTION Unanimously approved as submitted. (Kennison/Apaka)

ITEM H-2 **CDUA FOR A PRIVATE RESIDENTIAL RANCH AT KALIAE, KOOLAU, MAUI, TAX MAP KEY 1-2-01:04, APPLICANTS: MESSRS. MICHAEL BOTEILHO & FRED LEVY; CONSULTANT: MR. MARTIN COOPER**

Mr. Evans stated that after analysis of comments and concerns received from in-house divisions, state, county and federal agencies, staff's recommendation is for approval subject to the conditions listed.

Mr. Yuen asked about a dispute in materials over land relating to the Alanui and King's Trail. In the Environmental Assessment (EA) , there is a letter that says the trail was in existence in September of 1962 and it was graded after that and in the application, the applicant says that it was graded in 1963.

Mr. Evans responded, "We received a complaint relative to possible violations in the conservation district and as a part of the complaint violations process, we had asked our divisions to indicate what the veracity of the complaint. After our review of that alleged violation, we subsequently closed the violation case. The reason we closed the violation case is that we relied primarily on the documents and the statements made by our Maui Division of Forestry and Wildlife. We understand that there are a few documents pertaining to the roads and its traditional use. We also understand that permission was asked for and granted by our department for grading, gravel on the road, into the forest reserve, cutting of side ranges and a channel. There were a number of things that were allowed to be brought on the farm. Based upon our review, we felt there was no substance to the complaint and as such we closed the file.

Mr. Yuen said, "What I understand, Forestry confirmed that there had been grubbing on the parcel over many years. But they don't confirm that the old trail running lateral across the parcel had been grubbed/destroyed many years ago. I really don't see that in the materials that they've referred that to. And even if it were true that they were destroyed in 1963, that would still be a violation."

Mr. Evans asked, "Why would it be a violation?"

Mr. Yuen said, "To destroy a government trail?"

Mr. Evans responded that they would normally ask the Division of Land Management to entertain a possible violation. Lands were placed into the conservation district in 1964 and if anything happened in 1963 ...

Mr. Evans stated that in 1963 and 1964, the forest reserve land was scarified and planted eucalyptus trees. At that time , the trail was improved to a road down to the Boteilho property.

Mr. Yuen said, "You're talking about the mauka/makai road that goes through forestry property. I'm talking about the Alanui, the Old Government Road that goes east/west across this 63 acres. That's two

different roads. The road that goes from the Hana Highway down, that's a different road. I regard it as an important question as to who and when actually destroyed the Alanui."

Mr. Evans responded, "Yes, I have to admit, going back 30 years, is kinda difficult and I don't want to suggest that your question is not important. I don't know how to answer your question, going back 30 years to make a case."

Mr. Yuen stated that someone wrote a letter that says he was there September 1992 but he can't actually tell who wrote the letter and felt that it was important to verify what happened.

Mr. Evans stated that he couldn't verify it at this time.

Mr. Martin Cooper, architect for the applicant said that the owner was unable to be here today because of some business problems in San Diego. He brought some graphics and photos of the area and proceeded to point out areas on the photos he took of the parcels during the month of February, 1994. He also pointed on the photos where the top of the roof would be in relation to the trees on the property. The photos were taken from several different angles. He also mentioned that the owner wants to retire here and proposes a residence with lots of privacy.

Mr. Yuen asked, "In the Environmental Assessment, you have a map that locates the alanui in relation to the house site. How did you locate the alanui?"

Mr. Cooper responded, "With help from Forestry management, there's a trail specialist Mike Baker."

Mr. Yuen asked, "I take it from his report, there's no physical sign on the ground of the trail any more?"

Mr. Cooper answered, "Actually there is. It's really queer coming up the cliff. I've been on the trail everywhere Mike says it is, even off the property on both sides. I've come up from the Wailua side and gone down on the Hana side. The trail meanders as it comes up from the bay, switch back quite a bit and the first time we went through, we went through with a machete because it had been over grown and basically not been used. ... The client's position is not to deny the use of this cultural resource. We understand it's requirement as part of DLNR. But more than that we understand that it's something that needs to take place and client's position, let's go in and take care of it. ... In terms of where it comes across, Mr. Yuen, there is a spot, it roughly comes up in this area, and we're not sure climbing back down the cliff on this side,

we think it actually comes across the side of hao trees and it goes back up here and then down, so we're not sure how it actually crosses the parcel at this point."

Mr. Yuen said, "That was my question because I read Baker's report and he's identified where things had come onto the property from the gulches on either side. But you have a map that shows its path going across the plateau on the top of the property, mauka of the house site."

Mr. Cooper said, "You're referring to this one? That's the old government road. There's a question. We think there is. There's no way a government road is going up that cliff, it's just impossible. A trail, the King's trail will but you're not going to get a jeep up there and if you've been on the trail, the top of the trail is smooth because the rocks are river rocks and the rocks are taken from the stream and placed in. You can also find ohia and mango on the side of the trail because that's the basic way of finding where it is. So we do agree that the King's trail runs up the side of the property. There's also been a question on the existing cut right at the top where the trail comes up. It's the existing cut in the grade and that was done quite a while ago and not by the owners."

Mr. Yuen asked, "Is there a mark or any on the ground sign of this old government road that you've located on the site."

Mr. Cooper said, "We believe that there is abruptly a quarter of a mile we found on the parcel, but that's the part that's cut so clearly visible and it's were the Boteilho's used to drive as well. So in terms of whether that's actually where the trail is, we don't know. Wherever it ends up being identified to be, that's fine. We'll respect that and go ahead work with DOFAW to delineate that trail and have the public access across the property. But we don't know where it is specifically and it's more a question on in mind as to where it is specifically but it's not up to me to determine. I understand that it's going to be determined in a different way."

Mr. Cooper also mentioned that the State TMK maps got the island in the wrong parts on the map as well. They want to have the parcel surveyed first of all and the shoreline setback to make sure that we don't end up with any problems where the house is sited.

Mr. Evans stated that Conditions 16 and 19 addresses concerns voiced.

Mr. Yuen said that he had a question about the mauka/makai road. Looking at the file and from talking with the Maui Land Agent, it seems that Boteilho is getting a non-exclusive easement to use the road. Why are they blocking the road at the beginning of the State property?

It was clarified that the gate to the property was locked, but at the end of the road.

RECESS 10:15 a.m. - 10:30 a.m.

Mr. Paul Lucas, Esquire of the Native Hawaiian Legal Corporation addressed the chair and board and read his testimony into the record. A copy has been placed in the departmental board folder. He said that his office represents the Ke'anae-Wailuanui Community Association (Community). They fully support conditions 16 and 19, that require the Alanui O Piilani to be identified and delineated in cooperation with Na Ala Hele and kept open for local subsistence use. The Community disputes the applicants' statements that the Alanui was bulldozed as far back as 1963. He gave a background of the trail and uses by the Community.

Mr. Lucas, in his testimony stated that they would like to ask the Board to require the applicant to survey, stake and record the actual route of the Alanui across his property. He also stated that there should be sufficient setbacks/buffer zones on either side of the trail that allows residents to pass through the applicant's property without having to fear intimidation, threats, or harassment from the applicant and/or their guests.

Mr. Lucas stated that the Community fully concurs and supports the Conditions 14. and 5. as well as the other conditions. They ask that the Board down the size of the house to be compatible with the surrounding community. He also stated that the applicant denies the existence of the Communities' use of a makai-makai trail running from the Alanui to the Hana highway.

Mr. Evans stated that he would agree with Mr. Lucas regarding obtaining legal advice regarding staking of the trail. Staff would be willing based upon the information given by Mr. Lucas this morning, because that is a legitimate, bona fide concern of importance which they feel strongly as well. He suggested that Condition 16 could be modified by adding 16a. which would apply to King's trail which would state that the applicant be required to survey stake and record and drawing upon Mr. Lucas' suggestion, in consultation with knowledgeable community members, the actual route of the alanui across the property in order to fully protect. Relative to that particular concern, staff feels that they can legitimately accommodate that. The other concern that Mr. Lucas expresses relative to the size of the house, there would be some reservation on staff's part relative to the size of the house. Foremost, this is on private land and you're looking at some 63 acres. How much of the house will actually be viewed from outside the property? Take into consideration certain court cases that have occurred, one of the primary elements is what they call nexus, which means "where's the link?". It's not to say it couldn't be

done. But staff would feel, absent a material review, we would be hesitant at this point considering the size, private property, the Nolan case, how much could be viewed, and we'd be hesitant at this point to recommend to the Board any change.

Mr. Kennison stated that he agreed with Mr. Lucas that the land should be surveyed, staked, the actual route recorded and make sure that it's kept open and felt that it should be part of Condition 16a.

Mr. Yuen asked if there were any people that were going to testify today that knew of first hand viewing that the trail was destroyed in 1992.

Mr. Lucas stated that there were several people present that could probably do that.

Mr. Yuen questioned Mr. Lucas about a statement in his testimony that says, "The applicant has claimed that they were justified in bulldozing historic resources in 1992 because the Alanui had not been in use for at least one or two years." He said that he could not find that statement and wondered where it was stated as he did not recall seeing that.

Mr. Lucas asked for some time and felt he could find it.

Ms. Awapuhi Carmichael addressed the Board, saying that her family has been living in the Keanae area all the way from Kaupo. She recalls that her family has been using the alanui from time in memorial. The Alanui was always there until 1992. They did not go up there since 1992 because they bulldozed the whole area. Couple months ago when she went up there, she said that she knew the trail but it was all bulldozed and there was no marking, but there was the mango tree. When using the trail, they don't cut it because they know it's the Alanui. They have not cut any of the trees. When the hollyberry trees were overgrown and lain on the pathway they would make tunnels in the Alanui. When she went up there two months ago, she said that she knew where the trail was on the Nahiku side but they had bulldozed all the trees on the first dry riverbed from Wailuanui so she couldn't find the trail. She said that they walked around and from Wailuanui going towards Kopiliula she walked directly to the mango tree and the rocks were still there in the dry riverbed. She stated that other tenants from Wailuanui did go up after she did and they all identified the same trail. They said that they bulldozed it so they had no way of knowing where the trail was, except for the portion from Wailuaiki to the first dry riverbed. She stated that she had never seen such erosion, big boulders. She said that her mother was knows as the opihi lady and from the mauka, Hana Highway, they always used the trail. The Boteilhos never locked it's gate and they used jeeps to go over Kupelaula either on the path up there or below. It was never locked till 1992 and they never had cattle. The only cattle they

knew about from 1965 to 1992 were maybe stray cattle and they meandered along the King's Highway into Wailuaiki and part way to Kupelaula. She stated they all didn't go at once on the trail, they had certain days each family would go. She also stated that the trail was destroyed in 1992 except for a roadway that could be about four feet wide. Going up to the plateau, that's where the King's Highway could have been destroyed many years ago, say in 1963 but that's the only portion that was destroyed.

Ms. Carmichael was asked if she would be able to assist in identifying the trail. She responded that she would know a portion of it because she claimed that right now it's been destroyed and the landmarks had been destroyed. She said that there was only the one mango tree and the four feet road going up; when going down she stated that she wouldn't be able to know some parts. She also felt the kupuna above her might not even know. She stated that there were stepping stones before and now she feels they have all been bulldozed so there are none.

Mr. Lucas responded to Mr. Yuen's earlier question about the comments by the community association. It's the first page, no. 1, the third paragraph, the King's Highway has not been used for one or two years in the memorandum to response from the Keanae-Wailuanui Community.

Mr. Jim Neiss stated he has done business here for forty years as an architect and wanted to testify that in his opinion that he felt the photos are confusing and feels that the Board should disapprove this application.

Mr. Virgil Day testified that his family is from Waialua. He said that the trail has definitely been bulldozed. They used the trail often and when he went there last year he noticed that lots of the rocks and stepping stones across the property, since the last grading in 1993, two weeks ago some of the brothers went there and from the landscaping there was mud. They would like to have a trail put in and establish it from the Hana Highway down to meet the King's Trail. The State Forestry has a road that goes down through there now. What used to be there, used to be a trail down there. They put a road over the trail which was an easier way for the Boteilhos bringing the cows up. They have a corral on the corner of the mauka highway.

Mr. Dennis Kaaihue of Keanae stated that his parents were Hanakai and Akiona way back where his grandparents lived, they were farmers. His main concern here is to prevent these kinds of problems in the future where they destroy everything. His concern was for his children and the Hawaiian history. He hoped that a program could be done to prevent

people from misunderstanding things like this. Their culture was to live off the land.

Mrs. Gladys Kanoa, a director of the Hana Soil and Water Conservation District, referred to a letter of February 1994 to the Board. Their recommendation to the erosion problem was outlined. She wanted to make brief comments on two other aspects of the project. She stated that all land in the area is quite steep sloping down to the ocean. She spoke on the request of the house being setback 150 feet from the point of the cliff. She mentioned her concern on the applicant mitigating the erosion problem. She stated their fear is that a structure of the size proposed on the point of the little piece of land will look like a space ship to them as compared to what they're used to.

Mrs. Kanoa expressed concerned over the commercial and non-commercial use asked that it be clarified. She questioned the applicant's use for a hobby horse farm. She questioned the thoroughbred horses they will raise.

Mr. Evans responded that the application submitted states that there are 63 acres of land and there has been cattle there for a period of time. Prior to this there was cattle bought and sold off the land, most everyone knows that and that was pretty much accepted as what used to be. What used to be is allowed. The potential new owner wants to put up a house which did not exist before so the new owner has to go through the CDUA process. Commercial use will not be allowed with this new application but what has been a past practice will be allowed.

Mr. Yuen questioned the new owner being allowed to breed and sell the horses. He understood that there was a non-conforming use on the cattle ranch but questioned whether it could be converted to the proposed hobby horse farm with new structures put on the property for that hobby horse farm without that being considered commercial.

Ms. Himeno brought up the point that if he were breeding the horses to sell it would be commercial but if someone owned a horse or several horses and decided to sell one or two later on, it wouldn't be considered commercial.

More discussion followed on this issue regarding need for public hearing if commercial.

Mr. Evans stated that this was discussed with the applicant and based upon all representations received, they are not going into any commercial business. He stated that it could be clarified by adding a condition saying there will be no commercial venture on the property under this permit.

Mr. Nekoba went over the major concerns of the public. 1) That the trail will be staked and recorded so that public access is available and identified; 2) Be sure there is some kind of erosion control; 3) It's not for commercial purposes, he has horses which he can ride for his own enjoyment and if he decides to sell one or two it's fine; and 4) The size of the house, he felt it would be difficult for the Board to dictate the size of the house.

Mr. Evans stated that Condition No. 5 specifically says that they must submit a color paint selection; on Condition No. 14 a caveat could be added, to include lighting concerns. At the request of the chairman, Mr. Evans explained that although a CDUA is approved, there are certain follow-ups that will go through with staff. The Board can change the conditions and modify them and give staff directions so that when the applicant comes in with their building plans, staff is to make sure they are in compliance. On Condition No. 16, add 16a. relative to the actual staking and using elders in the community that are knowledgeable.

Mrs. Nakoa voiced strong concern about the bulldozing of the property and the sediment runoff into the bay was very bad.

Mr. Nekoba encouraged the public to report to the department if they notice anything out of the ordinary.

Mr. Evans stated that Condition 17 could be amended. It was suggested that all grubbing and grading be carried out in accordance with a plan approved by the Soil Conservation Service.

Ms. Mary Evanson of the Sierra Club voiced her concerns of the size of the house, the paved driveway and huge run off in adjacent gulches. She was also concerned about lighting because of many sea birds coming in from the ocean going up to Haleakala; the access from Hana Highway down must be kept open; and the mango trees being buffered. She informed the board during mango season when the mangoes fall and lay on the ground they give off a terrible smell.

Ms. Elaine Wender stated that she was a resident of Keanae and a member of the community association. She stated that she believed there was no application before the Board because she felt the CDUA was not signed by either Levy or Boteilho. She continued in great length regarding the application, the applicants and speculation. She felt that there should be a required \$1 million dollar bond to protect the State and the citizens should the applicant go bankrupt and leave a half finished product and thus damage to the environment.

Ms. Wender felt that a public hearing should have been held as the owner raises cattle and new owner will raise horses. She stated that her

petition for a public hearing was denied because there was no commercial activity proposed for this parcel in the application. She claimed that both the CDUA and the final EA are inadequate documents and should not have been accepted.

Ms. Wender stated that the traditional Hawaiian concepts of relationship to the land are so very much alike in Keanae and Waialuanui. The Hawaiian way of thinking in relationship with the land has more to do with privilege and responsibility than rights over others. The concept of Aloha aina, if you take care of the land it will take care of you, concept of stewardship.

Mr. Cooper stated that regarding the use of the trail, they are in agreement for use of the trail as they are aware of the cultural value. They are will to put resources towards that to help the community to make it so that the trail is used more. They have a concern with liability. If the State is requiring the applicant to maintain the trail, he asked who would be responsible for any liability damages if there is a suit based on someone either being on the property trespassing or on the trail portion and slipping and falling. If the general public is crossing the property and falls, they would like to be protected.

Mr. Yuen stated that the public trail had been destroyed and what the public would like is that it be marked and restored. Whatever the liability was before he guessed it would carry over.

Mr. Cooper stated that they would work with DOFAW on the survey and also include the elders in verifying where the trail transverses over the property. He said that there were two issues that he would request help from the Board. One is the archaeological survey of the entire parcel that was brought up by Ms. Wender which he feels would be unfair as they are not asking for construction over the entire parcel. He said that they understand whenever the owner wants to do something they have to provide construction documents and they would prefer to have the immediate vicinity of where the construction is proposed, that that is where the archaeological survey be required to be provided. This would be under Condition No. 19.

Chairperson Ahue said that he understood that the guidelines of the Division of Historic Preservation provide for inventory of where the construction is planned.

Mr. Cooper said the other comment is that this seems to be more like a public hearing than a public meeting.

Mr. Yuen requested to ask a question on commercial. "He's going to breed quarter horses and going to raise quarter horses, right?"

Mr. Cooper said that he did not know exactly what he's going to do and maybe it's because he's not familiar with horses.

Mr. Yuen asked, "After they're raised, what is he going to do with them?"

Mr. Cooper responded that he knows he has a ranch or two ranches on the mainland and he shows horses as a hobby and that's basically all he knows. He said that his client fully understands that if he wants commercial activities that he has to go through a public hearing.

Mr. Yuen stated that he felt if he raised the horses here and shipped them to California and sells them from his ranch, he felt that would be considered commercial.

Mr. Evans stated that commercial activity is very specific and is specified in the administrative rule. The only thing that would impress his staff is that commercial, all those activities designed for profit including the exchange or buying and selling of commodities or providing the services or relating to or connected with trade traffic in commerce in general.

Mr. Cooper stated that his client was not actively entering into economic use of the parcel based on horses. It's not his intent but if he decides to do that then it would be against this permit and they understand that.

Mr. Yuen still felt that it would commercial in a sense.

Mr. Evans explained the difficulty they were placed in as staff. A member of the public comes in and they cannot as staff say, "You're obviously lying."

Ms. Himeno stated she did not have a problem if the owner raised horses as a hobby and may sell a horse later.

Mr. Evans suggested adding another Condition No. 25, that no commercial use of the property occur under this CDUA, that coupled with the Condition No. 22 and 21 relating to the applicant's representation in his application.

Mr. Yuen stated that he felt there was a major conservation district violation in regards to destruction of this trail and destruction of an historic site. He said that he felt there should be a mitigation to restore the historic site, then said that you could never restore it. He then cited soil erosion problems; the size of the house too big; and there should have been a public hearing because it is borderline commercial.

Chairperson Ahue questioned Mr. Evans about the CDUA not being signed as Ms. Wender claimed.

ITEM F-5 See page 5 for Action.

DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES AND GRANT IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY TO SHIRLEY AND JACK KIAKONA OVER AND ACROSS STATE-OWNED LAND AT HOOLAWA-MOKUPAPA, HAMAKUALOA, MAKAWAO, MAUI, TAX MAP KEY 2-9-02:POR. 12

ITEM F-6

Mr. Young requested that an amendment be done should the Board approved this item today.

1. Revise the LAND AREA section to read as follows:

LAND AREA: 869 square feet, more or less, with the exact area and configuration to be determined by the applicants, same subject to the review and confirmation by the Survey Division, Department of Accounting and General Services.

2. Add to Recommendation B, "Prior to the issuance of the Grant of Non-Exclusive Easement, the applicants shall provide prior written proof to the Land Management Division that they have secured documented and legal access over, on and across Easements "C", "A" and "B", and the 6-foot-wide "Road" as described and shown on Land Board Exhibit "A".

ACTION. Unanimously approved as amended by staff. (Kennison/Nekoba)

DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES AND GRANT IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY TO GREGORY J. GARNEAU, ETAL OVER AND ACROSS STATE-OWNED LAND AT HOOLAWA-MOKUPAPA, HAMAKUALOA, MAKAWAO, MAUI, TAX MAP KEY 2-9-02:POR. 12

ITEM F-7

Mr. Young requested that an amendment be done should the Board approved this item today.

1. Revise the LAND AREA section to read as follows:

LAND AREA: 869 square feet, more or less, with the exact area and configuration to be determined by the applicants, same subject to the review and confirmation by the Survey Division, Department of Accounting and General Services.

2. Add to Recommendation B, "Prior to the issuance of the Grant of Non-Exclusive Easement, the applicants shall provide prior written

proof to the Land Management Division that they have secured documented and legal access over, on and across Easements "C", "A" and "B", and the 6-foot-wide "Road" as described and shown on Land Board Exhibit "A".

AMENDMENT OF PRIOR BOARD ACTION DATED DECEMBER 14, 1984 (AGENDA ITEM F-13), SALE OF LEASE AT PUBLIC AUCTION, LOT 4, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:33

ACTION Unanimously approved as submitted. (Nekoba/Himeno)

STAFF REQUESTS AUTHORIZATION TO SELL AT PUBLIC AUCTION, GOVERNMENT HOUSELOT AT PALOLO VALLEY, HONOLULU, OAHU, TAX MAP KEY 3-4-04:POR. 49

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

AMENDMENT TO PRIOR BOARD ACTION OF NOVEMBER 21, 1986 (AGENDA ITEM F-15) AUTHORIZING THE WITHDRAWAL OF CERTAIN LANDS FROM THE OPERATION OF GOVERNOR'S EXECUTIVE ORDER NO. 2074, SAND ISLAND, HONOLULU, OAHU, TAX MAP KEY 1-5-41:6

ACTION Unanimously approved as submitted. (Nekoba/Himeno)

STAFF REQUEST AUTHORIZATION TO CAUSE FORFEITURE AND TERMINATE GENERAL LEASE NO. S-5042 TO SAM H. AND DOROTHY M. TAO, LOT 87, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-04:52

WITHDRAWN Mr. Young asked that this item be withdrawn as staff was working on the payment of delinquent rent. No objections by the Board.

DEPARTMENT OF TRANSPORTATION REQUESTS WITHDRAWAL OF LANDS FROM GENERAL LEASE NO. S-3941 AND GOVERNOR'S EXECUTIVE ORDER NO. 1771 AND SET ASIDE FOR HIGHWAY PURPOSES, WAILUA, KAUAI, TAX MAP KEY 4-1-04

ACTION Unanimously approved as submitted. (Nekoba/Himeno)

ITEM H-1 See page 4 for Action.

ITEM H-2 See page 20 for Action.

ITEM H-3 See page 9 for Action.

ITEM H-4 See page 9 for Action.

ITEM H-5 See page 8 for Action.

ITEM H-6 See page 4 for Action.

ITEM H-7 See page 2 for Action.

ITEM H-8 See page 3 for Action.

ITEM J-1 ISSUANCE OF REVOCABLE PERMIT, HALEIWA SMALL BOAT HARBOR, ISLAND OF OAHU (HA DUONG NGUYEN)

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

ITEM J-2 ISSUANCE OF REVOCABLE PERMIT, KAILUA-KONA PIER, KEAUHOU BOAT HARBOR AND KAWAIHAE HARBOR NORTH, ISLAND OF HAWAII (BIG ISLAND PETROLEUM, INC.)

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-3 APPROVAL OF CONSENT TO SUBLEASE, KEEHI LAGOON, ISLAND OF OAHU (KEEHI MARINE, INC.)

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

ITEM J-4 GRANT OF RIGHT-OF-ENTRY AGREEMENT, WAIKIKI BEACH, ISLAND OF OAHU (ALBERT C. KOBAYASHI, INC.)

Ms. Himeno recused because of conflict of interest.

ACTION Unanimously approved as submitted. (Yuen/Kennison)

ITEM J-5 CONTINUANCE OF REVOCABLE PERMITS

ACTION Unanimously approved as submitted. (Himeno/Kennison)

ITEM K-1 RIGHT-OF-ENTRY, HONOLULU INTERNATIONAL AIRPORT, LOT 4, SOUTH RAMP DEVELOPMENT EXTENSION, OAHU (AMERICAN INTERNATIONAL AIRWAYS, INC.)

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

ITEM K-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS (NON-CONFORMING), AIRPORTS DIVISION, LIHUE AIRPORT, KAUAI

Mr. Toyama requested to remove the name of the first applicant listed,

Donna Mahas, Permit No. 5128, on the advice of Mr. Mason Young. Mr. Young informed the Board that by statute it prohibits the issuance of permits or leases to Donna Mahas because she had two leases from DLNR that were forfeited.

ACTION Unanimously approved as amended. (Himeno/Nekoba)

RESOLUTION By resolution, the Board of Land and Natural Resources expressed its appreciation for the services rendered by Mr. Howard K.W. Ching, Land Agent IV in the Division of Land Management who had served the State for more than fifteen years and who planned to retire from the State of Hawaii on the thirty-first day of March 1994.

ADJOURNMENT There being no further business, the chairperson adjourned the meeting at 12:50 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED:


KEITH W. AHUE, Chairperson

dc

4/14/94