

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

DATE: FRIDAY, APRIL 8, 1994  
TIME: 9:00 A.M.  
PLACE: BOARD ROOM  
KALANIMOKU BUILDING, RM 130  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII

**ROLL  
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 9:15 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. Linford Chang  
Mr. David Parsons  
Mr. Dean Uchida  
Ms. Dorothy Chun

**OTHER:** Mr. Johnson Wong, Deputy Attorney General  
Mr. Peter Garcia, Department of Transportation  
Dr. Robert McLaren (Item H-4)  
Ms. Anne Lo-Shimazu, Mr. Neal Wu (Item H-6)  
Mr. Mike Belles (Item F-6)  
Ms. Juliet Bagley (Item F-2)

**ADDED  
ITEM:** By motion of Mr. Kennison and second by Mr. Yuen, the following item was added to the agenda:

H-6 Amend Prior Action to the Conveyance of Land to the Housing Finance and Development Corporation (HFDC) for the Lahaina Master Planned Project at Wahikuli, Lahaina, Maui, Hawaii

Items on the agenda were considered in the following order to accommodate the applicants and interested parties who were present:

**ITEM H-4**

**CDUA FOR GEMINI NORTHERN 8-METER TELESCOPE AT MAUNA  
KEA SUMMIT, HAWAII AT TAX MAP KEY 4-4-15:9, APPLICANT:  
UNIVERSITY OF HAWAII INSTITUTE FOR ASTRONOMY**

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In his presentation, Mr. Evans recalled that the Board went through a time consuming process several years ago relative to what was going to transpire by the University at that site.

Mr. Evans stated that this new telescope will replace an existing telescope which they will be removing. After review, staff has found this application consistent with all previous plans approved in all elements in the conditions that were laid forth, with one exception. In Condition 5 staff is recommending, instead of its normal start within one year and complete in three years, that the construction shall be initiated within two years of the approval of such use and all work and construction must be completed within seven (7) years of the approval of such use.

Mr. Evans informed that Board that they had just received from the office of the director of the Institute for Astronomy a request that the Board approve a right-of-entry to construct improvements relative to the Gemini telescope. They have asked staff to incorporate this request in the conditions. From staff's perspective they feel it may be inappropriate for staff to recommend the change that the University is requesting. He stated that the representative from the University may present their reasons for their request.

Mr. Apaka clarified with Mr. Evans that the site will be the same and usage the same. He also asked which road are they talking about when they mention road alignment. Mr. Evans responded that the access road to the specific telescope may be somewhat aligned, not the paved road that goes up to the mountain.

Dr. Robert McLaren of the University of Hawaii, Institute for Astronomy responded to the question of the road. There is a slight realignment on the road that runs along the summit ridge to the east to accommodate Gemini, relatively minor. Any access material in the well used or maintaining the gravel portion of the access road to answer that question. In connection with the right-of-entry, the University has the lease for the science reserve and intends to sublease to the Gemini project. The sublease will come to the Board for the required approval under the terms of the general lease. In the interim, it has been the practice in the past to grant the right-of-entry to allow the construction to begin and that request they made coincident with the use permit request in the past. It has been dealt with at the same time in the past. They will follow whatever procedure the Board desires in that respect.

The chairperson asked Dr. McLaren if they had already submitted a right

of entry request.

Dr. McLaren responded that it was part of the application and also the cover letter accompanied the application for the right-of-entry.

Mr. Evans stated that the right-of-entry request that they submitted, the representation is correct, in that it was it was a part of the application. In the conditions listed, staff did not put it in. They are suggesting that the Division of Land Management could perhaps address that request this morning.

Dr. McLaren stated that they did not have any problems with the conditions.

Mr. Yuen could not understand, if you have a lease already, why do you need a right-of-entry.

Dr. McLaren stated that he thought that it was derived from the general requirement that the landlord has the right to approve improvements, that was his understanding.

Mr. Young, Administrator of the Division of Land Management stated that he believed that their division would not require them to come to the Board for a right-of-entry as he understood that the lease requires the use to be approved under the CDUA. His division would review the plans together with the chairman and if it is acceptable and consistent with the purpose of the lease as well as the CDUA as approved, then they can approve it and allow them to come in for construction. They have not seen the plans and thus had informed Mr. Evans that it would be inappropriate for them to allow or grant them a right-of-entry at this time.

It was clarified that it would be done in conjunction with the plan submittal which is a condition on the CDUA and they would not need to come back to the board.

**ACTION** Unanimously approved as submitted. (Yuen/Nekoba)

**ADDED**  
**ITEM H-6** AMEND PRIOR ACTION TO THE CONVEYANCE OF LAND TO THE HOUSING FINANCE AND DEVELOPMENT CORPORATION (HFDC) FOR THE LAHAINA MASTER PLANNED PROJECT AT WAHIKULI, LAHAINA, MAUI, HAWAII

Mr. Dean Uchida explained that this was an amendment to a prior board action regarding the Lahaina Master Planned Project at Wahikuli.

He explained that on February 25, 1994 the Board approved conveying

approximately 1100 acres to HFDC to allow them to begin construction of the first phase of the project. This involved a settlement negotiated between the State DLNR, HFDC and Pioneer Mill Company. Subsequent to the Board's action, HFDC took this matter to their Board and the question was raised as to the appropriateness of DLNR conditioning the conveyance on the payment of \$750,000.00 to Pioneer Mill for the relocation cost.

The matter was reviewed by the Attorney General's Office and they indicated that because the lease had expired the day before the Board took action, the lease expired on the 24th and the Board took action on the 25th, there was no contractual relationship between the State of Hawaii and Pioneer Mill Company. The A.G.'s office did indicate that HFDC could spend its funds if the relocation cost was a mutual benefit with HFDC and Pioneer Mill.

The recommended amendment to read:

C.7. HFDC **may [will]** pay [Pioneer Mill Company] for up to 50% of the estimated (\$1.5 million) cost of relocating infrastructure or approximately \$750,000.00, as a result of HFDC's housing development, **provided that the relocated infrastructure is of "mutual benefit" to both HFDC and Pioneer Mill Company.** This cost projection is based on, **but not limited to, the following** calculations prepared by Pioneer Mill Company and cover the following relocation costs:

a) Permanent Cane Haul Road Connector	\$550,000.00
b) Mauka-Makai Road Replacement	350,000.00
c) Irrigation System Replacement	200,000.00
d) Fencing along Cane Haul Road	<u>335,000.00</u>
Total Relocation Costs [Est.]	\$1,435,000.00

Legal counsel Wong questioned the wording in the amendment with regard to the wording. Discussion followed on using the word "capping" the cost of \$750,000.00 as opposed to "approximately." It was clarified that the cost problem is, all of the estimates listed are merely estimates. Because this is going to be a phased in development so not all of the costs will be incurred at this time. They are capping the construction, limiting the construction costs to items listed that both parties, HFDC and Pioneer Mill are willing to work out the 50% cost allocation. The limitation is the 50% and not the dollar amount.

Counsel Wong stated that notwithstanding the items listed therein, the amendment being inserted requires HFDC to make a determination whether those items will be of mutual benefit to HFDC and that is not an automatic participation in those items. He asked that it be reflected in

the record.

Mr. Yuen questioned the need for this amendment (the language).

Mr. Uchida explained that this is the language that HFDC's attorney asked DLNR to consider before their board will take it up again. Their board did not take it up because of this legal question and in order to clean up our actions so that HFDC's board can take an action, they've asked for this change.

Counsel Wong clarified this by explaining that prior language says that HFDC will pay. The Attorney General had concerns about what authority this board has to direct HFDC to pay.

Mr. Yuen said, "If we don't have any authority to direct them to pay, why don't we just take the whole thing out and do what they want?"

Counsel Wong explained that this is an attempt by staff to reach some sort of an understanding to take care of the situation. He said that he was correct in the use of the word "may" but it's based on a gentleman's understanding.

Mr. Uchida explained that back in February 1994, the language was agreed upon by all three parties but without Attorney General's approval. Subsequently they tried to negotiate a settlement that would be fair among all the parties, clean up the language so that HFDC's board can take action.

Counsel Wong stated that it would now be up to HFDC to justify their expenditures through their attorney as to whether it will benefit them.

Representatives from HFDC, Mr. Neal Wu and Mrs. Anne Lo-Shimazu from AMFAC were present but had nothing to add.

**ACTION** Unanimously approved as submitted. (Kennison/Himeno)

**CANCELLATION OF REVOCABLE PERMIT NO.S-6627 TO OLOKELE SUGAR CO., LTD. AND ISSUANCE OF NEW REVOCABLE PERMIT TO GAY & ROBINSON, INC. HANAPEPE WAIMEA (KONA), KAUAI AT TAX MAP KEY 1-8-06:2 & 3 AND 1-8-07:10 AND 1-8-08:20**

**ITEM F-6**

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

Mr. Young said that in light of the agreement between C. Brewer and Gay & Robinson, Inc. there is currently a revocable permit covering some 1,800 acres in Hanapepe. Gay & Robinson will complete the purchase of the assets of Olokele Sugar Co. by April 11, 1994 which includes the

transfer of the approximate 1,800 acres of state land covered by Revocable Permit S-6627. Gay & Robinson has also expressed an interest in acquiring a negotiated long term lease.

Staff is recommending that the Board authorize cancellation of RP S-6627 and issuance of a new permit to Gay & Robinson, Inc. effective April 16, 1994 at the same monthly rent and subject to the terms and conditions contained in RP No. S-6627.

Mr. Apaka clarified the location with Mr. Young.

Mr. Michael Belles, representing Gay & Robinson stated that he thinks the land in question in reference to the observations and questions by Mr. Apaka, that those will be refined later on in the process of negotiating the actual lease to make sure that they are fairly negotiating on land that is usable. In terms of the general parameters of the property, he thought that they were accurately described in terms of going up to the bluff line. Any usable flat lands currently being utilized by Olokele and intent by Gay & Robinson obviously is simply to continue the operation.

Regarding sugar cane activities in the State, Mr. Belles stated that this will result in continued intensification of use. He said that it's common knowledge that they have the highest yields in these operations and they have almost 50,000 tons per year anticipated which will result in about 10 per cent of the State's overall output being generated by this one operation.

He stated that this would expedite the process, streamline and make it more efficient and without the community patronizing them he said that it was important to mention the contribution of this entire process by the ILWU because without their participation and negotiation this would not have been possible.

**ACTION** Unanimously approved as submitted. (Apaka/Kennison)

**REQUEST FOR APPROVAL FOR AWARD OF CONSTRUCTION  
CONTRACT FOR JOB NO.80-HP-H11, PALAAU STATE PARK WATER  
SYSTEM IMPROVEMENTS ON MOLOKAI**

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**ITEM D-1**

Mr. Linford Chang made the presentation of Item D-1. In answer to Ms. Himeno, he stated that the upset price was \$120,000.00.

**ACTION** Unanimously approved that the Board award the contract for the subject project to H. E. Johnson Company, Inc. for their low Base Bid and Additive Alternate of \$114, 713.00. (Kennison/Apaka)

**ITEM F-1      TRANSMITTAL OF DOCUMENTS**

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**Item F-1-a**      **Assignment of General Lease No.S-3598 Covering Lot 17,  
Kanoelehua Industrial Lots, Waiakea, So. Hilo, Hawaii, Tax Map Key  
2-2-50:85**

**ACTION**      Unanimously approved as submitted. (Yuen/Nekoba)

**DIRECT AWARDS OF NON-EXCLUSIVE TERM EASEMENTS FOR  
LANDSCAPING AND MAINTENANCE PURPOSED COVERING  
PORTIONS OF GOVERNMENT BEACH RESERVES, ISLAND OF  
ITEM F-2      MAUI**

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Mr. Young stated that this is a win-win situation as the County is not willing to take the beach reserves and the State does not have the ability to maintain them and here we have adjoining property owners willing to develop and open it to the public as well as provide for use for their activities. Staff recommends that the Board approve the disposition of the easements.

Chairperson Ahue informed staff that he had received a letter from Ms. Pat Tummons complaining that there was no identifying Tax Map Key listed on this item in the agenda. Mr. Young stated that the tax map key was listed in the submittal but it was an oversight that it was not listed in the agenda.

The Board members then informed Mr. Young that they had received a letter from Mr. Isaac Hall protesting this item and he had asked that this letter be included as part of the official record. Mr. Young was then given a copy to read.

Mr. Young, having read Mr. Hall's letter, stated that it appears that they are doing what he is requesting that the area be open to public use and access. At present the area is unimproved and littered with keawe in overgrowth. To have someone, like an adjoining owner provide for the maintenance and development of the area, there are conditions in the lease that there be appropriate signage and use by the general public be unrestricted. He was not sure if there was a conflict.

Ms. Juliet Bagley wanted to know, "Why 55 years, is it the normal practice?"

Mr. Young replied, "Yes, it is a normal practice with respect to easements. We can always terminate the easement as well because this is a negotiated easement."

Ms. Bagley questioned the ceded lands issue.

Mr. Young's response was, "The ceded lands issue is that we're not diminishing the ceded lands trust for the fact that the easement continues to allow the lands to remain in the public trust. More importantly is the fact that the ceded issue, no ones getting any rent. By this disposition, they will get 20%."

Mr. Yuen addressed Mr. Young and said that he has always brought up the question that this is a situation that has the potential to be abused. Someone could easily landscape in such a manner to make it look like their private property and he was really sensitive to this. He said that his suggestion to Mr. Hall if he were to contact your office, if he were aware of situations it is being abused, please let the Board or the department know about it.

Mr. Young then informed the Board that they could take up both Items F-2 and F-3 together as they are essentially the same thing and the properties adjoin each other.

**ACTION** Mr. Kennison moved for the approval of Items F-2 and F-3 as submitted. Seconded by Ms. Himeno, motion carried unanimously.

**ITEM F-3 DIRECT AWARD OF A NON-EXCLUSIVE TERM EASEMENT FOR ROCK REVETMENT, STAIRWAY, LANDSCAPING AND MAINTENANCE PURPOSES COVERING PORTIONS OF GOVERNMENT BEACH RESERVES, ISLAND OF MAUI**

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See above Item F-2 for action.

**ITEM F-4 CITY AND COUNTY OF HONOLULU REQUESTS PERPETUAL, NON-EXCLUSIVE EASEMENT FOR GUARDRAIL PURPOSES AT KOMO MAI DRIVE, MANANA-UKA, OAHU, TAX MAP KEY 9-7-25:10**

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**ACTION** Unanimously approved as submitted. (Nekoba/Himeno)

**ITEM F-5 STAFF REQUESTS AUTHORIZATION TO ACQUIRE THREE (3) IMPROVEMENTS AT WAIOMAO, PALOLO VALLEY, OAHU, TAX MAP KEY 3-4-29:33, 34 AND 35**

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After his presentation, Mr. Young answered questions of the Board. After acquiring the three houses they would be demolished and include that as part of the area that was acquired back in the '50s as a set aside to the Division of Forestry and Wildlife as an addition to the Honolulu watershed.

Should the Board approve the acquisition today, Mr. Young asked that



an amendment be made to include the parcel that was acquired in the '50s, Tax Map Key 3-4-15:7 which is about 10 acres.

Chairperson Ahue stated that they were distinguishing this acquisition from similar disturbances caused by natural causes, mudslides, boulders as this was man-made artificial so that the State feels directly liable because of that.

**ACTION** Unanimously approved as amended. (Nekoba/Himeno)

**ITEM F-6** See page 6 for Action.

**REQUEST FOR AUTHORIZATION TO ACQUIRE LAND FOR KAUAI JUDICIARY COMPLEX, AND SUBSEQUENT SET ASIDE TO THE JUDICIARY DEPARTMENT, LIHUE, KAUAI AT TAX MAP KEY 3-3-03: PORTION 1**

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**ITEM F-7**

**ACTION** Unanimously approved as submitted. (Apaka/Kennison)

**CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR SINGLE FAMILY RESIDENCE AT HAENA, KAUAI, AT TAX MAP KEY 5-9-2:62 FOR APPLICANT MR.DAVID K.KANEALII**

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**ITEM H-1**

**ACTION** Unanimously approved as submitted. (Apaka/Kennison)

**CDUA FOR A SUBDIVISION OF PARCEL AT TAX MAP KEY 4-2-016: 001 AT KAWAINUI MARSH, KAILUA, OAHU FOR APPLICANT CITY AND COUNTY OF HONOLULU DEPARTMENT OF PARKS AND RECREATION**

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**ITEM H-2**

**ACTION** Unanimously approved as submitted. (Nekoba/Himeno)

**TIME EXTENSION REQUEST TO EXPAND THE OLOMANA GOLF COURSE ONTO APPROXIMATELY 12.2 ACRES OF STATE LAND AT WAIMANALO, OAHU AT TAX MAP KEY 4-1-13: PORTION OF 11 FOR APPLICANT OLOMANA GOLF LINKS, INC., AGENT: WILSON OKAMOTO AND ASSOCIATES, INC.**

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**ITEM H-3**

**ACTION** Unanimously approved as submitted. (Nekoba/Himeno)

**ITEM H-4** See page 3 for Action.

**ADOPTION OF RULES RELATING TO THE KAHO'OLAWA ISLAND RESERVE FOR THE DIVISION OF BOATING AND OCEAN RECREATION AND THE KAHO'OLAWA ISLAND RESERVE COMMISSION**

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**ITEM H-5**

Mr. Keoni Fairbanks, Executive Director for the Kaho'olawe Island Reserve Commission summarized the Office of State Planning's (OSP) testimony which is supportive of Senator Inouye and the Hawaii Congressional delegation, the island of Kaho'olawe is being returned to the State effective May 9, 1994.

There will be federal monies incorporated to clean up the island for the State. The U.S. Navy will be responsible and 10% of all monies appropriated will go to the State for environmental restoration. The immediate problem and the reason they are requesting these emergency rules is that on May 9, 1994 the State will own the land and will have jurisdiction there especially the surrounding waters which continue to be unsafe because of unexploded ordnance. The emergency rules will provide for continuous coverage of restriction of access to the area and this will allow them time to go to public hearings to have their regular rules address the boating and other issues.

There are concerns of safety in the waters and also the pristine nature of the marine resources and archaeological resources which have already begun to be vandalized.

Mr. David Parsons stated that the vehicle they have chosen to adopt these emergency rules are under the Division of Boating and Ocean Recreation Rules. The actual rules will be primarily under DOBOR's authority for adoption.

Mr. Parson stated in response to the Board that they are basically parodying what the Navy enforces in their exclusion of the use of the waters. The emergency rules will be effective for 120 days from the date that the State takes over. He stated that he believed currently, the Protect Kaho'olawe Ohana has authority to visit the island two weekends per month and that access is guaranteed in their rules under Section 13-2-56, 177D.

Chairperson Ahue stated that by statute, at least with regard to land dispositions, such as leases or contracts affecting the land and also there's a bill at the legislature to also include disposition relating to submerged lands as well as the waters around Kaho'olawe. For those functions, the Kaho'olawe Island Reserve Commission would replace the Land Board with regard to the authority to grant those dispositions effective as of May 9, 1994. All other rules and statutes that apply to State lands will still be in place.

**ACTION** Unanimously approved as submitted. (Kennison/Apaka)

**ADDED  
ITEM H-6**

See page 5 for Action.

**ITEM J-1**

**REQUEST FOR APPROVAL OF CONSENT TO SUBLEASE,  
HONOKOHAU BOAT HARBOR, NORTH KONA, ISLAND OF HAWAII  
(GENTRY PROPERTIES)**

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**ACTION** Unanimously approved as submitted. (Yuen/Himeno)

**ITEM J-2**

**REQUEST FOR CONTINUANCE OF REVOCABLE PERMITS**

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**ACTION** Unanimously approved as submitted. (Himeno/Nekoba)

Chairperson Ahue informed the Board that he had a letter from Carol Wilcox asking that the description of the item provide a little more detail in the board agenda.

Mr. Parson said that he didn't think it would be a problem and would look into that.

**ITEM J-3**

**REQUEST FOR AUTHORIZATION TO EXECUTE AGREEMENT FOR  
WATER SERVICE NOT IN COMPLIANCE WITH STANDARDS FOR  
KAHULUI BOAT RAMP FOR THE ISLAND OF MAUI (COUNTY OF  
MAUI)**

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**ACTION** Unanimously approved as submitted. (Kennison/Apaka)

**ITEM K-1**

**CONSENTS TO CERTAIN DOCUMENTS AFFECTING HARBOR  
LEASE NO.H-87-30, PIER 7, HONOLULU HARBOR OAHU (HAWAII  
MARITIME CENTER, A HAWAII NON- PROFIT CORPORATION, AS  
LESSEE/MORTGAGOR, AT THE REQUEST OF FIRST HAWAIIAN  
BANK, A HAWAII CORPORATION, AS MORTGAGEE**

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**ACTION** Unanimously approved as submitted. (Himeno/Nekoba)

**ITEM K-2**

**LEASE NO. DACA84-5-94-14 KAPALAMA MILITARY RESERVATION,  
OAHU (UNITED STATES OF AMERICA ARMY CORPS OF  
ENGINEERS)**

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**ACTION** Unanimously approved as submitted. (Himeno/Nekoba)

**ITEM K-3**

**REQUEST FOR DELEGATION OF AUTHORITY TO THE  
DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OF  
REVOCABLE PERMITS AT KAPALAMA MILITARY RESERVATION  
FOR INCONSISTENT PURPOSES, OAHU**

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Mr. Garcia said that the Department of Transportation was requesting the delegation of authority to the Director of DOT for the issuance of revocable permits at the Kapalama Military Reservation for inconsistent

purposes be extended for an indefinite period.

Mr. Mason Young informed the board that they had written to Rex Johnson, Director at the Department of Transportation on March 29, 1994. In the letter they informed him that the site that DOT suggested, some 61 acres is not acceptable. He then gave examples of the areas suggested as follows:

Hilo, Hawaii - Unable to use.  
Hanapepe, Kauai - One area in flood zone and in conservation district;  
another area has squatters.

Mr. Young stated that these areas are really not usable for DLNR. He informed the Board that there will be a meeting this Friday with both Directors of DOT and DLNR and staff members to see if they can come up with other suitable sites that they can agree upon. He asked the Board's consideration in not granting the request. He would not oppose another 30 day extension.

**ACTION** Mr. Kennison moved that the Board approve Item K-3 with the amendment that the delegation of authority be extended for another 30 days. Seconded by Mr. Nekoba, motion carried unanimously.

**ADJOURNMENT** The meeting adjourned at 10:30 a.m.

Respectfully submitted,

  
Dorothy Chun  
Secretary

APPROVED:

  
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KEITH W. AHUE, Chairperson

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4/29/94