

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

DATE: June 9, 1994
TIME: 9:00 a.m.
PLACE: State Office Building
Conference Rooms A, B, AND C
3060 Eiwa Street
Lihue, Kauai

**ROLL
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS: Mr. Herbert Apaka
Mr. William Kennison
Mr. Christopher Yuen
Mr. Keith Ahue

ABSENT AND

EXCUSED: Mr. Michael Nekoba
Ms. Sharon Himeno

STAFF: Mr. Roger Evans
Mr. Mason Young
Mr. Manabu Tagomori
Mr. Dan Quinn
Mr. Edward Lau
Mr. Sam Lee
Mr. Mike Laureta
Mrs. LaVerne Tirrell

COUNSEL: Deputy Attorney General Johnson Wong

OTHERS: Peter Garcia, Dept. of Transportation
Patricia Tummons (Items D-1, H-3)
Jesse Fukushima (Item D-1)
Ann Leighton (Items D-1, E-3)
Jan Burns (Item D-2)
Harold Bronstein & Clancy Greff (Items E-2, E-3)
Tom Hegarty, Judy Wigg, Amy Chandler, Ted Meyer,
Diane Faye, Mrs. Chandler, Mia Morita, Jeff Chandler,
Stacy Praila, Bethan Baptista, Scott Robison (Item E-3)
Rep. Ululani Beirne & Barbara Fox (Item E-4)
Dr. Jim Anthony (Items E-4, F-1-b,c,d & e)

OTHERS (continued)

Meredith Ching & Garret Heu (Items F-1-b,c,d & e)
Greg Matsuura (Item F-6)
Jack Park, Robert Andenza (Item H-2)
Yvonne Izu, Richard Kiefer, Juliette Begley,
Donna Wong (Item H-3)

Written testimony received at the meeting from the following persons are on file in the Chairman's Office and available for review by interested parties:

- Item D-1 Brooks Harper, USFWS ; Jesse Fukushima, Kauai Councilmember; Michael Kido, Chair, Kauai Board of Water Supply; Patricia Tummons, Editor
- Item E-2 Harold Bronstein, Attorney; Dawn Chang, Deputy Attorney General
- Item E-3 Various - Petition to not renew Capt. Zodiac's permit at Tunnels.
- Item E-4 Rep. Ululani Beirne; Richard Kahle, State Tax Director; Ipolani Tano
- Item F-1-b,c,d & e Carl Christensen, Native Hawaiian Legal Corp.
- Item H-2 Jack Park, applicant
- Item H-3 Karen Alexander; Mililani Trask Kia'aina, Ka Lahui Hawaii; Donna Wong, Hawaii's Thousand Friends; Jeff Alexander, Construction consultant; Anna Marie Kahunahana-Castro Howell

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

MINUTES Minutes of March 24, 1994 were approved as submitted.
(Kennison/Apaka)

**APPROVAL TO RESCIND AND AMEND PORTION OF REQUEST TO
TERMINATE EXISTING LEASE AND ESTABLISH A LEASE TO A NEW
NON-PROFIT ORGANIZATION FOR THE OPERATION OF PUBLIC
CAMPING AND CABIN RENTALS AT MALAEKAHANA STATE
RECREATION AREA, KAHUKU SECTION, OAHU.**

ITEM E-4

Daniel Quinn presented staff's submittal with two recommendations for approval. He asked, however, that condition no. 2 be amended as follows:

2. Amend prior Board action to instead authorize direct issuance of a lease to the Ko'olauloa Hawaiian Civic Club retroactive to June 1, 1994 and ending April 30, 1997, at gratis, under similar terms to the existing lease and subject to other terms and conditions that may be prescribed by the Chairperson.

Barbara Fox of Alii Affordable Housing Foundation said that she was at the meeting to make sure that whatever changes are made will be retroactive to June 1, 1994.

Representative Ululani Beirne presented to the board Tax Director Richard Kahle's June 7, 1994 letter certifying that Ko'olauloa Hawaiian Civic Club is an eleemosynary organization and, therefore, exempt from paying Hawaii state income tax. Representative Beirne then testified in support of Ko'olauloa Hawaiian Civic Club becoming the new non-profit organization to lease Malaekahana State Recreation Area.

Dr. Jim Anthony, representing the Hawaii Laieikawai Association, Inc. stated that he was not here to oppose nor support the amendment being proposed by staff. However he was concerned with procedures followed for leasing state parks, particularly this state park, which he believed was facilitated by federal funds.

The problem, he said, was that there has been no disclosure on the part of staff to enable the public to participate in any kind of intelligent fashion as to what strictures there are, if any, that arise from the fact that federal funds were expended in the acquisition of the park. Also, there has been no disclosure made this morning as to what the terms of this lease are. Furthermore, there is no evidence of the financial status of the Ko'olauloa Hawaiian Civic Club. Is this to be a precedence that leases can be issued to anyone without knowing their financial stability to carry out obligations that are going to be in the lease? He felt that there was far too much here being left to speculation and in an unsatisfactory state of affairs.

With respect to the park itself, Dr. Anthony said that this section of the park receives its water from Campbell Estate and does not meet Board of Water Supply standards, nor the standards of the Federal Drinking Water Act.

He felt that the idea of sections of state parks being run by eleemosynary organizations is a good one. However, these should be genuine eleemosynary organizations that have good financial standings. This is a good principle, but there should be rules.

While Mr. Ahue agreed, he did not think they would be able to address this concern today. Dr. Anthony continued that if this lease was to be given to the Koolauloa Hawaiian Civic Club then they should at least be put in a position where they are not programmed to fail. He felt that if the board is satisfied that they can do a good job and have the money to do it, then they should be given a long term lease.

ACTION

Unanimously approved, with an amendment to Condition No. 2, that the lease be issued to the Koolauloa Hawaiian Civic Club instead of the Hawaii Laieikawai Association, Inc. (Kennison/Apaka)

ISSUANCE OF REVOCABLE PERMIT TO EAST MAUI IRRIGATION CO., LTD., PORTION OF THE KOOLAU FOREST RESERVE IDENTIFIED AS THE "NAHIKU LICENSE" AREA AT NAHIKU, HANA, MAUI, TMK 1-2-04:5 AND 7.

ITEM F-1-b

ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF THE KOOLAU FOREST RESERVE IDENTIFIED AS THE "HONOMANU LICENSE" AREA AT HONOMANU, HANA, MAUI, TMK 1-1-01:44.

ITEM F-1-c

ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF THE KOOLAU FOREST RESERVE BETWEEN PUOHOKAMOA AND HONOPOU STREAM IDENTIFIED AS THE "HUELO LICENSE" AREA, KEOPUKA-EAST MAKAIWA, HANA, MAUI, TMK 1-1-01:2 & 50 AND TMK 2-9-14:1, 5, 11, 12 & 17.

ITEM F-1-d

ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF THE KOOLAU FOREST RESERVE IDENTIFIED AS THE "KEANAE LICENSE" AREA, WAILUA-IKI-KEANAE.

ITEM F-1-e

Mr. Yuen stated that Section 171-58 says that there needs to be a watershed management plan before a water lease on state lands can be issued. This requirement is very stringent, and there does not seem to be any plan. Mr. Young replied that the applicant did complete a plan which should be submitted to the board shortly.

Ms. Meredith Ching, vice-president for A&B-Hawaii, Inc., said that they were in concept with staff's recommendation as they, too, are anxious to get watershed management implemented and, as Mason described, there was an initial plan written several years ago. The plan includes seven members, of which they are just one.

Ms. Ching voiced concern with the November, 1994 deadline to implement. What needs to be done first, she said, is to come up with some kind of written agreement describing the duties, responsibilities and liability. Ms. Ching referred to staff recommendations 2, 3 and 4.

Their concern with condition no. 2, said Ms. Ching, was implementation.

With respect to condition no. 3, Ms. Ching said that they are willing to accept the responsibility for normal maintenance of the road but were concerned about any extraordinary repairs or unusual damage that might be caused once they let the public in.

As far as condition no. 4, their concern about the liability involved the public access into the area.

Lastly, with respect to the monthly rental, staff's recommendation is that it be determined by staff appraiser. Ms. Ching said that this was done about two years ago and she felt at that time it was high as compared to other rentals charged for comparable uses. The way the sugar industry is today, they have no cushions for extra costs.

Dr. Anthony did not think the board should be impressed by statements made by Ms. Ching, "that the sugar industry is having a difficult time." "If the sugar industry cannot cut the mustard, then they should get out", said Anthony.

Another thing, continued Anthony, East Maui Irrigation has done an enormous amount of damage to landowners and Hawaiians who have relied on water for their lo'i. The taking of ground water has had an undeniable impact on surface water. They have taken millions of gallons of water to the detriment of estuarian water quality and there is presently a lawsuit pending in this case that involves East Maui Irrigation and the taking of water. He felt that the board should be unsympathetic to this "cry-baby approach" that has, for many years, been used by the big blunderance of Hawaii's water resources.

Dr. Anthony referred to Native Hawaiian Legal Corporation's staff attorney, Carl Christensen's letter to the board dated June 8, 1994. Mr. Christensen reiterates his concern to the Board's policy of using "temporary" revocable permits as de facto leases and the Board's continuing non-compliance with Sec. 171-33(g) and 171-58(g), and H.R.S., Chapter 343. He wrote also that there should be some assurance that the rents will increase substantially.

Mr. Kennison did not agree with Dr. Anthony. He said that A&B-Hawaii has always worked hard to help the community.

Mr. Yuen said that feeling sorry for A&B was not the problem. He felt sorry for those people who might be out of a job if the sugar industry closes down. Dr. Anthony stated, "life is tough, but worse things have happened to people in the community and it's about time tough positions were taken with regard to the unfortunate problems that people face when they lose jobs." While sympathetic, Dr. Anthony said that we needed to be realistic about the sugar plantation's inability to compete in the world market.

ACTION Mr. Kennison moved to approve Items F-1-b, F-1-c, F-1-d and F-1-e as amended below. Mr. Apaka seconded, motion carried unanimously.

1. Monthly rental to remain the same.

2. Condition 2 under Recommendation:

The permittee will work with DOFAW to establish a public hunting program on state-owned forest reserve lands within the water license area by November 30, 1994. Such program shall be in written agreement form between the permittee and the State and shall address the allocation of duties and responsibilities between the two parties.

The agreement shall be implemented by March 31, 1995.

3. Condition 3 under Recommendation:

The permittee will have full responsibility for the normal maintenance of roads used within the water license area. Any extraordinary repairs or unusual damage caused by reckless or frequent use by the public shall be paid by the State.

4. Condition 4 under Recommendation:

The State will assume the liability for personal injury and property damage resulting from the public hunting program within the water license area. The State provide the appropriate staff and adequate signage to minimize any potential liability concerns.

5. The above amendments are subject to the review and approval of the Attorney General's Office.

PETITIONS FOR A CONTESTED CASE HEARING, ESTABLISH A DEADLINE DATE TO FILE A WRITTEN APPLICATION TO BE A PARTY, AND REQUEST FOR AN EXTENSION OF TIME ON CDUA OA-2670 TO CONSTRUCT A MARINA ENTRANCE CHANNEL USING STATEOWNED SUBMERGED LANDS AT HONOULIULI, EWA, OAHU, OFFSHORE OF TMK 9-1-12:6; APPLICANT: HASEKO (EWA), INC.; AGENT: MR. EARL MATSUKAWA, WILSON OKAMOTO & ASSOCIATES, INC.

ITEM H-3

Mr. Evans said that he received letters from Jeff Alexander, Clifford Oliveira, Jr. and Karen Alexander on behalf of Save our Surf.

Mr. Ahue noted that written correspondence was also received from Hawaii's Thousand Friends, Ka Lahui Hawaii and Anna Marie Kahunahana-Castro Howell.

Ms. Yvonne Izu, legal counsel to Haseko, said that they had presented their written opposition to John Kelly of Save our Surf, to be a party in the contested case proceedings, and had nothing further to add. They were at today's meeting to answer any questions posed by the board.

Richard Kiefer, attorney for Office of Hawaiian Affairs, said that he had received a request to defer this matter to the next Oahu meeting. He had no objection to this request as long as it met their June 26 deadline for action to a CDUA.

Mr. Kiefer said that OHA came to the January 27th hearing and vigorously opposed the CDUA because the submerged lands at issue were ceded lands, which the State holds in trust. Under this trust obligation the State may use these lands only for specific purposes. It is OHA's position that the usage Haseko proposes are not within the scope of this trust. Accordingly, OHA believes that it would be a violation of this trust obligation if this board were to approve the CDUA.

Although OHA opposed the CDUA at the January 27th hearing, Mr. Kiefer said that they did not, at that time, formally request a contested case hearing. That request did not come until eight days later, by letter dated February 4, 1994 from OHA Trustee, Clayton Hee. Mr. Evans noted that the departmental rules require that such a request is made at, or before, the January 27th meeting. However, the rules did specifically authorize this board to waive that requirement under appropriate circumstances.

Mr. Kiefer went on to explain why he thought those circumstances existed here. First, Kinau Kamalii, whose committee oversees this matter was hospitalized and so the OHA staff person who attended the January 27th meeting was not given authorization to formally request a contested case. Second, because of OHA's opposition at the January 27th meeting, a brief delay before OHA's formal petition they felt no prejudice would result should this request be granted. Finally, none of the other parties have objected to OHA's delay in requesting a contested case.

Mr. Kiefer noted that none of the other applicant's, except Haseko, was represented by Counsel. He suggested that participation by OHA, who would be represented by his firm, may help the board in it's decision on a contested case hearing by helping to focus and streamline the issues of the contested case hearing.

Accordingly, Mr. Kiefer asked that the board adopt staff's recommendation and that a contested case be held on this matter but asked also that the board amend the recommendation by providing that OHA be a party to that.

Mr. Evans said that Mr. Kiefer was correct. Staff did not, in its presentation, go to the question of standing. Staff did not think there was any need because of the question of timeliness.

Mr. Yuen said he did not understand, "The State's action in granting the CDUA would terminate the revenue generating potential of this piece of

property." Mr. Kiefer explained that if the CDUA is granted the submerged, or ceded lands, will be dredged and used for construction. As a practical matter, that use will prevent any other uses to the land. Mr. Yuen said that this is true for use of any state land.

Ms. Patricia Tummons read testimony by Mililani Trask, on behalf of Ka Lahui Hawaii, requesting for a contested case. Ka Lahui objected to DLNR's June 9, 1994 findings and Haseko's statement in opposition to petition of Hawaii's Thousand Friends.

Mr. Ahue asked Ms. Tummons if she knew whether the recommendation to allow intervenors into the case by June 20th would satisfy Ka Lahui's request -- the reason why they should or should not be a party in the contested case.

Ms. Tummons said that she did not talk directly to Ms. Trask about this but her understanding was that Mililani would like a clarification of what staff meant by describing Ka Lahui's responses as deficient.

Linelle Nishioka said that on March 21, 1994 a letter was sent to Anna Howell, who claimed to be the treasurer of Ka Lahui. No information was received.

Mr. Ahue said that according to Mililani Trask's letter, all issues were addressed in their petition. Ms. Nishioka said that the petition was received and a letter was sent out asking for additional information. This letter was sent to Anna Howell.

Judith Begley read testimony from Donna Wong of Hawaii's Thousand Friends.

Mr. Evans said that following the public hearing a written petition was filed on behalf of Ms. Wong. Based upon staff's review and in consultation with the Office of the Attorney General, it was felt that the request was inadequate.

Donna Wong, Executive Director for Hawaii's Thousand Friends, said that our letter did not say what was inadequate. Linelle's letter said that they could supplement their application if they wished to do so. Her reply to Linelle was, "our application is complete, we met all the guidelines, do we have to respond? The answer was, "no, you don't have to respond to this memo but declining to do so would make you seem like one not wanting to cooperate or something like that", which she thought was intimidating. She said, however, that she had received a letter from Keith Ahue saying that it was not a requirement.

Mr. Ahue asked Ms. Wong if she was aware that a part of the recommendation was to allow parties to intervene if they so wished by submitting a written application by June 20th. Ms. Wong apologized for arriving so late, but wanted to know why new applications had to be submitted.

Ms. Nishioka advised that this is pursuant to Chapter 91, which set the deadline for people to intervene in a contested case hearing up to so many days before, and the board rules provide in Chapter 1, Title 13, for the board to set an earlier deadline to that intervention. She wanted them to be aware that this intervention can be made by various parties but the board would still be looking at the same standard for admission of the parties.

Mr. Ahue clarified that regardless of what the board does today, they will still have the opportunity to file for intervention.

Ms. Wong asked what would be the benefit of this additional step. Mr. Ahue said that this is basically to give people another chance to make their point.

Ms. Wong argued that since Jeff Alexander is a member of Hawaii's Thousand Friends and he is directly affected and about to be accepted as a party, the Hawaii's Thousand Friends could be accepted as a party. Mr. Yuen felt that this could be an argument. However, he noted that staff's recommendation listed everyone as an individual.

Arguments continued with respect to the June 20, 1994 deadline for filing a written application to be a party in the contested case hearing. Mr. Ahue asked Counsel if there would be a problem if five more days were added to the deadline. Ms. Nishioka said that June 25th is the date that the board would have to approve any intervenors. As she understood it, the next board meeting is currently scheduled for June 24. The intention was that once these petitions came in it would be an agenda item for the June 24th meeting and the first pre-hearing conference is tentatively scheduled for July 8th.

Mr. Ahue asked if there was any magic about the June 24th meeting date. Ms. Nishioka said that these parties would have to be admitted by the board prior to the pre-hearing conference, which is set for July 8th. Otherwise they go to the pre-hearing conference without all of the parties.

Ms. Wong said that they are planning to be intervenors and requested, also, that staff look at their present application and that Jeff Alexander is a member of Hawaii's Thousand Friends.

ACTION Unanimously approved as submitted. (Kennison/Apaka)

ITEM H-2

**CONSERVATION DISTRICT USE APPLICATION OA-2691 TO
RECONSTRUCT AND EXPAND AN APARTMENT-COTTAGE SFR AT
KALIHI VALLEY, HONOLULU, OAHU, TMK: 1-4-025:19 UNIT P;
APPLICANT: MR. JACK E. PARK.**

Mr. Ahue asked about staff's recommendation no. 2, which states that the proposed reconstruction and expansion is not compatible with the locality and surrounding uses.

Mr. Evans explained that if this particular proposal were to replace the existing house with the same density as the existing house, then it would be compatible with whatever is there now. However, the proposal that was presented is much larger. Relative to the association, staff felt that the association would be an important player here because most condos that you see are vertical in nature and you would have an exclusive area which is the condo itself. Where the cars park would be called a limited common element and then you will have a common element, which is the yard, the grass, etc. which most associations have. Here you have an HPR that is horizontal instead of vertical.

Mr. Evans felt that there should be something in the record where the association either supports this project or, at a minimal, the association has no objection. Part of the difficulty is that the applicant is an officer of the association. However, staff has been informed that another officer of the association does not agree with this.

Mr. Jack Park presented written testimony in response to DLNR's review and comments for Application to rebuild and expand a single family residence in Kalihi.

Mr. Robert Andenza, approved agent for the surrounding community, said that one of their major concerns has been handling of any excessive water and damage it might do to the soil due to erosion and improper drainage.

Mr. Yuen asked Mr. Evans if it would handle his concerns about the association if the applicant was required to submit association approval before his construction plans could be approved. Mr. Evans said, "fine".

Mr. Evans said that staff's recommendation is to deny. If the board should decide to approve, Mr. Evans asked that the board put in some kind of condition that, before the department approves any construction plan, approval be received from the association.

Mr. Yuen said that since the recommendation is for denial, there are no set of conditions listed should the board decide to approve. Mr. Evans said that staff would recommend their standard conditions. They would also

recommend that any representations made by the applicant for now would be misleading. Also, that prior to approval of construction plans that the applicant provide the department with a letter of authorization to proceed from the association. Another condition would be that the proposed house be compatible with those houses within the condominium area, and that this house will be no larger.

Mr. Park asked that the board approve his project. However, the house would have to be larger than it was 30 years ago. His family has grown, they now have two cars instead of one -- they just need a larger house. Other people in the neighborhood have larger houses.

Mr. Yuen said that he agreed with Mr. Evans that this construction should be compatible with the surrounding area, but he did not know if that necessarily means within that particular subdivision inasmuch as the applicant has a house which is 50 feet away and not in the same subdivision. We do have to make sure that the drainage is taken care of in a responsible way, said Yuen.

Mr. Yuen said that basically this a residential neighborhood and through some slip of the pen, they cut off four of the houses and put them in the conservation area. While he felt that the house should be compatible with the surrounding area, he felt also that the area should be defined a little bit broader than just the neighborhood. Aside from that, he felt that the only reason staff recommended denial was because Mr. Park had not gotten approval from the community association. It seems that the board could approve the CDUA with a condition that the applicant show proof of the community association's approval prior to the department approving the construction plans. The motion would have to include the standard conditions which is normally put out for projects like this, plus the condition that all the representations made in the application about litigation and controls be conditions that they have to comply with.

ACTION Unanimously approved (Yuen/Kennison) subject to the following:

1. Standard conditions per Administrative Rules, Title 13, Chapter 2.
2. Written approval of the Nihi Gardens Association of Apartment Cottage Owners prior to approval of the construction plans.
3. Other terms and conditions prescribed by the Chairman.

**AMENDMENT OF PRIOR BOARD ACTION OF SEPTEMBER 9, 1988
(AGENDA ITEM F-14) CASTLE & COOKE, INC. REQUEST FOR
AMENDMENT FOR RESTRICTIVE CONDITION CONTAINED IN LAND
PATENT GRANT NO. 11,044 AND LAND OFFICE DEED 7141,
KAPALAMA, HONOLULU, OAHU, TMK 1-5-15:POR. 9.**

ITEM F-6

ACTION Unanimously approved as submitted. (Kennison/Apaka)

**CONTESTED CASE DECISION AND ORDER REGARDING REQUEST
FOR ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO
MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST
STATE PARK AND/OR HAENA POINT, KAUAI.**

ITEM E-2

Mr. Ahue stated that, as a part of this contested case hearing, the Board will follow the following procedure:

1. Staff will present the Board submittal and recommendation.
2. Board members will ask any questions they may have on the staff submittal and recommendation.
3. Pursuant to Chapter 91, the parties will have an opportunity to present oral argument limited to one-half hour each, and will enforce that time limit strictly and, therefore, asks for the parties cooperation. The order of presentation will be:
 1. Waiola represented by Harold Bronstein.
 2. Clancy Greff representing himself.
 3. DLNR represented by Dawn Chang, Deputy Attorney General.

Mr. Ahue stated that the board was in receipt of a written statement from Ms. Chang on behalf of the Department of Land and Natural Resources in lieu of oral argument as provided by DLNR's letter to the parties.

As this is still part of a contested case hearing proceeding, we will not entertain any testimony statements or evidence from any person who is not a party to the proceeding, said Mr. Ahue.

Mr. Dan Quinn presented staff's recommendation.

Mr. Yuen said that the board is here in June, 1994 to review a special permit extension for one year which was to begin in June 1992 and ending in June 1993 and is now over. This is moot. He asked, "what if we decided, gee, we made a big mistake in June 1992 and should never have given Zodiac this permit."

Mr. Bronstein did not agree that this issue was moot. He said it was a continuing violation. Only in this case there was a stipulation when they appeared before the board and got the board's decision in June of 1993 and we're here today with the same problem.

Mr. Bronstein asked to go on record to petition Wai'ola to request a contested case hearing. There cannot be a stipulation to some effect that would procedurally affect an orderly decision. Irrespective of staff's recommendations, and why they were making recommendations he was not sure, since it's the board's duty to decide on the contested case. Bronstein said that the hearings officer had concluded that a cdua is required for makua beach. The hearings officer then said that that was covered by the original cdua issued in 1978. He certainly disagreed with that. He said that Makua Beach was never mentioned in the original application and was never mentioned in the board's decision.

Bronstein continued that the original cdua was for two boats and six passengers and this is all that can be allowed. He continued that there is a constant argument about land use and this has nothing to do with why a cdua is required. It's because it's commercial activity, and what is happening on the beach is part of commercial activity.

With respect to the permits being issued and the CDUA requisition, there is language in the CDUA that the applicant must comply with all other federal, state and county local ordinances, said Bronstein.

Mr. Clancy Greff said that they have complied with Section 343-5 and that there was no need for a cdua or land disposition permit at Tunnels.

After much testimony, Mr. Greff concluded that after seventeen years in business they have never ever been found in violation and have not had one lawsuit that involves the state.

With respect to Mr. Greff's operations, Mr. Bronstein said that he would stand on the record of the complaints of the people from the day Greff's permit was issued in 1978, up until last year's testimony, who don't believe that this is in the best interest of the public. As far as grandfathering, he did not believe that this was applicable.

Mr. Ahue announced, "this closes the contested case hearing proceeding. The deputy attorney general has requested that the board go into executive session to discuss decision making."

EXECUTIVE SESSION Motion was made and unanimously approved that the board go into executive session to discuss decision making. (Apaka/Kennison)

(12:15 p.m.-

1:45 p.m.)

Mr. Ahue announced also that the board would be taking an hour break so the audience could take care of other business.

ACTION Item E-2, unanimously approved as submitted. (Apaka/Kennison)

ITEM D-2 **PERMISSION TO ENTER INTO DEMONSTRATION DESALTING PLANT AGREEMENT.**

Ms. Jan Burns of Campbell Estate said that they supported staff's recommendation.

ACTION Unanimously approved as submitted. (Kennison/Apaka)

ITEM D-1 **CONSERVATION DISTRICT USE APPLICATION-CONSTRUCTION OF A COLLECTOR TRENCH, STREAM CROSSING, AND AN 8-INCH PIPE ALONG THE NORTH SIDE OF THE MAKALEHA STREAM IN KAPAA, KAUAI.**

Mr. Tagomori said that this is located at an 800 ft. elevation and the value of this spring source at this high level provides a natural gravity source as compared to a well source where you have to pump for water. So there is a savings of pumping cost. He therefore recommended that the board approve this cdua, subject to the conditions listed in the submittal.

Mr. Apaka said that Mike Kido, Chairman of the Kauai County Board of Water Supply, seemed to have concerns about this project.

Mr. Tagomori said that he just saw the letter this morning. Mr. Kido's concern was about the contamination of the source and whether it should be developed in lieu of EPA's stringent surface waters. Mr. Tagomori said that they are familiar with EPA's standards and for that reason are designing a catchment at the groin so that no surface water will come into the catchment.

Mr. Tagomori said that they did request authorization from the Department of Health to bring in potable water supply.

Ms. Patricia Tummons testified in opposition of this project. She wanted to see some advice from the Department of Health as to whether EPA regulations at this point would allow this to be considered as a well source as opposed to surface waters.

Jessie Fukushima, Kauai County Councilmember, supported the project.

The U.S. Fish and Wildlife Service sent written testimony voicing concern that the construction of a water catchment at the springs may damage the feeder stream and springs to a degree that would result in the elimination of Newcomb snails, a species of endemic Hawaiian freshwater snail.

Ms. Ann Leighton, a Waipouli resident, also supported this project.

ACTION Unanimously approved as submitted. (Apaka/Kennison)

ITEM E-3 **REQUEST FOR ONE-YEAR EXTENSION AND THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK, KAUAI.**

Mr. Quinn presented staff's recommendation to extend the three permits with the conditions that are applicable to commercial tour boat landings at the Na Pali Coast State Park..

Tom Hegarty was present to answer any questions posed by the board.

Ann Leighton, as a resident and user of the Na Pali Coast, supported this request. She said that this activity would keep people employed and contribute to the general economy of the island.

Clancy Greff testified on his behalf.

Mr. Harold Bronstein, on behalf of Waiola, and with respect to the permits requested by Mr. Greff, Mr. Hegarty and Land Ann Cruises, Inc., said that he would have to ask for a contested case hearing.

Judy Wigg, a member of Waiola, opposed this request.

Amy Chandler voiced several concerns. She especially was concerned about the environment and historic sites being ruined by people being let off the boats and allowed to wander with no supervision.

Ted Meyer, an employee of Capt. Zodiac, responded to some of Ms. Chandler's concerns.

Diane Faye, beneficiary of land at Makua Beach, said that this operation takes place directly in front of her property. She has testified in the past asking that they not be allowed to operate at Makua and is asking again.

Her reasons: it is a commercial operation in a conservation district with no provision for infrastructure, etc. All this commercial business going on in the area has become a real problem.

Mrs. Chandler said that one of the reasons that they are against issuance of these permits is because there is no policing.

A Ms. Mia Morita also testified against the extension of these permits.

Jeff Chandler, a native hawaiian fisherman, representing Hui Hoomalu O ka Aina, said that he did not see Makua written in the submittal. Mr. Ahue informed Mr. Chandler that this request is only for landing. Mr. Chandler felt that they should not be landing at any of these beaches at any time of the year.

Scott Robison stated that, should this extension be approved, it would be contingent on an approval by the Division of Boating and Recreation.

Clarence Greff, father of Clancy and general manager of Capt. Zodiac had not intended to testify but felt compelled to speak out in support of this request. Mr. Greff said that as far as he was concerned right now, unless there was some kind of court order, they have every right to operate out of Hanalei River.

Bethan Baptista felt that no permits should be issued until the needs of the people have been met.

Deputy Attorney General Nishioka advised that if there is a stipulation to put this under lease. These permits would then be subject to whatever decision the board makes concerning the contested case hearing, in lieu of going through another contested case hearing on the same issue. She said that the board could make a decision but with the understanding that, depending on what the board's decision is on the contested case, a hearing could have an impact on these permits.

Mr. Bronstein said it was fine for the board to make a decision on the current permits; however, he felt that this decision would have to be subject to the contested case hearing.

Mr. Bronstein asked for a decision from the board. Mr. Ahue said that the board would have a decision in 30-45 days.

ACTION Unanimously approved as submitted. (Apaka/Kennison)

ITEM C-1 REQUEST APPROVAL OF LICENSE RENEWAL TO ULUPALAKUA HUNTING CLUB FOR A COMMERCIAL SHOOTING PRESERVE.

ACTION Unanimously approved as submitted. (Apaka/Kennison)

ITEM D-1 CONSERVATION DISTRICT USE APPLICATION-CONSTRUCTION OF A COLLECTOR TRENCH, STREAM CROSSING, AND AN 8-INCH PIPE ALONG THE NORTH SIDE OF THE MAKALEHA STREAM IN KAPAA, KAUAI.

ACTION Unanimously approved. See Pages 14 & 15.

ITEM D-2 PERMISSION TO ENTER INTO DEMONSTRATION DESALTING PLANT AGREEMENT.

ACTION Unanimously approved. See Page 14.

ITEM D-3 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 64-KF-A1 DEPARTMENT OF LAND AND NATURAL RESOURCES, KAUAI BASEYARD IMPROVEMENTS, KAUAI.

ACTION Unanimously approved. (Apaka/Kennison)

ITEM D-4 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 80-HP-L3 JOGGING PATH, OLD KONA AIRPORT STATE RECREATION AREA, HAWAII.

ACTION Unanimously approved. (Yuen/Apaka)

ITEM D-5 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 80-HP-L4 PARK IMPROVEMENTS, KALOPA STATE PARK, HAWAII.

ACTION Unanimously approved. (Yuen/Apaka)

ITEM E-1 APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO CONDUCT HISTORICAL AND CULTURAL RESEARCH FOR MALAE HEIAU, WAILUA RIVER STATE PARK, KAUAI.

ACTION Unanimously approved. (Apaka/Kennison)

ITEM E-2 CONTESTED CASE DECISION AND ORDER REGARDING REQUEST FOR ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI.

ACTION Unanimously approved. See Pages 12-14.

ITEM E-3 REQUEST FOR A ONE-YEAR EXTENSION AND THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK, KAUAI.

ACTION Unanimously approved. See Pages 15-16.

ITEM E-4 APPROVAL TO RESCIND AND AMEND PORTION OF REQUEST TO TERMINATE EXISTING LEASE AND ESTABLISH A LEASE TO A NEW NON-PROFIT ORGANIZATION FOR THE OPERATION OF PUBLIC CAMPING AND CABIN RENTALS AT MALAEKAHANA STATE RECREATION AREA, KAHUKU SECTION, OAHU.

ACTION Unanimously approved as amended. See Pages 2-3.

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1-a ASSIGNMENT OF GENERAL LEASE NO. S-3729, LOT 10, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SO. HILO, HAWAII, TMK 2-2-50:78.

Item F-1-b ISSUANCE OF REVOCABLE PERMIT TO EAST MAUI IRRIGATION CO., LTD., PORTION OF THE KOOLAU FOREST RESERVE IDENTIFIED AS THE "NAHIKU LICENSE" AREA AT NAHIKU, HANA, MAUI, TMK 1-2-04:5 & 7.

Item F-1-c ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF THE KOOLAU FOREST RESERVE IDENTIFIED AS THE "HONOMANU LICENSE" AREA AT HONOMANU, HANA, MAUI, TMK 1-1-01:44.

Item F-1-d ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF THE KOOLAU FOREST RESERVE BETWEEN PUOHOKAMOA AND HONOPOU STREAM IDENTIFIED AS THE "HUELO LICENSE" AREA, KEOPUKA-EAST MAKAIWA, HANA, MAUI, TMK 1-1-01:2 & 50 AND TMK 2-9-14:1, 5, 11, 12 & 17.

Item F-1-e ISSUANCE OF REVOCABLE PERMIT TO A&B-HAWAII, INC., PORTION OF KOOLAU FOREST RESERVE IDENTIFIED AS THE "KEANAE LICENSE" AREA, WAILUA-IKI-KEANAE, HANA, MAUI, TMK 1-1-02:POR. 2.

Item F-1-f ASSIGNMENT OF GENERAL LEASE NO. S-4976, LOT 10, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TMK 1-4-03:9.

Item F-1-g ASSIGNMENT OF GRANT OF NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT (LAND OFFICE DEED NO. S-27,920), WAIOLI, HANALEI, KAUAI, TMK 5-5-04:POR. 18.

Item F-1-h AMENDMENT TO SUBLEASE COVERING GENERAL LEASE NO. S-4643 TO GEM OF HAWAII, INC., GOVERNMENT (FORT) LAND OF KUWILI, PARCEL A, KUWILI, HONOLULU, OAHU, TMK 1-5-20:6.

Item F-1-i ASSIGNMENT OF SPECIAL SALE AGREEMENT NO. S-5593 COVERING LOT 42, ANAHOLA LOTS, ANAHOLA, KAWAIHAU (KOOLAU), KAUAI, TMK 4-8-08:22.

Item F-1-j CONSENT TO ISSUANCE OF A LAND LICENSE TO KIEWIT PACIFIC CO. TO REMOVE SOIL FROM LAND USED BY KEKAHA SUGAR CO., LTD., AT KEKAHA, WAIMEA (KONA), KAUAI, TMK 1-2-02:POR. 1.

ACTION Items F-1-b,c,d & e unanimously approved. See Pages 4-6.

MOTION & ACTION Motion was made by Mr. Apaka, second by Kennison and unanimously to carried to approve Items F-1-a,e,f,g,h & i as submitted and Item F-1-j as amended below:

1. Any concession agreement between Kiewit Pacific Co. and Kekaha Sugar Co. concerning the sale and/or removal of soil, material, etc. from land shall be with the prior written approval of DLNR.
2. Condition C.1 under Recommendation: replace Chairperson with Kauai District Land Agent.

REQUEST FOR EXTENSION OF LEASE TERM OF GENERAL LEASE NO. S-4372 TO UNITED STATES DEPT. OF AGRICULTURE, SOIL CONSERVATION SERVICE, PARCEL A-1, MOLOKAI FARM LOTS, PALAAU-APANA 2, MOLOKAI, TMK 5-2-01:7.

ITEM F-2

ACTION Unanimously approved. (Apaka/Kennison)

APPROVAL TO LAND EXCHANGE BETWEEN STATE OF HAWAII AND DAVID H. MILLER AND JILL KATHLEEN MILLER, MAAKUA STREAM, HAUULA, KOOLAULO, OAHU, TMK 5-4-02:02.

ITEM F-3

ACTION Unanimously approved. (Kennison/Apaka)

STAFF REQUEST RESCISSION OF PRIOR BOARD ACTION OF AUGUST 26, 1988, (AGENDA ITEM F-12) RELATING TO THE GRANT OF PERPETUAL, NON-EXCLUSIVE OVERHEAD EASEMENT FOR PEDESTRIAN BRIDGE AT IWILEI, HONOLULU, OAHU.

ITEM F-4

ACTION Unanimously approved. (Kennison/Apaka)

CITY AND COUNTY OF HONOLULU, BOARD OF WATER SUPPLY REQUEST FOR A RIGHT-OF-ENTRY TO CONDUCT AN ENVIRONMENTAL ASSESSMENT STUDY, WAIMANALO, KOOLAUPOKO, OAHU, TMK 4-1-08:PORS OF 5 AND 80.

ITEM F-5

ACTION Unanimously approved. (Kennison/Apaka)

AMENDMENT OF PRIOR BOARD ACTION OF SEPTEMBER 9, 1988 (AGENDA ITEM F-14) CASTLE & COOKE, INC. REQUEST FOR AMENDMENT OF RESTRICTIVE CONDITION CONTAINED IN LAND PATENT GRANT NO. 11,044 AND LAND OFFICE DEED 7141, KAPALAMA, HONOLULU, OAHU, TMK 1-5-15:POR. 9.

ITEM F-6

ACTION Unanimously approved. See Page 12.

REQUEST TO AMEND REVOCABLE PERMIT NO. S-6587, HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA), PARKING PURPOSES, FORMER POHUKAINA SCHOOL SITE, KAKAAKO, HONOLULU, OAHU, TMK 2-1-51:9.

ITEM F-7

ACTION Unanimously approved. (Kennison/Apaka)

ITEM F-8 STAFF RECOMMENDATION FOR ONE-YEAR HOLDOVER OF G.L. NO. S-3827 TO EAST KAUAI WATER COMPANY, LTD., WAILUA, KAPAA ANAHOLA, HANAIEI, KAUAI.

ACTION Unanimously approved. (Apaka/Kennison)

ITEM F-9 O. THRONAS, INC.'S REQUEST FOR EXTENSION OF LAND LICENSE NO. S-320, KAWAIELE, MANA, KAUAI, TMK 1-2-02:POR. 1.

ACTION Unanimously approved. (Apaka/Kennison)

ITEM H-1 APPROVAL TO PROCEED WITH THE SINGLE AUDIT OF THE DEPARTMENT'S FEDERAL AID PROGRAM.

ACTION Unanimously approved. (Kennison/ApakaP)

ITEM H-2 CONSERVATION DISTRICT USE APPLICATION OA-2692 TO RECONSTRUCT AND EXPAND AN APARTMENT-COTTAGE SFR AT KALIHI VALLEY, HONOLULU, OAHU, TMK:1-4-025:19 UNIT P; APPLICANT: MR. JACK E. PARK.

ACTION Unanimously approved. See Pages 10-11.

ITEM H-3 PETITIONS FOR A CONTESTED CASE HEARING, ESTABLISH A DEADLINE DATE TO FILE A WRITTEN APPLICATION TO BE A PARTY, AND REQUEST FOR AN EXTENSION OF TIME ON CDUA OA-2670 TO CONSTRUCT A MARINA ENTRANCE CHANNEL USING STATEOWNED SUBMERGED LANDS AT HONOULIULI, EWA, OAHU, OFFSHORE OF TMK 9-1-12:6; APPLICANT: HASEKO (EWA), INC.; AGENT: MR. EARL MATSUKAWA, WILSON OKAMOTO & ASSOCIATES, INC.

ACTION Unanimously approved. See Pages 6-9.

ITEM K-1 LEASE NO. DOT-A-78-45 (AS AMENDED), ASSIGNMENT OF LEASE TO A REVOCABLE LIVING TRUST, HONOLULU INTERNATIONAL AIRPORT, SO. RAMP, OAHU (GILBERT W. DELA CRUZ & ROBERT Y. OTA)

ACTION Unanimously approved. (Yuen/Apaka)

**SHORT FORM LEASE, LEASE NO. DOT-A-81-37, HONOLULU
INTERNATIONAL AIRPORT, SO. RAMP (AIRCRAFT SHEET METAL
SPECIALIST, INC.)**
ITEM K-2

ACTION Unanimously approved. (Yuen/Apaka)


ADJOURNMENT: The meeting was adjourned at 3:10 p.m.

Respectfully submitted,



LaVerne Tirrell, Secretary

APPROVED:



Keith W. Anue, Chairperson
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