

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

DATE: July 22, 1994
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
1151 Punchbowl Street, Room 132
Honolulu, HI

**ROLL
CALL**

Chairperson Keith W. Ahue called the meeting of the Board of Land and Natural Resources to order at 9:13 a.m. The following were in attendance:

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

STAFF: Ms. Dona Hanaïke
Mr. Ronald Walker
Mr. Daniel Quinn
Mr. Mason Young
Mr. Clyde Hosokawa
Mr. Roger Evans
Mr. David Parsons
Ms. Geraldine M. Besse

OTHERS: Ms. Linnel Nishioka, Dept. of the Attorney General
Mr. Peter Garcia, Dept. of Transportation
Ms. Tamar Chotzen (Item No. E-1)
Ms. Pearl Pahukoa (Item No. F-4)
Mr. Bumpy Kanahela, Mr. Kevin St. John and Mr. Mike Hikelea (Item No. F-6)
Ms. Doris H. Nye (Item No. F-7)
Ms. Donna Leong and Mr. James C. Gage (Item No. H-2)
Ms. Nani Lee (Item No. H-3)
Mr. Edmund Amaral (Item No. H-5)
Ms. Carol Wilcox (Item No. H-6)
Mr. Richard Kiefer, Mr. Carl Christiansen and Mr. Keith Chun (Item No. H-8)

MINUTES Unanimously approved the minutes of June 24, 1994, as submitted (Kennison/Apaka).

All written testimony submitted at the meeting are filed in the Chairperson's office and are available for review. Some items were taken out of sequence to accommodate applicants or interested parties present.

**ITEM H-6 CONSERVATION DISTRICT REVIEW PROJECT - PHASE II:
AMENDMENT TITLE 13, CHAPTER 2, HAWAII ADMINISTRATIVE
RULES**

Ms. Hanaike reported that approval is requested to authorize public hearings for amendments to the conservation district rules. She also asked that the Board delegate authorization to the Chairperson to appoint hearings officers for the public hearings. A preliminary draft had been given to the Board, the advisory committee and the departmental divisions. She said they expect to hold public hearings in October and to submit the rules for final approval at the November or December meeting.

Mr. Ahue noted that the Board was briefed earlier in the morning. Mr. Apaka asked for a comparison between the old and proposed rules. Ms. Hanaike stated that a chart would be prepared highlighting the differences, followed by a briefing at the Kauai board meeting.

Mr. Yuen clarified that the Board was not actually approving the draft at today's meeting and the final will be presented to the Board before being forwarded to the Governor's office.

Ms. Carol Wilcox presented oral testimony as well as written testimony regarding the proposed rules. Ms. Hanaike assured Ms. Wilcox and the Board that public input has been incorporated into the proposed rules. Mr. Nekoba stated the public will be able to provide further input at the public hearings. Mr. Yuen suggested that the board attend one of the public hearings.

ACTION Unanimously approved as submitted (Kennison/Yuen).

**ITEM H-7 APPROVAL TO IMPLEMENT PILOT PROJECT: HEARING
OFFICER/ADMINISTRATIVE PENALTY SYSTEM**

Ms. Hanaike informed the Board that the pilot project (HOAPS) was undertaken in response to the need to improve the permit compliance process within the department.

The Chairperson noted that the Board had been briefed on the project prior to the Board meeting.

ACTION Unanimously approved as submitted (Kennison/Landgraf).

ITEM F-6 AMENDMENT TO PRIOR BOARD ACTION DATED SEPTEMBER 24, 1993 (AGENDA ITEM F-8), DIRECT LEASE TO SAVE A NATION, INC., LOTS 3,4 AND 5, WAIMANALO AGRICULTURAL PARK, PHASE II, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:POR 79

Mr. Young noted that staff was asking for a name change from Save a Nation to Eco-Art, Inc. The Ohana Council was experiencing some problems obtaining the 501-C3 status and, therefore, Eco-Art would be used instead.

Mr. Young indicated he obtained a copy of the incorporation papers of Eco-Art and its purposes are basically the same as Save a Nation's.

Mr. Kanahale introduced Mr. Kevin "Kedar" St. John, the primary founder of Eco-Art, and Mike Hikelea, the president, who indicated that there is now a new slate of officers and Board of Directors. Mr. Kanahale explained that Mr. St. John donated Eco-Art to the Ohana Council and has named Mr. Kanahale as president. Mr. Kanahale informed the Board that a corporate name change would be made from Eco-Art to Ohana Council.

Mr. Landgraf asked for a list of the officers and directors.

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM E-2 REQUEST TO EXTEND RIGHT-OF-ENTRY PERMIT TO CONTINUE DEVELOPMENT OF A CONCEPT OF A CULTURAL HEALING CENTER AT MAKAPUU POINT, OAHU

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-2 REQUEST FOR A TIME EXTENSION ON CDUP OA-2304 FOR THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE ON ROUND TOP DRIVE, HONOLULU, OAHU, TMK:2-5-16:1 APPLICANT: MR. JAMES C. GAGE

Mr. Evans stated that the staff recommendation is predicated on Exhibit 14, which was a letter received from Sherry P. Broder requesting a contested case on any request to renew the permit. Discussions have been held with Ms. Broder and the landowner, and Ms. Broder was now withdrawing her request. Her oral request would also be submitted in writing.

Mr. Evans, therefore, informed the Board that Recommendation No. 4 was amended by Option B, which he distributed to the Board members.

Mr. Landgraf questioned whether the April 27 letter requesting the contested case was timely and requested in the proper format and whether there was a contested case to withdraw. Mr. Evans indicated that the request for contested case had not been acted upon, and Ms. Broder was withdrawing her April 27 letter. Mr. Ahue stated his understanding was that a request in writing constitutes proper format.

Mr. Nekoba noted that Option B contained a one-year extension. Ms. Donna Leong, applicant's attorney, and the applicant asked for three years because of changes to the construction plans and the requirement that certain portions of the plans be approved by the neighbors.

ACTION Unanimously approved Option B with a change to a three-year extension. Seconded by Mr. Kennison and unanimously approved as amended. (Option B is attached hereto).

ITEM F-7 DIRECT AWARD OF NON-EXCLUSIVE TERM EASEMENT FOR RECREATIONAL PIER COVERING GOVERNMENT TIDAL AND SUBMERGED LAND AT KANEOHE BAY, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-4-14:SEAWARD OF 04

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-3 EXTENSION OF TIME REQUEST FOR A STAY OF ENFORCEMENT ON DENIAL OF CDUA HA-2475, KEEKEE, SOUTH KONA, HAWAII; TMK: 8-1-4:13; APPLICANT: WILLIAM AND RITA COWELL; AGENT: CADES SCHUTTE FLEMING & WRIGHT

Mr. Evans indicated that prior to the expiration, the applicant asked for an extension of time but staff was unable to bring it to the Board until this meeting.

Ms. Nani Lee, representing applicants, stated that regarding the June 30, 1994, letter from Historic Preservation, as a condition of the time request previously granted, she, on behalf of the Cowell's, and the Historic Preservation archaeologist have continued to work out the issues. The letter was a result of their last meeting and the Cowell's desire to show that they were trying to resolve the issues in good faith. Ms. Lee indicated that the SMA approval applicants received is contingent upon the granting of a CDUP, conformance, as well as the addressing of archaeological concerns by applicants.

Mr. Yuen reiterated that the applicants built the home without any permits, and that there are a number of historic sites on the property. He asked for verification of whether the sites had been damaged in the original construction. Ms. Lee said that there was no damage to the large terrace and her understanding was that there was no damage to the sites in 1991. She said she would request that determination from the Division of Historic Preservation.

Ms. Lee indicated that a new CDUA has been submitted and requests the same location. The original structure does not conform to the County Building Department's designation of a single-family dwelling and will require a tear-down and construction of a new dwelling. She said applicants are asking for the stay until such time as a determination is made on the CDUA. Mr. Yuen indicated that he was, "Disgruntled because the net effect of this is that they're getting to keep their beach house they built without a permit while they're waiting to build a new house. . . . They're going to tear down the beach house anyway."

Mr. Yuen stated that another concern was that it was a whole village site. Ms. Lee stated that the applicants were willing to redesign the house to fit into the village concept; the rock walls would be rebuilt; native plants would be planted. She said that all the requests made by the Division of Historic Preservation have been met.

Ms. Nishioka advised that the practice of the department has been that if a request is received prior to the expiration of the time period, it could be brought to the Board; there was no legal opinion to the contrary. Ms. Nishioka further explained that the extension would be for a stay of the original stay.

Mr. Landgraf commented that should the extension of stay be approved he did not want applicants to assume that the Board would approve the CDUA.

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM H-8 ADOPTION OF EMERGENCY RULES, REGARDING ADMINISTRATIVE RULES OF THE DLNR, STATE OF HAWAII, PROVIDING FOR LAND USE WITHIN THE CONSERVATION DISTRICT, PROVIDING FOR SUBZONES, USES, APPEALS, ENFORCEMENT AND PENALTIES

Mr. Evans informed the Board that this item was basically a housekeeping measure; the last Legislature passed Act 270, which gave the conservation district chapter, Chapter 183, a new section. The Department's position, he said, was that applications, which were in receipt or process prior to the new law, would be processed under the old law. The next step, he said, would be the administrative rules. He pointed out that not only is the department required to do this, but it was a necessity to ensure that a pending contested case is compatible with the existing processes (the Ewa Marina case).

He said that Ms. Yvonne Izu of Oshima Chun Fong & Chung, a party in the Ewa Marina contested case, submitted written testimony in support of the emergency rules.

Mr. Yuen asked whether the legislation has the effect of abrogating the present rules as the legislation changed 183-41 into Act 270. He noted a couple of substantive changes: the definition of "land use" and some reference to permitting; however, 99% remained unchanged. "The upshot of, the implication of this is that we haven't had any rules for the last three weeks. . . . We don't have any rules as we sit here right now." Mr. Evans commented that the staff was not prepared to say that the Act abrogated the rules and were acting in a very conservative nature. Ms. Nishioka advised that the subject was raised in the Ewa Marina case and while it has not been fully reviewed by the Attorney General's Office the Board had the option of doing nothing or implementing intermediate action with a notice of change; however, the Attorney General's Office believed the present course of action was the most conservative route to "definitely cover the Board procedurally." She said the court may decide that Act 270 did not affect the rules at all and did not result in a legal problem to the rules. The emergency rules were suggested in order that the permits would not be called into question over the next six months. This was procedural backup to any challenges.

Ms. Nishioka stated that if the position is that the department does not have any rules is correct, the Board could find that it does create an emergency to regulate half of the lands in the State; however, there is no legal opinion whether the rules are in effect. Regarding Ewa Marina, Ms. Nishioka advised the issue was a procedural one--what rules are the contested case governed under--whether it's 183-41 or Act 270.

Mr. Richard Kiefer from the law firm of Paul Johnson Park & Niles, attorneys for OHA, stated they were a party in the Ewa Marina case. Written testimony was also presented. He stated that the issue was not only a procedural issue but a substantive question of the Board's jurisdiction to act on both the contested case hearing as well as other matters pending before the Board. He stated that Act 270 expressly repeals section 183-41; Act 270 does not contain a saving provision and explicitly abrogates the rules under 183-41. He commented that one of the primary reasons for the enactment of Act 270 was to allow the creation of a new regulatory scheme for conservation district use lands. It appears that because of Act 270 there are no rules and the Board does not have jurisdiction to deal with pending applications, he said.

Mr. Kiefer stated that emergency rules fall under the Hawaii Administrative Procedures Act, which normally requires a process of public notice and comment. The Act does recognize that emergencies may arise which justify the issuance of rules without opportunity for notice and comment and are allowed only under very limited circumstances, "If an agency finds that imminent peril to the public health, safety or morals or to livestock and poultry health requires adoption, amendment or repeal of a rule upon less than 30 days notice of hearing and states in writing its reasons for such finding, it may proceed without prior notice or hearing." He noted that the staff expressed concern in its submittal but the concern did not fall under the definition of "emergency." Mr. Kiefer stated that administrative need does not constitute an urgency for rulemaking purposes and that anything done under those administrative rules will be invalid, which includes the contested case hearing, as well as any other proceedings before the Board. Mr. Kiefer explained that in the event they prevail in the case and an appeal is taken there would be clear grounds for reversal of the entire process. Mr. Yuen noted that Haseko's position, in writing, is that the statute has not been repealed.

Mr. Kiefer stated that Haseko's 180-day period was running under the old statute; but that particular provision has now been repealed. Mr. Yuen advised that 183-41 and Act 270 contain the same 180-day provisions. Mr. Kiefer stated that the Board could make a blanket rule that pending applications or the period for action on pending applications is delayed pending the issuance of new rules; however, he stated that was not the case at present. Mr. Yuen stated the emergency is that an applicant could rely on the 180 days. Mr. Kiefer stated that there was no emergency to justify rules to process applications. He said OHA is concerned with the Ewa Marina CDUA process and the larger context.

Mr. Kiefer conceded there might be situations that justify emergency action by the Board. Mr. Evans stated that applications have to be processed for sewerline, etc.; it could be endangering public health, welfare and safety issues. Mr. Nekoba noted that the State regulates 2 million acres and to have no rules would be an emergency.

Mr. Carl Christiansen of the Native Hawaiian Legal Corporation, a party in the Ewa Marina case, suggested that if the Board wanted to adopt emergency rules one of those rules should be a provision limiting the applicability of those rules to actions which involve or peril public health, safety and morals. He stated that clearly there is no emergency within the meaning of the statute that would apply, for example, to a private marina development and to the extent that the rulemaking is so broad under emergency procedure they would argue it was not an appropriate emergency rule.

He stated there was a major problem with Act 270. Several sections of H.R.S. refer to 183-41; Act 270 updated one of those sections but not the others and because of the disagreement of what procedures apply a real problem exists--does 190D apply? It makes specific reference he said to 183-41, which he contends no longer exists. Act 270 did not update 190D.

Mr. Christiansen asked whether the Attorney General's Office would now reconsider it's advice to the Board to adopt the emergency rules.

Mr. Ahue commented that one of the criteria in the statutes for declaring an emergency was an imminent peril to the public health, safety or morals, but the recommendation in the submittal only cited "public health and safety." The question was whether "morals" should be included. Ms. Nishioka stated that it was an oversight and should be included.

Mr. Yuen advised Mr. Kiefer that his strategy was questionable whether it was in the public interest to put forth his position (to delay the process). He answered that to delay the Ewa Marina process was not the case; that they had serious questions about the effect about proceeding at this point without the resolution of basic jurisdictional issues. He said that to the extent that there was an emergency in the administration of the conservation district the Board can adopt rules to deal with emergency situations.

Mr. Christiansen suggested that the Board should immediately institute regular rulemaking procedures. Mr. Ahue stated that the emergency rules will expire and permanent rules enacted. Mr. Kiefer suggested that the Board may want to consider enacting rules with the proviso that they only apply in emergency situations. Mr. Ahue stated that the intent was to do both.

Mr. Evans stated that in the Ewa Marina case the Board is proceeding under 183-41. Should the Board adopt the emergency rules, they will be proceeding under the emergency rules.

Mr. Keith Chun, on behalf of Haseko, asked for clarification on what rules they need to abide by. Ms. Nishioka stated that the issue will be covered by a motion and was still an open issue only as it applied to Ewa Marina and had not been determined--what rules would the Board be operating under; and in applying these emergency rules only to emergency situations, what constitutes an emergency. She recalled that emergency rules were promulgated for the Keehi Lagoon clean-up, were challenged and successfully defended.

ACTION Mr. Nekoba moved to adopt Item No. H-8 with an amendment to item no. 1, that the Board finds that there is "imminent peril to public health, morals, or safety." Motion was seconded by Mr. Landgraf.

Mr. Yuen noted that the Board is not taking the position that the existing rules are no longer valid; that the action is to ensure that there are rules under which to operate.

Mr. Chun asked for clarification. Mr. Yuen stated that if it is found that the statute did not have the effect of abrogating the rules, then the Board was not really doing anything today. All he said the Board was doing today was adopting emergency rules to cover the possibility that the old rules have been repealed by another statute. "If that's what happened, then we're adopting emergency rules; if that's not what happened, then it's a non-action."

Unanimously approved as amended.

ITEM F-4 SALE OF LEASE AT PUBLIC AUCTION, GOVERNMENT LAND SITUATE AT WAILUA, HANA (KOOLAU), MAUI, TAX MAP KEY 1-1-04:6 & 18

Mr. Young stated that the lease was pulled from auction in order to give the people of Kanae and Wailua an opportunity to have a fair chance to bid. He said that the use was specific for the cultivation of taro and ti leaf to continue the lifestyle in the area. Mr. Kennison expressed his concern that it was important to continue the lifestyle in Kanae and noted that the Pahukoa's have put in a lot of work on the property. Mr. Yuen agreed it was important to maintain that lifestyle in Kanae and suggested that maybe the statute needed to be changed for traditional use areas like Kanae.

Mr. Landgraf asked whether the Pahukoa's entertained the formation of a non-profit group. Mr. Kennison mentioned that Mr. Solomon and Mr. Willie Kemoku formed a non-profit corporation. Mr. Young suggested that the item be withdrawn to allow the Pahukoa's to explore the possibility of using the 501-C status of the nonprofit group.

Mrs. Pahukoa informed the Board that she would like to retain the property, which has been in the family for five generations and contains family burial plots.

ACTION Mr. Kennison moved to withdraw the item; seconded by Mr. Nekoba and motion unanimously approved.

RECESS The Chairperson called a recess from 12:05 to 12:29 p.m.

ITEM H-5 CDUA, AFTER-THE-FACT, FOR A SINGLE FAMILY RESIDENCE, POULTRY FARM, AND MERCHANDISE SALES AT HONOLUA BAY, MAUI; TMK:4-1-1:8; APPLICANTS: JOSEPH AND SARA AMARAL

Mr. Evans stated that a public hearing was held several weeks ago, and a number of questions were raised by members of the Board and addressed in the submittal.

Mr. Edmund Amaral and his sister appeared before the Board, representing their grandmother, Sara Amaral. Mr. Yuen stated that one of the concerns was the legal ownership of the property, whether there had been judicial determination identifying the heirs. Mr. Amaral presented a deed. He stated that eight Kaaikamanu's were the owners of one-fifth interest, his grandmother having a 1/40th interest in the property.

Mr. Nekoba stated that part of the problem was that there was one parcel and only one house allowed on the property. If all eight owners agree that Sara Amaral would be the only one allowed to build on the property and they understand and consent to it, Sara Amaral could then submit an application.

Regarding the present structure, Mr. Ahue noted there was question of occupancy as well as exposure.

ACTION Mr. Kennison moved to approve staff recommendation with a reduction of the fine to \$10 for each violation; seconded by Mr. Yuen and unanimously approved as amended.

ITEM F-13 WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER NO. 1997, DEPARTMENT OF DEFENSE, DIAMOND HEAD RESERVATION AND RESET ASIDE AS ADDITION TO GOVERNOR'S EXECUTIVE ORDER NO. 2000, DIAMOND HEAD STATE MONUMENT, FORT RUGER, OAHU, TAX MAP KEY 3-1-42:06 (POR. OF) AND TAX MAP KEY 3-1-42:20 (POR. OF)

Mr. Young asked to amend the submittal to include the provision that today's action is subject to determination by the Office of Conservation and Environmental Affairs of whether a CDUA is applicable.

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM E-1 APPROVAL OF TWO GRANT-IN-AID CONTRACTS FOR THE HAWAII NATURE CENTER

ACTION Unanimously approved as submitted (Nekoba/Yuen).

ITEM C-1 PERMISSION TO CONDUCT PUBLIC HEARINGS TO ADOPT HAWAII ADMINISTRATIVE RULES FOR THREATENED AND ENDANGERED PLANTS

ACTION Unanimously approved as submitted (Yuen/Landgraf).

ITEM E-1 See page 9.

ITEM E-2 See page 3.

ITEM F DOCUMENTS FOR BOARD CONSIDERATION:

Item F-1a ASSIGNMENT OF GENERAL LEASE NO. S-5015, PARCEL A-1, GOVERNMENT (CROWN) LAND OF OLAA, PUNA, HAWAII, TAX MAP KEY 1-7-01:63

Item F-1b CANCELLATION OF REVOCABLE PERMIT NO. S-6046 AND REISSUANCE OF A REVOCABLE PERMIT, GOVERNMENT LAND AT HONOPOU, HAMAKUALOA, MAKAWAO, MAUI, TAX MAP KEY 2-9-01:18

Item F-1c ASSIGNMENT OF GENERAL LEASE NO. S-5199, HEEIA, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-6-03:SEAWARD OF 8

ITEM F-1d SUBLEASE BETWEEN THE LIHUE PLANTATION COMPANY, LIMITED, SUBLESSOR, AND UNITED STATES OF AMERICA, U.S. DEPARTMENT OF COMMERCE, NATIONAL WEATHER SERVICE, SUBLESSEE, WAILUA, LIHUE, KAUAI, TAX MAP KEY 3-9-02:POR 20

ACTION Unanimously approved as submitted (Kennison/Nekoba).

ITEM F-2 GRANT OF PERPETUAL, NON-EXCLUSIVE WATERLINE EASEMENT TO WATER COMMISSION OF HAWAII TO SERVE MOUNTAIN VIEW ELEMENTARY SCHOOL AT OLAA, PUNA, HAWAII, TAX MAP KEY 1-8-01:POR. 7

ACTION Unanimously approved as submitted (Yuen/Kennison).

ITEM F-3 DIRECT SALE TO BEATRICE NEILSON OF THREE (3) PERPETUAL, NON-EXCLUSIVE WATERLINE EASEMENTS AT MAKAWAO, MAUI, TAX MAP KEY 2-4-13:POR. 78

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM F-4 See page 8.

ITEM F-5 DIRECT AWARD OF NON-EXCLUSIVE TERM EASEMENT FOR WATERLINE PURPOSES ON, UNDER, OVER AND ACROSS LOT 2, WAIMANALO AGRICULTURAL PARK, PHASE II, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:POR 79

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-6 See page 3.

ITEM F-7 See page 4.

ITEM F-8 HAWAIIAN ELECTRIC CO., INC. REQUESTS CONSTRUCTION RIGHT-OF-ENTRY TO KANEOHE REGIONAL PARK FOR KEAAHALA ROAD WIDENING, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-5-23:9

ACTION Unanimously approved as submitted (Nekoba/Apaka).

ITEM F-9 CHEVRON U.S.A., INC. REQUESTS NON-EXCLUSIVE EASEMENT FOR FUEL LINE AND MAINTENANCE PURPOSES, HONOLULU, OAHU, TAX MAP KEYS 1-1-03, 1-5-32, 1-5-34, 1-5-42, AND 9-7-20

ACTION Mr. Young asked to amend the submittal because it involves executive order property and would be subject to the consent of the Governor and the EO agency. Unanimously approved as amended (Nekoba/Kennison).

ITEM F-10 AMENDMENT TO PRIOR BOARD ACTION OF DECEMBER 17, 1993 (AGENDA ITEM F-16), SET ASIDE TO DEPARTMENT OF AGRICULTURE FOR AGRICULTURAL PARK PURPOSES, KEKAHA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-02:POR 1

ACTION Unanimously approved as submitted (Apaka/Kennison).

ITEM F-11 HAWAII HOUSING AUTHORITY REQUESTS PERPETUAL, NON-EXCLUSIVE EASEMENT FOR SEWER LINE PURPOSES, KAPAA, KAWAIHAU, KAUAI, TAX MAP KEY 4-5-15:POR 28, 32 AND 35

ACTION Unanimously approved as submitted (Apaka/Kennison).

ITEM F-12 SCHULER HOMES, INC. REQUESTS WAIVER OF LAND PATENT GRANT NO. 9853, DIAMOND HEAD, WAIKIKI, OAHU, TAX MAP KEY 3-1-37:09

Mr. Young amended his submittal that the Board:

"A. Find that the public's interest will be served by the waiver of the above-described waterline reservation from Land Patent Grant No. 9853.

"B. Approve the waiver/deletion of the above-described waterline reservation from Land Patent Grant 9853 subject to the Schuler Homes, Inc. paying to the Land Board the difference, if any, between the fair market value of land based upon its restricted use and the fair market value with the restrictive condition waived. The determination of the difference shall be by an independent appraiser whose services shall be contracted by the Department and such cost to be borne by the applicant.

"1. Review and approval of the Department of the Attorney General.

"2. Other terms and conditions that may be prescribed by the Chairperson."

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM F-13 See page 9.

ITEM H-1 **CDUA FOR THE SUBDIVISION OF SUBMERGED LANDS FOR MAALAEA SMALL BOAT HARBOR, MAALAEA, MAUI; TAX MAP KEY:3-6-01 (SEAWARD) APPLICANT: DIVISION OF BOATING AND OCEAN RECREATION, DEPARTMENT OF LAND AND NATURAL RESOURCES**

Mr. Evans stated that additional work had to be done on the final supplemental EIS and, therefore, the Division of Boating and Ocean Recreation asked for a 90-day extension to complete the document, making the new CDUA date November 3, 1994.

ACTION Unanimously approved as amended (Kennison/Apaka).

ITEM H-2 See page 4.

ITEM H-3 See page 5.

ITEM H-4 **CDUA FOR THE OLA'A FLUME TUNNEL IMPROVEMENT PROJECT AT KAUMANA, SOUTH HILO; TMK: 2-5-01:POR 13 (LOT 5-A) APPLICANT: DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII**

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM H-5 See page 9.

ITEM H-6 See page 2.

ITEM H-7 See page 2.

ITEM H-8 See page 8.

ITEM J-1 **ISSUANCE OF REVOCABLE PERMIT, ALA WAI BOAT HARBOR, ISLAND OF OAHU (HERBERT M. SUZUKI)**

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM J-2 ISSUANCE OF REVOCABLE PERMIT, ALA WAI BOAT HARBOR, ISLAND OF OAHU (JOWA HAWAII CO., LTD.)

ACTION Unanimously approved as submitted (Nekoba/Kennison).

ITEM J-3 CONTINUANCE OF REVOCABLE PERMITS:

Item J-3a PARDNER, INC., LAHAINA BOAT HARBOR, ISLAND OF MAUI

Item J-3b NA ALII WATER SKI CLUB, KEEHI LAGOON, ISLAND OF OAHU

Item J-3c KOLEA CHARTERS OF LAHAINA, INC., LAHAINA BOAT HARBOR, ISLAND OF MAUI

Item J-3d KAWAIIHAE TERMINALS, INC., KAWAIIHAE BOAT HARBOR, ISLAND OF HAWAII

Item J-3e ALA WAI FUEL SERVICES, INC., ALA WAI BOAT HARBOR, ISLAND OF OAHU

Item J-3f ROSE MARINE, INC., LAHAINA BOAT HARBOR, ISLAND OF MAUI

ACTION Unanimously approved Item No. J-3 (Kennison/Nekoba).

ITEM K-1 RESTAURANT AND LOUNGE CONCESSION LEASE, KEAHOLE-KONA INTERNATIONAL AIRPORT, HAWAII

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM K-2 LEASE - VENDING MACHINE AGREEMENT, MAIN TERMINAL LOBBY, HONOLULU INTERNATIONAL AIRPORT AND MAIN TERMINAL, KAHULUI AIRPORT, OAHU AND MAUI (BEN SMITH, DBA PEOPLE POSTCARDS)

ACTION Unanimously approved as submitted (Yuen/Kennison).

ITEM K-3 CONSENT TO SUBLEASE - LEASE NO. DOT-A-72-29, OAHU (UNITED AIRLINES, INC.)

ACTION Unanimously approved as submitted (Kennison/Nekoba).

Mr. Ahue announced that Mr. Rex Johnson, the Director of Transportation, would make a presentation on the tri-party agreement at the next meeting.

DATE: 7/6/94

OPTION B: BOARD APPROVES TIME EXTENSION

RECOMMENDATION

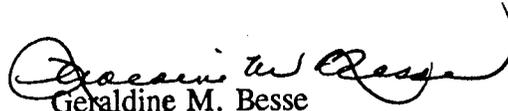
That the Board approve an extension of time for Conservation District Use Permit OA-2304 subject to the following:

1. That the applicant has ³one ⁵year to complete work or construction from the date of this approval;
2. Landscaping: before proceeding with any work authorized by the Board, the applicant shall submit two copies of final landscaping plans to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. One copy will be returned to the applicant.
3. Driveway Improvements: the applicant shall submit four sets of construction plans before proceeding with any work conducted on the common use driveway to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. The plans shall be accompanied by a letter signed by the common users of the driveway authorizing the improvements to occur on the driveway.
4. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
5. That applicable conditions imposed by the Board on January 12, 1990, and June 10, 1993, remain in effect.

[END]

ADJOURN- There being no further business, the Chairperson adjourned the meeting at 2:00
MENT p.m.

Respectfully submitted,


Geraldine M. Besse
Secretary

APPROVED:



KEITH W. AHUE, Chairperson