

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

DATE: AUGUST 26, 1994
TIME: 9:00 A.M.
PLACE: 1151 PUNCHBOWL STREET
BOARD ROOM
HONOLULU, HI 96813

**ROLL
CALL**

Chairperson Keith W. Ahue called the meeting of the Board of Land and Natural Resources to order at 9:06 a.m. The following were in attendance:

MEMBERS: Herbert K. Apaka
Christopher Yuen (excused at 1:30 p.m.)
Michael Nekoba
William Kennison
Libert K. Landgraf
Keith W. Ahue (excused from 9:10 a.m. to 10:50
a.m.)

STAFF: Mr. Henry Sakuda
Mr. Ralston Nagata
Mr. Mason Young
Mr. Dean Uchida
Mr. Roger Evans
Mr. David Parsons
Mr. John Corbin
Mr. Ed Lau
Ms. Geraldine M. Besse

OTHERS: Mr. Johnson H. Wong, Dept. of the Atty. General
Mr. Peter Garcia, Dept. of Transportation
Ms. Momi Lum (Item No. E-1)
Mr. Jim McDonough (Item No. E-3)
Ms. Ululani Beirne and Mr. Ben Schaefer (Item No.
E-4)
Mr. Ted Halley and Mr. Bill Halms (Item No. F-1-c)
Mr. Craig Nakano (Item Nos. F-3 & F-4)
Mr. Eric Maehara, Mr. Steve Kubota, Mr. Gary
Anderson, Mr. Charles Reppun, and Mr. George
Huddes (Item No. H-1)
Mr. Keith Chun (Item No. H-5)
Mr. Everett Kaneshige (Item No. H-6)
Mr. Brian Taketa (Item No. H-8)
Dr. Don Hall (Item No. H-9)

Rear Admiral William P. Kozlovsky, Mr. John Farias, Mr. Bob Hampton, Mr. George Okamura and Mr. Jack Laura (Item No. K-3)

The Chairperson presented the department's Employee of the Year award to Ms. Jeannette S. Tamayori, who has 35 years of State service and serves as the Parks Project Technician. She is responsible for working with programming consultants and conceived the statewide computerized parks permit system. This system has detailed menus on park amenities, openings/reservations, fee structures and other pertinent user information and allows the State to process 20,000 reservations a year.

The Chairperson announced that Linford Chang was selected the department's Manager of the Year. Mr. Chang has 32 years of State service and serves as the Engineering Branch Program Manager with the Division of Water and Land Development. He is responsible for the smooth transition and timely completion of 80 engineering projects resulting from the transfer of the Boating and Ocean Recreation Division to the Department of Land and Natural Resources and the aftermath of Hurricane Iniki.

Mr. Ahue excused at 9:10 a.m. Mr. Apaka presided.

ADDED It was moved and seconded to add the following item to the agenda
ITEM: (Yuen/Nekoba):

Item E-4 Verbal Appeal to Extend Board Imposed Deadline to Secure Permits to Construct New Dwelling Units within Existing Revocable Permit Area for Ululani Beirne and Puanani Martinez at Kahana Valley State Park, Oahu

MINUTES Unanimously approved the minutes of July 22, 1994 (Kennison/Nekoba).

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-9 CONSERVATION DISTRICT USE APPLICATION MA-2705 FOR AN ADVANCED ELECTRO-OPTICAL SYSTEM (AEOS) 8-METER CLASS TELESCOPE AND RELATED IMPROVEMENTS AT HALEAKALA HIGH ALTITUDE OBSERVATORY SITE, MAUI, TMK 2-2-07:08; APPLICANT: UNIVERSITY OF HAWAII INSTITUTE FOR ASTRONOMY

Mr. Evans asked to amend Condition No. 7, page 17, by deleting said condition as the condition is usually placed for single-family dwellings.

He recalled that in 1989 there was a problem with the Air Force, which resulted in a monetary sanction. After consultation with the Attorney General's Office and certain federal agencies, including the Air Force and the U.S. Department of Justice, the Board reached an agreement to waive the fine providing there be no further violations of the land use law, Chapter 183, during the following year. Mr. Evans stated he could report no subsequent violations. As recommendation no. A, the Board would formally ratify the Chairperson's letter of November 21, 1991.

Dr. Hall briefly explained the work done by the University and the Air Force on Haleakala and submitted photos and other information concerning the project.

ACTION Mr. Kennison moved to approve the item as follows: recommendation no. A--that since there have been no violations by the Air Force, pursuant to the Chairperson's letter of November 21, 1991, said letter is ratified; and recommendation no. B--that the AEOS 8-meter class telescope and related improvements at Haleakala be approved with the conditions as recommended; and that condition no. 7 on page 17 is deleted. Seconded by Mr. Nekoba and unanimously approved as amended.

ITEM F-3 UNITED STATES OF AMERICA, DEPARTMENT OF ARMY REQUESTS PERPETUAL, NON-EXCLUSIVE PEDESTRIAN WALKWAY EASEMENT, U.S. ARMY FIELD STATION, KUNIA, UPPER POUHALA, WAIKELE, EWA, OAHU, TAX MAP KEY 9-4-12:POR. 11

Mr. Young asked to amend condition no. A-8, after the word "shall," add ". . . within five (5) years from the date of receipt of the executed easement document . . ."

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM F-4 UNITED STATES OF AMERICA, DEPARTMENT OF ARMY REQUESTS PERPETUAL NON-EXCLUSIVE SECURITY FENCE AND EROSION CONTROL EASEMENT, KAENA POINT TRACKING STATION, KUAOKALA, WAILUA, OAHU, TAX MAP KEY 6-9-03:POR. 2

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM E-1 APPROVAL OF A GRANT-IN-AID FOR MO'OKINI LUAKINI, INC., OAHU

ACTION Unanimously approved as submitted (Yuen/Kennison).

ITEM H-1 APPROVAL ON A LAND EXCHANGE BETWEEN THE STATE OF HAWAII AND THE GEORGE GALBRAITH ESTATE AT KAPOLEI, OAHU; TAX MAP KEY 9-1-16:25 POR. AND 9-1-17:4

Mr. Uchida explained that the submittal was a follow-up to Board action of March 1994 regarding a land exchange between the State and the Galbraith Estate. The State lands involve 500 acres in Kapolei, and the Galbraith lands involve approximately 2,200 acres. He stated that the Legislature enacted Act 177 approving the land exchange subject to certain conditions, which are part of the statute. He said normally the practice is to do a land exchange and then submit it to the Legislature for disapproval. In this case, the Legislature approved the land exchange, subject to the requirements of the statute.

Appraisals have been conducted on both properties, and the Galbraith property was appraised at approximately \$54 million, and the State lands at \$85,000 per acre at urban value, the value of the 500 acres being \$42,438,000. At this point, Mr. Uchida asked to correct a typo on page 4, paragraph 3 to "\$42,438,000."

As part of the transaction, it was requested that a long-term lease be issued to Del Monte, the existing lessee of the Galbraith property, and that the State acquire the Galbraith property, subject to the lease.

In addition, the State is attempting to take care of the existing employee situation-- Poamoho Camp on the Galbraith property. Mr. Uchida stated that an agreement was reached to allow for Galbraith to convey the land directly to a non-profit, being the residents of Poamoho. The residents, in turn, would receive improvements to the property donated or sold to them for \$1 by Del Monte. The cost to the residents would be the setting up of the corporation.

Mr. Kennison noted that Mr. Uchida had done a good job in putting this package together. Mr. Uchida acknowledged that many people were involved in resolving the matter.

In response to a question from Mr. Yuen on affordable housing, Mr. Uchida stated it was his understanding as part of the rezoning through the Land Use Commission, certain requirements, formulas and guidelines adopted by HFDC would be made a part of the rezoning to take the land from urban to ag. That in itself carries weight to require the applicant to do affordable housing. The applicant will also attempt to get expedited permits from the City, and the expedited process is only allowed for affordable development. Mr. Yuen stated his concerns were whether the LUC could remove the conditions, who would enforce the conditions, and what would happen if the LUC were abolished. Mr. Uchida stated that if the applicants take advantage of the expedited permitting the County's DP and DLU would "kick in," and affordable housing would be required to obtain the zoning. He further stated that there were several layers of approvals required. Mr. Yuen asked whether a condition could be added similar to the LUC condition, to be enforced by the Board. Mr. Uchida stated he thought it could be added but not necessarily tying it as part of the deed. The problem with that might be in securing financing.

Mr. Nekoba pointed out it would affect the value of the land which was not taken into account when the appraisal was done; that at this point the condition should not be added because it then may require reformulating the exchange. Mr. Yuen pointed out that in the '70's homes were built and sold that were higher than what the LUC was told with no enforcement or follow-up. Mr. Uchida stated his understanding was that the LUC looks not necessarily at the price per se but the floating market that they're aiming at--60% affordable. Mr. Kennison added that by the time the projects get underway the prices have skyrocketed. Mr. Uchida stated that the State is looking at a 10-year build-up at 50 acres per year. Mr. Uchida stated that the 1,900 acres in Wahiawa would remain in ag for the present.

Mr. Eric Maehara representing Galbraith Estate and Schuyler Homes addressed Mr. Yuen's concerns stating that even if the LUC is abolished the condition would remain and run with the land, and there will be an agreement with HFDC and approved by the City and County, which would be enforcing the condition. Mr. Maehara added that the standard LUC condition is that before zoning is obtained from the City there must be an affordable housing requirement that meets the HFDC guidelines adopted in November 1992. Mr. Maehara stated he believed the guideline was that 20% meets 80% of the median income or lower; 20% of 80-120%; and the balance over 140% median income. Mr. Maehara informed the Board that the condition is part of the petition and recorded in the Bureau of Conveyances. The petition will be submitted upon approval by the Board and includes the condition. Mr. Yuen pointed out that with approval by the Board today the land has not yet been rezoned by LUC and, therefore, there is no condition on affordable housing. Mr. Uchida noted that affordable housing was discussed at the Legislature and the intent was for HFDC to do affordable housing in the area. Mr. Maehara noted that one of the conditions of the exchange had been that it was for public purposes, which was affordable housing.

Mr. Steve Kubota representing The Hawai'i La'ie Kawai Association, Inc., stated that concerns centered on the State's acquisition for landbanking for agricultural purposes. He said that one of the provisions of the exchange was that a long-term lease would be negotiated between the State and Del Monte prior to the swap. He asked whether that committed the State to acquiring the land and becoming the landlord. "Does this commit the State to some kind of agricultural policy? In effect, supporting corporate agriculture?" He stated that the public does not have an adequate understanding of the ADC; it was a major issue and required further public dialogue. Mr. Kubota asked whether the 2,000 acres would be held by one lessee or as an option could the State consider long-term leases by subdividing into ag-residential tracts that small farmers could acquire.

He said the other major concern was the water requirements and that it was not specified what use the ag parcel would be placed in. He said there was not an adequate description of where the water supply is coming from. He said that question has to be reviewed in the context of the larger issue of Waiahole Ditch. He asked whether the State was going to be in effect bailing out some corporate risks that have become financially unsound. Is the public going to pay for the tremendous social cost of transferring water, the risks of the sugar companies in transporting the water and the ultimate business failure of sugar in Hawaii?

Mr. Kubota then requested that the item be deferred until more information on Waiahole Ditch, the State's role in the transfer of the water could be obtained, and a fuller public examination made of the State's agribusiness strategy.

Mr. Apaka advised that the water issue was not on the agenda; today's item was on the land exchange; the water issue would be discussed in the future.

Mr. Uchida stated that on the Waiahole situation the redistribution of the Oahu Sugar lands and promotion of diversified ag on a smaller scale have been discussed. In the Galbraith situation, he said, the idea was to keep the tenant in business, in ag. He said the State already is a major landowner in Central Oahu.

Mr. Uchida clarified that it is contemplated that Galbraith will issue a lease to Del Monte prior to the consummation of the exchange. Mr. Uchida said Lake Wilson is an option in the Galbraith case, rather than using Waiahole water. Mr. Gary Anderson from Del Monte stated that most of the water used for pineapple is rain. Mr. Kubota stated that if Del Monte switched crops the water issue would become pertinent. In response to Mr. Landgraf, Mr. Kubota stated that he was asking for deferral in order to address water, lifestyle and the future of Hawaii. Mr. Uchida stated that the purpose of the ADC is to assist in the transition from plantation agriculture to other forms of diversified ag. He also advised that a meeting was scheduled for Monday with the Water Commission and environmental groups.

Mr. Charles Reppun, representing the Kahaluu Neighborhood Board, Waiahole-Waikane Community Association, and Hui Ohana, asked to address the issue of the Kapolei lands for short-term ag. He said the concern was what water would be used. He asked whether it was Board policy that Waiahole ditch water be used for those lands; Mr. Uchida stated that the issue was before the Commission and reminded him that was not the item on the Board agenda. He wanted to know how the Board applied to the Water Commission without voting on the matter. Mr. Uchida stated that the application was made by the Chairperson for the processing of a permit. He signs the DLU master application which does not require Board action. Mr. Uchida further explained that DLNR is a co-applicant and that the Water Commission had not yet accepted the application. Mr. Reppun stated their concern is that there are alternative sources of water and wanted to discuss the application with the Land Board. Mr. Landgraf stated that the issue on the Land Board agenda is the Galbraith land exchange and not the use of water on Kapolei land, irregardless of who signed the application. Mr. Nekoba advised him of a public meeting before the Water Commission, which was the proper forum.

Mr. George Huddes of the Waiahole Poi Factory stated he felt it was a proper item for discussion. He stated that the State should ascertain whether the same water used now would continue to be made available for irrigating the crops on that land. It's a relationship between the State and Campbell and questioned what would happen to the existing permits to use ground water--that it was a big economic item and for the Board to move ahead without looking into the continuing availability would be irresponsible.

Mr. Huddes stated this land was included in the Water Commission application and the question is up in the air. He asked that the Board defer action until more information is available. Mr. Uchida stated that he believed the wells referred to are located on Campbell Estate or elsewhere, and it's a Commission matter. Mr. Reppun disagreed and stated they are being denied a forum.

Mr. Ahue returned and chaired the meeting. Mr. Maehara stated that as soon as zoning is approved they will start building, and farming would be very short term.

In response to questioning from Mr. Landgraf, Mr. Huddes admitted that he is opposed to use of Waiahole ditch water for the interim ag use.

ACTION Mr. Nekoba moved for approval with amendments: that the typo on page 4, paragraph 3, be corrected to read "\$42,438,000," and to add a condition that HFDC affordable housing guidelines be added as a condition. Mr. Yuen asked permission to word the amendment as follows: that in any rezoning or reclassification, the owner of Kapolei property shall make the property subject to the standard Land Use Commission conditions for affordable housing which require a set proportion of housing to be in affordable price ranges and compliance with this condition is enforceable by the DLNR. It would be a condition of conveyance and not a deed restriction. Mr. Maehara stated he agreed to the condition. The motion was seconded by Mr. Yuen and unanimously approved as amended.

ITEM H-8 CONSERVATION DISTRICT USE APPLICATION OA-2704 FOR THE GTE HAWAIIAN TEL FIBER OPTIC TELECOMMUNICATIONS CABLE FROM KEAWAULA TO MOKULEIA WEST OAHU; TMKS 8-1-01:07, 6-9-3-05; 6-9-2:13; 6-9-04:04, 08, 11, 21; APPLICANT: GTE HAWAII TEL; R.M. TOWILL CORPORATION

Mr. Evans recommended denial because the applicant had not received SMA clearance. Mr. Brian Taketa, representing the applicant asked for deferral until the next meeting because the SMA was scheduled to be heard on August 31. Mr. Evans stated there was no objection by his staff.

ACTION Deferred (Landgraf/Kennison).

ITEM K-3 CONSENT TO CONTRACTUAL AGREEMENT FOR HERITAGE TOUR BOAT LANDING AT PIER 7, HONOLULU HARBOR, OAHU (HAWAII MARITIME CENTER (HMC), A NONPROFIT HAWAII CORPORATION, AND ATLANTIS SUBMARINE HAWAII, L.P. (ASH), A HAWAII CORPORATION)

Mr. Garcia stated that the purpose of the agreement was to have twice-daily boat landings for disembarkation and reembarkation in connection with the Heritage Tour programs to promote Hawaii's maritime history, Honolulu Harbor in particular. The Hawaii Maritime Museum would be given the opportunity to sell tickets, on commission, for both the Heritage Tours and the Atlantis Tour.

Mr. Garcia explained that the revenue derived from the restaurant is subject to a percentage rental, and goes to DOT. HMC is receiving a certain amount from the restaurant but the revenue itself is subject to the percentage rental. The amount, Mr. Garcia said, is \$13,000 a year or 5% of gross receipts, whichever is greater. The exemption is the HMC educational and historical programs, which includes admission fees and receipts for sales of gift items.

Admiral Kozlosky of the Maritime Center addressed Mr. Nekoba's questions. He said it was not the intent to operate a travel desk. He said the selling of tickets for Heritage Tours is a cross-marketing agreement and is merely for convenience. Mr. John Farias of Atlantis stated it was an opportunity to diversify tourism and the opportunity to bring people from Waikiki via the Hilton Pier, which is already taxed, by catamaran to Honolulu Harbor.

Admiral Kozlovsky stated that the tour starts from Hilton and the educational part starts at that point. The next phase, he said, was a tour of the Maritime Center and walking tour to Chinatown and back; Pier 7 is merely a stopping point.

Mr. Bob Hampton said he was in support of the concept; however, his concern was that it should not be exclusive to one single operator. He said it would increase the opportunity for HMC self-sufficiency and would also increase the number of visitors to the museum and the heritage tour. Another concern, Mr. Hampton stated, is the activity desk, which would require DCCA licensing. He contended that selling tickets for another operator requires a travel agency license.

Mr. Garcia stated it was not meant to be exclusive, and Mr. Farias agreed it was not their intent. Admiral Kozlosky explained that all action relative to any significant use of Pier 7 is brought to the attention of the DOT and the Attorney General's Office to ensure they are not in violation of their lease.

Mr. Nekoba stated that the under 501-C3 status it was possible to take in a certain amount in unrelated business. Admiral Kozlosky stated the matter of tax exempt status raised by Mr. Hampton had been checked out by their attorney. As far as the exemption on HMC's 25% commission, Mr. Nekoba stated, it should just be for the Heritage Tours. Mr. Farias agreed. On the percentage rental, providing that the boat is coming from another harbor, where the State is being paid per head or percentage charge, the State would not want to double-charge. It might, he said, encourage other operators from other harbors to provide that same service.

Mr. Farias stated he had no problem with HMC not selling the submarine tour; it was merely to be used as a convenience to visitors. Mr. Nekoba suggested that HMC may want to look into it further. Mr. Garcia stated the cost would be 5% of 25% for the selling of tours other than Heritage Tours.

ACTION Mr. Nekoba moved to approve the item with an amendment to condition no. 1 that the exemption of HMC's 25% sales commission on tickets for Heritage Tours from the percentage rental provision of the harbor lease would be for Heritage Tours only; if dives or anything else were sold, HMC would be required to pay the 5%. Seconded by Mr. Yuen and unanimously approved as amended.

ITEM K-4 CONSENT TO ASSIGNMENT OF SUBLEASE, HARBOR LEASE NO. H-87-30, PIER 7, HONOLULU HARBOR, OAHU (T. CARRICK JORDAN DBA RICK'S PLACE, INC., A HAWAII CORPORATION/THE PIER 7 ASSOCIATES, A REGISTERED HAWAII PARTNERSHIP)

Mr. Yuen asked that when DOT items are submitted to the Board, as a matter of practice, the submittal should include a discussion whether a premium is made on the assignment for the record.

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-6 EXTENSION OF TIME REQUEST ON CONSERVATION DISTRICT USE PERMIT OA-2547 FOR .1 MILLION GALLON WATER TANK AT KAMEHAMERIDGE, HAWAII KAI, OAHU; TMK: 3-9-10:1; APPLICANT: HAWAII KAUAI DEVELOPMENT COMPANY

Mr. Everett Kaneshige representing applicant asked for a modification of the recommendation for completion of construction in three years.

ACTION Unanimously approved with the amendment that applicant has a deadline of 1998 to complete the project (Nekoba/Landgraf).

ITEM H-5 EXTENSION OF TIME REQUEST ON CONSERVATION DISTRICT USE APPLICATION OA-2670 TO CONSTRUCT A MARINA ENTRANCE CHANNEL USING STATE-OWNED SUBMERGED LANDS AT HONOULIULI, EWA, OAHU; TMK 9-1-12:6; APPLICANT: NELSON LEE, HASEKO (EWA), INC.; ATTORNEY: ALAN M. OSHIMA AND YVONNE Y. IZU

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM H-2 REQUEST APPROVAL ON RESOLUTION OF BACK RENT ON GENERAL LEASE NOS. S-3269 AND S-4316 INVOLVING MR. HERBERT ARATA AT HILO, HAWAII

Mr. Uchida presented the item. He noted that Mr. Yuen had questioned the method of calculation and distributed his version, noted as Exhibit C. Mr. Uchida stated that prior to the meeting, Mr. Arata's accountant, Mr. Jitchaku, informed him that he believes he can provide the necessary documentation on the other allowances for professional services, marketing, etc.

Mr. Yuen clarified that when Mr. Arata subleased the units prior to the condo conversion he entered into agreements with perspective buyers where they would pay him upfront varying amounts per unit, \$10,000-\$17,000, with the agreement that it would go through the condo process and they would get condo units. At that time, the condo was not in place, so it was treated as premiums or pre-payments on the subleases. The State's policy, he said, is that DLNR participates in any premium on the sublease; then there's the question of whether there was a premium. The way Exhibit B was done was to take the income he derived and then subtract out certain expenses, primarily the interest paid on the money he borrowed to get the original lease on the condo, which was approximately \$1 million. Mr. Yuen's criticism involved taking the interest payments on the \$1 million and subtracting that from the sublease income, which was also approximately \$1 million. The net effect showed Mr. Arata not making a "sandwich" but having a loss on the sublease transaction. His difference with that, Mr. Yuen stated, is that the interest and principal paid on the \$1 million went not just to the units that he eventually sold off and subleased but also paid for units he kept in the project. He sold 80+ units and kept 40+ units and he wound up with one-third of the units that he still owned but he owned them free and clear. Basically, Mr. Yuen stated, the money he received from subleasing the other units paid off all the money that he borrowed to get the whole project so he ends up with 40 units free and clear, less his expenses in carrying through the condo transaction. Mr. Yuen suggested that the Board instead of taking out 100% of his principal and interest payments, 2/3rds should be taken out because he sold out 2/3rd of the units. Mr. Yuen stated that this would amount to approximately \$300,000.

There were some adjustments to be made in his favor, Mr. Yuen stated, that he had expenses in developing the condo project, such as legal expenses, sales commissions, closing costs, miscellaneous expenses. The formula also allows for a return on equity and his understanding was that it involved \$100,000 of his own money, again taking 2/3rds of that and

12% a year the final figure still shows a loss of \$2,310. The net effect is that he does not have a sandwich profit for different reasons.

Mr. Yuen further stated that the figures for his actual condo expenses are not firm figures at this point; that they were projected figures, which his accountant says he is able to verify. Mr. Yuen said his recommendation was that the bottom line does not change; that the item should be passed as submitted subject to verification of the allowances by the accountant. If the actual figures show no sublease profit, then it would need not be brought back to the Board.

Mr. Uchida stated that maybe the Board should revisit its sublease sandwich policy; however, Mr. Ahue stated it did not address every situation.

Mr. Yuen stated he did not want to treat Mr. Arata more favorably than other people or less favorably. The way to get more exact, he said, would be to look into his entire profit and losses and operation and trying to allocate. Mr. Nekoba suggested taking another look at the rules.

ACTION Mr. Yuen moved for approval stating that the bottom line of what is owing would be the same as the staff recommendation assuming that the condo conversion expenses can be verified to come out to the figures shown on Exhibit C. If there is no sandwich profit, then it would be his recommendation it need not come back before the Board. Seconded by Mr. Apaka and unanimously approved as amended.

ITEM E-3 REQUEST TO CONDUCT FIRST AMENDMENT ACTIVITIES AT THE NUUANU PALI STATE WAYSIDE (PALI LOOKOUT), NUUANU, OAHU

Mr. Nagata noted that a letter had been received this morning from Ohana Council's attorneys regarding the conditions. Mr. Nagata commented as follows:

(1) Condition no. 1--hours of operation. 9 to 6 hours of operation is based on information provided by the applicant; however, he suggested that the legal requirements be checked on the sunrise-to-sunset request. Mr. Nagata stated that he recently became aware that monies were appropriated to DOT to close off the loop road that goes to the lookout area. Gates are supposed to be installed to prevent vagrancy during the evening hours. He pointed out that DOT would control the gate hours, not DLNR.

(2) Preapproval by DLNR of message-bearing merchandise. Mr. Nagata stated that he wanted to ensure that the message espoused the cause and could not mislead the public into thinking it's a commercial operation.

(3) Item no. 12. Agrees with Ohana Council.

(4) Item no. 13. Mr. Nagata stated that in not having done (2) it is unknown whether the sovereignty materials would meet the standard of completeness.

(5) Item no. 15. Mr. Nagata stated he pointed out to Ohana Council that the clause was intended to prevent misrepresentation that an article was for donation. If it is for donation and the donation was not forthcoming that it would not be required. If it was represented to the public that something was for sale, he did not believe the State could force them to give it away free.

(6) Item no. 16. He said a skirt would be required on three sides with boxes stored beneath the table. They would be allowed three chairs.

(7) Item no. 22. No comment.

Mr. Nagata commented that the Council wanted to start immediately at the site. Mr. Kanahele, who had to leave, indicated that in order to do so, Ohana Council would be willing to abide by whatever the Board approved, the submittal, or any other adjustments or conditions, until such time as the Board had the opportunity to obtain a legal opinion.

Mr. Jim McDonough, vice-president with Eco-Art, stated they agree with the 9 to 6 hours for the present. As for the pre-approval, he said there is a standard handed down by the court, and he would be happy to meet with Mr. Nagata, submitting their merchandise voluntarily for approval.

As for the addresses, they will change it to the organization, and the individuals will be identified. No misrepresentations will be made as to whether anything is a gift or not. They will not allow clutter by using a van or storing merchandise under the table.

He further stated that as to item no. 15, they did not have a problem with Mr. Nagata's interpretation. The tee shirts will be offered at a specific price. It will be made very clear, he said, whether the item is a gift, for donation only, or whether it is a for-sale item.

As to item no. 16, one chair was sufficient and boxes would be stored.

As to item no. 22, he felt it could be worked out between the attorneys.

Mr. Ahue summarized that there were no changes except for no. 12, which would list the address of the organization and no. 16, one chair, boxes under the table and three sides of the table covered; and no. 22, subject to review by the Attorney General and further discussion. In the meantime, the Ohana Council will operate under no. 22 as stated. The parties agreed that in the final version of the rules, they may want to add a clarification regarding sales.

ACTION Mr. Nekoba moved for approval with the amendment that no. 12, the address of the organization will be used, and no. 16, one chair can be used, boxes stored under the table, and the table to be covered on three sides. Seconded by Mr. Landgraf and unanimously approved as amended.

ITEM F-1c COUNTY OF KAUAI REQUEST LAND LICENSE FOR SAND MINING, MANA BASE POND, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-02:POR. 1

Mr. Young read a letter he received from the County Engineer claiming a discrepancy in the fee paid. Mr. Young indicated that his information is that the County took more than 140,000 cubic yards, which would have to be confirmed.

Mr. Bill Halms of DPW was present and stated that the figures in the letter were figures given to him. Mr. Ted Halley, the consultant, informed the Board that the sand mining was to backfill where refuse was relocated from, not to cover the landfill. He said it was estimated to take 5,000 cubic yards but because they did not have all of the survey data yet the exact amount was unknown but was based on what Mr. Telfer estimated to be available at the Mana Base Pond.

Mr. Apaka noted that the County was being charged \$2 but everyone else was being charged \$3. Mr. Halley stated his understanding was that \$3 was for clean sand. Mr. Apaka stated that when soil was removed for the landfill that was not a consideration. Mr. Halley stated that material under the other land license being used for cover is \$.50 a cubic yard; however, it is a different material, mud.

ACTION Mr. Apaka moved to approve but to raise the royalty rate to \$3 per cubic yard and agreed to Mr. Young's suggestion that the County provide to DOFAW, Mr. Telfer, grading plans, specifications, and construction drawings for review and approval prior to removal of the material. Seconded by Mr. Kennison and unanimously approved as amended.

Mr. Apaka explained that federal monies were involved.

ITEM E-4 VERBAL APPEAL TO EXTEND BOARD IMPOSED DEADLINE TO SECURE PERMITS TO CONSTRUCT NEW DWELLING UNITS WITHIN EXISTING REVOCABLE PERMIT AREA FOR ULULANI BEIRNE AND PUANANI MARTINEZ AT KAHANA VALLEY STATE PARK, OAHU

In answer to a question from Mr. Landgraf, Mr. Nagata stated that at the time the County approved the Soga's permit, a letter was received in July stating that the existing approved SMA did not really cover the housing, such as the Soga's, with the cumulative impact that in allowing permits beyond the Soga's, other applications would be put through more scrutiny and would have to go to the City Council.

Ms. Beirne stated that there were many hurdles in obtaining the permit but with the help of the Land Board they could be overcome and asked for more time.

Ms. Beirne stated that even though DOH approved her wastewater proposal, she was looking into another wastewater proposal so that landfill would be unnecessary. She said her neighbor across the street informed her she was grandfathered in and so were the

Beirne's. She said the Soga's also said that Mr. Nagata advised them that if they were to renovate or rebuild according to the specs that it would be "ok." She said that if the Board wanted her to not build or construct a new home and stay within the perimeters of their present structure it would be the same situation as Adela Johnson.

Mr. Ben Schaefer, son of Puanani Martinez, stated that the two biggest hurdles were the DOH septic tank and the floodway. Regarding the submittal from Mr. Nagata, he stated that No. 1. construction in the hazardous floodway zone, the flood maps are dated in the 1940's and are very outdated. He claimed that his family's area has never flooded because the house was built on the highest part of the land. In the longterm, he said, the State, federal, and city need to rezone the flood zone because different areas are flooding. No. 2, the size and height of dwellings appear to be of sufficient variance. Mr. Schaefer stated that there was a main dwelling, the family house, and three cottages. One was knocked down in the 1950's, and the other two new ones were built within the last 15 years. The entire square footage of the three equals the same size as the new house. He said there are five bedrooms and two baths and are proposing two additional bathrooms. No. 3, State assisted waste water system costs are being incurred, Mr. Schaefer stated he understood where State Parks was coming from and that he understands that a decision has to be made. No. 4, the City and County DLU has determined that subdivisions subsequent to the Soga's will receive substantial scrutiny. He said he came from the DLU this morning and was informed that the SMA by the State to the City for a permit was approved in 1979 with the understanding, "the City Council granted a Special Management Area use permit for the first phase of Kahana Valley State Park development by adoption of the committee report. According to the director's report, proposed development was to include the demolition of 17 existing residential units and construction of new units, mauka of existing buildings and higher elevation." He stated that a plan was submitted to the City prior to the Advisory Council stating that residents would live in the back. When trying to obtain a permit, the City is telling them that they are not living up to the permit, the permit that was approved in 1979. He said meantime the Advisory Council met from 1984 to 1989 and came up with proposals of moving to the back or remaining in place, but the decision was already made by the 1979 permit. "How would we know that we would not be complying with the City's rules?"

He said he had a memo from the City stating, "The proposed project is located on State land use conservation district, and DLNR, which is responsible for approving the uses, structures and developments standards in the P-1 district. . . . The State is the owner of the property and is providing the lease land to the Valley residents to build their own homes; therefore, DLNR is responsible to review and approve the permit for compliance with the flood regulation of the National Flood Insurance Program. Such evidence of DLNR's approval must be submitted together with the building permit application prior to City approval. . . . Clarification as to whether the State intends to subdivide the proposed lease lot for the Martinez

residence since the City does not recognize lease boundaries as zoning lots for development purpose. Otherwise, the applicant must show on their site plan the entire State property." Mr. Schaefer stated that the Board has already set a precedent in allowing the Soga's to remain, and there were only two more families wishing to remain where they are. He said they are working with the DLU on the flood and environmental review to review it one more time. He said he was not aware of a number of these things until this morning. He suggested another option might be to remain in the existing house and be grandfathered in. In the meantime, he said, they have incurred costs for the septic tank testing, the wastewater matter, and surveys. compliance with the SMA.

Mr. Nagata informed the Board without the extension, as of June 30, the applicants would have to go to the previously-selected sites on Trout Farm Road.

Mr. Yuen excused at 1:30 p.m.

Mr. Nagata stated that the "urgency" was the way the leases were set up: once the lots are turned over, subject to a water allocation from the Commission on Water Resource Management, the residents have one year to construct.

Mr. Landgraf asked whether the City's memo would substantiate that this was a "Catch-22" situation, that evidence was incumbent on DLNR's approval, and whether he was aware of the 1979 SMA. Mr. Nagata replied that the July 19 memo was the position of the DLU. On July 22, the County issued a building permit to the Soga families, which was also sought after-the-fact. At the time of the permit, the City sent a letter stating that this was what they were basing their review and any subsequent review. At that point in time he had not received any information on any permits received. Mr. Nagata stated that today he asked Mr. Schaefer for any kind of approvals, including the DOH approval. Mr. Landgraf suggested deferring the item to the next Honolulu meeting. Mr. Nagata stated that he had no problem with that. The only problem with the deferral would be on the wastewater because they are moving forward on it, the engineers are looking at it. There has been no discussion on an alternate system as they are talking with the wastewater people so he would not want that to be entangled; that the wastewater matter should be out of the picture. He said that from the design standpoint they're looking at the two lots on Trout Farm Road and will not be looking at incurring any cost at the present residences. He said he wanted it clear that the residents will take care of the design and construction of their own at the present residences.

Mr. Ahue stated that one of the statements made in the memo to DLNR is that DLNR is responsible to review and approve the building permit for compliance with department regulations. He said there is no building permit for review. In terms of the potential "Catch-22" there is a need to have a building permit. Ms. Beirne stated that an application has been filed with DLNR. Mr. Nagata stated that the aspect of the building permit dealing with compliance with the flood regulations, "that's what DLU is saying that DLNR is going to have

to address, that part of the building permit. Now, in order for DLNR to address that, back in May, remember there was this no-rise certification and application for the floodway thing that was going to cost some big bucks somebody had to pay for that. The State said, 'We're not going to pay for that,' and the application would be put together and would have to come to the department for its disposition. And I guess that would probably end up going through DOWALD . . . So the question at that time I think was whether or not they were willing to pick up the tab and try to pursue it, and I don't think anybody got an answer." Mr. Schaefer stated that they have the design for the wastewater. Ms. Beirne stated that because the consultant fee was so expensive the engineer and architect suggested that they look into another wastewater design so they wouldn't have to landfill in the area because of the floodway being in the back. Ms. Beirne stated, "I think that what we're looking at here is, we're pushing on the septic tank and the consultant who's going to get paid to put in the septic tank because it was a Board decision in May." She said the lots have not been turned over and that the septic tank should go before the construction of the home. She said in May when the matter came to the Board for septic tank approval, "It was just to take \$4,500 off of what they were offering us, and at that time Mr. Nagata also said they might not have enough money for all. . . . What we're looking at is an extension of time here that you folks might be able to assist in some way, and we try to do as much as we can."

Mr. Ahue said that as he understood it the Board set this deadline six months ago; however, Mr. Nagata stated they had already had two years and nothing was happening and it looked as though the State was ready to turn over the lots in early 1994. Mr. Ahue stated that it sounds like as long as the State does not incur any costs, which was the original intent in granting the five residents the opportunity to obtain permits, it would not matter if this were deferred to the next Oahu meeting. The only question seems that the State may incur costs. "What I'm hearing is that the plans are going though the lots are going to be located in the subdivision." Mr. Nagata stated that was correct, and it is proceeding right now as the funds had to be encumbered. Mr. Ahue stated if the State is proceeding on the previous deadline, the State is now going ahead with the subdivision the moneys could not be used for subject properties. The ramification he said, is that they would have to spend money not knowing if at the next Board meeting they'll be in a position to ask for an extension based on progress. Ms. Beirne stated that at the May meeting it was the Board decision to pay for septic tanks for all residents. Mr. Ahue stated that the problem was that the State could not do septic tanks for the subdivision plots and do it for unimproved lots. She said they have been working on this for the two years and have kept the Board apprised of what was going on.

Ms. Beirne stated they are undertaking the costs. Mr. Schaefer stated that the difference now is that the "City is letting us into their door now where they weren't before," by actually giving us the letter, which was what the Chairperson had asked for. Mr. Schaefer stated that the City said an official letter would be sent. Mr. Nagata stated that one of the things in the memo dealt with the Gray Hong matter Ms. Beirne was trying to get the State to pay; somebody has to pay for it and that the Board's feeling was that it was not going to be the State. Once it was done, it would be submitted to the Board for a determination by the Board felt it was appropriate to build in the floodway. The second matter relates to the regulatory flood elevation. Ms. Beirne said Gray Hong were already doing work in the Valley and were

already paid for the studies and that was the reason she went back to them but they came back with a \$10,000-15,000 fee, no permit holder or new lessee could pay. Mr. Nagata stated that the position of the State has been to subdivide these lots out of the parcel they're at and in order for that to be done the metes and bounds needs to be done, which the Board said the State would be willing to pay or have DAGS do it; however, the floodway variance has to be looked into also and submitted. Mr. Nagata stated that regarding the Soga's, after OEQC gave a letter stating that as long as certain criteria was met, they could be exempt. Parks was asked and examined it and advised they could be exempt; however, they were not grandfathered in. Soga's are not in the floodway but it had to do with the EIS law on height. Mr. Nagata stated that if they want to stay, they would still need to get the Building Department to certify that they meet the code. He said Adela Johnson met the code, but was unsure whether the others would be able to. Mr. Schaefer suggested that they be grandfathered in on their present residence and if they do not meet the code, then to comply with the code. Mr. Ahue advised it would be contrary to the Board's action.

ACTION Deferred to next Oahu meeting (Landgraf/Kennison).

ITEM E-2 DEPARTMENT OF AGRICULTURE'S REQUEST TO RELOCATE ANNUAL STATE FARM FAIR TO SAND ISLAND STATE RECREATION AREA, OAHU

The following amendments were added at the request of the Hawaii Farm Bureau Federation:

(1) Third paragraph: The Farm Fair runs for 10 consecutive days; however, setup and breakdown will require an additional 4-1/2 weeks.

(2) Under recommendation, that the first sentence read: That the Board . . . to annually approve for a minimum of 10 consecutive years"

(3) Amendment to recommendation 1: That the first annual approval of the chairperson shall not occur prior to completion of County installed park expansion or the year 1997 whichever is sooner if an agreement can be made to do so between the Farm Fair and the County. Provided that,"

ACTION Unanimously approved as amended (Landgraf/Apaka).

ITEM H-3 DIRECT AWARD OF A NON-EXCLUSIVE CESSPOOL AND PIPELINE EASEMENT FOR THE KUKUI CAMP SITE AT O'OKALA, HAWAII

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM H-4 **AGREEMENT TO SET ASIDE OF STATE OWNED LANDS FOR THE PROPOSED KAPOLEI HIGH SCHOOL AT KAPOLEI, EWA, OAHU; TAX MAP KEY 9-1-16:25 POR. AND 9-1-17:4**

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM B-1 **TO IMPLEMENT ACT 271, SLH 1994, WHICH REQUIRES THE DEPARTMENT TO PROMULGATE ADMINISTRATIVE RULES FOR A SUBSISTENCE FISHING PILOT DEMONSTRATION PROJECT ON THE WESTERN COASTLINE OF MOLOKAI**

ACTION Unanimously approved as submitted (Kennison/Landgraf).

ITEM B-2 **REQUEST FOR APPROVAL TO CONDUCT JOINT PUBLIC HEARING ON PROPOSED AMENDMENT TO HAWAII ADMINISTRATIVE RULES (HAR), CHAPTER 13-31, MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT (MLCD) OF THE DIVISION OF AQUATIC RESOURCES AND ESTABLISHMENT OF A NEW HAR, CHAPTER 13-257, DAY USE MOORING RULES OF THE DIVISION OF BOATING AND OCEAN RECREATION**

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM B-3 **REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARING ON A PROPOSAL TO ESTABLISH A MARINE LIFE CONSERVATION DISTRICT IN THE SHOREWATERS BETWEEN THE BARBERS POINT DEEP-DRAFT HARBOR AND KAHE BEACH PARK, OAHU**

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM D-1 **CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS**

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM E-1 See page 3.

ITEM E-2 See page 17.

ITEM E-3 See page 12.

ITEM E-4 See page 17.

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:

ITEM F-1a ASSIGNMENT OF GRANT OF EASEMENT, LAND OFFICE DEED NO. S-27, 516, FOR ACCESS AND UTILITY PURPOSES, GOVERNMENT LAND AT WAIMANO, EWA, OAHU, TAX MAP KEY 9-7-19:35

and

ITEM F-1b ISSUANCE OF REVOCABLE PERMIT TO MR. ALBERT SILVA, GOVERNMENT LANDS OF KEAWAULA, WAIANAE, OAHU, TAX MAP KEY 8-1-01:7

Mr. Young stated that the Division of Forestry and Wildlife asked to amend the submittal, Item No. F-1-b, to include: (1) the permittee shall construct a perimeter fence around the parcel to prevent animals from encroaching on mauka forest lands before initiating any grazing activities; and (2) the permittee will be responsible for maintaining the fence for the duration of the permit.

ACTION Unanimously approved Item No. F-1a and F-1-b as amended (Landgraf/Kennison).

ITEM F-1c See page 13.

ITEM F-2 DEPARTMENT OF AGRICULTURE REQUEST RIGHT-OF-ENTRY FOR SOILS STUDY COVERING MEADOW GOLD DAIRIES, INC., GENERAL LEASE NO. S-4101, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-26:4

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM F-3 See page 3.

ITEM F-4 See page 3.

ITEM F-5 AMENDMENT TO PRIOR BOARD ACTION OF MAY 13, 1994 (AGENDA ITEM F-7), DIRECT LEASE TO WAIMANALO TEEN PROJECT, INC., WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-09:POR. 1

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM F-6 HAWAII COMMUNITY DEVELOPMENT CORPORATION REQUESTS RIGHT-OF-ENTRY TO STATE LAND SET ASIDE UNDER GOVERNOR'S EXECUTIVE ORDER NO. 2210 TO DEPARTMENT OF AGRICULTURE, ANIMAL QUARANTINE STATION SITE, HALAWA VALLEY, EWA, OAHU, TAX MAP KEY 9-9-10:34

ACTION Unanimously approved with an amendment that the correct name of the applicant is "Hawaii Community Development Authority" (Landgraf/Kennison).

ITEM F-7 REQUEST FOR AUTHORIZATION TO ACCEPT CONVEYANCE OF LAND FROM HOUSING FINANCE AND DEVELOPMENT CORPORATION (HFDC) AND SET ASIDE TO DEPARTMENT OF EDUCATION FOR KAPOLEI ELEMENTARY SCHOOL SITE, KAPOLEI, EWA, OAHU, TAX MAP KEY 9-1-16:40

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM F-8 AMENDMENT TO PRIOR BOARD ACTION OF JUNE 28, 1991 (AGENDA ITEM F-8) FOR DIRECT LEASE TO QUALIFIED PERMITEES UNDER ACT 237, SESSION LAWS OF HAWAII 1988, STATEWIDE

ACTION Unanimously approved as submitted (Landgraf/Kennison).

ITEM H-1 See page 7.

ITEM H-2 See page 11.

ITEM H-3 See page 17.

ITEM H-4 See page 18.

ITEM H-5 See page 10.

ITEM H-6 See page 9.

ITEM H-7 CONSERVATION DISTRICT USE APPLICATION MO-2680 FOR TWO FISHPOND RESTORATION PROJECTS AT THE EAST MOLOKAI SHORELINE; TMKS 5-8-1:02 AND 5-8-2:58; APPLICANT: AQUACULTURE DEVELOPMENT PROGRAM, DEPARTMENT OF LAND AND NATURAL RESOURCES

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM H-8 See page 7.

ITEM H-9 See page 3.

ITEM K-1 RESUBMITTAL OF FLORIST CONCESSION, HONOLULU INTERNATIONAL AIRPORT, OAHU

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM K-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 5208, NON-CONFORMING USE, KAHULUI AIRPORT, MAUI (A & B HAWAII, INC.)

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM K-3 See page 9.

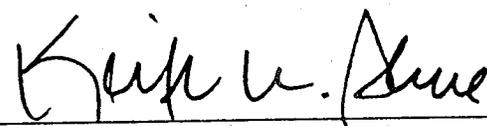
ITEM K-4 See page 9.

ADJOURN- MENT There being no further business, the meeting was adjourned at 2:30 p.m.

Respectfully submitted,


Geraldine M. Besse
Secretary

APPROVED:



KEITH W. AHUE, Chairperson