

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

DATE: SEPTEMBER 23, 1994
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
1151 PUNCHBOWL STREET
ROOM 132
HONOLULU, HAWAII

**ROLL
CALL**

Vice-Chairperson Herbert K. Apaka called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

MEMBERS: Mr. Christopher Yuen
Mr. Michael Nekoba
Mr. William Kennison
Mr. Herbert K. Apaka

Mr. Libert K. Landgraf (present from 9:20 a.m.)
Mr. Keith W. Ahue (present from 9:22 a.m.)

STAFF: Mr. Henry Sakuda
Mr. Ronald Walker
Mr. Ralston Nagata
Mr. Mason Young
Mr. Roger Evans
Mr. David Parsons
Ms. Geraldine M. Besse

OTHERS: Mr. Johnson H. Wong, Dept. of the Atty. General
Mr. Peter Garcia, Dept. of Transportation
Mr. Ben Schaefer, Ms. Ululani Beirne, and Mr. Carl
Reinhart (Item No. E-1)
Ms. Estelita George and Ms. Adela Johnson (Item
No. E-2)
Ms. Barbara Locricchio (Item No. F-1-c)
Mr. Sidney Fuke (Item No. F-2)
Mr. Robert Kihune (Item No. H-1)
Ms. Jean Bruce and Mr. Rodney Kilborn (Item No.
H-2)
Mr. Robert Smolenski and Mr. Robert McClean
(Item No. H-5)

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 F-2 AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 16, 1992 (AGENDA ITEM F-2) REGARDING DIRECT ISSUANCE OF LEASE TO ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII OF GOVERNMENT LAND SITUATE AT KAIMU, PUNA, HAWAII, TAX MAP KEY 1-2-06:POR. 33

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION FOR OCEAN RESEARCH, ALTERNATIVE ENERGY AND MARICULTURE RESEARCH, AND COMMERCIAL MARICULTURE AND ENERGY FACILITIES, AT KEAHOLE POINT, NORTH KONA, HAWAII; TAX MAP KEY: 7-3-09:23; APPLICANT: NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

Mr. Evans reported that subsequent to the submittal the staff received the SMA clearance from the County. He noted it was very difficult for the staff to fully analyze the SMA clearance when it was received late afternoon yesterday. He stated there is a concern relating to Condition No. 4. During the process, it was made clear that the County had not firmed its position on what would be allowed; there was also concern about the commercial element. In the SMA permit, the County allowed limited use but remained silent on the question of aquaculture activities; therefore, the staff asked NELH to clarify Condition No. 4.

Based upon the clearance requirement being met by the applicant, Mr. Evans asked to amend the staff submittal to approve the CDUA subject to the conditions on supplemental pages 12, 13, and 14.

Mr. Robert Kihune, the newly-appointed NELH Executive Director, expressed his appreciation to Mr. Evans and Mr. Roy Schaefer for their assistance with the application. Mr. Kihune explained that he accepted responsibility for the delay in the process because he was new and wanted to be comfortable with the project. He stated he spoke with Mr. Dean Nakano from the Planning Department, who said the interpretation was that the intent was to approve both commercial and research aquaculture.

Mr. Kihune, in answer to a question from Mr. Yuen, stated that the buffer would be 1,000 feet from the coastline. Mr. Kihune explained aspects of their plans.

Mr. Yuen suggested that in cases where the staff believes they have not had sufficient time to study the SMA and prepare an adequate recommendation that the application be approved with an added condition that the applicant return to a later meeting for consideration.

of additional conditions. Mr. Evans stated it was not necessary in this case but the suggestion would be considered in future applications. Mr. Evans also stated that another alternative might be that if a pattern develops the Board consider the recommendation for denial. Mr. Ahue advised that legislation is being considered to allow extensions in the event of incompleteness of the SMA process.

ACTION Unanimously approved as amended (Yuen/Nekoba).

ITEM H-5 **TIME EXTENSION REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA-637 FOR EXCAVATION AND QUARRY USE, HONOKOHAU, NORTH KONA, HAWAII; TAX MAP KEY: 7-4-08: POR. 26 & 29; PERMITTEE: MCCLEAN HONOKOHAU PROPERTIES; AGENT: SMOLENSKI & WOODSELL**

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-1c **DOCUMENT FOR BOARD CONSIDERATION: ASSIGNMENT OF GENERAL LEASE NO. S-5097, LOT 82, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-02:79**

ACTION Unanimously approved as submitted (Apaka/Kennison).

ITEM H-2 **CONSERVATION DISTRICT USE APPLICATION FOR THE SUBDIVISION OF SUBMERGED LANDS FOR MAALAEA SMALL BOAT HARBOR, MAALAEA, WAILUKU, MAUI; TAX MAP KEY: 3-6-01 (SEAWARD); APPLICANT: DEPT. OF LAND AND NATURAL RESOURCES, DIVISION OF BOATING AND OCEAN RECREATION**

Mr. Evans recalled that a public hearing was held on March 10 on Maui. A determination was made that a supplemental EIS was required, and the draft was made available to the Board and the public prior to the public hearing.

Staff continued their review, he said, and incorporated concerns expressed at the hearing from the public, federal, state and county agencies. In addition, he said, there is a requirement that once the supplemental EIS is required the law stipulates that the document must be accepted prior to any Board approval of the application itself. Mr. Evans pointed out Exhibit 5 indicating that the final EIS was accepted by the Governor on August 31, 1994. Mr. Evans stated that acceptance of the document means it informs and discloses--acceptance does not imply approval of the permit. Mr. Evans stated that a concern was raised by the Governor in the letter regarding the loss and degradation of surf sites at Maalaea, being one of the most popular surf sites on Maui. Staff incorporated this concern in its analysis and recommends approval. The only issue is subdivision. If approved, appropriate land disposition by the Division of Land Management would be necessary, and he suggested that the appropriate disposition may be an Executive Order to the Division of Boating and Recreation.

Mr. Evans brought to the Board's attention a fax from Isaac Hall requesting a contested case hearing, the specific reason being that good cause exists for granting intervention. Mr. Hall stated he represented adjoining property owners and surfers who would be affected by the loss of three significant surf sites; they also disagree that acceptance of an EIS is required before the proposed action can proceed to the permitting stage. They claim that even if they did not meet the deadline the Board can waive it because of "good cause." Mr. Evans stated that staff had only a superficial opportunity to review the request. He further stated that the administrative rules clearly indicate that a request for a hearing or a written request must be made by the close of the public hearing if one was required and, in this case, one was required, but not made. Mr. Hall claimed that the acceptance of the EIS has to occur before it reaches the permitting stage. The staff believes that is not really accurate, and it would be correct to say that acceptance of the EIS is required before approval but not before the permitting stage begins. They also indicate that the EIS is inadequate because of the hawksbill turtle and as a result the CDUA must be denied. Mr. Evans pointed out that the purpose of the EIS undergoes extensive public review under the current rules; that in this particular case the draft EIS was made available prior to the public hearing. Mr. Evans stated that without addressing the issue of standing and the Board rules that provide it to waive the time frames, the staff recommendation is denial of the request based on timeliness. Should the Board act on the application today, the staff would change the recommendation, splitting it into two parts: Part A: that the Board deny the request received on September 22 at 9:05 a.m. from Isaac Hall for a contested case hearing on the basis of timeliness; and B: that the Board approve the request for the subdivision.

In answer to Mr. Landgraf's question, Mr. Evans replied that the supplemental EIS was for the whole project. He related that if it were for the subdivision only the question would be asked: for a paper subdivision, what is the purpose of the subdivision? It depended on how the question was answered. In this case, he said, the decision was not theirs because it is an agency action and the determination for an EIS is made by the agency; in this case, the Division of Boating, and the question should be directed to that division.

Mr. Nekoba asked whether there was another CDUA for the improvements or expansion of the harbor. Mr. Evans answered that a CDUA does not exist for that; that basically they are asking for a subdivision of part of the ocean and if it is subdivided they will ask for an Executive Order. "It is unencumbered State land. Even if you approve this today, this remains unencumbered State land. They will come before you with a request for an Executive Order. At that time, they're going to be explaining to you the purpose of the EO, and the purpose of the EO, as we understand it, is for a harbor. Once they get that EO that land then will be set aside. It will now be encumbered to this agency, in this case, DOBOR, for whatever purpose you approve or limit it to." Mr. Nekoba asked whether they would need to return for a CDUA for the improvements or expansion. Mr. Evans stated, "No, as long as their improvements are consistent with the EO. An easy example, you got, Harbors, Honolulu Harbor. It's under EO to Harbors. They want to go in the harbor right now, Honolulu Harbor, and add a pier, and you look at the EO, and the EO says, 'a pier is consistent with the harbor purpose.' No CDUA is required. On the other hand, they go in and they want to put in a restaurant--that may not be consistent. Then, they have to do a CDUA." Disposition, he said, would be the next step.

Mr. Yuen stated it did not sound right to him, the reason being that Mr. Evans stated that once there is an EO for a particular use in the conservation district, the government agency never needs a CDDA as long as any further use is consistent with the Executive Order. He noted that all harbors are under Executive Order; however, he asked: if someone wanted to put an island in the harbor for a lighthouse, dredge, piers, they do not need a CDDA? Mr. Evans replied that, unless, as part of issuing the Executive Order a requirement is put on it, but absent any specific requirement a CDDA would not be required. The land goes to the agency. Mr. Evans stated that there have been some CDDA's for harbor improvements but they were for harbors never EO'd. He advised that DOT is working to clean that up. Mr. Evans went on to say that, "If this process succeeds at this stage and at the next stage they come before the Board, and you effectively are turning over that property to, in this case, DOBOR. If over a harbor, DOBOR was a part of Harbors, you effectively would be turning over that property to DOT." Mr. Yuen stated the agency would never present the Board with all their plans, where they want to put the breakwater, all they would have to do is come to the Board and ask to subdivide out a certain section and obtain an EO and if they want to build a breakwater, dredge the nesting grounds of the hawksbill turtle they never come in for a CDDA. Mr. Evans stated Mr. Yuen's understanding was correct. Mr. Yuen stated that there could be a subdivision of a harbor, an EO, and the first plan for improvements is not made for a couple of years, and the Board would be unable to put any conditions on it because it's a blank piece of paper. Mr. Evans stated when improvements are made, bids, contracts, etc., it would require Board approval. Mr. Yuen gave another example: if DOT wanted to build H-4 across the Koolau's, they come in with a subdivision of land for highway corridor, an Executive Order, but still no studies because they have not indicated where they would put the highway or considered environmental effects, and they do not need a CDDA. Mr. Evans stated that a singular question has to be asked: what is the purpose of the subdivision? Using H-4, Mr. Evans stated they would answer that it would require an EIS.

Mr. Parsons stated they already have an Executive Order, which was issued in the '60's, encompassing the present boundaries of Maalaea Boat Harbor. Basically, the uses for harbor purposes are already recognized in the existing EO. The reason for the present request is because DOBOR is asking to realign the channel and provide additional breakwater extension beyond the boundaries of the existing Executive Order; therefore, the intent is to ask for an additional Executive Order to add that portion to the existing EO for boat harbor purposes. Mr. Parsons explained that Waianae Boat Harbor was "started from scratch, from bare submerged lands." He explained that they did a full EIS that addressed the entire project, including all the piers, breakwaters, etc. The subdivision was approved based on that EIS for subdivision, which encompassed the entire project, an Executive Order was issued, and they are tied to the purpose of the Executive Order in that any uses within that area must be for harbor-related purposes. He said after that EO was issued and the harbor constructed, it included all the improvements addressed in the EIS and there wouldn't be room for any improvements within the property that were not covered in the EIS because the full potential development of the harbor in the original EIS had been addressed.

Mr. Wong noted some confusion because "the fact that you have an Executive Order in and of itself, there's not specified a particular use, might be in general--maritime use . . . and that's why Harbors comes up generally with a master plan before the Board--so here's

the proposed uses, specific uses. Now, once the Board approves the master plan, you don't have to come back in for a specific CDUA but any, other than a master plan being approved, any proposed construction would require a CDUA notwithstanding the Executive Order. I'm not aware of any opinion being issued saying that once you get the EO you don't need a CDUA." Mr. Wong continued, "Right now, just subdividing it--what are you going to do? You may say, 'We don't have specific plans,' but if you have a specific plan, those got to come before the Board as to whether they go along on a CDUA basis." He cited Waimea Falls as an example.

Mr. Nekoba asked Mr. Wong whether, "In this particular case, then, it would have to come back for a CDUA; either we have to approve a master plan or they have to come in for a CDUA for improvement or expansion?" Mr. Wong advised they would need to come in for the proposed specific improvement. Mr. Evans asked, "Absent the EO, absent a master plan, they got to come in with CDUA's; however, if they do EO, they do a master plan, a CDUA, this is a master plan, Board approves it, then they don't any subsequent?" Mr. Wong replied that, "Anything within the master plan but if it's something outside the master plan, they have to come in."

Mr. Landgraf stated that this has been done in other divisions, citing Forestry and Parks, and the department should be consistent. Mr. Evans replied that it is clear what is expected by the Board. Mr. Landgraf asked Mr. Wong whether a EO was considered a form of disposition; Mr. Wong replied it is. Mr. Landgraf further asked whether for disposition an EA or EIS was required. Mr. Evans replied that the question would be whether this was an action on State land? If it is determined an action, the answer would be "yes." It would be triggered under 343.

Mr. Evans then recommended an additional condition: No. 9--that the applicant do a CDUA in the form of a master plan. Mr. Evans stated at that point it would be brought to the Board and the "substance is going to be dealt with," at that point.

Mr. Ahue noted the comments incorporated in the report and recommendation appear to address the merits. Mr. Evans stated that the comments were incorporated but not in the conditions.

Mr. Yuen asked whether the CDUA was always for the subdivision; he was under the impression at the public hearing that it was for the project. Mr. Evans explained it was discussed but the request he received was only for subdivision, where the lines should be drawn.

Mr. Nekoba commented that the only way the submittal would work, according to the AG, is if the submittal included a CDUA for the subdivision and construction and expansion of the improvements. At the public hearing the entire matter was discussed but is not what is before the Board now. He said that Condition 9 would require a CDUA either for approval of the master plan or specifically for the expansion and improvements of the harbor. Mr. Evans stated his understanding is that the EIS, which discussed "everything," has been accepted so regarding the new CDUA requirement, he is suggesting incorporating all the previous work.

In response to a question from Mr. Kennison regarding the Governor's concerns on the surfing sites, Mr. Parsons answered that the Governor's concerns, as well as those expressed at the public hearing, were addressed. Basically, the final configuration of the proposed breakwater was changed as shown in Enclosure 1; Enclosure 2 is the original proposal on the configuration. Based on the revision, the impacts to the surfing sites have been significantly reduced. As for the Maalaea Pipeline--termed one of the ten best waves in the world--according to all the studies, the Pipeline would not be affected. The surf site known as Buzz's I may be slightly impacted by the new breakwater configuration; however, he said in the supplemental EIS, specifically the surf site analysis, it is identified as a high surf, deep water site, which is rarely ridden.

There will be no impact on Buzz's III, according to Mr. Parsons. He indicated they attempted to create as little impact as possible on Buzz's II because this surf site is the most popular one for beginners and intermediate surfers. A surf site that is definitely impacted, he said, is the one called "Off the Wall," which is the one right in the channel. He emphasized that the best wave conditions at this site are also the wave conditions that create the greatest surge in the harbor, and the whole intent of the project is to reduce surge. He said the site will be eliminated. He noted that during Hurricane John, the surge allowed surfers to ride in through the channel and harbor entrance and halfway through the harbor basin. Those wave conditions destroyed several piers. He also noted that the left break at the site was enhanced by dredging existing channel and will include minor realignment and shaping of the east wall of the channel to see if they can create another small left break in that area to replace what's being lost.

Mr. Nekoba moved for executive session to confer with counsel because, he said, if the only discussion is on the subdivision and if an additional CDUA will be required or master plan for this improvement and expansion, then this matter may need to be taken up at a later date. Seconded by Mr. Landgraf and unanimously approved.

EXECUTIVE SESSION The Board was in executive session from 10:35 a.m. to 10:55 a.m.

ACTION Mr. Parsons recommended that the item be deferred until the issues raised prior to the executive session are clarified. Mr. Kennison moved to defer; seconded by Mr. Apaka. The Chairperson advised that if the motion is carried, no action would be taken today.

Ms. Jean Bruce testified:

"When I was a child we could launch our outrigger canoe from the sandy beach at Kanai and haul it ashore on the Sandy beach in front of Maalaea store to go shopping. The

construction has now stopped this activity. The ocean area near the entrance of the harbor is currently used by children from all over Maui when the summer swell breaks for buggie [sic] boarding and surfing. This site is a unique and invaluable ocean recreation and park and it should not be altered in any way. The proposal to destroy these surf sites is unacceptable.

"I have observed the high waves crashing over the harbor seawall next to the old sea flight terminal. To build an additional parking lot in this high surf area would destroy or damage all vehicles parked there.

"The total nesting hawksbill endangered sea turtle population in Hawaii in 1993 was 24 turtles. Two of these 24 nested at Maalaea. One was killed by a car as it crossed North Kihei Road. The Army Corps of Engineers need to consult with the National Marine Fishery Service regarding impacts of this proposed project on the endangered hawksbill sea turtles. They feed and move through the coastline at Maalaea. The threatened green sea turtles are frequently seen from tour boats at the harbor entrance feeding and resting. I saw many there on Friday, July 18."

Mr. Rodney Kilborn testified that the ocean is his life and is concerned about the children of Maui. He stated Maalaea was a special place and stated that the extension would not work. He suggested building the extension inward, using Plan 6. He urged the Board to consider what had happened at Mala Wharf, which was completed in 1921. When the first naval vessel came in, a south swell came through and the vessel was destroyed. He said that the next day, it was said the whole plan was a "disaster."

ACTION The motion to defer was unanimously approved.

ITEM B-1 **REQUEST FOR APPROVAL TO AMEND AN AGREEMENT WITH THE OCEANIC INSTITUTE FOR A STUDY ENTITLED "STOCK ENHANCEMENT OF MARINE FISH IN THE STATE OF HAWAII (DAR-SEMFISH): PHASE IV"**

and

ITEM B-2 **REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII FOR "ADMINISTRATIVE SERVICES TO UNDERTAKE STOCK ENHANCEMENT OF MARINE FISH IN THE STATE OF HAWAII (DAR-SEMFISH): PHASE IV" DURING FY 1994-95**

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM C-1 **PERMISSION TO CONDUCT PUBLIC HEARINGS TO ESTABLISH ADMINISTRATIVE RULES FOR CHAPTER 195-f, RELATING TO FOREST STEWARDSHIP**

ACTION Unanimously approved as submitted (Landgraf/Apaka).

ITEM C-2 APPROVAL OF EXPENDITURE CATEGORIES FOR THE WILDLIFE REVOLVING FUND

Mr. Walker asked to amend the item on page 2, last paragraph, before the second to the last sentence, by adding: The Division of Forestry and Wildlife will work closely with the Division of Conservation and Resources Enforcement to identify and finalize a listing of these conservation priorities.

ACTION Unanimously approved as amended (Landgraf/Apaka).

ITEM C-3 KAMAKOU PRESERVE/NATURAL AREA PARTNERSHIP

ACTION Unanimously approved as submitted (Kennison/Landgraf).

ITEM C-4 MO'OMOMI PRESERVE/NATURAL AREA PARTNERSHIP

ACTION Unanimously approved as submitted (Kennison/Landgraf).

ITEM E-2 REQUEST FOR AMENDMENT OF EIGHT (8) GENERAL LEASES AT KAHANA VALLEY STATE PARK, OAHU

At the suggestion of the Attorney General, Mr. Nagata proposed four amendments to eight of the leases. Typically, he said, the leases required that the residents construct new homes; however, five families (Adela Johnson, Ronald Johnson, Samuel George, Keith George and Erline Alonzo) did not need to relocate to new residential lots and are currently residing in existing residences within the lots they were assigned to.

Mr. Nagata asked to correct the last sentence of amendment no. 3--written statements have been received but not necessarily conforming to the Attorney General's requirements; therefore, no. 3 would be subject to the receipt of proper written statements.

Ms. Estelita George of the Sam George family, Lot B-14, stated that she had not been informed of the meetings of August 12, 1994, and September 24, 1993. She stated that her concern involved Lots B-11 to B-13, which she said were of cultural and historical value. She informed the Board they envision a school for the masters, using those lots. She said any more disturbances to the Valley would contribute to further erosion and contamination of the Valley, and she suggested getting the EIS in order.

Mr. Nagata stated that the three lots were not bulldozed because the rp's had not been rescinded at the time. Mr. Nagata further advised that Sam George still has rp's for portions that won't be built on. Ms. George asked for the 2.5 acres; if they are unable to obtain it then they would go to a higher court.

Mr. Nagata stated that archaeologists have gone to check the sites and nothing of significance was found to be in danger of being destroyed. Regarding the EIS, in order to accommodate the house lots, the EIS was revised in 1992. He said the only designated historical

landmark in the Kahana Valley area is the Huiloa Fishpond.

Mr. Nagata informed the Board that there is a slight problem with funding at the present time because Bank of Hawaii has pulled out. HFDC is attempting to obtain an answer or find an alternative source.

Ms. Adela Johnson expressed her concern about the Vierra family who has decided to move into a subdivision. She said the Vierra's have lived there for generations but because of the frustration in attempting to remain on their lot and obtaining the necessary the permits they have decided to move to a new lot.

ACTION Mr. Nekoba moved for approval with an amendment to paragraph 3 that it would be subject to receiving the final written statement from the parties, approved by the Attorney General. Seconded by Mr. Yuen and unanimously approved as amended.

ITEM E-1 RESUBMITTAL-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

Mr. Nagata recalled that this item was deferred to obtain more information from the lessees. They also used the opportunity to discuss certain points made by Mr. Schaefer, DOWALD, and the DLU. Earlier in the week Mr. Schaefer did submit additional information regarding permits but did not have copies. Mr. Nagata stated that he was shown the building permit they are attempting to process; the only agency that had signed off was DOH indicating they approved the aerobic system. He also had calculations regarding the floodway. Based on that, DOWALD gave Mr. Schaefer's engineer the application to fill out. Mr. Schaefer also claimed he had metes and bounds drawn up.

Mr. Schaefer distributed a packet containing: correspondence from the DOH approving the wastewater system; the no-rise certification and accompanying engineering calculations; building inspection by Archibald Wong; correspondence from DLU stating that in order for the lessees to comply they must work "hand-in-hand with the State;" correspondence from the Chairperson to the Soga's on whether they were grandfathered in; and the Director's Report on the 1978 SMA, which mentions demolishing 17 residences and building 16 new ones. Mr. Schaefer stated that only one individual showed up at the public hearing, Norman Shapiro from New York, the president of the Hui o Kanani o Kahana; the 17 residents did not show up. He claimed they were not notified of that hearing. Even when they had the Advisory Council, he said, they were never informed of the SMA.

Mr. Schaefer indicated that the next step was to have DLNR and the permittee submit the application to DLU as co-applicants.

Mr. Nagata stated that only the Martinez residence has the DOH approval for the wastewater system; to his knowledge Ms. Beirne has not obtained that approval. Ms. Beirne stated that her consultant was present and submitted a written request for extension to obtain the permits. Mr. Nagata continued that regarding the survey the Board did indicate willingness to do the metes and bounds but not until the approvals were obtained. The Board said "no" to the no-rise certification. In the case of the Soga's they have decided to go on their own to do the metes and bounds survey because they are now in the position to build. Ms. Beirne claimed that the no-rise also applied to her property. She said she has also retained Gray and Hong who have lowered their cost to \$2,500; that they checked with R.M. Towill regarding the survey. Towill is working on her sister's survey. She claimed that her application to DOWALD could be done through Martinez.

In answer to a question from Mr. Yuen, Mr. Nagata stated that the difficulty with granting an extension is that the State is trying to move ahead on the sewage treatment system, and is attempting to tie down the final figures to ascertain whether the State would have enough money to even install the system or whether the residents would have to pick up the tab. In this case, it could be said they are ordering the system for the areas mauka and not for the present Beirne and Martinez lots.

Mr. Nagata further stated that DLNR would have to sign off as landowner. By so doing, DLU would assume that DLNR is advocating approval, but Mr. Nagata commented he did not believe it was the Board intent that the DLNR would take an advocacy role in the lessees obtaining permits. Mr. Nekoba stated he believed if the State signed off it would allow the lessees to pursue the permits. Mr. Nagata asked for clarification concerning the Board intent--if there is a way for the State merely to sign off as landowner to allow for its processing, then that is what the Board is willing to do. He also asked whether the Board intent was for the lessee-applicant and the State to go "hand-in-hand" or in other words put the State in a position of asking DLU for favorable action. Mr. Nekoba stated the State should not be in the position to make it difficult or impossible for the lessees to obtain their permit. It was not the intent to take an advocacy role.

Mr. Nagata commented that regarding the SMA, the person previously mentioned attending the public hearing as a person from New York is actually a resident. As far as Mr. Nagata knew, the legal requirements for a public hearing had been met. What was proposed in the SMA was "pretty much what was proposed in our EIS that was processed through, went through its own process and in that process, I believe, there were more than one Kahana resident testifying." He said he believed testimony was made by Ms. Beirne, as well as Mrs. Kahala and Mr. Shapiro. At that time, the department was working very closely with the residents and keeping them informed but he did not know why the residents chose to show up/not show up at the public hearing but it was their prerogative. In processing the permits for the subdivision, the department did ask DLU for an opinion on whether an SMA was required for those in the subdivision area; DLU stated the State did not need to comply to the SMA law.

Shortly thereafter the department did process a revised EIS statement to show what they wanted to do in today's situation. The matter was brought to the Board and residents were present at the meeting. Mr. Nagata stated, "The bottom line with the people at the City, DLU, regarding the SMA is that they recognized that for the . . . areas that we had covered under the revised EIS, that the SMA was fulfilled from their standpoint. As far as the Soga's one, the Soga's, like the Martinez and the Beirne's fell outside of whatever we had submitted but when they reviewed it and also when we reviewed it from the standpoint of the EIS, but the Soga's proposed to do is basically to build two structures, replacing two existing structures, of approximately the same size, taking up the same volume--the height, etc.--in relatively the same location. Because of that we were able to issue a determination of exemption on their part but we have a little different situation here in that this particular, these two applications are occurring in a floodway, which also, right now, the drawings that they show, I believe, are in variance from the existing dwelling in terms of volume, size and height." Mr. Schaefer stated that they have never been flooded; that the Soga's are building right on the ground and they are getting approved for that. Mr. Nekoba commented that the BLNR responsibility is to sign the SMA application.

Mr. Reinhart stated that the SMA has to be signed by the fee simple owner, which is the State, and the SMA would probably be granted in the form of a negative statement because the SMA relates to the engineering design and location so he assumes that the Beirne's would not have a problem getting by the SMA. It's in an area, he said, where an EIS has already been done. Regarding the flood situation, a regular septic system was designed, raising the ground up 3 feet, which is the most reasonable and acceptable way to do it; however, since it was in a flood area, the Beirne's couldn't raise the ground up. If fill is put in, the Kahana Valley flood elevation would rise up and if two feet of dirt is filled in for an area of 10,000 square feet, the flood elevation might rise 1/8th inch. So it was decided to change the system to an aerobic unit, which has been acceptable to the DOH, under a special condition that a perc test be done.

Mr. Nagata asked to clarify that the DOH is not the final agency signing-off on the building permit. In Mr. Schaefer's case, they were the first and only one thus far. Regarding the EIS being done for the entire valley, he stated that the EIS does not cover the structures in the current location, and the applicants would need to comply with that.

Mr. Nagata further stated that the valley was originally purchased for State Park purposes but the residents subsequently lobbied for the living park concept, and legislation was passed.

Mr. Ahue commented that he did not believe that the original intent was to jeopardize the project, and the only concern raised by Mr. Nagata about granting the extension is that it may jeopardize the sewage contract. He advised that the applicants may be taking a chance because if they will not utilize the subdivision lots, there's no sense in spending the money on the sewage but if ultimately applicants have to move into those lots, there may not be sewage.

The State does not want to put in infrastructure or additional funds for infrastructure if it won't be necessary so it has to be decided now how the project will proceed if there's more delays.

Mr. Nagata stated that at the time they entered into a contract with the sewage consultant, the septic tank and leech fields were designed for certain lots up mauka, including the lots for Beirne and Martinez.

If those two subdivision lots are not taken by the applicants, Mr. Nagata advised the Board would have to review its policy of 31 families so as not to say that as the families get larger the State would keep on establishing lots. The 34 lots were set up to give some flexibility to the last residents choosing lots.

RECESS The Chairperson called a recess from 12:30 to 12:35 p.m.

Mr. Nagata proposed that if an extension is granted that it be clearly understood that as far as the engineering, design, inspection is concerned, the costs would be borne by the applicants. In this case both the Beirne and Martinez families have retained Mr. Reinhart to do that part. Mr. Nagata stated that the State does not want its contractor to be responsible for that area as well. He suggested separating the wastewater engineers; that a deadline be established but at some point they could pull back from buying the material and installing the system. Mr. Nekoba suggested the cost of buying the material and installing the system be put aside, do the rest of the lots and in the event the applicants receive their permits for their present sites the money could be used for that. If it would cost more if the applicants have to move mauka it would be their responsibility. Mr. Nagata stated he was unsure whether he could negotiate that with the contractor. Mr. Beirne stated she couldn't see why the funds for the two mauka lots couldn't be put on hold until there is a finalization of their situation.

Mr. Nagata stated the engineers were working on approximately 26 lots and the cost was much more than what Self-Help would have done it for because they were going to do it on prior costs that they had fixed in time, much more than \$4,500.

Mr. Ahue suggested that if it can be worked out that without incurring additional costs set aside funds or materials for those two additional lots; but if it can't be worked out, it can't. Ms. Beirne stated they could accept that.

ACTION Mr. Nekoba moved to grant applicants a six month extension to obtain the necessary permits and the State would sign the SMA permit but merely as the landowner; and that Mr. Nagata will talk to the contractor to exclude the two mauka lots to determine what type of credit or allowance there would be and if funds could be set aside and applied to the lower lots if they obtain permits or, subsequently, if they do not get the permits it could be applied to

the mauka lots if it can be worked out. If that could not be worked out, the applicants would assume that risk. The motion was seconded by Mr. Landgraf.

Mr. Nagata stated that he will check with DOWALD on the low-rise to determine whether a separate application was necessary.

ACTION The motion was unanimously approved.

Ms. Adela Johnson spoke on behalf the Kahana Ohana Unity Council and spoke in support of the Beirne and Martinez families' efforts.

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:

Item F-1a ASSIGNMENT OF GENERAL LEASE NO. S-4938, LOT 22, HANAPEPE RICE AND KULA LOTS, HANAPEPE, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-9-01:3

Item F-1b ASSIGNMENT OF GENERAL LEASE NO. S-5098, LOT 83, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-02:81

ACTION Unanimously approved as submitted (Apaka/Kennison).

Item F-1c See page 3.

ITEM F-2 See page 2.

ITEM F-3 DEPARTMENT OF TRANSPORTATION REQUESTS RIGHT-OF-ENTRY ONTO STATE LANDS FOR PURPOSE OF RESTORING THE UKUMEHAME SILT BASIN, UKUMEHAME, LAHAINA, MAUI, TAX MAP KEY 4-8-02:42 AND POR. 2

ACTION Unanimously approved as submitted.

ITEM F-4 DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND WATERLINE EASEMENT AND GRANT IMMEDIATE CONSTRUCTION RIGHT-OF-ENTRY, GOVERNMENT LANDS AT KALOI AND KANAIO, HONUULA, MAKAWAO, MAUI, TAX MAP KEY 2-1-0-3:50 AND 54

ACTION Mr. Kennison moved for approval with amendments: (1) deletion of paragraph C under recommendation since it is already existing and (2) that the granting of the easements be subject to the concurrence of the Governor; seconded by Mr. Apaka and unanimously approved as amended.

ITEM F-5 **REQUEST APPROVAL FOR ISSUANCE OF ACCESS EASEMENT IN CONFIRMATION OF KULEANA ACCESS RIGHT, PORTION OF LOT 35, HAUULA HOMESTEADS, HAUULA, KOOLAULO, OAHU, TAX MAP KEY 5-4-01:POR. 21**

ACTION Unanimously approved as submitted (Nekoba/Landgraf).

ITEM F-6 **DEPARTMENT OF HEALTH REQUESTS APPROVAL OF AMENDMENT NO. 8 OF LAND OFFICE DEED LOPO-OA-06, WAIKIKI, HONOLULU, OAHU, TAX MAP KEY 2-6-03:POR. 24**

Mr. Young asked to amend the tax map key no. to: 2-6-03:por. 23.

ACTION Unanimously approved as amended (Nekoba/Landgraf).

ITEM F-7 **REQUEST FOR EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, GENERAL LEASE NO. S-3960, LOTS 81 AND 32, HANAPEPE RICE AND KULA LOTS, HANAPEPE, KAUAI, TAX MAP KEY 1-9-02:1 AND 20**

ACTION Unanimously approved as submitted (Apaka/Kennison).

ITEM F-8 **CHAPTER 91 ADMINISTRATIVE PROCEDURE FOR PETITION FOR A CONTESTED CASE HEARING TO APPEAL THE DIRECT AWARD OF FIVE, FIFTY-FIVE (55) YEAR TERMS, NON-EXCLUSIVE EASEMENTS FOR LANDSCAPING AND MAINTENANCE PURPOSES COVERING PORTIONS OF GOVERNMENT BEACH RESERVES ON MAUI**

ACTION Mr. Young informed the Board that the individuals/entity who filed for a contested case informed him during the week that they were not available because of a prior commitment and asked that the matter be deferred to the next Oahu meeting. Motion to defer unanimously approved (Kennison/Apaka).

ITEM H-1 See page 3.

ITEM H-2 See page 8.

ITEM H-3 **REQUEST FOR AN EXTENSION OF TIME TO COMPLY WITH PAYMENT OF IN-KIND LANDSCAPING SERVICES REGARDING CONSERVATION DISTRICT USE PERMIT MO-536 FOR PUBLIC SEWERAGE SYSTEM USE AT KAUNAKAKAI, MOLOKAI; TAX MAP KEY: 5-3-5:2 PERMITTEE: DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT, COUNTY OF MAUI**

Mr. Evans reported that because of budgeting the County requested an extension of time.

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM H-4 CONSERVATION DISTRICT USE APPLICATION FOR A 2-INCH WATERLINE IN THE MAKAWAO FOREST RESERVE, MAKAWAO, MAUI, TAX MAP KEY: 2-4-16:02; APPLICANT: MR. JAMIE G. HUNTER

Mr. Evans stated that the staff recommendation was for denial because of the SMA requirements; however, as the Chairperson had suggested at the last meeting, sometimes there is more than one reason for the denial, which was the present case. He pointed out Exhibit 5, a letter from the County indicating that a Land Use Commission Special Permit had been granted to purify and bottle water. The staff did not view that as a clearance for the SMA. Mr. Evans stated that the County was asked for clarification and yesterday afternoon staff received a letter from Maui Planning that supplements the previous letter stating that the property is not located within the SMA. The second concern was that they have not received a written response from the applicant about the intended use of the water. When applicant came in he indicated he wanted the utility line for water purposes for his house; however, during processing it was discovered there was commercial water bottling going on the property. The staff has a number of questions: (1) what is the source of the water; (2) what is the source of the water for the water being bottled; where is the bottling taking place. If in fact the bottling is taking place on the property, why does the applicant need this line; why not use the same line. Applicant had stated it was too costly to fly to Honolulu for the meeting. Notwithstanding Recommendation no. 1 and that the matter has been clarified by Maui County that it is outside the SMA and based on the sampling of the concerns about the intended use of the water the staff feels they have no alternative but to continue with their recommendation for denial based on Recommendation no. 2.

ACTION Unanimously approved as submitted (Kennison/Apaka).

Mr. Evans stated for the record that the staff written request for clarification is dated August 22nd.

ITEM H-5 See page 3.

ITEM K-1 CONSENT TO COMMISSIONER'S ASSIGNMENT OF LEASE (RESUBMITTAL), CONSENT TO MORTGAGE AND SHORT FORM LEASE - LEASE NO. DOT -A-81-14, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (GARY O. GALIHER AND DIANE T. ONO, HUSBAND AND WIFE - CITY BANK)

Mr. Garcia indicated that the assignment was approved on May 27, 1994, however, Mr. Galiher asked to have his wife included as an assignee. Mr. Garcia asked to correct the statement that the lease has been reviewed and approved by the deputy attorney general; it is in the process now.

ACTION Unanimously approved as amended (Nekoba/Landgraf).

**ITEM K-2 RESUBMITTAL OF RESTAURANT AND LOUNGE CONCESSION,
KEAHOLE-KONA INTERNATIONAL AIRPORT, HAWAII**

ACTION Unanimously approved as submitted (Yuen/Nekoba).

**ITEM K-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT, NON-
CONFORMING USE, KAHULUI AIRPORT, MAUI (A & B HAWAII, INC.)**

ACTION Unanimously approved as submitted (Kennison/Apaka).

**ITEM K-4 CONSTRUCTION RIGHT-OF ENTRY, SAND ISLAND CONTAINER
FACILITY, OAHU (MATSON TERMINALS, INC.)**

ACTION Unanimously approved as submitted.

RESOLUTIONS The Board passed the following congratulatory resolutions:

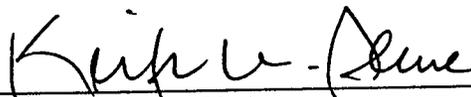
- (1) George Miyashiro on his retirement after 28 years of service as an engineer with the Division of Water and Land Division;
- (2) Patricia Kimura, deputy registrar, Bureau of Conveyances, after 33 years of service; and
- (3) Sandra Furukawa, Registrar of Conveyances, after 27 years of service.

ADJOURNMENT The meeting was adjourned at 1:10 p.m.

Respectfully submitted,


Geraldine M. Besse
Secretary

APPROVED:



KEITH W. AHUE, Chairperson
Board of Land and Natural Resources