

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

DATE: FRIDAY, NOVEMBER 18, 1994
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 130
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

**ROLL
CALL**

Vice-Chair Apaka called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. and the following were in attendance:

MEMBERS: Mr. Christopher Yuen
Mr. William Kennison
Mr. Libert Landgraf
Mr. Herbert Apaka

**ABSENT
& EXCUSED:** Mr. Keith Ahue
Mr. Michael Nekoba

STAFF: Mr. Roger Evans
Mr. W. Mason Young
Mr. Ronald Walker
Mr. David Parsons
Mr. Linford Chang
Ms. Dorothy Chun

OTHERS: Deputy Attorney General Linnel Nishioka
Director Rex Johnson and Mr. Peter Garcia,
Department of Transportation
Dr. Donald Hall (Item H-8)
Ms. Dona Hanaike (Item H-1 and H-2)
Ms. Patricia Tummons, Mr. Carl Christensen
Mr. DeGray Vanderbilt (Item H-1 and H-2)
Mr. Chester Koga (Item F-9)
Ms. Nani Lee (Item H-10)
Mr. Bruce Johnson (Item J-1)
Mr. David Andrew (Item F-1-d)
Mr. Cook, Ms. Maxine Davidson, Ms. Pat Martin
(Item H-11)
Mr. Christopher Chung, Mr. Eric Parker (Item H-4)
Messrs. Denton Wong, Jay Anderson, Mac
Poepoe, Walter Ritte, Walter Ragsdale, Lawrence
Aki, Matthew Adolpho, (Item H-12, H-13, H-14)
Mr. Walton Hong (Item H-5, H-6)

Mr. Ronald Mahelona, Mrs. Eva Mahelona
(Item F-14)
Mr. Roger Harris, Mr. Jeff Monden (Item H-7)
Mr. Everett Dowling (Item F-5)

MINUTES Mr. Yuen pointed out a correction on page 11 of the minutes of October 14, 1994. There was a misspelling, "Hui Hui" Ranch; it should be Huehue Ranch. With that correction, Mr. Yuen moved for the approval of the minutes of September 23, 1994 and October 14, 1994; seconded by Mr. Landgraf, motion carried.

ADDED ITEM: Upon motion by Mr. Yuen and a second by Mr. Landgraf, the following was added to the Agenda:

Item H-15 Request for Authorization to Conduct Preliminary Negotiations to Lease Private Lands at Makalawena, Hawaii in Exchange for a Negotiated Direct Lease of State Owned Lands at Hamakua, North Hilo, Hawaii

ADDED ITEMS: Mr. Kennison made a motion to add the following items to the agenda. Motion was seconded by Mr. Landgraf. *Discussion followed.

Item F-17 Authorize Final Approval to Land Exchange Between the State of Hawaii and Mauna Kea Agribusiness Co., Inc. at South Hilo, Island of Hawaii, Tax Map Keys:3rd/2-9-03:44 (State-owned) and 3rd/2-6-13:Portion of 7 (Mauna Kea Agribusiness-owned)

Item J-4 Issuance of Revocable Permit Ala Wai Boat Harbor, Island of Oahu

* Miss Pat Tummons addressed the Chair saying that it seemed to her that the law says that no item shall be added if there is a significant public concern pursuant to Chapter 92.

Mr. Yuen commented that it was a request for authorization to enter into negotiations which amends and which would include the possibility of a lease instead of an exchange. The Board had already approved the negotiations to enter into a direct exchange. Any definitive action would require further board action.

Mr. Carl Christensen of the Native Hawaiian Legal Corporation (NHLC) asked why this item was not placed on the agenda in a timely manner so that the public could have reviewed it in the normal course of business.

Mr. Yuen asked Mr. Young why Item F-17 needed to be on the agenda. Mr. Young explained that the board had approved in principle the land exchange. F-17 pertains to the expansion of the Haaheo Elementary School parking lot. They merely had an agreement whereby the State would get 26 acres in exchange for one acre. The school needs the expansion for the school buses to turn around. The board approved the land exchange in principle and now staff is coming to the board to give

final facts of the land exchange so that they can process this to the legislature this coming session with a due date of December 15 to get it there. Mr. Yuen commented that he represents a related company and had not been voting on this item, but would vote to allow it to be added to the agenda.

ACTION Vice-Chair Apaka called for the question and it was unanimously approved to add the two additional items to the agenda.

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

CDUA FOR CONSTRUCTION OF THE SMITHSONIAN ASTROPHYSICAL OBSERVATORY SUBMILLIMETER ARRAY TELESCOPE AND ASSOCIATED FACILITIES/INFRASTRUCTURE; TEMPORARY USE OF A PORTION OF THE BATCHING PLANT SITE, CONSTRUCTION OF UP TO TWO (2) 8-PERSON CABINS IN THE EXISTING CONSTRUCTION CAMP, USE OF THE APPROVED MATERIALS STAGING AREA TO THE SOUTH OF THE CONSTRUCTION CAMP SITE AT MAUNA KEA, HAMAKUA, HAWAII; TAX MAP KEYS: 4-4-15:09 (SCIENCE RESERVE) & 4-4-15:12 (HALE POHAKU) APPLICANT: UH INSTITUTE FOR ASTRONOMY

ITEM H-8

Mr. Evans stated that there were discussions with Dr. Hall of the University relative to some of the conditions. As a result of the discussions, staff is prepared to recommend some modifications to the conditions listed.

Condition No. 5 currently reads that the entire project area to be fenced. It is felt that there is a need to only fence in the historic sites of two small shrines on the property. Staff would propose a modification, "that all construction, related activities, including the stockpiling of construction materials in the summit area shall be declined to a clearly demarcated area by fencing." A lateral fence, 10-12 feet to be put up between the two shrines with no markings. This is to insure that a bulldozer operator does not inadvertently cause any damage to the existing historic sites. They also don't want to draw attention to these sites.

Condition No. 6, staff feels this condition could be deleted because of condition no. 5 and also the two shrines are outside of the area that is being used.

Condition No. 8, they would suggest wording that the control building and antenna maintenance facilities shall be painted to blend in with the surrounding environment, rather than all structures.

Condition No. 9, they feel that this could be deleted as it currently reads. There is still a concern expressed about the Wekui bug. They have been

informed that this particular species does not exist in the area where the work is being performed or where the telescope will be located.

Condition No. 11, staff is suggesting wording, "to insure that the recreational areas are protected and perpetuated, the applicant shall minimize the impact of the facility on skiing and snow play to the greatest extent practicable. The applicant shall remove any fencing around the observing pads when they are not in use."

Mr. Landgraf also asked a related question. "For a number of years as part of the development on Mauna Kea, the University of Hawaii was required by a CDUP, a number of years ago to do a master recreational site on Mauna Kea, has it ever been completed?"

Mr. Evans responded that it has not been completed due to a number of reasons. They expect the plan to be coming before the board in December.

Dr. Donald Hall passed out copies of computer generated images to give the board some idea of the modest impact of the facilities. Dr. Hall stated that they appreciated the cooperation of staff in working out some of the difficulties in the original conditions recommended. He was entirely satisfied with Mr. Evans' recommended changes except that in No. 5 he would like it to be very clear on what the university's obligations are. Previously they had simply marked shrines and historic sites. The university has been working closely with the construction people. He understands that staff would like them to construct a lineal fence and they would like to have it clearly stated in the conditions if so, saying that they can live with staff's recommendation.

Regarding condition No. 9 and the Wekui bug, Mr. Yuen asked Dr. Hall to state for the record why it could be deleted.

Dr. Hall explained that the University had a problem with calling out a particular consultant as a part of the condition. Dr. Howarth conducted the entomological survey for the Mauna Kea Science Reserve complex development plan and his comments and recommendations have been followed to the greatest extent possible in the development of the science reserve.

He explained that there is no inference that there are wekui bugs down on the lava flows. There is no evidence that they exist down on the lava flows. Dr. Howarth's recommendations were that as long as they avoided debris and oil spills, that there were no significant problem, even if they existed there. Explanation accepted by the board.

ACTION Unanimously approved as amended. (Yuen/Landgraf)

Amendments: Condition No. 5 "that all construction, related activities, including the stockpiling of construction materials in the summit area shall be declined to a clearly demarcated area by fencing." Basically a lateral/lineal fence, 10-12 feet will be put up between the two shrines with no markings. This is to insure that a bulldozer operator does not inadvertently cause any damage to the existing historic sites.

Condition No. 6 be deleted.

Condition No. 8 that the control building and antenna maintenance facilities shall be painted to blend in with the surrounding environment, rather than all structures.

Condition No. 9 be deleted.

Condition No. 11 suggested wording, "to insure that the recreational areas are protected and perpetuated, the applicant shall minimize the impact of the facility on skiing and snow play to the greatest extent practicable. The applicant shall remove any fencing around the observing pads when they are not in use."

ITEM K-1 OPEN TAXICAB MANAGEMENT SERVICES CONCESSION,
HONOLULU INTERNATIONAL AIRPORT, OAHU

Mr. Garcia explained that the present tenant is delinquent and they are presently in the process of terminating the existing contract. Before the termination DOT would like to have an existing contract which would enable continuing taxi service at the airport.

ACTION Unanimously approved as amended. (Landgraf/Yuen)

Amendment: The Term shall be twelve (12) months from execution of document and shall continue month-to-month thereafter.

ITEM K-7 DEPARTMENT OF TRANSPORTATION REQUESTS AUTHORIZATION
TO DISPOSE OF LANDS SITUATED AT KAPOLEI, OAHU

Director Rex Johnson offered two amendments to the conditions. In Condition No. 4, after the last word "sale" add "with the concurrence and authorization from the Board." Add Condition No. 5, "Any expenditures (appraisal services, surveying, etc.) to be agreed upon between DLNR and DOT."

Ms. Pat Tummons commented that she was concerned if the land were sold with the lease to the Hawaii Motor Sport Center intact, that's going to cause the land to be encumbered which means it's going to have less value than were it put up for sale without such an encumbrance.

Mr. Carl Christensen with the NHLC suggested that if in the future it is proposed that any land be sold to get the State out of the hole, that ceded lands not be considered.

Mr. Johnson added that he assumed first of all, that there may or may not be more value with the lease encumbrance, maybe not more value. He opted to Mr. Mason Young to comment. Mr. Young commented that the proposal before the Board is subject to the lease and the raceway park is a short term lease.

Mr. Young commented that the impact is not merely just the termination or the removal of the tenants. He felt if you take away a raceway park it may end up on H-1 or H-2.

MOTION Mr. Landgraf moved for approval as amended.

DISCUSSION Mr. Yuen stated that he would feel more comfortable if the amendment to Condition No. 4 were deleted. It says that if they don't raise enough money, the Department of Transportation would authorize or identify other State owned lands for sale with the concurrence and authorization of the Board. It seems to be that if they don't raise enough money, they can at that point come back to the Board and ask for authorization for some other land without a submittal. He would rather the Board, for the record, as not saying we approve of the idea of selling other pieces of land to raise money to cover the possible shortfall. He would like to have this stated as an amendment to delete condition no. 4.

Mr. Johnson stated that they would be against that particular amendment as the State needs to show the federal government, should this happen, is that we as a State would be willing to right our wrong if we have committed wrong and this board in large part has benefitted from lands required. It would be helpful in making their case to the federal government.

Mr. Yuen responded that if you make that commitment, it's seen as a commitment by the State to sell other lands and backing the Board into a situation where you're going to come or your successor may come to the Board and say, you've approved this, we want to sell this as we need another \$20 million dollars. As a policy, the State doesn't do that and I feel that is a very good policy to take a long view of things than just to sell land to make money.

Mr. Johnson stated that his only problem was that they are going to be dealing with this \$72 million. He responded that he could live with the deletion of Condition No. 4, but felt that he would have a stronger position with the federal government if he had it.

ACTION The Chair recognized that there was a motion on the floor. Mr. Landgraf accepted Mr. Yuen's amendment of deleting Condition No. 4. Mr. Yuen then seconded the motion. Motion carried unanimously.

GRANT OF NON-EXCLUSIVE TERM EASEMENT TO GTE HAWAIIAN TELEPHONE COMPANY FOR COMMUNICATION CABLES, KEAWAULA, WAIANAE, KUAOKALA, KAENA, MOKULEIA, WAIALUA, OAHU, TAX MAP KEY 8-1-01:POR 14; 6-9-03:PORS OF 2 AND 5; 6-9-01:POR 4; 6-9-04:POR 9 AND, 6-9-05:POR 7

ITEM F-9

Mr. Young informed the Board that this was an identical submittal that was submitted at a prior meeting for AT&T. It includes all the proposed changes by the Board.

Mr. Winslow Tanabe, representing GTE Hawaiian Tel introduced Mr. Chester Koga, consultant on this project who would be available to answer any technical questions relating to the project.

Mr. Tanabe stated that basically they are agreeable to most of staff's recommendations. The only thing they are unable to agree to right now is the automatic step-up. They would like to recommend an easement based on fair market value off the land area with a lump sum payment as opposed to an annual payment.

Mr. Young said that this is the deviation he was talking about. At the time when GTE Hawaiian Tel got approval for the fiber optic cable, they got the Board to agree to a lump sum payment, only because of the objection by the staff with respect to the percentage of the gross. Staff came back and said that there's got to be a better way. In light of the AT&T disposition class meeting, staff is recommending 4%.

Mr. Tanabe stated that Hawaiian Tel's position is that this is a precedence that has been set for all public utilities and they would like to recommend that this not be done.

Mr. Yuen stated that one concern that he would have doing it as a lump sum is that the State has just started to lease out ocean space and the appraisals he had seen were kind of at a loss or out of value and in 10 to 20 years time there may be other better examples of how do you value the right to where the cable crosses the ocean bottom.

Mr. Tanabe pointed out that this was not for ocean space but for land around Kaena Point.

ACTION Unanimously approved as submitted. (Landgraf/Kennison)

CDUA, AFTER-THE-FACT, FOR A SINGLE FAMILY RESIDENCE AT
KEEKEE, SOUTH KONA, HAWAII; TAX MAP KEY: 8-1-4:13 APPLICANTS:
WILLIAM AND RITA COWELL; AGENT: NANI
RAPOZA, CADES SCHUTTE FLEMING & WRIGHT

ITEM H-10

Mr. Evans recalled for the Board that this item was deferred at the last Board meeting. Because a question had arisen relative to the department issuing a negative declaration. He then went over the different requirements. In this particular case, they made a judgement and a preliminary negative declaration was issued. A final negative declaration was issued on November 15, 1994.

Mr. Evans requested a modification to the submittal on page 1, the title should read, "Conservation District Use Application After-the-Fact, for a Non-Conforming Use Single Family Residence at Keekee, South Kona", and the same would hold true in staff's recommendation on page 7, "That the Board of Land and Natural Resources approve this application for a non-conforming use single family residence at Keekee, ..."

Ms. Nani Lee, representing the applicant addressed the Board stating that they agree to the terms and conditions as outlined in the recommendations.

Mr. Yuen reminded Ms. Lee that her client must live up to the conditions listed. Ms. Lee responded that they understand and will.

MOTION Mr. Yuen moved for approval as modified.

Discussion As a point of information, Ms. Pat Tummons wanted to know the total amount of fines that had been imposed on the after-the-fact construction which was built four years ago.

Mr. Evans responded that his recollection was that when the Board had considered this a number of years ago, the Board did impose a fine of \$500.00 and it was paid immediately.

Ms. Tummons said that she recalled at the same time the fine was approved, the applicant was instructed to remove the structure as well and that was never complied with. She understood that they came back to the Board a year or two later with a request for a stay of execution which the Board granted. She commented that although they paid the fine immediately, they did not immediately get a stay of execution.

Mr. Yuen commented that as he remembered it, he thought there was a stay, there was a time frame for taking down the structure and there was request for some kind of a stay before they would have been in violation, whether it was formal or informal. He did state that he was not happy

with the situation. After his motion he was about to say that he would not be moving for approval of this item unless it had been documented and was required by the kuleana rules that this be approved.

ACTION Motion was seconded by Mr. Landgraf and approved unanimously.

ITEM J-1 ISSUANCE OF SUBLEASE, MAALAEA BOAT HARBOR, ISLAND OF MAUI (FRESH ISLAND FISH CO., INC.)

Mr. Bruce Johnson stated that they have been operating for 19 years in Maalaea Harbor and the functions that they served were not only for ice and bait but extended to the public as well. They had a fish market for the community. They also have infrastructure that handles other commercial fishermen, sport fishing vessels and recreational as well. In 20 years in this business, he's seen a decline in these types of facilities and they're down now to two facilities like this in the State.

Mr. Johnson stated that they were endorsed by the Maalaea Community Association in trying to keep this facility in the harbor at the time they heard they were leaving.

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM F-15 SMITHSONIAN INSTITUTE REQUEST FOR RIGHT-OF-ENTRY TO STATE SUBMERGED LANDS TO CONDUCT ARCHAEOLOGICAL SURVEY, HANAIEI BAY, HANAIEI, KAUAI, TAX MAP KEY: 5-5-HANAIEI BAY

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

Item F-1-d Assignment of Grant of Easement (Land Office Deed No. S-27,987), Kamaole, Wailuku (Kula), Maui, Tax Map Key 3-9-04:79

Mr. David Andrew representing Tomen Wailea, Inc. was present to answer any questions of the Board.

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM H-11 LAND USE REVIEW FOR IDENTIFIED PROPERTY DEVELOPMENT ON A PARCEL AT HANA, MAUI (PORTION OF PAEHALA AND PUUALU); TAX MAP KEY: 1-5-11:09; REMAINDERMAN: BYRON M. COOK; COUNSEL: TOM C. LEUTENEKER; CARLSMITH, BALL, WICHMAN, MURRAY, CASE, MUKAI AND ICHIKI, ATTORNEYS AT LAW

Mr. Evans informed the Board that this was a violation by Mr. Cook in the Conservation District, land use, basically construction of a single family residence and related improvements without a conservation permit at Hana. Mr. Evans continued to give an overview of the submittal going

over the actions that had and had not occurred.

Mr. Evans stated that in 1987, Mr. Cook, represented as the landowner, was aware of the Conservation District Rules and that he demonstrated an awareness of the conservation district rules or statutes by submitting a CDUA for processing for a single family house on the parcel. The process was never completed by way of Board action. Staff was informed that efforts were going to be made to correct the deficiencies and it would be resubmitted. It was never resubmitted. Instead a house was constructed on the parcel. The Department issued a notice and order to cease and desist. The chain of events are all listed in the chronology.

Mr. Evans continued in great detail that representation was made that the applicant was not the sole land owner but that all the landowners involved in this property which number about 40, would need to sign off on the application so that it could be properly decided upon by the Board. That never occurred. Representation was also made that this was a kuleana property.

Mr. Landgraf reconfirmed with Mr. Evans that the process was not completed by Board action, that was the process back in 1987 of CDUA No. 2049. Basically there are two things before the Board this morning. A proposed violation which seems to be cured and the second part where the home should be removed because of the limited subzone and because of the multiple ownership, the owners need to sign off.

Mr. Kennison asked if this were Board policy or rules.

Mr. Evans explained that the Board practice has been where there was a question of multiple ownership and based partially on that question, the Board took action that the removal had to occur in a prior case.

Mr. Evans responded to another question by the Board that he had not been out to the site but a report from the DOCARE people came in the past three weeks which stated that the house was still on the site.

Mr. Byron Cook stated that he built the house in 1987 because he really needed it for a growing family. There were many questions that arose when he applied and he could not get them all solved at the time. He stated that it seems here that he is the remainderman. He concurs with the chronology of events which states that he built the house without first getting the Board's approval. He claimed that he tried to go through the process but kept getting stuck. He would like to try to cure the violation.

More discussion followed regarding locating the multiple owners, fines imposed, etc.

Applicant was asked if he ever thought of applying for a subzone change as an alternative. Mr. Evans explained that an application for a subzone change would entail about a year's process approximately.

Mr. Carl Christensen of the Native Hawaiian Legal Corporation stated that he had a general question. He asked if it were the Board's policy not to accept CDUA's unless they are signed off by all the owners of the property. That creates a very serious problem in rural areas where title isn't clear.

Mr. Evans stated that he used the term practice when it came to the question of approving and not approving in the limited subzones. Relative to policy, under Title 13, Chapter 2, it does allow an individual with a legal interest in the land to apply, go through the process, so we do entertain and we do process applications where anyone can demonstrate a legal interest, not 100% of the legal interest.

Ms. Pat Martin stated that she was one of the owners and Mr. Cook does have her approval and she would like to see him on the land.

ACTION Mr. Kennison moved that the Board defer this item to allow the applicant time to resolve the problem of obtaining the approval of the other owners and he can look into the change of subzone. Seconded by Mr. Landgraf. Yes votes by Mr. Yuen and Chair Apaka.

DISCUSSION Mr. Evans asked the Board for guidance as to time frames or length of time frame of this deferral and what is expectations of staff by the Board and expectations of Mr. Cook.

Mr. Kennison proposed that the applicant could apply for a subzone change and the applicant to seek acceptance by all the landowners. The time frame to be one year.

Mr. Evans commented that the question of landownership will come up as a part of the change in subzone. As a potential possibility, he suggested that Mr. Cook be required to apply within the next 60 days for a change in a subzone amendment and with this legal interest, staff will process the subzone amendment.

Mr. Yuen stated the applicant should be informed that the Board will still be looking at the question of the other owners, that they agree with him in submitting the application.

Mr. Cook stated that he would need help in making this happen. Mr. Evans said that staff will help in answering questions. Relative to the type of help that Mr. Cook needs, staff can make references of various agencies in the community regarding planning and legal aid.

Mr. Landgraf brought up the fact that there were two parts to the recommendation and one was the violation and recommended fines. Was his motion deferring the matter of the possible violation and fines also?

Mr. Kennison stated that the matter of the fines could be deferred also.

Mr. Cook felt that he would have a better chance of getting people to recommend his application if he didn't have a fine of \$277,000 hanging over his head.

Taking into account the comments by Mr. Cook, Mr. Kennison asked to take up the matter of the violation first.

**AMENDED
ACTION**

Mr. Kennison amended his motion that a fine of \$2000.00 be held in abeyance until such time the board acts, one way or another on the proposed amended subzone rule change and the applicant to have 60 days in which to submit an application for the rule change to staff. Should the applicant be unable to get the relatives to sign off or changes his mind about applying for the rule change, he may return to the Board and the Board may reexamine the fine, saying that the maximum will be \$2,000.00. Amendment was accepted by the Board.

Deputy A.G. Nishioka asked the chairperson for clarification that Under Item B. that it would also be suspended.

Mr. Kennison clarified that it was.

ITEM H-1

**ADOPTION OF TITLE 13, CHAPTER 5, HAWAII ADMINISTRATIVE
RULES RELATING TO THE STATE CONSERVATION DISTRICT**

Ms. Dona Hanaike informed the Board that these rules are a combination of almost a two year review process that this department has undertaken. There was much input over the last two years in their attempt to review the procedures and practices dealing with conservation district use permits in this department. The last time this rule was reviewed was in 1977-78. Outlined in the Board submittal are how these new rules are set up. Public hearings were held and numerous comments were received. The purpose of this rule change was to overhaul the department's procedures to make it more user friendly and add more standards and criteria on how we approach certain kinds of procedures and subject areas. There were a lot of consensus on the approach. There were couple areas where the committee had difficulty in addressing and they did include that in this morning's board submittal. One of the two areas is the regulation of activities that are not considered land uses under the rule or law but they could possibly have impact on

the natural resources. The other item is the possibility of some unanticipated land uses, the idea being what is considered a variance procedure where you have a hardship case. But there may be situations where general reasons just don't apply.

Regarding the rule that was taken to public hearing, they did make changes. Most were non-substantive changes to the rule to help clarify meanings and interpretations based on comments they received, also included severability section that was recommended and based on that they recommend that the Board approve the proposed rules for Title 13-5 and with that approval to cancel the existing rule and also to direct the Office of Conservation and Environmental Affairs to look into these two issues that the committee has hi-lighted and to come up with recommendations for future rule changes in six months.

Mr. Kennison requested to make an amendment to Title 13-5-2 Definitions on page 55 defining the definition of "water system". "water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g. ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of surface water collection system) which furnishes a supply of water to consumers. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards. (Note: Amendment to added underscored text.)

Mr. Yuen stated that he had a few questions which he would like to go on record as showing the intent behind the changes. Some things are clear but he would like to have it absolutely clear.

There are things that are stated as identified uses and typically they require a Board permit. To make it clear, even though it is an identified use, the Board still has to say "yes" or "no" to the use.

Ms. Hanaike stated, "That's correct, the identified uses is like a threshold, like you have to get past that and the Board still has to go through the review process to determine whether or not a permit is allowed in this case. We have standards and criteria to help you to judge what considerations would go into reviewing a permit request as well. The decision is ultimately the Board's."

Mr. Yuen said, "So it's still a discretionary decision with the Board and then the administrative permits are discretionary decision with the Chair of the Board."

Ms. Hanaike stated, "Unless it is appealed to the Board, then it would be heard by the Board."

Mr. Yuen stated, "There were some questions about submerged lands in marine waters on page 5-21 (d) where it says that the requirements of this chapter are met with complying with various other things. At the same time there are provisions for requirement permits for things like seawalls, marine construction generally requires permits. The idea is that the section on permits supersedes that particular section."

Ms. Hanaike confirmed, "Yes it does. The idea of that section was to insure that things such as fisheries management and Natural Area Reserves, I don't have the rule in front of me, that those statutes would apply for those types of activities. However, any kind of land use that affects the submerged lands is still within the purview of the department and maybe in the future it should be reviewed to clarify that if there's any questions."

Mr. Yuen said, "So the basic point is that marine construction, like artificial reefs, that sort of thing still require permits. So this section here, means that you don't need a CDUA permit to gather opihi, to go fishing or things like that, as long as you comply with the other fishing laws, that's all you need."

Ms. Hanaike stated, "I think that's the section where we added a source note, was recommended by one of our project advisory committees to inform people that there are other laws in the department that have to be complied with, our fishing laws, our public state parks laws, forestry laws, etc. So we try to educate the public in that way."

Mr. Kennison commented, "Same to be applied to the non-conforming uses, where the business operation in places non-conforming that will remain as is, as long as they remain as non-conforming use as they originally were, for example, golf course holes in a conservation area. As long as they remain a golf course entity, it can remain what it is, once removed from the golf course entity then it would be non-conforming and deleted."

Ms. Hanaike stated, "That's correct, we will honor all permits and land uses that were in effect prior to the adoption of this rule."

Mr. Carl Christensen of NHLC stated that he was a member of the project advisory board reviewing this and was in part responsible for the outcome. He stated that he voiced various objections during the review process, some of which were accepted and some of which were not. He stated he would like to speak about only one particular item today which he would ask the board to at the very least to delete from the identified uses in the protective subzone. He referred to section 13-5-22, item P-6 Public Purpose Uses. The two items listed would allow the board to grant a permit for (D-1) Land uses undertaken by the State of Hawaii or

the counties to fulfill a mandated governmental function, activity, or service for public benefit and in accordance with public policy and the purpose of the conservation district. Such land uses may include transportation systems, water systems, communications systems, and recreational facilities. (D-2) Transportation systems, transmission facilities for public utilities, water systems, energy generation facilities utilizing the renewable resources of the area (e.g. hydroelectric or wind farms) and communications systems and other such land uses which are undertaken by non-governmental entities which benefit the public and are consistent with the purpose of the conservation district.

Mr. Christensen stated that the existing rule that is similar to the first of these is the rule that allowed the H-3 freeway to be built through the protective subzone. He asked that these be eliminated and moved instead to the identified uses for the limited subzone and others, for the reason that the protective subzone is to mean anything at all, it has to mean protection against the very sorts of things that are contemplated in these items.

Mr. Christensen continued that he believed this completely removes any protective effect of the conservation district and completely eliminates any public belief that this is a system that really protects anything. He stated that the State is imposing a very complicated regulatory system with regard to private lands, yet it is effectively exempting itself from most of the difficulties of that process. He claimed that during the group discussions he did not hear anyone speak in favor of these provisions.

Ms. Hanaike stated, "Carl and I had disagreed on this. But I would disagree that no one else spoke in favor of this. I think there's a difference of opinion what the protective subzone is and to give you an example, the Koolau Mountain range is in the protective subzone. If we were to pass this then the Wilson Tunnel, the Pali Highway, all your electrical power lines, all your ditch systems would be gone. I think there has to be, we are looking at our existing system today, these rules were set up for the existing system. The protective subzone is not pristine forest areas like our Natural Area Reserves System, etc. We need to balance various activities. This is an elaboration of the government use, permitted use that was in our existing rules. What we tried to do was define it better, put more criteria and standards there, but also to recognize that the government has more than one function in this society and we have to understand that there are competing public policy interests. This provision does not say that these things are automatically approved or they are exempted from review. All it does is it allows it to go forward and be heard by the Board. The Board has the discretion to approve or reject it so I think without this provision it would severely curtail other public functions of this government and I don't think that's something that we can in good conscience have."

Mr. Christensen responded, "First, not all of the protective subzone is pristine but in theory at least those areas that are pristine, are in the protective subzone. The proposed rules would allow major construction in such zones whether or not they are pristine and of course the government has conflicting mandates. If it's necessary to construct the Wilson Tunnel through such an area, there're certainly procedures to seek variance or to seek reclassification out, either the protective subzone or out of the conservation district entirely. By having a provision which makes it very easy procedurally to treat the protective subzone in the way that all other subzones are treated, it basically gives State agencies and other government agencies and certain favorite private projects no incentive at all to avoid the protective subzone. As an example of why this difference makes a difference, some years ago there was a proposal to run a power line down the backbone of the Koolau Mountains from near Kahuku down to Wahiawa. When the Board approved the route of that, while they did nevertheless approved it, they still moved it outside of the protective subzone and with a rule like this which makes no distinction at all, makes no special recognition of the purposes of the protective subzone which I assume there are purposes for, otherwise there would be no reason to create such a subzone, if you do not treat that specially, it means that it has no special protection and the whole process is effectively meaningless. I would also note that this provision is substantially broader than the previous provision which exempted only public governmental uses. This one also allows certain private uses and it's so broadly worded that effectively any private use that's proposed could be fitted into this very broad language of Item D-2."

Chairperson Apaka asked, "What type of comments, we had on this item coming back from the public themselves?"

Ms. Hanaike responded, "I think we had a group of people within our project advisory committee that were probably the most vocal. I'm not sure about general public comments because within our project advisory committee there was a difference of opinion and I think Carl represented that opinion as to how to approach this issue. And so it was something that was debated probably more than on one occasion. We felt however, looking at it from a staff view that we need some kind of recognition of government functions within this room otherwise you cannot proceed in meeting other public policies mandates that are mandated by the legislature. You think there are a lot of controls already the State has to comply with the environmental review processes, again there are standards and criteria for the Board to review all permits. It's in another section of this rule, help you decide whether or not an application should be approved and I think this provision is better than the first one. The first one is very vague and I disagree with Mr. Christensen that this is broader. I think this explains to everyone, which

is one of the goals of this rule, exactly what permit use means. The rules were very vague in the past about what government did, what kind of activities were going on in the conservation district. I think people are surprised now to see this language is there. We're just being very open about these are the kinds of activities that were going on in the last 15 years before this board and so we're just putting it out front so everyone will know. I think the Board has earlier, Mr. Yuen brought it up that it doesn't mean that everything that comes before the Board is automatically approved. I think it shows that the Board is moving in that direction when they moved power line outside the protective subzone and I think issues like this can also be addressed in the big fix scenario, the contract that was going to go forward on phase III contract. Maybe the concept of the protective subzone needs to be reviewed, the areas that are pristine and they should be restricted to very few activities. Our task here was to accept the existing regime that we had so what you see here is what has been the past practice of the Board in the last 15 years. It may change when we go through this consultant review and this issue of the protective subzone can be addressed and public uses could be restrictive. Until you do that you have a lot of land in the protective subzone, like the whole Koolau Range and we couldn't build any wells for water, you're talking about a lot of impacts here."

Mr. Christensen commented, "In response, I would like to say that if there's a surprise factor, it is surprise and shock that the department and conceivably the Board, could show so little respect for the protective subzone that would seriously contemplate this sort of land uses that are proposed here on other than a highly exceptional basis for which there are other provisions in these rules and the statutes that would allow those uses to go forward, if in fact they were truly that important."

Mr. Yuen commented, "Mr. Christensen and I talked about this quite a bit. I'm not comfortable with the way this is written at the present but I do think that I would support in going ahead in passing the rules and putting this as one of the items to be worked on in the roughly six month time frame which we have discussed for a couple of other things. When I took a crack at rewriting this and to try to meet the very real and legitimate concerns that both of you are raising here, I wasn't able to come up with anything that I ... it's easier to describe what we want to do than to actually put it down in so many words and I wasn't able to review this before these rules went out for public hearing, it becomes a lot more difficult after they go out for public hearing. I think it should be worked on, I think that what you're saying has a lot of merit. I think we might wind up with different public preference sections for protective versus the other subzones but I'm sitting here today, my feeling is that it needs to be developed another day. Under the rules at present, the Board can approve an H-4, a possible protective subzone. You're not losing anything by passing the rules with this provision in there. You may not

be closing a loop hole today, which you would like to see closed today but I think we can look at that and do it in the future. Part of the problem is that, just to give an example, much of the protective subzones is that way as a watershed and there are existing water systems within the protective subzones and that's why we have a protective subzone. So there is construction, there are physical activities within the protective subzone. They are not areas that are just being kept as complete 'no touch' areas. I certainly think that if the language can be tightened up and I think we need to work on that."

Miss Pat Tummons commented that she did submit written comments which apparently were not made a part of the rules. She also had comments from herself and then a short set of comments from Carol Wilcox who could not remain this morning. She said that she was a little bothered by the fact that the final rules as you have them, they were not available to her to review at leisure. She would have had to pay fifty cents a page which given the length of these rules it was quite prohibitive. She wanted to register her objection to the cost of looking at these rules. She was very concerned that the whole category of activities that don't involve landscape altering work is eliminated. I believe last August, the Land Board asked about this and was assured by Ms. Hanaike that this problem would be addressed. She was also concerned because of point raised by Mr. Yuen about the Board approving all of the identified uses. The identified uses as I read these rules do include administrative approval, those items for which no Board approval is required. So when the statement is made by Ms. Hanaike that indeed all of the identified uses will come before the Board, I don't believe that's correct. An item that's apparently still in the rules concerns subzone boundary determinations being made by the staff. I would remind this Board of the credible problems and subzone boundaries determination. She feels that with limited staff, the Office of Conservation and Environmental Affairs will not be able to handle subzone boundary determinations and people applying for conservation district uses. She then brought up the earlier issue of Mr. Cook and how she felt that he should wait for the new rules to go in effect.

Mr. Yuen responded, "Even though the houses are identified uses in the limited subzone under the new rules, if the reason for the limited subzone is a flood plain and the house can be built to conform with flood plain regulations. Looking at the house, I don't think that's why his property is in the limited subzone."

Miss Tummons stated, "Oh, okay I had assumed that it was."

Mr. Yuen further explained, "It's not. It looks like it's on a flat point on a ridge, I don't know if that will change. All of the identified uses that states they require it to come to the Board for approval and there are

criteria that the Board has to look at, in other words the Board can still say yes or no. Specifically for Mr. Cook, I don't think the rules make a difference."

Miss Tummons said, "As far as you just qualified, all of the identified uses that say they require Board approval, but that's not the universe of identified uses, I wanted to make very clear that there are identified uses that require only administrative approval. Would echo Mr. Christensen's concerns on the protective subzone included in a very broad language."

She then offered Carol Wilcox's comments. She has concerns that the process has not been complete and this Board has not been offered an opportunity to have a public hearing on this. The public has not been allowed to testify before the Board except for this meeting. She suggested that this Board as now constituted too small to pass the approval of these rules with the chair and Mr. Nekoba absent. The submittal she says is self serving and sanitizes the record. The critical comments including her own and those of the DLNR divisions and other state and county agencies as well as the public are not mentioned in the submittal. She urges the Board not to approve these rules.

Mr. DeGray Vanderbilt, resident of Molokai stated that he had two testimonies, one from Molokai and one from the Sierra Club Legal Defense Fund. "Basically what Molokai has been saying at the public hearing and I don't know if you've had an opportunity to see the testimony from Molokai, but thanks to Ed Henry's public hearing on Molokai that was well attended ... basically what Molokai is saying is that they don't want these rules changed the way they are because it leaves the door open until such time as the various divisional, whether it be boating and marine, if their rules set up so that there's a same public notice, the same contested case proceeding, that there is in DLNR's rules and I think if it does have to be passed, one suggestion was that as it is in some of the county's rules and regulations in the State of Hawaii, except on Molokai. ... He then handed out copies of testimony to the Molokai Planning Commission from a Mr. Harry Aki, a resident of Maunaloa, Molokai. Mr. Aki had planned to be here today to testify on Items H-11, H-12 and H-13. This will show you why this is such a concern to the people on Molokai, the Hawaiian community that has worked with Ms. Hanaike to develop the Governor's Final Report on the Molokai Subsistence Task Force. (Mr. Vanderbilt continued to point out items in the testimony and maps that were related to the Molokai Ranch trail.) (A copy of Mr. Aki's testimony has been filed in the departmental board folder.)

He then read the testimony from the Sierra Club Legal Defense Fund, dated November 18, 1994 and signed by Marjorie Ziegler regarding the proposed revisions to Title 13, Subtitle 1, Chapter 5 rules relating to the

conservation district. Her testimony voiced her concerns that should the Board believe that line agencies should regulate such activities within their jurisdiction, then they recommend the Board reject or defer adopting these rules until a consistent process is drafted by each line agency for public notice, review, comment, and appeal of permits and approvals for activities in the Conservation District. (A copy of the testimony has been filed in the departmental board folder.)

ACTION Mr. Kennison moved for the approval of staff's recommendations with the amendment he had made earlier to the definition of "water system." Motion was seconded by Mr. Yuen and carried unanimously.

Amendment: Title 13-5-2 Definitions on page 55 defining the definition of "water system". "water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g. ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of surface water collection system) which furnishes a supply of water to consumers. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

ITEM H-2 APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT FOR A NATURAL RESOURCES INVENTORY, SUBZONE CLASSIFICATION REVIEW AND FORMULATION OF A MANAGEMENT PLAN FOR THE STATE CONSERVATION DISTRICT

Ms. Hanaike handed out an addendum to Item H-2 which is a request for approval to engage the services of a consultant for a Phase III review of the Conservation District which they are referring to as the Big Fix. She stated that the department received five proposals which were evaluated and numerically scored by a Consultant Selection Committee.

Staff's recommendation is to select Lacayo Planning, Inc. to undertake the proposed Phase III Conservation District Review Project study as they had the lowest total evaluated bid price.

Question was asked as to when the actual scoring sheets would be available for public review.

Ms. Hanaike responded, "Under the procedures set out by the Office of Information Practices, they will be released when they execute the contract." Ms. Hanaike was not sure when the actual proposals submitted by the applicants would be available to the public and she would need to check.

Miss Tummons stated that she did not see any dollar figure attached to this contract and should that not be a part of the approval. Is there

going to be any provision for the public to comment and review before the final plan is presented to the Board?

Ms. Hanaike stated that one of the elements of the Invitation for Bid (IFB) was a public input element that required public input and information proposal be part of this plan. Each one will be addressed in their own way. As far as the price goes she was not sure if it could be released to the public.

Deputy Attorney General Nishioka stated, "My understanding is that did the Board in a prior time approve this going out to bid with a contract and was there a dollar amount at that time. Up to \$300,000.00 was the amount. Her understanding is that the Board has already authorized a contract up to \$300,000.00."

Ms. Hanaike stated that the bid was \$286,050.00. Mr. Yuen stated for the record that it was not the lowest bid in the dollars term. When the proposals were evaluated, it was significantly better. The two low bids were very close.

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

RECESS 12:45 pm -1:15 pm

ITEM H-4 CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR PIER 38
MARINE RESEARCH FACILITY AT HONOLULU HARBOR, TAX
MAP KEY 1-5-42:6 & 7 (SEAWARD) APPLICANT: DBED&T

Mr. Evans stated that the application has gone through the review and process requirement. Staff is recommending approval subject to conditions listed.

Mr. Eric Parker and Mr. Chris Chung of DBEDT were present. Mr. Parker stated that they were working with the Department of Transportation (DOT) on the project and the mechanism will be a lease through the DOT to the University of Hawaii and the E. O. will remain with DOT. DBEDT will have no involvement in terms of the land. They are only developing the facility acting as the developer.

ACTION Unanimously approved as submitted. (Landgraf/Kennison)

ITEM H-12 CONSERVATION DISTRICT USE PERMIT REVIEW, MO-2093,
SUBDIVISION AT WEST MOLOKAI; LANDOWNER: MOLOKAI
RANCH, LTD.

Mr. Evans began by passing out a change on page 3, a recommendation. Mr. Evans stated that he would draw upon the maps

that the Board has in their exhibits III and IV. This is a CDUP review for a subdivision in West Molokai. He then gave a background beginning about 6 years ago in 1988, the Board approved an application for an after-the-fact subdivision and two conditions were imposed by the Board after much discussion which related to questions of liability, public access, a need to get to the ocean and as a result the Board concluded with a decision that incorporated conditions 8 and 9 in the submittal. Condition 8 clearly states that there was to be public access to the ocean and to beach lands. Up until today, public access alignment has not been formalized for a number of reasons. A proposed access was submitted to staff as seen on Exhibit IV. Staff was not really clear on how the proposal would satisfy the Board's requirement. With permission of the private property owner of lot 113, staff was able to do a field inspection and traverse that proposed alignment. During the field inspection they discovered a public access which does lead from the paved road over the property and does end at the ocean edge. There is 10-12 foot brown sand beach.

Mr. Evans said that staff is recommending that the Board approve this as a beach access trail alignment.

He elaborated on the signage, markers, fencing, locks on the gates, contacting owners by telephone before entering and ownership of area that may be owned by DHHL.

Mr. Denton Wong, attorney for Molokai Ranch asked to make couple points of clarification. The beach access point can be worked out and designated. The locked gates points to a number of things. One specifically is that there are gates because we still run cattle down there, ranch operations down there. Our proposal is to provide keyless entry. There would be space on the other side of the gate so that people can walk through but you can't drive through. About providing the DOCARE people with keys, we don't see that as a problem because I think we need the coordination between Molokai Ranch and DOCARE. The CDUP imposed a condition for pedestrian access. As put down in the proposed signage, Molokai Ranch is contemplating allowing vehicular access for a portion of the trail. This in addition to the requirement and I just wanted to point out because it's an addition, as time goes on we may evaluate how we're going to use it and we may pull it back or extend it, we really don't know yet, I wanted to make that real clear.

The other point would be the use of the trail. In the original CDUP it was allowed that you could restrict the use not only to pedestrian use but also to daylight hours. There's a concern about protecting the private landowners rights as well as they feel there may be poaching in the area.

With respect to the conditions, Mr. Wong stated that they do not have a

problem with it. Would just like to clarify with respect to No. 2, regarding the public easement. This is an open area, there's nothing really there but Molokai Ranch as you've heard already today, is contemplating recreational network and so to the extent that we provide an easement and is recorded, we would request that we have the right to relocate it subject to the realignment approval by the Board.

Condition no. 3 and 6, seem to be the same. It's not real clear whether we're saying, put it on the trail now or after we get the metes and bounds description?

Mr. Evans responded that we have a public access, let's make it a public access, put the sign up, get the signage up, the trail markers up. There still is the burden of metes and bounds and adjustments can be made at that time.

Mr. Wong stated, "That's not a problem. We recognize that the trail bends every now and then and we do need the markers and that's fine. No. 4, you have no fencing. Now some of the trail is already fenced. I take it from your conversation today that the signage that we attached, basically you don't have a problem except with respect to the telephone check-in type of thing and I think we're probably going to drop the telephone. Just to let you know about that."

Mr. Wong stated, "For clarification of condition no. 11, instead of you saying by any other landowner, if you just went ahead and put in DHHL, I would feel more comfortable."

Mr. Evans stated that they would be willing to make the change based upon representation of counsel.

Mr. Wong said that would be fine. He stated also that he had been in contact with DHHL.

More discussion followed regarding the trail.

Mr. Mac Poepoe stated that he comes from Molokai, lived there all his life. Up to the first gate it's already public access. We can drive down there anytime we like. He stated they came before the ranch many times and asked them to sit down together and make a deal on this access thing. He stated that they wanted the ranch to let them go in to the area, Lot 113 to go to the beach. There's an area you can walk down to the beach. They cannot walk very far because once you get to the fishpond, that's it. You have a small stretch of beach to walk this way and that way. The rest is all mud and the fishpond comes out into the ocean and it's all filled with mud. What the people would like on Molokai is, we want to be able to drive in, past those fishponds and go to the beach and the

long stretch of beach. If we can get to that sand beach, we can walk all the way.

Walter Ritte of the Department of Business and Economic Development and Tourism (DBEDT) on Molokai conveyed to the Board the importance of this road access to the Molokai community. He talked about the Governor's Subsistence Task Force Final Report. Lack of access was listed as one of the top three problems for subsistence activities on Molokai. Mr. Ritte continued to point out information in the Governor's Subsistence Task Force Final Report relating to the importance of subsistence activities, the traditional exercise for subsistence, cultural and religious purposes, history of the access problems on Molokai, and the three major users of this area.

Mr. Ritte stated that in the 70's for a period of about 10 years Mayor Elmer Carvalho opened up an area which he pointed out on the map. After the 10 years, the county council did not reopen the access and now it's closed again. He claimed that this was not a new idea of proposed vehicular access up to Kolo. He then urged the Board to support the Governor's task force plan in obtaining access through this area to get to the fishing areas. He claimed the plan the ranch has come up with is not acceptable.

Mr. Yuen directed his question to Mr. Wong, "I don't know this area at all and maybe the other Board members may want to ask Mr. Wong a question also. I'm starting to gather what is where, why isn't the access allowed to Kolo and why does it stop where it does?"

Mr. Wong responded, "We're obligated to provide pedestrian access to the beach and actually the trail as we laid it out goes further in to our property than absolutely necessary. We tried to set up the trail so that at least there would be a reasonable point where the public could get to the beach. That's the condition of the CDUP. Understand that lot 113 is thousands of acres and it's private property to the extent that Molokai residents in the past have used it with permission. Now Walter did mention about the 10 year lease. That's true, the government had a 10 year lease but from my understanding is that during that time there was a terrific amount of poaching and caused lots of problems for the ranch. So whether that was a reason why, I don't know, there's no lease now for public use of that road. People do drive down there but it is with permission, they have to get the key from the Molokai Ranch office, sign in and they can go down. So we're not trying to exclude but for purposes of today, we're really trying to comply with the conditions of the CDUP."

Mr. Yuen stated, "If we do pass this today, then that's the last from the department, DLNR the last obligation you have to provide any access in

lot 113 and that includes this Kolo Wharf and this pretty long stretch of shoreline, actually this fishpond going almost to Hale Olono. Is that correct?"

Mr. Wong stated, "That's correct. Now I guess Roger would say, I shouldn't speak for him but, there's the opportunity when we have to come back in for lot 114, we have to discuss access on those subdivided lots as well."

Mr. Yuen asked, "Is it true that if you come down to this point you can't really walk in neither direction because it's covered by mud flats? The way Mr. Poepoe described it."

Mr. Wong responded, "We were there and you know I'm not really a camper. You could see beach pretty far down, I'm not sure whether it was high tide or low tide, but we're trying to do is provide the beach access for the public."

Mr. Jay Anderson stated that he worked for Molokai Ranch. He stated that he was sitting here getting a little embarrassed because we don't know where we're talking about on the map and the lines are very confusing to me. He said, "Right now what's being described is approximately six miles from the highway to the beach and as Matt Poepoe pointed out, the public can presently drive on the dirt road three miles in to a gate we have there. That gate we have marked in our proposal, the gate where the vehicle stops and what we're providing in addition presently being provided for the public, a pedestrian gate, turnstile or what have you to keep the cattle in and provide access to the people. And then it is an additional 2.8 miles to the beach. When you get to the beach, you can walk, fish, crab. Most of the coast is a brown sand beach as Mr. Evans pointed out. At points you're going to have to walk up on Molokai Ranch property over the rocky bluff back down to the beach. But for several miles you walk on a brown sand beach, lots of keawe, rugged terrain, nice beach area, great fishing but access is impeded at certain points by natural outcrops of keawe or rocky bluffs."

Mr. Evans commented that it seemed to him that the unpaved road ran down to the harbor and the harbor was on lot 114 and lot 114 has not been resolved as yet.

Mr. Anderson commented on the gates saying that they have a cattle operation all along the southern shore and the gate helps to keep cattle on the ranch.

Mr. Lawrence Aki of Molokai addressed the Board so that they may better understand the access. He said, "Walter is saying that the County opened the south shore, basically from Kolu Wharf and back to

Kaunakakai Town which is the area called Palaau. The county opened it up for 10 years. Prior to that from 1977-87, is what Walter is sharing with you. In 1922 when the pineapple industry, Libby, McNeil, Libby actually leased that land from Molokai Ranch, all of that area was accessible that we're talking about. Every single area was accessible by vehicular from Maunaloa town, down into Hale Olono, down into Halena, Kolu wharf and you could actually shoot straight across to the other end. From 1922 until 1970, the area was open. In 1974 Molokai Ranch took the lands back and they shut it down. In 1977 with the involvement of the county and because the community outcry for access, something that they traditionally had for so many years, so the county got involved and worked with the existing Molokai Ranch owners which was Castle and Cooke came to an agreement in opening it up again. But this time being the area of Waikane or basically Kolu Wharf back to the town of Kaunakakai and this area was still closed down. ...

Mr. Walter Ragsdale, presently consultant for the Molokai Ranch stated that he was born and raised in Kalamaula, Molokai. He stated, "My family has background working for this ranch over the years. I want to clarify Lawrence's statement and Lawrence is a friend of mine. During my years on the ranch, my grandfather and great-grandfather worked on the ranch, my father for a time worked on the ranch. I hunted on this ranch all my life. That area from Maunaloa town to the south shore that was not always opened to the general public. Neither was it opened to Buchanan's Place, down to the old Kalamaula Road. It was closed. It was ranch land and to get onto that property you needed a key. I hunted on that property almost all my life. There was no vehicle access continuously right through, even Halena had a key. The road that was open was old Halena Road from Maunaloa Town, rubbish dump road, that one was open because there was a rubbish dump right before Halena Camp. That was open but the bottom road was always private until the County opened it up."

Mr. Aki added, "If I may jump in again. Again, Mr. Ragsdale and I know each other very well. In 1964 as a child, Mr. Ragsdale was telling the truth as far as the west side gate closed off. I think the map is throwing all of you off. What it is as far as this map, this is not the island. The island actually continues on. We're talking about land mass and (pointed to the map). Mr. Ragsdale was absolutely right, that this section was closed off. You'll find though from Maunaloa town, down into Halena and Kolu Wharf in the '60s were being fished by me, by vehicular. I would ask Mr. Ragsdale where was he, but I'm not going to be that mean."

Mr. DeGray Vanderbilt stated, "I was a member of the Molokai Citizens Advisory Committee which did a nine-month review of our community plan which has still not gone to the County Council for final approval yet."

There was a lot of testimony before our committee about getting access to Hale Olono. So one of the recommendations under recreation is to establish public vehicular access to Hale Olono Harbor and that is we've gotten a draft back from the planning department and they did not change the recommendation. The ranch in their comments stated that they were in agreement for the need of public access to Hale Olono Harbor and willing to dedicate to the State a mutually agreed upon 100 foot right of way. Nobody wants 100 foot right of way for highways down there. One resident testified at a public hearing, "just open the gate like it was before leave the dirt road."

Mr. Matthew Adolpho stated, "I'm a third generation homesteader on the island of Molokai. I'm here today just to talk about the brown sand. There's no brown sand. There's only black and there's white, where the hell did the brown come from. It's a game. (He then went to the map on the board making drawings on the different areas.) Do you know what this is? Any idea Jay? This is the brown shit you're talking about. The cattle to the trough. There is no brown sand, stop fooling yourself. That's full of shit." He continued on stating that they should open their eyes and just open up the gate. That there was no need for a gate. He addressed Mr. Wong saying that he did not have to be told what types of land rights they had and tenant rights. He spoke of how he had lived behind locked gates and how some people were privileged to go through the gates. He felt that the request for community input was useless as it did not aid their cause. He ended by thanking the Board for listening to him and again claimed that there was no brown sand.

Mr. Evans asked if the Board would consider the changes on Condition No. 2, it would be in the form of a public easement and relocation subject to approval and on Condition No. 4, that no new fencing occur, also there were two Condition No. 11 so one would be 12 and the other landowner be specifically listed as DHHL.

Mr. Yuen asked if it would be possible to have a time frame for the remaining access issues to be resolved as this has been going on for a long time.

Mr. Wong stated, "Perhaps I can address that just a little. Lot 114 is presently owned by Alpha U.S.A. When they bought it, they bought it subject to certain agreements and one of those agreements was to subdivide the property in Lots A, B and C, and we conveyed to Molokai Ranch Lots A and B. We have been in contact with them to force them to comply with the conditions of the subdivision agreement. They have refused, we filed a law suit in 1991 to force specific performance. We've tried to get settlement discussions with them, they have not been fruitful. The trial is set for March 1995."

Mr. Yuen commented that when you lock people out of the areas they get upset and you'd probably feel the same way.

Mr. Landgraf asked, "When the present owners of Molokai Ranch bought that, weren't they aware of the encumbrances that were part of the permit?"

Mr. Wong responded, "With respect to providing the access? You'd have to think that they were. There are public records, people knew about them, not necessarily by way of apology but the present manager hasn't been there for very long. Going back to 1988 when this CDUP was approved, at the same time the present owners of Molokai Ranch acquired 70% of the stock. In 1990 they acquired almost the rest of the stock. Since that time there have been different managers."

Mr. Landgraf commented that he understood but the company's problem with the change of management has somehow become the people's problem. He also agreed with Mr. Yuen that when you lock people out they get very upset. He hoped that the ranch could work out something with the people amicably.

ACTION Mr. Kennison moved to approve staff's recommendation as amended, seconded by Mr. Landgraf motion carried unanimously.

ITEM H-13 CONSERVATION DISTRICT VIOLATION - RANCH HOUSE AT WEST MOLOKAI, LANDOWNER: MOLOKAI RANCH, LTD.

Mr. Evans began his presentation of the Conservation District Violation of land use for Molokai Ranch by going over the background from November 2, 1993 when there was a meeting between the department staff, a deputy director of DLNR, representative of the private landowner, and their legal counsel at that time, relative to inquiry about possible uses of the structure known as Kaupoa House and a specific question of whether they could take the house down and rebuild it. They were informed by the deputy director of DLNR at that time, "No" not without a permit. Discussions continued as to what they could do with the house. Mr. Evans continued to relate the background.

Mr. Evans stated that the house was torn down and a new one was built in its place in the general subzone in the conservation district without any permission. Staff is asking that the Board find Molokai Ranch in violation of our administrative rule and fine the ranch the amount of \$2,000.00 per day for a period of 20 days for the total amount of \$40,000.00. Also any administrative costs incurred by DOCARE. As part of the violation, staff is recommending that the ranch remove the structure because of failure to obtain the necessary permits.

Mr. Kennison asked if they had come in requesting a permit to build in the general use subzone, would it have been permitted?

Mr. Evans replied that it would have been up to the Board to make that decision to permit it. Were it for a replacement structure that had existed in the general subzone, all things considered staff would recommend for approval.

Mr. Denton Wong pointed out that the Kaupoa House was being repaired to the size and shape as existed immediately prior to the present sale. As built plans of the house were prepared last year in contemplation of the repairs and in preparing for the project this year, they used those as built plans. They were being done on the house and the plans specs called for the same house footprint, same roof height, same dimensions so that the new house, the repairs would be the same exact house as the Kaupoa house. In fact the house still sits on the original foundation as the original Kaupoa house. There's no increase in the size, the shape or elevation of the house. Molokai Ranch didn't start this project just to repair the entire house. The plans and specs, and we have copies if you'd like to take a look, show as much as we could what parts we tried to keep. As the tear down started to occur it became clear that it was a safety issue. Our contractor is here and will confirm that it was just unsafe for the remaining structure to remain and the decision was made. From Molokai Ranch perspective, they feel that they've done as much as they could in anticipating what needed to be done in the conservation district. The final thing he wanted to emphasize was that Section 13-2-21, subsection A. 7 Specifically permits repairs and alterations of lawfully structures. The house has been repaired, but the house has not been changed, the use has not changed prior to repair.

Board members Landgraf and Yuen expressed their feeling that this certainly appears to be a new house.

Mr. Anderson stated that they went to renovate the house. The deputy director then Ms. Hanaike signed the existing plan with the notes from their project manager and engineer as to what work they would be performing. When the renovation started, one of the first thing they did was take the metal off the roof and discovered all the ply wood under was rotten. Then the four walls are wiggling in the 20-mile tree winds and their project manager and engineer met again. He stated that basically they made a business decision and they didn't know on the spot to contact DLNR and go in back for a CDUA, etc. For safety precautions they knocked the walls down. They used a jack hammer to destroy parts of the slab that was cracked and unlevel. The only original thing remaining was the septic system in the ground. Even some of the pipes coming out from the ground had to be replaced.

Mr. Lawrence Aki stated that as far as Kaupoa House is concerned, Mr. Anderson has been pretty fair in most cases. The business decision was made and he's correct in that.

Addressing the Board, Mr. Aki stated, "Now do your business decision and I think you know what the decision should be. I think you should take his recommendation, basically the only thing I am in disagreement of, instead of \$2,000.00 a day, I recommend \$5,000.00 a day. Because if you look at the business decisions by Molokai Ranch in the past you'll find that there's the same story with them grading Halena Beach which is a conservation area, which they tried to hide from the public and everybody else; denying it for so many months and then after that coming out with the truth after so many of the community bringing these items up. ... (He then spoke about illegal sand mining.) His recommendation is that they need to be taught a good lesson, business decision, instead of \$2,000.00, \$5,000.00 a day and take the building down."

Mr. John Sabas of DBEDT on Molokai, also serves as an administrative aid for OHA trustee, Samuel Kealoha and field representative for Senator Daniel Inouye stated that he wanted to make it perfectly clear because of the people that were being dealt with that he was speaking on his own behalf, his comments are his own. "It saddens me to see the type of management that the community has to go through with this new regime of Molokai Ranch administrators, I think you've witnessed some of the frustrations, I feel it myself. Either Mr. Wong is blind or he hasn't been down there before this new house was built or he's just a damn liar. What you've got there is a new structure, plain and simple as you said Mr. Yuen. I think what you should also know and nobody's mentioned is that this new structure is a commercial venture, it's not a single family home. It's not where the ranch employees go there with their families for the weekend and enjoy the weekend. It's commercial venture that's part of the whole plan to bring more income into their programs, part of their tourism program. It's illegally built. It's built in an area where many residents have used for years for subsistence gathering and the most hurtful thing about the way they've gone about this, besides is just blatant disrespect for you as an agency, is how they've pretty nearly kept the community out of their planning processes. They've been very confrontational and as a result, many of us in the community have very meaningful discussions or made very few headways in trying to reach some solution. As you mentioned earlier, commissioner Landgraf, they will continue to be warfare on that island until these guys, and you've got about a dozen here, all hired guns, you've got seven of us that came down from Molokai, paid our own way, took vacation time because we're concerned if we didn't come here, you'd get bullshit lies that he's just got. And we wanted to let you folks know the other side of the story. That is a new structure and I think what Mr. Evans and the staff is

recommending that that building be torn down completely, I think that's fair and I think that would set a very positive tone in the community. That these guys from New Zealand can come around and do what they like to do how they do business in a foreign country. This is Hawaii, there's rules you have to follow, you ask questions about an SMA. I'm almost certain that they need an SMA and they haven't done anything to try to get that. I'm appealing to Commissioner Kennison of Maui, representing our County, to take to heart what the staff is recommending, I'd like to see that building torn down and have them start from scratch. Mostly I would like to see them begin to work in earnest with the community. They can't continue to divide us. ..."

Mr. Walter Ritte stated that another point is that all of these issues that are being brought up today are well known in the Maui/Molokai areas. He claimed that in each one of these instances is related to the Molokai Ranch using their wealth to get things done. He supports the idea of the maximum fine.

Mr. DeGray Vanderbilt passed out a brochure which mentions a lot of the violations of the ranch. He spoke about the killing of game on the ranch and claims that it was done by one of their ranch employees.

Mr. Kennison referred to page 3 of the submittal the paragraph that begins "The Notice and Order ..." , asking if the dates were correct of the acknowledgment of the order.

Mr. Wong responded saying that he had the log of their contractor. Upon receipt of our notice to stop work, he physically completed what he was doing, putting the roof on the house because he wanted to protect it from the elements. He left the house work on the 15th of October. After that he thinks he was on site cleaning the lot, was moving the equipment, getting out of the elements, so from their perspective, the dates should be only as October 15, 1994. He stated that he also had in attendance, Willy Whitford who is the Molokai Ranch caretaker for Kaupoa House and he would be willing to verify those kinds of dates.

Mr. Kennison confirmed the actual construction stopped on the 15th with Mr. Wong.

Discussion followed that this was a new home and may be used commercially.

Mr. Kennison commented that he had visited the area and it's a new home.

MOTION Mr. Kennison moved to approve staff's recommendations on No. 1; regarding No. 2 the fine, because of what transpired today, he moved

that the maximum fine be \$10,000.00 and what he would like to see is that the fine be paid in-kind instead of the monies from the fine going into the general fund. The restitution to benefit the Molokai Community to be worked out between DLNR and Molokai Ranch. He moved also to approve the fine regarding the administrative costs incurred by DOCARE; and delete No. 3.

DISCUSSION Mr. Yuen asked if they don't tear down the house, wouldn't they need to apply for a permit to keep it there.

Mr. Evans stated that the Board could order them to do a permit as an after-the-fact.

Mr. Wong again referred to Section 13-2-21-7 saying that a permit would not be required.

Mr. Evans stated that they were not talking about repairs as the Board has already ruled that this is a new structure.

Mr. Landgraf commented that Mr. Anderson's comment about this being a business decision, knowing full well that he had an engineer on the premises on the ranch. He felt that the fine should be \$20,000.00 at the minimum.

Mr. Anderson requested that he be allowed to clarify his statement regarding a business decision. He claimed that he wasn't present, they didn't have a meeting and in fact he wasn't on that project at that time. When he used the term business decision, he was describing the contractor and their project manager who was busy with many other projects.

EXECUTIVE SESSION Mr. Kennison addressed the Chair and moved for an executive session to discuss a legal matter with counsel. Mr. Landgraf seconded the motion which carried.

3:25pm-3:40pm Chairperson Apaka called the regular meeting back to order.

ACTION Mr. Kennison requested to amend his motion. He moved that the \$10,000.00 fine to be paid in-kind for restitution to the Molokai Community to be worked out with the Department and Molokai Ranch, plus the DOCARE costs; that the Ranch will apply to DLNR for a permit to have the structure remain or just tear the house down. The time frame for the after-the-fact application should be submitted to the department within sixty (60) days. Seconded by Mr. Yuen, motion carried.

For the record, Deputy A. G. Nishioka stated that they were in executive

session and one of the issues that was asked of her was whether in the review of the rules and the non-conforming use, whether a permit would be required. With all due respect to Mr. Wong, we did not agree with his opinion that this is still a non-conforming use because the Board has already made a determination that it is not repair but a total replacement of the structure. It was her advice to the Board that a permit was required.

Mr. Landgraf mentioned another option to not tearing the house down was to move it on ag land.

ITEM H-14 **CONSERVATION DISTRICT VIOLATION - CLEARING AND GRUBBING AT HALENA CAMP, MOLOKAI, LANDOWNER: MOLOKAI RANCH, LTD.**

Mr. Evans presented a background and staff's recommendation.

Mr. Wong stated that they had submitted testimony regarding Halena Camp to consider that in terms of the ranch's desire to reopen Halena Camp to make it again a community camp site. The clearing was in respect to shrubbery and the shrubbery is growing back now. At this point he stated that he was willing to accept the recommendation of the staff.

Mr. Lawrence Aki wanted to state for the record that the \$2,000.00 fine was something really minimal for what they do on the island. He claimed that the ranch knew that what they did was illegal and wrong and again they would just be slapped on the wrist. He stated that the \$2,000.00 fine was too small for something like this as their intent was actually for commercial use and today they're presenting it for the community's use. He felt the fine should be somewhere in the amount of \$10,000.00 or even \$50,000.00.

Ms. Tummons expressed her concerns with staff's submittal where it states that no physical or social resources were affected. She referred to a report from an archaeologist who had been hired to inspect after the grading for historic sites. According to Molokai Ranch's own CDUA, the area that was cleared was 24 acres. Those 24 acres were surveyed by some archaeological firm that found, "several artifacts were collected from the ground surface of the level plane within the project area but not from any designated sites. These artifacts lack the specific context likely dragged to their location from elsewhere in the study area during recent bulldozing activity." She felt that it does suggest that grading and clearing did harm historic sites. She contacted the Historic Sites section on this matter and they too are very concerned. She stated that she did not see that concern in the submittal and hoped that the Board would take that into consideration.

Mr. Kennison asked Mr. Evans for an explanation.

Mr. Evans stated that not only were they aware of that but for the record they were aware of the letter from the individual on Molokai that claimed that the Ranch had bulldozed archaeological sites. They felt that the statements made were very vague with really no evidence or proof to pursue a violation.

Mr. Yuen suggested that staff could have used their discretion and included that information in the submittal to inform the Board members.

Mr. John Sabas, a Molokai resident commented that this was again another example of them coming before you for an after-the-fact permit and it's not because they don't know the rules or certain policies. He claimed that this is another example where common citizens call and say there is something illegal going on and come on down and do something. He claims that it was the citizens that brought them here and not the department. For the record he wanted to say that the State is letting them get away with bloody murder.

Mr. Kennison asked Mr. Wong if they accepted the staff's recommendations and conditions. To which Mr. Wong replied, "Yes."

Mr. Evans asked if the Board would consider one modification. Based upon the Board's previous action on Kaupo House, the amount of fine, whatever the fine you choose to make, could that also be paid in kind to be consistent with the last Board action.

ACTION

Mr. Kennison moved to approve staff's recommendation and to modify the \$2,000.00 fine to Molokai Ranch to be paid in kind, to be worked out between the ranch and the department. Seconded by Mr. Yuen, motion carried unanimously.

ITEM H-5

**CDUA TO CONSTRUCT A SINGLE FAMILY RESIDENCE AT HAENA,
KAUAI, HAWAII; TAX MAP KEY:5-9-02:52 APPLICANT: WALTON D.Y.
HONG**

Mr. Evans informed the Board that staff's recommendation is for approval for conditional use subject to the conditions listed.

Mr. Walton Hong, representing the applicant stated that he had a few comments. To clarify for the records, he stated that the property was contemplated for solving or helping to resolve the traffic problem by the because of the Tunnels Zodiac boat operation. This is not the subject property but the property next to it.

Mr. Evans stated that he stands corrected.

Regarding the staff's recommendation, Mr. Hong stated that condition no. 6 concerns them because some of the vegetation along the shoreline is really damaged and twisted to be cleared out, pruned and made nicer. The condition no. 6 as worded indicate that they cannot touch the trees. He suggested that language be added to say, "except in conjunction with an approval of landscaping plan." The condition no. 14 requires them to come up with some kind of a landscaping plan and that would give them some flexibility to clear some of the dead wood and improve the looks of the area instead of its natural state. Condition No. 10 which states no further subdivision of this lot, he commented that he suspected that the reason for this recommendation is because you don't want this large lot divided into more than one parcel. He pointed to exhibit no. 3, there is already an existing kuleana parcel located only within this parcel. Both lots are owned by the same owner. Eventually they would want to, if the Board permits them, is consolidate the two parcels and cut them into two equal parcels. There won't be any more residences but that is subject to a future proceeding if his client elects to do that. He was stating this for the record if it could be a possibility for the future.

Mr. Evans commented that staff would like to have the Board continue with that condition. Staff's position in the past has been regardless of any non-conforming status or non-conforming use, which you had, regardless of the manner in which you attained it, be it kuleana or something existing, once you consolidate and resubdivide any non-conforming use that previously was on the property is lost. In our view, the idea of further subdivision would be the antithesis of the past practice in treating applications and coming before the Board. Staff would have a difficult time applicant just wanting to equalize acreage.

Mr. Hong appreciated the comments and stated that if his applicant elects to direct him, he will come and argue this before the Board in the future.

ACTION Unanimously approved with the amendment to Condition No. 6.
(Landgraf/Kennison)

ITEM H-6 CDUA TO CONSTRUCT A SINGLE FAMILY RESIDENCE AT WAIKOKO,
HANALEI, KAUAI, HAWAII; TAX MAP KEY:5-6-03:03
APPLICANT: DAVID PRATT, TRUSTEE: (WALTON D.Y.HONG)

On behalf of the applicant, after reviewing the staff report and in order to preclude two options that they may have or elect to take, Mr. Hong asked the Board's permission to withdraw the application at this time.

WITHDRAWN Unanimously approved to withdraw the application. (Yuen/Landgraf)

ITEM F-10 WAIANAE DISTRICT COMPREHENSIVE HEALTH AND HOSPITAL BOARD, INC.(WDCHHB) REQUESTS TERMINATION OF GENERAL LEASE NO. S-4369; REISSUANCE OF A LEASE TO WAIANAE DISTRICT COMPREHENSIVE HEALTH AND HOSPITAL BOARD, INC. dba WAIANAE COAST COMPREHENSIVE HEALTH CENTER (WCCHC) AND, CONSENT TO MORTGAGE, WAIANAE, OAHU, TAX MAP KEY: 8-6-01:3

ACTION Unanimously approved as submitted. (Landgraf/Yuen)

ITEM F-14 CANCELLATION OF REVOCABLE PERMIT NO. S-5891 TO RON MAHELONA AND AUTHORIZATION TO ISSUE REVOCABLE PERMIT TO FRANK AND ABIGAIL SANTOS dba NO KA OI PLANTS, HANAPEPE, WAIMEA (KONA) KAUAI, TAX MAP KEY 1-9-07:POR 5 AND 9

Mr. Young explained the details leading up to the request for cancellation of R. P. No. S-5891. He informed the Board that Mr. Mahelona submitted a letter yesterday asking consideration of the Board to give him time in which to get off the property and asked for extension of time to January 31, 1995 in which to remove his property. He submitted a proposal of how he proposed to catch up on payments. Staff still contends this permit should be canceled as Mr. Mahelona has been given all the adequate time and numerous appointments to meet with him.

Should the Board decide to go along with Mr. Mahelona's request, staff is asking that the Board modify the submittal to the extent that the rent for December will be paid on December 1st rather than the 15th. Permits are all payable a month in advance. Staff would also ask that should the permit be canceled, that it be issued to Frank and Abigail Santos effective February 1st.

Mr. Ron Mahelona stated that he understood what was being recommended. He informed the Board that he has been the lessee for the last 21 years and had raised hogs which was wiped out by Hurricane Iniki. He is asking the Board to consider his letter and giving him an extension to January 31st to remove his personal things and about 150 hogs as he is relocating to Anahola where he will have a Hawaiian farm lot. He also stated that he was presently he was broke. He would need the time to put the land back to where it would be acceptable to DLNR and the Department of Health. He also needs more time to make the payments.

Mr. Young commented that according to Mr. Mahelona's representation today he is broke and would not be able to make the \$643.43 payment as he proposed in his letter. He suggested to the Board that if they were going to allow him to make the payment by the 15th, then they should request payment of the full amount that is delinquent by cashier's check

or cash by November 30, 1994. Secondly, December 1st that he pays the rent that's due, as currently he is due August, September, October and November. Should you grant him an extension to December and January he will have rent owing for December and January as well. He suggested end of the month, payment should be made by cash or cashier's check for the full amount of the delinquency. December 15th he should pay the rents due for December and January.

Mr. Mahelona wished to state for the record that during the time he has leased this property he has put in a lot of infrastructures that will be left. After hurricane Iniki he borrowed and invested more than \$15,000 in the building that he is presently living in which will be going to the State after he vacates. He claimed to have five major hotels and four of these hotels are not working now and no income now.

Mrs. Mahelona addressed the Board saying that at this point there is no income coming in and would be impossible for them to meet that date.

ACTION Mr. Landgraf moved for approval to grant the permittee an extension of the cancellation date to January 31, 1995; subject to following conditions:

- a. Permittee shall by no later than December 31, 1994 pay to the Kauai District Office in cash, certified or cashier's check the full amount of the rental owed for the months of August, September, October, November, December, 1994 and January 1995.
- b. Should the permittee fail to remit the above payment by December 31, 1994, Revocable Permit No. S-5891 shall be canceled effective as of December 31, 1994, subject to the conditions under Paragraph A of the Recommendation.
- c. Commencement date for the permit to Frank/Abigail Santos dba No Ka Oi Plants to be determined by Kauai District Land Agent subject to the condition that the permittee shall insure the State-owned improvements against fire and other perils.

Motion was seconded by Mr. Kennison and carried unanimously.

ITEM H-7 CDUA FOR SHORELINE MODIFICATION AT KAUPULEHU, NORTH KONA, HAWAII; TAX MAP KEYS: 7-2-3:4,5 & 6 (OFFSHORE), APPLICANT: KAUPULEHU LAND COMPANY

Mr. Evans informed the Board that they had received a letter from the Kona Hawaiian Civic Club on November 18, 1994 and they are supportive of this particular project and that it includes a condition requiring a management plan for the marine environment. A faxed letter

from Ka Lahui Hawaii this morning stated that they opposed this application because it infringes upon Hawaiian gathering rights.

Mr. Roger Harris and Mr. Jeff Monden of Kaupulehu Land Company were present. Responding to a question by Mr. Yuen, Mr. Harris said that they believed the actual excavation work will take less than two months. Then there will be a subsequent of pumping or cleaning of the silt remains and that could take another two months for an approximate period of four months.

ACTION Mr. Yuen moved for approval with the amendment of an additional Condition No. 17 that the applicant submit a management plan. Prior to submitting the management plan, the applicant will be in consultation with the Division of Aquatic Resources, Office of Hawaiian Affairs, the Kona Hawaiian Civic Club and other concerned individuals. This should start right away because the extent of the management plan that it include suggestions on how the project is done. Modify Condition No. 2, delete all words after "sand."

Motion was second by Mr. Landgraf and carried unanimously.

ITEM F-5 REQUEST TO AMEND PRIOR BOARD ACTION OF AUGUST 13, 1993 (AGENDA ITEM F-5) RELATIVE TO LAND ACQUISITION OF APPROXIMATELY TWELVE (12) ACRES FOR KIHEI II ELEMENTARY SCHOOL, KIHEI, MAUI, TAX MAP KEY 3-9-19:POR. 6

Mr. Kennison stated that he wished to commend the applicant for doing a fantastic job in getting this project going as the Kihei area is fast growing.

Mr. Everett Dowling informed the Board that the Attorney General has since signed the agreement.

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM C-1 REQUEST FOR APPROVAL OF CONTRACT WITH MR. PETER ZIROLI TO PARTICIPATE IN THE STATE FORESTRY STEWARDSHIP PROGRAM

ACTION Unanimously approved as submitted. (Yuen/Landgraf)

ITEM D-1 REQUEST FOR APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT FOR JOB NO.40-OB-3, CONCRETE DOCK REPLACEMENT, ALA WAI BOAT HARBOR, OAHU

Mr. Chang informed the Board that bids were opened yesterday and the bid pad was passed out to the Board this morning. They propose to

award for both base bid and additive alternate No. 1 for a total of \$255,040.00 to Healy Tibbitts Builders, Inc.

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM F-1 **TRANSMITTAL OF DOCUMENTS**

Item F-1-a **Issuance of Revocable Permit to Kamanawa Foundation, Lot 5, Hanapepe Rice and Kula Lots, Hanapepe, Waimea (Kona), Kauai, Tax Map Key 1-9-12:13**

Mr. Young asked that should the Board approve this document that the permittee be required to provide fire insurance and other perils governing the property said to include improvements and encompasses the church as well as the caretaker's cottage.

Item F-1-b **Issuance of Revocable Permit to Gilbert Ane, Government Land at Waimanalo, Koolaupoko, Oahu, Tax Map Key: 4-1-08:44**

Item F-1-c **Issuance of Revocable Permit to Allen K. Hoe and Robert F. Miller, Government Land at Waimanalo, Koolaupoko, Oahu**

Item F-1-d See page 9 for Action.

Item F-1-e **Assignment of General Lease No. S-4209, Lot 4, Keanae Homesteads, 1st Series, Hana, Maui, Tax Map Key 1-1-03:70**

Item F-1-f **Assignment of General Lease No. S-4016, Government Land of Kawaipapa and Wakiu, Hana, Maui, Tax Map Key 1-3-04:6 and 20**

ACTION Mr. Kennison moved for approval of Items F-1-a as amended, F-1-b, F-1-c, F-1-e and F-1-f as submitted; seconded by Mr. Landgraf motion carried unanimously.

AMENDMENT TO PRIOR BOARD ACTIONS OF AUGUST 13, 1993 (ADDED ITEM F-17) AND SEPTEMBER 10, 1993 (AGENDA ITEM F-2), DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS REQUEST FOR APPROVAL OF LICENSE AGREEMENTS COVERING PLACEMENT OF TEMPORARY MULTIMEDIA TOUCHSCREEN KIOSKS AT VARIOUS SHOPPING MALLS AND COMMUNITY CENTERS, STATEWIDE

ITEM F-2

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

DEPARTMENT OF HEALTH, HAWAII COUNTY COMMUNITY MENTAL HEALTH CENTER (DOH-HCCMHC) AND THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS EMPLOYMENT SERVICES (DLIR-ES) REQUEST FOR RIGHT-OF-ENTRY TO COTTAGE #10 SITUATE AT KA'AO, HONOKAA, HAMAKUA, HAWAII, TMK 4-5-01:POR. 11

ITEM F-3

ACTION Unanimously approved as submitted. (Yuen/Landgraf)

RESUBMITTAL-REQUEST TO ACQUIRE EASEMENT FOR WATERLINE TO KING KEKAULIKE HIGH SCHOOL, MAKAWAO, MAUI, TAX MAP KEY 2-3-07:POR. 1 AND 10

ITEM F-4

ACTION Unanimously approved as amended. (Kennison/Landgraf)

Amendment: Amend Paragraph C under Recommendation to grant County of Maui, Board of Water Supply perpetual, non-exclusive waterline easement at gratis subject to standard grant of easement form and such other terms and conditions the Chairperson may prescribe.

ITEM F-5 See page 38 for action.

HAWAIIAN CEMENT REQUESTS WAIVER OF THE PERFORMANCE BOND AND IMPROVEMENT BOND PROVISIONS CONTAINED IN GENERAL LEASE NO. S-5284-A, PELEHUNUI, WAILUKU, MAUI, TAX MAP KEY 3-8-08:1 AND 31

ITEM F-6

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

STAFF REQUESTS AUTHORIZATION TO: 1) SELL A GENERAL AGRICULTURAL LEASE AT PUBLIC AUCTION; AND 2) ISSUE AN INTERIM REVOCABLE PERMIT FOR PAPAYA CULTIVATION PURPOSES AT WAKIU AND KAWAIPAPA, HANA, MAUI, TAX MAP KEY: 1-3-04:24

ITEM F-7

In his presentation, Mr. Young asked that the Board approve the request with the amendment to the Recommendation as listed on the handout to this morning.

ACTION Unanimously approved as amended. (Kennison/Landgraf)

Amendments:

1. Under Recommendation, Paragraph B, add the following:

- * Recommended Term: Twenty-five (25) years to commence as of the date of sale of lease at public auction.
- * Upset Minimum Lease Rental: To be determined by staff appraisal, same to be reviewed and approved by the Chairperson.

- * Method of Payment: Semi-annually in advance.
- * Percentage Lease Rental: To be determined by staff appraisal, subject to review and approval of the Chairperson.
- * Effective Annual Lease Rental: The minimum annual lease rental established at public auction or the percentage rental, whichever is greater.
- * Minimum and Percentage Rent Reopenings and Redeterminations: At the expiration of the tenth (10th) and twentieth (20th) years of the lease term.
- * Annual Statement: The lease shall, on or before the 60th day following the previous year of the lease term, submit a certified statement of income upon which the percentage rent was calculated for the previous year of the lease term. Said statement, which shall be prepared by a certified public accountant, shall itemize the source of all income, the lessor shall have the right to audit the lessee's books during regular working hours.

All other standard terms, conditions, covenants and restrictions as contained in the General Lease form approved by the Department of the Attorney General, Land/Transportation Division.

2. Under Recommendation, add Paragraph D, "Find that the area is not now suitable for hunting nor will be during the term of the lease."

STAFF REQUEST AMENDMENT OF REVOCABLE PERMIT NO. S-5377 TO DOUGLAS SHERMAN FOR LANDSCAPING AND MAINTENANCE PURPOSES AT WAIOHULI-KEOKEA BEACH HOMESTEADS, KIHEI, WAILUKU, MAUI, TAX MAP KEY 3-9-09:POR. 11

ITEM F-8

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM F-9 See page 7 for Action.

ITEM F-10 See page 36 for Action.

STAFF REQUEST BOARD APPROVAL FOR THE TERMINATION OF REVOCABLE PERMIT NO. S-6685 TO LUCKY "S" DAIRY, KUAOKALA, WAIALUA, OAHU, TAX MAP KEY: 6-8-02:7 AND 6-9-03:2

ITEM F-11

ACTION Unanimously approved as amended. (Landgraf/Yuen)

Amendment: Termination date to be 30-days following the date of receipt of written notice of termination.

REQUEST BOARD APPROVAL FOR DIRECT ISSUANCE OF NON-EXCLUSIVE TERM EASEMENT FOR WATER METER PURPOSES TO BOARD OF WATER SUPPLY, WEINBERG VILLAGE, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY:4-1-03:POR 23

ITEM F-12

ACTION Unanimously approved as submitted. (Landgraf/Kennison)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES REQUEST FOR CONSENT TO ASSIGNMENT OF LICENSE AGREEMENT DATED MARCH 4, 1992 AND AMENDMENT 1 THERETO DATED AUGUST 25, 1993 FROM ATOZ VENTURE TO BANK OF HAWAII REGARDING ALAN SANFORD DAVIS PARK AT HONOLULU, OAHU, TMK 2-1-01:12

ITEM F-13

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM F-14 See page 37 for Action.

ITEM F-15 See page 9 for Action.

ITEM F-16 ANNUAL REVIEW OF REVOCABLE PERMITS ON THE ISLAND OF HAWAII, MAUI/MOLOKAI, OAHU AND KAUAI

Mr. Young went over the remarks in the submittal which explained that a meeting of the Board on March 12, 1993, the Board approved staff recommendation that the monthly rentals reflect market rent and that the increases shall be over a period of 3 years. This is the third year and the attachment exhibit shows the increases.

Mr. Young stated that an addendum had been passed out and the Board would have to either delete or change some of the uses, for example on the island of Oahu, they are recommending that Waiahole be deleted (approval has already been given to cancel Waiahole), and under Waimanalo these are the permits that would be under 237 from a permit to a lease.

Mr. Yuen had a question regarding permit S-5127 to McCandless Ranch, Elizabeth Marks, Waiea tract. Mr. Young stated that they had just sent out a letter to McCandless Ranch with regards to the easement.

Mr. Yuen said, "We had put it down last time I thought, that it wasn't going to be for pasture anymore but just for access easement..."

Mr. Young said that a letter was sent out to McCandless Ranch informing them what the Board had directed staff to do and also have her advise staff whether she wanted the access easement or not. This was about a year ago as stated by Mr. Yuen. Mr. Young apologized to the Board that this was picked up when they did their review and so the

letter was sent out about two weeks ago. Mr. Young said he was sorry that he didn't receive a copy of the letter.

Mr. Young stated that there was also another amendment. On the summary sheet there was a total and he wished to give the Board the correct totals.

Mr. Carl Christensen stated that he was present today to basically sing the same song which he had been singing for the last three years with regards to 1) the general illegality of using revocable permits as a long term management device and 2) the continued practice of the board to give corporate tenants cut-rate rents on public lands that are part of the ceded lands trust. He said that he was particularly distressed by the note in the staff submittal that there will be again no increase in the rents for sugar and pineapple lands including the water licenses on East Maui. Last year the staff posed a modest increase in the water licenses and the Board overrode that. He pointed out that where ceded lands are involved, 20% from the revenue of the lands go to the office of Hawaiian Affairs. Where water licenses or sugar lands are involved and additional 30% of those revenues go to the Department of Hawaiian Home Lands. If the Board wishes to subsidize the corporate enterprises to sugar or pineapple plantations by giving them reduced rate access to public lands, they are subsidizing those enterprises and 50¢ of every \$1.00 of that subsidy is coming out of the pockets of the native Hawaiians through OHA and DHHL. He claimed that he has never gotten a response as to why the rents are so low to corporate enterprises. He asked that the Board defer action.

MOTION Mr. Kennison moved for approval as amended.

Mr. Yuen commented, "My cake on the sugar and pine permits is that they are more of a value. He did not think that There's not that much money on those leases.

Mr. Christensen asked, "Is that land not usable for other purposes then? Is that water not usable for other purposes and other people paying good money to drill new wells to get more water on Maui? And the Board is making a conscientious decision not to seek new revenues."

Mr. Kennison commented, "That land is being used to hire thousands of workers and if you multiply those thousands of workers by all the jobs that are affect outside including the Hawaiians and all the other ethnic groups, there's quite a bit of them. You're talking about four to five thousand jobs. There's a lot of significance to support the sugar industry." He stated that his motion stands.

ACTION Motion was seconded by Mr. Landgraf and motion carried unanimously.

Amendments:

1. Island of Oahu: Delete R.P. Nos. S-1292, S-4197, S-4367, S-4724, S-5542, S-6064, S-6071, S-6337, S-6598, S-6681, S-6685.

Waimanalo: Delete R.P. Nos. S-5321, S-5689, S-5700, S-6007.

Correct R.P. No. S-4053, rental should be \$74.00 per month for 1994 and 1995.

Correct R.P. No. S-6661, rental should be \$152.00 per month for 1995.

2. Island of Maui: Delete R.P. Nos. 2-5606, S-6521, S-6593.

Correct R.P. No. S-4939, rental should be \$39.00 per month for 1994 and, \$41.00 per month for 1995.

3. Island of Kauai: Delete R.P. No. S-5891.

AUTHORIZE FINAL APPROVAL TO LAND EXCHANGE BETWEEN THE STATE OF HAWAII AND MAUNA KEA AGRIBUSINESS CO., INC. AT SOUTH HILO, ISLAND OF HAWAII, TAX MAP KEYS: 3RD/2-9-03:44 (STATE-OWNED) AND 3RD/2-6-13:PORTION OF 7 (MAUNA KEA AGRIBUSINESS-OWNED)

**ADDED
ITEM F-17**

Mr. Yuen recused himself from acting on this item.

DEFERRED Due to lack of quorum, deferred to December 16, 1994 meeting. (Kennison/Landgraf)

ITEM H-1 See page 20 for Action.

ITEM H-2 See page 21 for Action.

ITEM H-3 REQUEST AUTHORIZATION TO CONDUCT AN INVITATION FOR BID (IFB) PROCESS TO DISPOSE OF STATE OWNED LANDS BY NEGOTIATION FOR THE HAMAKUA FOREST PLANTATION PROJECT AT HAMAKUA, NORTH HILO, HAWAII

Mr. Uchida made the presentation to the Board.

ACTION Unanimously approved as amended. (Yuen/Landgraf)

Amendment: 1) In the proposals that the applicant be required to fully disclose the anticipated environmental effects of the project including the use of pesticides and herbicides.

2) In the waiting, portion on environmental affects on 4.2.2. that use of

native species should be listed in there as a plus factor; it does not change the waiting but if there is some way that they can incorporate the use of the species, it should be a plus factor in the evaluation.

3) The applicant should be required to address the possibility of including smaller growers within the leased area. They can address it and say that it's not feasible. They can address it and say that we can try to do it. But it should be something that is addressed and considered by both applicant and the screening committee to whether there is a way to do this by incorporating small growers rather than just leasing it all out in a block under one operator.

Staff to be given the flexibility of including the three concerns into the IFB.

ITEM H-4 See page 21 for Action.

ITEM H-5 See page 35 for Action.

ITEM H-6 See page 35 for Withdrawal Action.

ITEM H-7 See page 38 for Action.

ITEM H-8 See pages 4-5 for Action.

ITEM H-9 EXTENSION OF TIME ON CONSERVATION DISTRICT USE APPLICATION (CDUA) TO CONSTRUCT A MARINA ENTRANCE CHANNEL USING STATE-OWNED SUBMERGED LANDS AT HONOLULI, EWA, OAHU; TAX MAP KEY: 9-1-12:6 (OFFSHORE)

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM H-10 See page 9 for Action.

ITEM H-11 See pages 11-12 for Action.

ITEM H-12 See page 28 for Action.

ITEM H-13 See page 32 for Action.

ITEM H-14 See page 34 for Action.

ADDED
ITEM H-15 REQUEST FOR AUTHORIZATION TO CONDUCT PRELIMINARY NEGOTIATIONS TO LEASE PRIVATE LANDS AT MAKALAWENA, HAWAII IN EXCHANGE FOR A NEGOTIATED DIRECT LEASE OF STATE OWNED LANDS AT HAMAKUA, NORTH HILO, HAWAII

ACTION Unanimously approved as amended. (Yuen/Landgraf)
Amendment: With the deletion of the reference to State-owned lands at Hamakua and North Hilo which are obviously the areas that can be looked at. Because this is exploratory, feels there is no reason to limit it to those lands.

ITEM J-1 See page 9 for Action.

ITEM J-2 REQUEST FOR CONTINUANCE OF REVOCABLE PERMITS

- a. Lahaina Yacht Club, Mala Boat Harbor, island of Maui
- b. Kailua-Kona Development Group, Kailua Bay, Island of Hawaii
- c. Robert Jordan, Nawiliwili Boat Harbor, Island of Kauai
- d. Hawaii Big Game Fishing Club, Honokokau Boat HARBOR, Island Of Hawaii

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ISSUANCE OF REVOCABLE PERMIT, WAIANAE BOAT HARBOR, ISLAND OF OAHU (HAWAIIAN DREDGING CONSTRUCTION COMPANY)

ITEM J-3

ACTION Unanimously approved as submitted. (Landgraf/Kennison)

ADDED ISSUANCE OF REVOCABLE PERMIT ALA WAI BOAT HARBOR, ISLAND OF OAHU

ITEM J-4

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM K-1 See page 5 for Action.

ITEM K-2 RESTAURANT AND LOUNGE CONCESSION LEASE, MOLOKAI AIRPORT, MOLOKAI

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM K-3 RETAIL CONCESSION, HILO INTERNATIONAL AIRPORT, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Landgraf)

ITEM K-4 AMENDMENT NO.1 TO LEASE NO. DOT-A-94-5, HONOLULU INTERNATIONAL AIRPORT, OAHU (UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE)

ACTION Unanimously approved as submitted. (Landgraf/Kennison)

ITEM K-5 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 5244,
KAHULUI AIRPORT, MAUI (BRYAN FUNAI)

ACTION Unanimously approved as submitted. (Kennison/Landgraf)

ITEM K-6 EXTENSION OF THE COOPERATIVE AGREEMENT BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK
SERVICE AND THE STATE OF HAWAII, HARBORS DIVISION,
KAWAIHAE HARBOR, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Kennison)

ITEM K-7 See page 7 for Action.

ADJOURNMENT The meeting adjourned at 5:15 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED FOR SUBMITTAL


MICHAEL D. WILSON, Chairperson

dc
1/05/95