

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

DATE: September 15, 1995
TIME: 9 o'clock a.m.
PLACE: Kalanimoku Building
1151 Punchbowl Street, Room 132
Honolulu, Hawaii

**ROLL
CALL**

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

MEMBERS: Mr. Herbert K. Apaka, Mr. Christopher Yuen, Mr. Michael H. Nekoba, Mr. Colbert Matsumoto, Mr. William Kennison, and Mr. Michael D. Wilson.

STAFF: Mr. Michael Buck, Mr. Ralston Nagata, Mr. Dean Uchida, Mr. Roger Evans, Mr. Ed Henry, and Ms. Geraldine M. Besse

OTHERS: Ms. Linnel Nishioka, Dept. of the Attorney General; Mr. Peter Garcia, Dept. of Transportation; Mr. Henry Curtis, Ms. Pat Tummons (Item No. E-1); Ms. Pat Devlin, Mr. Craig Crawford, and Mr. Padraic Riley (Item No. F-1-e); Ms. Pat Tummons (Item No. F-8); Mr. Dean Yamamoto (Item No. H-2); Mr. Jack Park (Item No. H-5); Ms. Mary Blane Johnston (Item No. H-6); Mr. Clinton Ashford, Ms. Cynthia Thielen, Ms. Susan Foo, Ms. Maria Davilla, Mr. Ike Sutton, Ms. Lilliam Almeida, Ms. Janet Gillmar, Mr. John Michael White, Mr. Michael Cruickshank, Mr. John DeHan, Mr. Bernard Bayes, Mr. John Medusky, Mr. Monty Richards, Mr. Henry Curtis, Mr. Charles M. Black, Ms. Donna Wong, Ms. Diane Tusher, Ms. Pat Tummons, and Mr. Earl Kaawa (Item No. H-7); Mr. Charles Morita, and Ms. Dale Evans (Item No. K-1)

MINUTES: The minutes of the meetings of February 10, 1995, April 13, 1995, April 28, 1995, and August 25, 1995, were unanimously approved as submitted (Yuen/Nekoba).

All written testimony and tapes of the meeting are filed in the Chairperson's office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested persons present. A copy of the agenda is attached for reference.

ITEM H-7 Presentation of the item was made by Mr. Roger Evans and Mr. Ed Henry. The following individuals testified:

Mr. Clinton Ashford urged that the Board not repeal HAR 13-2 until 13-5 was adopted.

Ms. Cynthia Thielen asked that 13-5-42A(5) be reconsidered as the rental issue goes beyond statutory language and the Board was being intrusive.

Ms. Susan Foo provided oral and written testimony on behalf of small landowners urging that the proposed rule not be adopted.

Ms. Maria Davilla urged the Board to do what was right.

Mr. Ike Sutton provided a map and indicated 1,500 acres as being land downzoned under the rules and cited the Lucas case.

Ms. Lillian Almeida, representing owners of Malua Nui, provided oral and written testimony objecting to the repeal of 13-2.

Ms. Janet Gillmar presented oral and written testimony stating that the rules are restrictive.

Mr. John Michael White, founder of COA, provided oral and written testimony. He stated that not all conservation landowners had been informed of the proposed rule changes. He suggested: (1) complete inventory and list of all landowners. Stated COA did their own inventory; 2) recommendation of one informative workshop and public hearing on all islands; and (3) notification to all conservation landowners by mail of workshops and hearings.

Mr. Michael Cruickshank provided written and oral testimony.

Mr. John DeHan from Tantalus provided testimony.

Mr. Bernard Bayes, attorney for COA, urged that 13-2 and 13-5 be considered together.

Mr. John Medusky spoke against the rental policy.

Mr. Monty Richards supported the review and asked to participate in workshops.

Mr. Henry Curtis of Life of the Land said apathy is the problem.

Mr. Charles M. Black supported the conservation district review process.

Ms. Donna Wong from Hawaii's Thousand Friends also testified and submitted written testimony. She addressed accessory uses, the appeals process, and clarification.

Ms. Diane Tusher representing Tantalus Community Association stated the Association voted not to take a position on the rules.

Ms. Pat Tummons commented that apparently discussion had with the Board and cited concerns with Chapter 92. She also stated that reconsideration should be through broad-based participation.

Mr. Earl Kaawa supported deferral of repeal action and asked to be part of the working group. He urged that hearings be held on each island.

ACTION: Mr. Kennison moved to defer action; seconded by Mr. Yuen and unanimously approved.

ITEM H-2 Mr. Dean Yamamoto representing the applicant asked for deferral as his client, who had been out of town for some time, wished to address the Board.

ACTION Unanimously deferred (Yuen/Kennison).

ITEM H-6: Mr. Evans explained that at the April 28th meeting, action was deferred; on May 12th action was again deferred to allow applicant's counsel to discuss the issues with staff. Upon review and consideration, Mr. Evans stated the staff recommendation is for denial of the extension.

Ms. Mary Blane Johnston representing Mr. Hopper stated they were seeking amendment to the completion time (Condition No. 7); that Mr. Hopper be given one year to complete once the amendment was approved. In addressing other staff concerns, she said she would personally see to it that the permit was recorded and that the historic site review done immediately. Most troubling she said is that the recommendation is punitive in nature. She stated that Mr. Hopper could apply for a subzone change or a new application could be submitted; however, the alternatives are not realistic.

The Chairperson asked whether the extension would not be precedent-setting. Ms. Johnston answered that cases should be decided on a case-by-case basis.

EXECUTIVE SESSION Because of legal ramifications, Mr. Kennison moved for executive session to consult with legal counsel. Motion seconded by Mr. Yuen and unanimously carried. The Board was in executive session from 11:20 to 12:35 p.m.

ACTION Mr. Kennison moved to deny staff recommendation and to extend the CDUA; seconded by Mr. Nekoba. (Roll call vote: ayes: Mr. Kennison, Mr. Nekoba, and Mr. Yuen; noes: Mr. Apaka, Mr. Matsumoto, and Mr. Wilson). Motion failed and permit not extended.

ITEM F-1-e:

and

ITEM K-6 These two items were considered jointly. Mr. Uchida presented Item No. F-1-e with a proposed amendment; Item No. K-6 was presented by Mr. Peter Garcia with a recommendation for approval but asked for a recalculation of the premium. He said the form did not conform to the form requested by DOT. Ms. Pat Devlin and Mr. Craig Crawford and Mr. Padraic Riley from Hawaiian Cement explained the calculation of the premium.

ACTION Unanimously approved the above items by adding the following amendment: "Provided that within one year of the assignment of lease premium amount may be adjusted upwards if the value of the assignment of the 50% partnership interest in General Lease No. S-5284-A is determined for tax purpose, to be inconsistent with the pro-rata share of the sales price used in the calculation of the excess of sales price over KCOR Corporation's capital account for General Lease No. S-5284-A. Upon re-calculation of the premium amount, payment, if any due, shall be immediately transmitted to the department."
(Kennison/Matsumoto).

ITEM H-5 Unanimously approved as submitted (Nekoba/Apaka).

ITEM K-1 Mr. Garcia explained the submittal.

Mr. Charles Morita, vice president-general manager of OTM, Inc., presented oral and written testimony.

Mr. Yuen noted that in the last contract there apparently were questions concerning the scope of services to be provided by the State and the management company, and this would need to be worked out beforehand. Mr. Morita agreed there was some dispute.

Mr. Garcia explained that a pre-bid conference with potential operators is held to answer any questions.

Chairperson excused at 1:50 o'clock p.m.; remainder of meeting chaired by Vice Chairperson Apaka.

Ms. Dale Evans of ATM, Inc., presented oral and written testimony and stated that the present system does not work and that total ground transportation needs to be addressed.

A representative from SIDA Taxi also testified.

ACTION Unanimously deferred (Yuen/Kennison).

RECESS The Vice Chairperson called a recess from 2:25 to 2:50 p.m.

ITEM H-1 Unanimously approved as submitted (Nekoba/Yuen). A representative from the Board of Water Supply stated they accepted the recommendations.

Mr. Yuen excused at 2:55 p.m.

ITEM E-1 Mr. Nagata clarified that the intent of Recommendation No. 5 is a minimum of \$100 a month to be paid to State Parks.

Mr. Henry Curtis from Life of the Land stated the real draw is the lookout area, and there would be conflict at the lookout. Mr. Nagata stated the concern was addressed by Condition No. 4.

Ms. Pat Tummons suggested a time limit; Mr. Nagata explained that the concern was addressed by Condition No. 1.

ACTION Unanimously approved as submitted (Nekoba/Matsumoto).

ITEM H-3 Unanimously approved (Kennison/Matsumoto).

ITEM C-1 Unanimously approved as submitted (Kennison/Nekoba).

ITEM C-2 Unanimously approved as submitted (Kennison/Nekoba).

ITEM E-1 See above.

ITEM F-1a Mr. Uchida asked that the phrase "fabrication of ornamental steel" under the section entitled "Purpose:" be deleted.

and

Item F-1b

and

Item F-1c

and

Item F-1d

Item F-1f Mr. Uchida asked to withdraw the item to take a closer look at less expensive rent and to look at consolidation of Shafter Flats lots that were unable to be auctioned, or the possibility of using a DOD armory scheduled to be closed.

ACTION Unanimously consented to Item No. F-1-a as amended; Item Nos. F-1-b, -c and -d as submitted; and withdrawal of Item No. F-1-f (Nekoba/Kennison). See page 4 regarding Item No. F-1-e.

ITEM F-2 Unanimously approved (Nekoba/Kennison).

ITEM F-3 Unanimously withdrawn because applicant was unable to be contacted (Kennison/Nekoba).

ITEM F-4 Unanimously approved as submitted (Nekoba/Kennison).

ITEM F-5 Unanimously approved as submitted (Nekoba/Kennison).

ITEM F-6 Unanimously approved as submitted (Kennison/Nekoba).

ITEM F-7 Unanimously approved as submitted (Nekoba/Kennison).

ITEM F-8 In reference to a question posed by Ms. Tummons, Mr. Uchida advised that the Board is operating under current conservation rules 13-5 and the Hawaii Revised Statutes Chapter 183. The Deputy Attorney General concurred.

ACTION Unanimously deferred (Matsumoto/Nekoba).

ITEM F-9 Mr. Uchida asked to add another condition, Condition No. 11: That the County of Hawaii resolve the outstanding fees owed the State before the right-of-entry is issued.

ACTION Unanimously approved as amended (Kennison/Nekoba).

ITEM F-10 Unanimously approved as submitted (Nekoba/Kennison).

ITEM F-11 Unanimously approved as submitted (Kennison/Matsumoto).

ITEM F-12 Unanimously approved as submitted (Kennison/Nekoba).

ITEM F-13 Mr. Uchida asked to amend Condition No. 7: The County of Kauai resolve the outstanding fees owed the State before the set aside is issued.

ACTION Unanimously approved as amended (Kennison/Nekoba).

ITEM F-14 Unanimously approved as submitted (Kennison/Nekoba).

ITEM F-15 Mr. Uchida asked to amend the action to provide for immediate right of entry subject to standard conditions and any other conditions deemed appropriate by the Chairperson.

ACTION Unanimously approved as amended (Nekoba/Kennison).

ITEM H-1 See page 5.

ITEM H-2 See page 3.

ITEM H-3 See page 5.

ITEM H-4 Unanimously approved as submitted (Kennison/Nekoba).

ITEM H-5 See page 4.

ITEM H-6 See page 4.

ITEM H-7 See page 3.

ITEM K-1 See page 5.

ITEM K-2 Unanimously approved as submitted (Kennison/Nekoba).

ITEM K-3 Unanimously approved as submitted (Kennison/Nekoba).

ITEM K-4 Unanimously approved as submitted (Nekoba/Kennison).

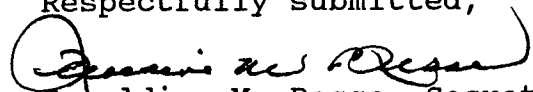
ITEM K-5 Mr. Garcia presented a report on DOT's revocable permits, which did not require action by the Board.

ITEM K-6 See page 4.

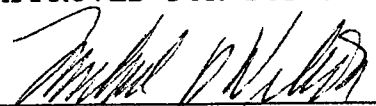
ITEM K-7 Unanimously approved as submitted (Nekoba/Kennison).

ADJOUR- The meeting was adjourned at 3:45 p.m.
MENT

Respectfully submitted,


Geraldine M. Besse, Secretary

APPROVED FOR SUBMITTAL:


MICHAEL D. WILSON, Chairperson
Board of Land and Natural Resources

1/13/96