

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

DATE: November 17, 1995
TIME: 9:00 a.m.
PLACE: 1151 Punchbowl Street
Board Room
Honolulu, Hawaii

PRESENT:

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

STAFF: Michael Buck Dean Uchida
Roger Evans Geraldine M. Besse
Ralston Nagata

GUESTS: Linnel Nishioka (Dept. of the Attorney General)
Peter Garcia (Dept. of Transportation)

Oswald Stender, Bill Burnham, Allan Lieberman, Frances Yamada, Brian Omoto, Marilyn Bornhornst, Bob Johnson, Robert Wenkam, John Mathias, Reese Liggett, John Hall, Steve Brown, Thelma Greig, Alma McGoldrich, Tom Mahone, Kevin Jim, Peter Ho, Randy Brooks, Suzan Harada, Cat Brady, Philip Bogetto, Marc Nakamura, Joe Padrowsky, Tosh Hosoda, Michael Milner, Marilyn Kim, Raymond Chuan, Michael Bailey, Douglas Ing, Mary Hudson, Peter Worcester, Henry Curtis, Keith Krueger, Brian Moto, George Kaya, Mel Yoshioka, Annette Hee, Natalie Mahoney, Alan Price, Dave Hamil, Rory Frampton, Stephen Tom, Amy Fein, Mark Gushiken, Annette Kaohelaulii, Donald Bill, Yvonne Ching, Pat Tummins, Howard Hamamoto, George Kaya

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.

The Chairperson commenced the meeting of the Board of Land and Natural Resources at 9:20 a.m.

Item C-1 Request for a long term cooperative lease with the Peregrine Fund for the management of the Olinda Endangered species facility on the island of Maui.

Mike Buck, Administrator of the Division of Forestry presented the staff recommendation that the Board authorize the Division of Forestry & Wildlife to enter into a long term cooperative agreement with the Peregrine Fund for the management and direction of the endangered species rearing facility at Olinda, Maui and authorize the Chairman to sign the completed documents after legal review and approval by the Attorney General.

Buck introduced Bill Burnham President of Peregrine Fund, Allan Lieberman and Oswald Stender. Buck said there are 8 employees; 6 permanent state civil service, and 2 temporary federal funded employees. He said the main focus now in Olinda is Hawaiian endangered species and it may be possible in the future for some other endangered species because three-quarter of the funds come from the United States Fish & Wildlife Service (USFWS). Buck explained that one employee will be provided housing to encourage research and to reintroduce the species to the habitat. He did not see a problem with control on what specific birds to be raised as he felt the work plan is to be able to work as a partnership.

Buck spoke about the professionalism and focus on the work of the Peregrine Fund on the Big Island with the Alala and said the success of the work will be demonstrated when the birds reproduce.

Bill Burnham gave a brief background of the Peregrine Fund's work and said they are here to assist the State of Hawaii to maintain the natural heritage of the islands and is very committed to that.

Chairman Wilson commented that it is unfortunate that the University of Hawaii does not have a developed program to train experts in the area of bird propagation for resource management. He hoped that one of the benefits would be for the Peregrine organization to be an "incubator of knowledge" for the residents of Hawaii, as well as caring for the birds.

Oswald Stender testified that he was impressed with the work of the Peregrine organization and feels very encouraged.

Henry Curtis, Executive Director of Life of the Land asked that the partnership not happen due to the fact that the agreement is for 20 years between the federal government and the Peregrine Fund with very little oversight by the State. He felt that the "public is being cut out of the process".

Pat Tummins' concern was about the annual work plans submitted directly to the Chair by the Peregrine Fund without Land Board review which prohibits the public from knowing what is going on at the facility. She said she is not opposed to the Peregrine Fund managing the Olinda facilities. Tummins wanted clarification on what kind of contribution the State will make to the operation of the project as it calls for expenditure of State funds, what would be the cost saving measure for the State and how are ongoing research programs going to be integrated.

Tummins talked about a lawsuit filed by the Sierra Club enabling the State to go into private lands to capture *Alala* species to be brought into the captive propagation facility. She understood that the state was not interested in the settlement of the lawsuit and wanted to know whether the State is "washing its hands" by turning the facility over to the Peregrine Fund.

Buck explained that the work plan, permitting requirements, partnership agreement and all the funding is open for public disclosure. He said an advisory committee would be established. Member Chris Yuen felt it should not come before the Board, that it is a matter of professional expertise.

Chairman Wilson asked whether it was feasible to submit an annual report to the Board which would give the public an opportunity to ask questions. Burnham said they would be happy to do so.

Yvonne Ching veterinarian from Kauai testified in opposition to the project as it eliminates the veterinarian research position from the facility. She spoke of her work experience in summer of 1993 with the Peregrine organization and questioned their ability to manage the facility. Ching felt it was beneficial for a veterinarian to be at the facility.

Unanimously accepted as submitted (Kennison/Nekoba).

Item H-1 Time extension request - Conservation District Use Permit MA-2542 for Water System Improvements and Subdivision of the Project Area, at Waikapu, Maui.

Roger Evans briefed the Board members on the project. The staff recommendation is that the Board of Land and Natural Resources deny the request to extend the deadline to complete construction of the water system improvements, at Waikapu, Maui, for failure to provide adequate information to support the granting of a time extension, and for failure to complete the project in a timely manner, subject to conditions: That the permittee is in violation of Condition nine (9) of the permit, that the Board affirm Condition ten (10) of the permit.

Evans said they have not completed the project due to the concerns relative to gaining subdivision approval from Maui County. The staff did not feel that was sufficient justification and questioned whether it was the delay by Maui County or the financing in behalf of the applicant.

Howard Hamamoto presented a brief background of the project and said subsequent to obtaining CDUA approval in June 1992, an agreement was made with HFJ Mauka, to purchase 2 golf courses which occupy approximately 360 acres of the 560 acres. They have been attempting to subdivide 200 acres of this parcel into a residential development. He said a provision in the sales document is that the purchasers cooperate to seek the subdivision of the property. Hamamoto said through the attorneys they were able to satisfy the concerns of the conditions and made recommendations to sign the water agreement for the subdivision. He said for unknown reasons the principals have refused to sign the water agreement which is the primary cause of the delay.

Hamamoto said continued attempts to negotiate have been made and that if the motion is to deny extension, he intends to reapply.

Motion to recommend a 6-month extension. Within the 6-month period both applicant and OCEA to work out justification for a longer extension, to investigate the reason for the delay and the expected date of execution of the document (Kennison/Apaka).

Vote: all in favor.

Item F-2 Staff requests authorization to cause forfeiture of General Leases No. S-5155 to the County of Maui Tax Map Key: 4-4-01: Portion 36, Lower Honokowai, Lahaina, Maui.

Dean Uchida briefed the Board members on the project by saying the lessee is delinquent in their lease rental payments due to disagreements on the rent. The County claims that the lease between the State and County was not valid because it was not approved by County Council but that it was approved by the Corporation Counsel and signed by the Mayor. Uchida said the staff recommends termination of the lease and to pursue the collection of the rent and the matter be turned over to the attorney general's office.

There was discussion on who was responsible for the lease payment and the construction of the parking lot. DIA is owner of the Hotel, JDH subleased the lot from Maui County and put in the required additional parking lot.

George Kaya of Maui County explained their concern over the forfeiture because of MEO, the non-profit organization dealing with the seniors of Maui who may lapse Federal and County funding because of this delay and the slaughterhouse project which may lose State funds.

Deputy Corporation Counsel Brian Moto summarized the County's position and said "there was no valid lease to begin with". He said under the County Code, intergovernmental agreements must be approved by the County Council if the agreement places a financial obligation upon the County which needs to be reviewed by the Council and which never was. Moto said JDH was notified to deal directly with the State because of the invalid lease. He said the County of Maui takes no leasehold interest in this parking lot. He talked about the lease and right of entry with MEO and the Molokai Slaughterhouse and requested the Board consider these issues so that the projects could proceed.

Moto said the matter was brought to the State's attention in 1988 and also brought to the Maui land agent's attention in 1992. Member Nekoba said the approval and signature by both the Mayor and the Corporation Counsel gives the assumption that both parties abided by the [Maui] County rules and it seems obvious an error was made. Moto believed the County has not collected any money from JDH.

Chairman Wilson stated in 1987 the Chairperson of DLNR consented to a mortgage of \$14 million in the construction of the parking lot on State land with the reliance on what he considered a valid lease. Nekoba felt that with the amount of money involved, the bank would have required consent from the County of Maui also. Member Nekoba's advise was to get past the issue of the validity of the lease and proceed to collect the rent due.

Bob Johnson, Economic Development Coordinator said the Mayor wrote DLNR requesting the lease be canceled in 1990 and in 1989 JDH wrote to request that the lease be canceled and consolidated into one document without the County. Member Matsumoto said by the Mayor suggesting the lease be canceled, it is acknowledging an existing lease between the County and the State. Moto suspected that the former Mayor prompted that communication by the knowledge that no Council approval had been in place.

Motion to move into executive session to consult with legal counsel concerning ramifications if the County is found in default (Kennison/Yuen).

Vote: all in favor.

Board meeting resumed at 11:20 a.m.

Motion to defer action for 60 days in order for the State and County of Maui to resolve the issue (Kennison/Nekoba).

Vote: all in favor.

Item F-3 Forfeiture of G.L. No. S-4433 to the County of Maui, Office of Economic Development for the Molokai Agricultural Park at Hoolehua, Molokai TMK: 5-2-01: 10 through 28.

Dean Uchida asked that the item be withdrawn since the Molokai farmers wished to work out a separate agreement with the Department of Agriculture.

Unanimously approved to withdraw item F-3 (Kennison/Nekoba).

Item H-4 Enforcement follow-up: CDUA OA-1121 for the construction of a water reservoir and accessory improvements at Wiliwilinui Ridge, East Honolulu, Oahu; TMK: 3-5-24: POR 3
Permittee: Kamehameha Schools/Bernice Pauahi Bishop Estate.

Roger Evans said the previous Board direction asked a number of groups to agree to a temporary public access for specific activities as hiking and ti leaf sliding but not for it to be used as a public street. He said in the staff's mind the public was allowed access to the Wiliwilinui Trail and that access was recognized by the private land owners in the area. Board of Water Supply asked for and received permission from BLNR to build a water tank on private land with the specific condition that continued access occur.

Evans said staff's recommendation is to reject the Homeowner's Association proposal, that continued access to the State Forest Reserve for hiking, hunting and general public be provided by the Homeowner's Association, reinstate the notice of violation of Condition 7 and render the Conservation District Use Application null and void. The requirement of signing a waiver of liability is not necessary, that an 8 vehicle parking area is inadequate, and traffic in and out be limited from sunrise to sunset.

There was a discussion regarding the overflow of parking and whether the cars could park along the shoulder of the road. The following individuals testified against restricted public access, liability waiver, set access time, and favored overflow parking on the paved streets: Robert Wenkam, Chair of Conservation Committee, Hawaiian Trail and Mountain Club; John Mathias, Hawaii Bicycle League; Reese Liggett, Sierra Club also testified in behalf of Rodney Jose, Pig Hunters Association; John Hall, Hawaiian Trail and Mountain Club; Steve Brown, Hawaiian Trail and Mountain Club; Thelma Greig, Alma McGoldrich, Tom Mahone, Kevin Jim, Suzan Harada, Henry Curtis, Cat Brady and Philip Bogetto.

The following residences of Waiialae Iki V testified in favor of limited parking or parking on public road, requiring liability waivers, limited access time, and limited access to the trail for protection of the homeowners: Peter Ho, Randy Brooks, Marc Nakamura, Joe Padrowsky, Tosh Hosoda, Michael Milner, and Marilyn Kim.

There was discussion on the Grant of Easement document and the reason it was not processed for signature was that the City knew that Gentry was in the process of relocating the easement route within the subdivision. Brian Suzuki Planner for City Parks Department said the draft Grant of Easement is with Department of Land Utilization (DLU) which has not been signed by City Council nor executed by the Mayor.

Member Nekoba said DLU or the City had to have had some type of agreement before the developers could proceed on the development of homes or the infrastructure for a subdivision. Suzuki said he understood that the representation made to the City was that the streets were initially public but had subsequently changed. Member Nekoba could not understand why there would be any discussion of waiving liability when all of the streets were public. Hasada said the initial plans were for public streets and went on to explain the background of the subdivision. He said during construction, it was decided to turn the public streets into private streets and the City told them in order to change the streets, public access had to be provided and began putting together the Grant of

Easement. Brooks gave a chronology of all of the correspondences. Liggett submitted a petition of 275 names for unlimited trail access.

Member Nekoba commented that public input has been important and raises some flaws in Chapter 520 and said it could use some improvement.

Motion made to accommodate no limit overflow parking near the trail on a street that is 30 feet wide, the access hours be sunrise to sunset, if evening access is desired apply for camping permits allowing overnight parking, and absent opinion by the attorney general's office a liability waiver would be required until such time the attorney general's office gives their opinion that the homeowners association is protected then the waiver requirement would be dropped (Nekoba/Kennison).

Chair Wilson said that while he understands the community's desire for a waiver, it would be similar to asking people interested in going to the beach to sign a waiver. He said he appreciates the community's concern but would not support the motion if it contains the waiver provision.

Member Yuen said he supports the motion except for the waiver and understands the homeowner's concern but didn't think they had any significant liability. He said he personally would have no problem in signing any waivers and that a waiver is not absolute protection.

**Vote: 3 in favor (Nekoba, Kennison, Apaka).
2 oppose (Wilson and Yuen).**

Chair Wilson declared the motion not carried and entertained another motion.

Member Matsumoto returned to meeting and was apprised of the action.

Motion made to revote to allow Member Matsumoto to vote (Nekoba/Kennison).

Member Matsumoto said he was not convinced that the kinds of concerns the association had with regards to potential liabilities justifies written waiver requirements and was not inclined to go along with the motion. He had concerns about the demands of the parking and said his vote would be against the motion.

Chair Wilson called for the vote.

Vote: 3 in favor (Nekoba, Kennison, Apaka).
3 oppose (Matsumoto, Wilson, Yuen).

Chair Wilson said the motion fails and called for another motion.

Motion to finalize access overflow parking to allow parking beyond the gate arranged and negotiated with the Department, that the access time be sunrise to sunset with overnight camping allowed with camping permit and no signed liability waiver required (Yuen/Matsumoto).

Vote: 4 in favor (Yuen, Matsumoto, Wilson, Apaka).
2 oppose (Nekoba and Kennison).

Chair Wilson declared the motion carried and called for one-half hour recess.

Item F-6 Direct sale of a non-exclusive easement and construction right-of-entry to CH2M hill on behalf of Helco for a portion of the Keahole to Kailua 69kv overhead transmission line corridor at Kealakehe, North Kona, Hawaii TMK: 7-4-08: 17 portion.

Dean Uchida requested amending deletion of section C-1 a & b to be replaced with C-1 authorizing the issuance of an immediate construction right-of-entry to the applicant, subject to the following conditions:

- 1) Prior to the issuance of the direct easement, HELCO shall submit to the Division of Land Management up-to-date survey descriptions and a minimum of three
- (3) survey map whiteprints prepared by a Hawaii registered professional land surveyor covering the utility easement area.

Uchida's staff recommendation is that the Board find the area in question to be an economic unit in terms of the intended use, authorize the direct award to HELCO of the subject easement under the terms and conditions listed and subject to terms and conditions specified.

There was discussion on the existing 69kv line in the area from Keahole to Kailua and the need for another line to accommodate electrical loads which are predicted to grow.

Unanimously approved as amended (Yuen/Nekoba).

Item F-12 Rescind a shoreline access easement in favor of the State of Hawaii issued on lands owned by Ulupalakua Ranch, Inc. and the easement with a shoreline access easement in favor of the County of Maui at Kaeo, Honuaula, Makawao, Maui TMK: 2-1-7: 79.

Dean Uchida asked for withdrawal of item.

Unanimously accepted to withdraw item (Apaka/Kennison).

Item F-1-d Direct negotiated land license to Jas. W. Glover, Ltd., for continued Quarry purposes, Waiakea, South Hilo, Hawaii, TMK: 2-1-13: 151.

Dean Uchida requested withdrawal of item.

Unanimously accepted to withdraw item (Yuen/Nekoba).

Item F-4 Forfeiture of G.L. No. S-5136 to Sheldyne E. Baniaga for Milolii-Hoopuloa Houselots at Milolii, South Kona, Hawaii TMK 8-9-14: 22.

Dean Uchida requested withdrawal of item.

Unanimously accepted to withdraw item (Yuen/Nekoba).

Item F-9 Amendments to prior Board action relating to the authorization of direct residential leases pursuant to Act 314, SLH 1991 at Kikala and Keokea, Puna, Hawaii TMK: 1-2-7: 2 portion Item H-2 Time extension request for conservation District use Permit CA-2559 for a Singled Family Residence at Tantalus, Honolulu, Oahu.

Dean Uchida informed Board members of a drawing to be held tomorrow [Saturday, November 18, 1995] for those residents who qualified for lots. The staff's recommendation is for the revision or deletion/addition of certain terms and conditions contained in the present draft lease, formation of a community association, and authorize the Department of the Attorney General to review, revise, subsequently approve the exact wording of the foregoing terms and conditions to best serve the interests of the State.

Unanimously accepted as amended (Yuen/Nekoba).

Item F-7 Direct issuance of a non-exclusive drainage easement and construction right-of-entry to Maalaea Triangle Partners on behalf of the County of Maui for a drainage easement at Ukumehame, Wailuku, Maui TMK: 3-6-01: 2.

Dean Uchida requested amendment by adding condition B-16:

"Construction plans, project coordination and site clean-up shall be approved by the Maui District Land Agent and Division of Boating and Ocean Recreation prior to initiating any work on the project."

Unanimously accepted as amended (Kennison/Nekoba).

Item H-5 CDUA for a subdivision and construction of a new 300,000 gallon water storage tank, access road and water transmission line, Maalaea, Maui TMK: 3-6-01: por 14. Applicant: Dept. of Water Supply, County of Maui.

Unanimously approved as submitted (Kennison/Apaka).

Item H-3 Petitioners' standing to request a contested case hearing (Pursuant to Chapter 91, HRS) on an after-the-fact CDUA for a subsea cable for the Acoustic Thermometry of Ocean Climate (ATOC) project utilizing submerged lands, offshore of the island of Kauai. Applicant: Scripps Institution of Oceanography, University of California, San Diego.

Roger Evans briefed the Board and said that the issue is one of standing of the various petitioners and questioned whether a contested case hearing is appropriate. He talked about the different criteria required for a public hearing.

Recommendation from the staff that the Board allow the petitioners and applicant to provide further information and evidence, and that the Board subsequently determine whether or not a contested case hearing is required and determine the parties to the contested case hearing.

Chair Wilson clarified with Linnel Nishioka, Deputy Attorney General, on the process and whether or not the Board could make a decision regarding standing after taking evidence in today's Board meeting. Nishioka concurred.

Michael Bailey, Life of the Land presented a video of whales and whale recordings after which he demonstrated the ATOC amplified whale sounds.

Mary Hudson, attorney for University of California Scripps introduced herself and Peter Worcester, Principal Investigator and Research Oceanographer. She spoke about entitlement and standing and whether or not the petitioners have a due process right for a contested case hearing.

Citing Chapter 91 HRS, she said that a contested case is a proceeding where the rights and privileges of specific parties are required by law to be determined after an opportunity for a hearing. Hudson cited several Supreme Court cases which dealt with similar issues. She said some of the requirements do not apply in this case but that constitutional due process is required. Hudson explained that it's more than something that they care deeply about, it must be a legitimate entitlement and must be specific to the claimant.

Hudson said the petitioners raised the Article 11 Section 9 provision of the Constitution that states that everybody is entitled to a clean, healthy environment. She said that is not enough because everyone is entitled to that. It must be specific to the claimant.

Hudson said another requirement is that there must be a property interest for the applicant. She said Scripps does not have a property interest, is not asking for one and is merely asking for a permit. Permits are considered to be a privilege, not a property interest. Scripps is not asking for a lease or an easement, they are asking to lay the cable on the State's submerged lands. Hudson said, citing one of the cases, that the court's decision was that a sublease is not a property interest and therefore not a foundation for a contested case.

Hudson talked about ceded lands and the argument of Life of the Land concerning rights and protection for some Native Hawaiian members in their organization to protect their interests and therefore are entitled to a contested case hearing. She said Life of the Land has no specific right, that the right has to be specific to the person asking for it. Hudson said the issue of access is not being threatened and that no one will lose access.

Hudson talked about the standing issue. She said some petitioners claim that they live adjacent to the land in question and reminded the Board that the land in question is submerged. She also talked about the route of the cable that begins on State land and ends up on Federal land. Hudson clarified that the permit is about the cable and that the sound source and its operation on Federal lands, is not the focus at this point. Hudson said the second basis for standing is where a person can demonstrate that they will be

directly affected and their interest is clearly distinguishable from the public.

Dr. Peter Worcester stated that the scientific issues that were raised are summarized in the EIS approved by the National Fishery Service and accepted by DLNR. He said in the video and sound presentation, there were several mis-statements. 1) That the sound would be amplified in the water. He said the opposite is true and that the sound weakens rapidly as it spreads out from the source. 2) The pure tone is like a single note on a piano or violin and what ATOC transmits is a modulated signal which is a different spectrum. 3) The question, would you like to listen to that 24 hours per day? Worcester said the permit from NMFS grants permission to run the source an average of 2% of the time. The 6 transmissions lasts 20 minutes one day out of every 4 days which is a small fraction of time, 2/100 of the time that the source is allowed to be on, not 24 hours a day.

Worcester concluded by saying that the hypothesis outlined in the EIS is that this will not have any ill affects and that one of the goals as scientists is to test that hypothesis. He said the scale of this project is to try to address the ocean base of scale and understand what is going on in the whole northeast/north central/Pacific Ocean.

Dr. Raymond Chuan introduced himself as Co-chair for the Kauai Friends of the Environment and spoke in behalf of individuals and organizations who believe that their livelihood, that aesthetic and environmental interests will be adversely effected. He said the petitioner's interest in the proceeding is distinguishable because it satisfies the requirements of HAR 13-1-31 (a) & (4).

There was a discussion concerning permits and Member Yuen asked whether the applicants have considered the possibility of making an agreement without requesting a contested case hearing if the DLNR permit is only for the MMRP and they have to go through the permitting process at DLNR. Chuan said no, because there is a question of credibility in view of the dead whales in California and the financial status of the program. He referred to various news articles on the incident of the whales.

Chair Wilson noted for members of the audience who were anticipating other agenda items, that the agenda item on park rules and Dollar Rent a Car will be determined today and all other agenda items will be deferred to the next meeting, December 15, 1995.

Member Matsumoto requested clarification on the applicant's position, whether or not this application is appropriate for a contested case hearing or to contest the standing? Hudson said she does not believe there's any basis [for contested case hearing] and does not believe there's any standing, but if the Board feels there's standing it's not an issue she would want to fight about.

Henry Curtis testified that Life of the Land is not arguing whether MMRP or ATOC is good but looking at after the fact CDUA. He said the question is not whether ATOC should be allowed to go forward with their project because the cable has been laid and the noise box has been turned on without a permit. Curtis said Life of the Land is willing to take on such mis-use of the laws and to fight for the public.

Keith Krueger testified in behalf of Animal Rights Hawaii and believes that anything that effects the ecosystem and the environment effects creatures and that is within their purview of special interests.

Chair Wilson concluded the testimony portion of this issue and said the other items will be taken before the Board moves into executive session.

Item E-1 Request for permission to conduct public hearings for adoption of rules to address activities protected by the First Amendment of the United States Constitution.

Ralston Nagata requested permission from the Board to conduct public hearings for the adoption of Rules and to delegate the Chairperson the authority to designate a hearing officer to conduct the hearings.

Unanimously approved as submitted (Nekoba/Apaka).

Deputy Attorney General Nishioka recommended that the Board delegate authority to approve the final draft of the Rules prior to public hearing to the Chairperson as there may be changes in the intermediate.

Unanimously approved as amended (Nekoba/Apaka).

Item K-6 Consent to assignment of leases - Statewide airports (Dollar Systems, Inc.)

Peter Garcia stated the recommendation that the Board approve of the Consent to Assignment of Lease Nos. DOT-A-87-19, DOT-A-84-7, DOT-A-84-21, DOT-A-84-20, DOT-A-84-38 and DOT-A-84-28.

Linnel Nishioka said Presley Pang, Deputy Attorney General who had an emergency meeting asked her to brief the Board on the status of this item. She said the request from the Attorney General's office is that the Consent is expressly conditioned upon the State working out a settlement with Dollar Rent A Car for past due amounts owed to the State. Nishioka further explained that if no settlement is worked out, the consent would not be valid.

Unanimously approved as amended (Nekoba/Kennison).

Nishioka clarified that the Attorney General is requesting if the Board feels the Consent is appropriate that it be subject to the State being able to work out in agreement with Dollar Rent A Car for the past amounts due. She said it is up to the Board whether the Board thinks the consent is appropriate.

Approval of February 24, 1995 Land Board meeting minutes.

Minutes unanimously approved as submitted (Apaka/Nekoba).

Meeting moved into executive session.

Meeting resumed at 4:25 p.m.

Chair Wilson said it is the determination of the Board after hearing from the Deputy Attorney General that it is not a legal requirement to have a contested case hearing although it is a discretionary call.

Motion to continue dialogue on this issue on an undetermined day in January and the time frame to be determined by the Chair (Apaka/Kennison).

Chair Wilson explained that the motion for the hearing is not considered a contested case hearing. He said one of the factors of a contested case hearing is that there are limitations on who can testify and in the proposed motion this type of hearing allows input from anyone who would like to testify.

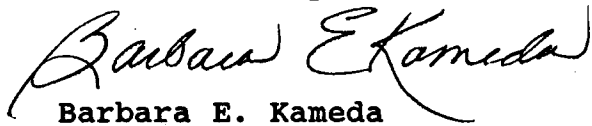
Member Yuen explained that a contested case hearing is time consuming and that it is difficult to get the Board members together. He said the hearings officer will hear all of the evidence and the Board will receive a summary. He felt that this type of meeting allows everyone fuller input as far as facts to the Board. Member Yuen said he is interested in the scientific information about the likely effects of the sounds in this project.

It was clarified that the hearing would be on the merits of the project and whether the permit should be granted or not.


Vote: all in favor.

The meeting was adjourned at 4:30 p.m.

Transcribed by:


Barbara E. Kameda

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON
Chairperson
Board of Land & Natural Resources