

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

DATE: Friday, February 23, 1996  
TIME: 9:00 a.m.  
PLACE: Kalanimoku Building  
Land Board Conference Room 132  
1151 Punchbowl Street  
Honolulu, Hawaii

OPENING: Chairperson Wilson called the meeting to order at 9:23 a.m. The following were in attendance:

MEMBERS: Chairperson Michael Wilson  
Mr. Christopher Yuen Mr. Herbert Apaka  
Mr. William Kennison Mr. Michael Nekoba  
Mr. Colbert Matsumoto

STAFF: Dean Uchida Peter Garcia  
Larry Cobb Mike Buck  
Roy Schaefer Barbara Kameda

GUESTS: Linnel Nishioka, Esq.  
Harold Edwards (Molokai Ranch)  
Beth Fujimoto (Time Warner)  
Anthony Rodrigues (Judd Trail)  
Dr. Peter Worcester, Mrs. Mary Hudson, Dr. Adam Frankel, Douglas Ing, Esq. (ATOC Project)  
Raymond Chuan (Kauai Friends of the Environment)  
Michael Bailey (Greenpeace Hawaii)  
Dr. Marsha Green, Leigh Calvez (Ocean Mammal Inst.)  
Tim Carr (Sea Shepherd Conservation)  
Fred Madlen (Hawaii's Thousand Friends)  
Shauani Kumar, Keith Krueger, Elaine Bowles  
Henry Curtis, Kalani Haia, Melanie Salmon  
Juliet Bagley  
Dennis Krueger (ADN Corporation)  
Cat Brady  
Don Clegg (Western PCS)  
Kalike Chun (in behalf of Rep. Virginia Isbell)  
Denise & Doug Cullen

Chairperson Wilson formally concluded the public hearing for the ATOC issue which ended in recess at the last public hearing and said the Board will make a decision today. The process for testimony for today will be limited to 3 minutes.

**APPROVAL OF MINUTES OF FEBRUARY 24, 1995 AND JANUARY 26, 1996**

Minutes of February 24, 1995 was unanimously approved as submitted (Matsumoto/Kennison).

Minutes of January 26, 1996:

Item E-2: Page 4 - Correct spelling of leech to leach.

Item H-1: Page 5 - Clarification by Linnel Nishioka that the Board has declined to act on the petition and that it has not denied the petition.

Unanimously approved as amended (Nekoba/Apaka).

**BUSINESS:**

**ITEM J-1: CONSENT TO ASSIGNMENT OF LICENSE, LONO HARBOR, ISLAND OF MOLOKA'I (HONOLULU CONSTRUCTION AND DRAYING COMPANY, LTD., ASSIGNOR, AND MOLOKAI RANCH, LTD., ASSIGNEE)**

Larry Cobb, Property Manager for Division of Boating introduced himself and Harold Edwards of Molokai Ranch. Edwards said the issue of immediate access because of the cattle operation creates a security control problem. He said Molokai Ranch has provided access for special activities for camping and picnicking with permits.

There was discussion about the existing roadway and future roadway. Member Yuen's concern was for the people who would like to have access to the harbor now and not have to wait until the marina is developed.

Member Matsumoto moved to approve the item. Member Kennison moved for deferral of the item since there is no time constraint and felt that there were more questions that needed to be answered. Matsumoto withdrew his motion. Member Apaka seconded the motion to defer and the motion was unanimously carried.

**ITEM D-9: CANCELLATION OF REVOCABLE PERMIT NO. S-6908 AND REISSUANCE OF A REVOCABLE PERMIT TO TIME WARNER ENTERTAINMENT COMPANY, POR. KULA, MAKAWAO, MAUI, TMK: 2-2-07:POR 8**

Unanimously approved as submitted (Kennison/Nekoba).

**ITEM C-3: APPROVAL OF RELOCATION OF THE JUDD TRAIL**

Anthony Rodrigues said he represented the landowners and opposed the relocation of the Judd Trail because of the historical significance of the trail and an invasion of privacy for the property owners. He read letter from Sen. Andrew Levin and Rep. Virginia Isbell opposing the relocation of the trail.

There was a discussion about the original conditions to develop the area and to provide perpetual easement to the public. Member Michael Nekoba felt it was irresponsible of the developer not to have developed the area in the past five to six years and that a fine should be levied.

Dennis Krueger representing the ADN Corporation which is the property on the makai side of the Estates of Holualoa said he wanted to be sure that the action taken by the Board in 1990 with respect to the movement of the trail to the southern border isn't changed.

There was a discussion about whether the Board's condition would be binding on whomever would buy the property at the foreclosure sale and Linnel Nishioka related that it would have to be in documented and recorded. Member Nekoba conveyed that there is a cloud on the titles of the property involving the 5 or 6 properties in which the trail will traverse those properties and said there is a need for a situation in which it will survive the foreclosure. Member Yuen felt that the individual landowners who bought lots will either live with it or will litigate that the State does not own the Judd Trail through their property. Krueger believes that when those properties were sold, they were made aware of the existing action taken in 1990 and were advised of the trail on the southern portion of their property.

Kalike Chun read testimony from Rep. Virginia Isbell requesting the action be deferred and require the Na Ala Hele Trail director and adjacent landowners to resolve issue under the "Joint Policy" provision.

Cat Brady, Assistant Executive Director of the Life of the Land testified that they are in opposition of the relocation of this historical trail, "because you can't buy history and you can't relocate it for your convenience...".

Motion made the \$75,000 in bond with the County for subdivision improvements, that the [State] retain the requirement of the Kuakini Highway parking on ADN which would be abandoned if it did not prove feasible and that the money to be held in escrow be used for the Judd Trail or other trail projects on the West side of the island of Hawaii in consultation with the Na Ala Hele Trail Council (Yuen/Nekoba). Unanimously accepted as amended.

It was clarified by Member Yuen that the Board is not recommending whether or not a trail is put in or not. He felt there was no point in putting in a trail now on the Southern boundary unless there was a comprehensive establishment of the Judd Trail.

A 15 minutes break was taken and reconvened by Chairperson Wilson.

**ITEM D-2: AMENDMENT REQUEST, CONSERVATION DISTRICT USE PERMIT OA-1749, ANTENNAE ATTACHMENT TO A TELECOMMUNICATION TOWER, KOKO HEAD, OAHU, TMK: 3-9-12:02**

Unanimously approved as submitted (Nekoba/Kennison)

**ITEM D-1: AFTER-THE-FACT CONSERVATION DISTRICT USE APPLICATION FOR THE ACOUSTIC THERMOMETRY OF OCEAN CLIMATE (ATOC) PROJECT UTILIZING SUBMERGED LAND OFFSHORE OF KAUAI**

Dr. Peter Worcester introduced himself as the principal investigator for the project and read a quote from a letter to Michael Wilson from Dr. Barry Rawley, Dean of the School of Ocean & Earth Science & Technology School, University of Hawaii. He said it addresses one of the issues as to whether or not the project represented "good science".

Dr. Worcester pointed out some of the conditions in the recommendations: Condition 7 - [ATOC] requests that the project related years be three years instead of two years because of the delay of the project. That the cable removal be changed from 60 days to six months because of the short time frame to organize the resources and dependent on weather conditions. Condition 10 - does not specify procedures for shutdown as appropriate. He requested that it be reworded to incorporate the National Marine Fisheries Service permit criteria and procedure and to appropriately involve the Board.

Dr. Adam Frankel explained the "playback experiment" in which 22 trails have been completed, is a scaled down experiment designed to find out directly what affect, if any, low frequency sound had on the behavior of the humpback whale. He explained the experiment in detail.

Mrs. Mary Hudson explained that the shutdown decision is in the hands of the MMRP staff as well as NMFS and not with the primate researchers. A discussion took place clarifying the monitoring activities by MMRP during the project. Ms. Hudson clarified that the request for the change from 2 to 3 years is not to lengthen the project but that it is too late to start observing whales this year, for this season.

There was a discussion about the whales that died in California and whose responsibility it was to determine the cause of deaths. Dr. Worcester and Ms. Hudson concurred that it would be NMFS. Ms. Hudson explained that the project was immediately stopped until NMFS and the Scientific Advisory Board conducted an investigation and based on applied criteria they determined that the project had no relation to their deaths.

There was a discussion about DLNR's involvement for the shutdown of the project [Condition 10]. Ms. Hudson said they were proposing that DLNR be integrated into the process for consultation and not that which produces the ultimate decision. Chairperson Wilson said it would be highly unlikely that the State of Hawaii would want to delegate the final decision making to a person in Washington D.C.

A break was taken and reconvened by Member Apaka at 1:22 p.m. Chairperson Wilson and Member Nekoba was not present.

Dr. Worcester clarified Condition 10 by stating that it could be modified to include the Board in the procedures outlined in the NMFS Scientific research permit, that the Board receive all relevant information and if the Board is not satisfied with NMFS' conclusion, the Board will have the authority to shut the project down.

Raymond Chuan commented about a testimonial remark made by Dr. Dan Costa at a California Coastal Commission meeting in January regarding the dead whales who stated that MMRP was only interested in observing whale behavior. Chuan said the attitude toward the dead whales was obviously of no concern to the ATOC people.

Chuan commented after 3 years and 38 million dollars spent [ATOC] wants to change the sound sources at the bottom of the ocean to a ship board sound source broadcasting not at 75 hertz but at 20 hertz. He said a program called GAMOT, Global Acoustic Mapping of Ocean Temperature, has been in existence for several years using a mobile ship board source and floating receivers to measure ocean temperatures. Chuan felt that SCRIPPS wants to duplicate the program and with the endorsement of Dr. Rawley, University of Hawaii, that ATOC is the only program that is able to measure ocean temperatures.

Chuan stated that the program is running out of money and suggested that, "SCRIPPS withdraw the application, take out the cable and close the book".

Michael Bailey, Director of Green Peace Foundation commented about the change of the hertz and demonstrated a 50 decimal sound range. He stated that Green Peace and a coalition of other organizations plans to directly intervene in the ATOC process. They plan to conduct a high seas blockade of any project using cables from shore without scientific knowledge of the impacts. Bailey said the present application should not be approved by the Land Board because it is not fully designed with adequate protection for Hawaii's environment.

Dr. Marsha Green of Albright College referred to an article published in the Acoustical Society of America in 1994 on the effects of very loud sounds in Australia on marine mammals. She noted that Dr. John Haney, curator of marine mammals at the Museum of Natural History concluded that the three whales were dead four to seven days at the time of discovery and the ATOC testing occurred four to seven days before the whales were found. The NMFS conclusion was not that they didn't die from the ATOC source but that no one could make any reasonable conclusion whether or not they were affected by the source. She suspects that the correlation between the ATOC test and the dead whales may be closely related because it is extraordinarily unusual.

Dr. Green addressed the long term impact of the ATOC source sounds and said that MMRP is designed to study only the short term effects of the sound, like the reproductive rates, communication, and etc. She referred to a letter dated June 13, 1995 addressed to the Board from Drs. Hal Whitehead and Linda Wildgard stressing the long term harm to the well being of the mammals that the ATOC noise could result in lower fertility, miscarriages and the rates in which mates find each other. Dr. Green felt that if the project is approved with the knowledge that it is impossible to know the long term effects that it is in violation of the Endangered Species Act.

Leigh Calvez believes that the effects of ATOC will be irreversible and leave few options in the future "to protect whales, other marine life and possibly even ourselves". She requested that the Board vote against granting the ATOC permit.

Tim Carr introduced himself representing the Sea Shepherd Conservation Society, an international law enforcement environmental group. He said what's needed is not to defer it but to address it and take on the responsibility to not let this project proceed.

Fred Madlen, Board member of Hawaii's Thousand Friends, stated that the cable runs on ceded lands and that no one is able to give assurances that no harm would come to Hawaiian interests. He suggested that the Board place a condition for a performance bond and if it is detected by the Board that [they are not in compliance] that the bond be forfeited. He asked the Board to defer or deny on the grounds that there is no compelling evidence to act as trustees.

Shivani Kumar strongly urged the Board members to deny the permit and felt that ATOC cannot be trusted.

Keith Krueger read several quotes from a document and commented that the applicants could not predict or measure what the impacts of their actions of the marine eco system would be. After reading other comments from various people he felt that there is "genuine scientific disagreement not only over the potential impacts of this undertaking but also over the premise on which it is based". He said the permit should be denied because of the inappropriateness of the Kauai location and that ATOC does not understand Hawaii's marine eco system and it's functional inter relationships.

Chairperson Wilson returned.

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Cat Brady read the testimony of Elaine Bowles who is opposed to the after the fact permit to, "legalize their already illegal action" and felt although they proclaim their environmental sympathies they do not act in an environmental responsible and prudent manner. She asked the Board to deny the permit to keep Kauai safe from this destruction.

Henry Curtis, Executive Director of Life of the Land thought they [ATOC] would have been more careful about any blatant wrong doings and indications are that they discounted the environmental community. He also commented on the fact that they were already asking to change one of the conditions by extending the length to 3 years and for removal of the cable to 6 months.

Melanie Salmon testified that she has been involved with whale conservation on a global level for 3 years and felt privileged to voice the concerns of many people from England, Germany and France concerning ATOC and its global ambitions. She said it is clear that ATOC's main agenda is not measuring noise pollution effects on marine life but measuring climate change. Salmon said their concern given "currently recovering humpback whale populations may regret if the boom box is allowed to go off on that breeding zone".

Larry Garmon read testimony of Jay Murray who said the sounds caused noticeable lung vibrations and distraction to submerged divers, that it will induce resonance in air containing cavities, that the basic premise that temperatures can be averaged over vast distances, and, "...no doubt that these transmissions will pervade the entire planet if allowed to proceed".

Nicol Brown asked the Board not to grant the permit and had no doubts that the ATOC project is a potential hazard to the unprotected and endangered species that populate the Hawaiian waters.

Dr. Worcester responded to the allegation of completely changing the ATOC project and explained that there is a short term test called Alternate Source Test which is not part of ATOC and that ATOC is not changing what is proposed. He said the possibilities of long term effects cannot be proven in 18-24 months of data. He felt it was important to realize that a beginning has to be established to do research.

Ms. Hudson clarified there was no violation of the Endangered Species Act, that they were in compliance, and that a "no jeopardy" was issued by federal agencies that were involved with the consultation. She also clarified the scientific research has been amended to correct the settlement agreement and the NMFS permit to specifically spell out the rules that would control the engineering testing.

Member Yuen said he talked with Dr. Roger Payne, a leading whale scientific expert on the effects of sound on whales, someone who has been involved with whale conservation for 25 years and also wrote a critical letter concerning the ATOC project. Dr. Payne felt that there was no real risk to the whales from this project. Member Yuen said since this project was not a commercial one, he felt it has potential to play the part in analyzing one of the most important environmental problems of our times, which is changing the global climate.

Member Yuen moved to approve the project with amendments to: B-7 to 3 years and 6 months; B-10 that a designated DLNR representative be given the same power as the National Marine Fisheries Service team member to bring attention to perceived adverse effect in a shut down protocol. In the EIS, wherever it says NMFS to add DLNR designated representative. If there were action to finally revoke the permit or suspend it for anything greater than a period of 60 days, then the applicant would have the opportunity for a hearing before the Board before any kind of action were taken and that there be full consultation with DLNR designated representative throughout the project. The exact process in the role should be subject to further discussion. Motion was seconded by Akana.

Chairperson Wilson added to the motion to include an appropriate amount of funding that would require consultation with the expert at the University of Hawaii and funding for travel or education as a member of the MMRP advisory committee.

Member Matsumoto asked Member Yuen for clarification on Condition 7 on changing to 3 years and the adequacy of funding. Member Yuen explained that under the EIS it describes the process where the sound sources are being operated in conjunction with monitoring and studying marine mammal and cannot just operate the sound sources for the



purpose of climate measurements. Dr. Worcester concurred.

On the matter of funding, Dr. Worcester said ATOC is under severe financial stress and that the details should be discussed but is receptive to make sure that DLNR is engaged in a meaningful way. There was a discussion about the type of funding to include funds going to the University of Hawaii or depending on activities outside of Hawaii for travel expenses to California for meetings. Chairperson Wilson clarified that the motion includes the fact that DLNR would be able to approve the type of funding arrangements.

Unanimously approved as amended.

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**ITEM B-1: REQUEST FOR APPROVAL TO AMEND/EXTEND FOUR AGREEMENTS WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) DURING FY 1996-1997**

Unanimously approved as submitted (Yuen/Kennison).

Chairperson Wilson excused himself.

**ITEM D-3: UNAUTHORIZED CONSTRUCTION OF SINGLE FAMILY RESIDENCES AT NENEHIWA PLACE, KAHALUU, OAHU, TMKS: 4-7-46:66-77**

Motion made to approve the staff "Amended recommendation" with amendment to Condition 4 to add or appropriate agencies after the Office of State Planning (Kennison/Yuen). Unanimously approved as amended.

**ITEM D-11: HAWAIIAN ELECTRIC COMPANY AND MAUI ELECTRIC COMPANY REQUEST TO AMEND BOARD ACTION (6/9/95, F-9), UKUMEHAME AND MAALAEA, MAUI, TMKS: 4-6-08:POR. 4; 4-8-02: PORS. 2 & 8 AND 4-8-03:PORS. 8 & 40**

Member Colbert Matsumoto recused himself.

Motion made to approve the staff recommendation and to add condition that Maui Electric resolve any outstanding monies owed the State (Kennison/Nekoba). Unanimously approved as amended.

**ITEM J-2: CONTINUANCE OF REVOCABLE PERMITS (DIVISION OF BOATING AND OCEAN RECREATION)**

- A. KEEHI MARINE, INC., KEEHI LAGOON, ISLAND OF OAHU**
- B. HAWAIIAN DREDGING & CONSTRUCTION COMPANY, WAIANAE BOAT HARBOR, ISLAND OF OAHU**

Status of outstanding balance is \$314,680.19. Member Matsumoto was concerned about the balance being the largest delinquency in the books and felt that the Division should be more diligent in the collection of the amounts owed to the State considering the State's financial situation and that this balance has been outstanding for several years.

Motion to approve the continuance of Hawaiian Dredging revocable permit B-95-62. The continuance of the Keehi Marine, Inc. lease till June 30 and if the applicant does not resolve their delinquency by June 30 that the Division come before the Board to cancel the permit and be put to public auction (Nekoba/Kennison). Unanimously approved as amended.

**ITEM C-1: REQUEST FOR APPROVAL OF CONTRACT WITH UMIKOA RANCH TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM**

Motion to approve with amendments that the mauka road need not be fenced, to make sure the fencing will not prohibit access along the lower road and to preserve large older koa trees that are remaining near (500 feet) of the road and that some of the older trees be preserved for habitat purposes on the parcel (Yuen/Nekoba). Unanimously approved as amended.

**ITEM C-2: ADOPTION OF AMENDED SECTIONS OF CHAPTER 105, RULES REGULATING CLOSED WATERSHEDS**

Unanimously approved as submitted (Kennison/Nekoba)

**ITEM D-4: REVOCABLE PERMIT TO OAHU CHURCH OF CHRIST FOR CHURCH SERVICES AND RELIGIOUS ACTIVITIES, WAIMANO, EWA, OAHU**

Unanimously approved as submitted (Nekoba/Matsumoto)

**ITEM D-5: WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER NO. 3263 AND QUITCLAIM OF LAIMANA ST. TO COUNTY OF HAWAII FOR PUBLIC ROADWAY PURPOSES, PONAHAHAWAI, SO. HILO, HAWAII, TMK: 2-3-20**

Unanimously approved as submitted (Kennison/Nekoba).

ITEM D-6: BRENDAN BALTHAZAR REQUEST FOR A WAIVER OF THE PERFORMANCE BOND PROVISION CONTAINED IN GENERAL LEASE NO. S-5276, NAKULA, KAUPU, HANA, MAUI, TMK: 1-8-01:3

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-7: CANCELLATION OF REVOCABLE PERMIT NO. S-6122 AND REISSUANCE OF A REVOCABLE PERMIT TO GREG ALLEN DBA VISION ENTERPRISES FOR COMMUNICATION PURPOSES, POR. OF KAMAOLE, KULA, MAKAWAO, MAUI, TMK: 2-2-01:POR 51

Unanimously approved as submitted (Kennison/Nekoba).

ITEM D-8: REVOCABLE PERMIT AND IMMEDIATE RIGHT OF ENTRY TO ROBERT VIDA AND DAN AWAI FOR PASTURE PURPOSES, MOKUPAPA, HAMAKUALOA, MAKAWAO, MAUI, TMK: 2-9-06:21, 22 AND 23

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-10: REVOCABLE PERMIT TO HALEAKALA RANCH COMPANY FOR PASTURE PURPOSES, HAIKU-UKA & POR. MAKAWAO, MAUI, TMK:2-4-16:1

Unanimously approved as submitted (Kennison/Nekoba).

ITEM D-12: REQUEST TO AMEND BOARD ACTION (1/14/94, F-6) FOR DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT, HANAWANA WEST, MAKAWAO, MAUI, TMK: 2-9-11:POR. 8

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM D-13: KAUAI RACING ASSOCIATION REQUESTS RIGHT-OF-ENTRY TO UTILIZE KAUAI RACEWAY PARK, WAIMEA, MANA, KAUAI, TMK: 1-2-02:POR. 30 & 40

Unanimously approved as submitted (Matsumoto/Kennison).

ITEM D-14: AMENDMENT OF REVOCABLE PERMIT NO. S-6909, DAVID COSTA, HEEIA, OAHU, TMK: 4-6-16:36

Unanimously approved as submitted (Nekoba/Kennison).

ITEM D-15: AMENDMENT TO PRIOR BOARD ACTION (8/25/95, F-13), WATERLINE AND WATER FACILITY EASEMENT, BOARD OF WATER SUPPLY, PUPUKEA, OAHU, TMK: 5-9-20:53, POR. 54

Unanimously approved as submitted (Nekoba/Matsumoto).

ITEM D-16: DIRECT SALE OF TERM, NON-EXCLUSIVE UTILITY EASEMENT TO HAWAIIAN ELECTRIC COMPANY, INC. AND GTE HAWAIIAN TELEPHONE COMPANY, INC., SAND ISLAND PARKWAY ROAD, KAHOLALOA, SAND ISLAND, HONOLULU, OAHU, TMK: 1-5-41:2, 14, 17, 26, 27, 31, 34, 37, 61, 64-66, 77, 80, 94, 96, 100, 101, 107, 119, 121, 133, 153, 162, 171, 174, 178, 192, 248, 252, 253, 259, 261, 264, 272, 274, 277, 280, 287, 300, 303, 310, 326, 341 AND 342

Unanimously approved to withdraw (Kennison/Nekoba).

ITEM K-1: APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT, NON-CONFORMING USE, AIRPORTS DIVISION

Unanimously approved as submitted (Kennison/Matsumoto).

ITEM K-2: RESUBMITTAL OF APPROVED CONTRACT FOR THE OPERATION OF TAXICAB SERVICES AT THE HONOLULU INTERNATIONAL AIRPORT

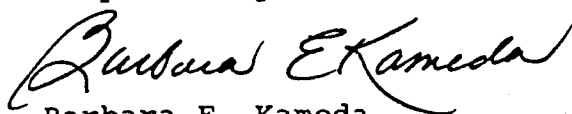
Unanimously approved as submitted (Nekoba/Matsumoto).

ITEM K-3: REPORT ON REVOCABLE PERMITS ISSUED BY THE DEPARTMENT OF TRANSPORTATION FOR CONSISTENT USES

Meeting was adjourned at 4:34 p.m.

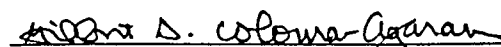
NOTE: ALL TAPES OF THE MEETING ARE FILED IN THE CHAIRPERSON'S OFFICE AND ARE AVAILABLE FOR REVIEW. CERTAIN ITEMS ON THE AGENDA WERE TAKEN OUT OF SEQUENCE TO ACCOMMODATE APPLICANTS OR INTERESTED PERSONS PRESENT.

Respectfully submitted,



Barbara E. Kameda  
Secretary

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON  
Chairperson  
Board of Land & Natural Resources