

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

DATE: August 14, 1981

TIME: 9:00 A. M.

PLACE: Kaunakakai Elementary School  
Cafetorium  
Kaunakakai, Molokai

ROLL  
CALL

Chairman Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:00 A. M., with the following in attendance:

MEMBERS

Mr. Takeo Yamamoto  
Mr. Stanley Hong  
Mr. Roland Higashi  
Mr. Thomas Yagi  
Mr. Douglas Ing  
Mr. Susumu Ono

STAFF

Mr. Kenji Ego  
Mr. Libert Landgraf  
Mr. Robert T. Chuck  
Mr. Ralston Nagata  
Mr. James Detor  
Mr. Roger Evans  
Mr. Robert Lee  
Mrs. Joan K. Moriyama

OTHERS

Dep. A. G. Edwin P. Watson  
Mr. Peter Garcia  
Mr. Boyce Brown and Mr. Kurt  
Bosshard (Item H-1)  
Mr. Ed Nakamura (Item H-3)

MINUTES

The minutes of July 10, 1981 were unanimously approved as circulated.  
(Higashi/Yamamoto)

The chairman announced that although we have the printed agenda, the practice of this board has been to permit people in the audience who have other appointments to be moved up ahead of the agenda. He said the board can accommodate them at this time. Since there was no one who wanted his item moved up, the board took up the items in the order of the printed agenda.

REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE  
OCEANIC INSTITUTE TO CONDUCT MULLET/MILKFISH BAITFISH CULTURE  
RESEARCH

ITEM B-1

Staff recommended that the board approve the execution of the agreement as submitted. Mr. Ego said since the preparation of the board submittal, staff has received preliminary approval as to form from the Attorney General's Office.

ACTION

Unanimously approved as submitted. (Hong/Yamamoto)

It was reported that in addition to the \$100,000, the sum of \$75,000 might possibly become available through the Pacific Tuna Development Foundation.

ITEM C-1

DECLARATION OF OPEN HUNTING SEASON FOR MOUFLON EWES, MAUNA KEA PUBLIC HUNTING AREA IN OCTOBER 1981

The board was informed that at the present time Regulation 23 only allows for hunting of rams. In the recent surveys, when staff participated in the Mauna Kea feral sheep and goat eradication program, they did a comprehensive survey of mouflon population and it has increased considerably over what staff had expected.

Staff asked for board approval to allow hunting of ewes besides rams and delete the requirement for evidence of sex when hunting mouflon during October, 1981 and authorize a notification to the public of the hunting season changes pursuant to Section 13 of Regulation 23.

ACTION Unanimously approved as submitted. (Higashi/Hong)

Mr. Ono asked Mr. Landgraf for a quick report on the public goat hunting at Mauna Kea.

Over two years ago this month, Judge King's court required this department to remove and eradicate the feral sheep and goats at Mauna Kea. Mr. Landgraf said they tried to accomplish most of that. From June 7, 1980 to July 12, 1981, they harvested 1,380 sheep and 112 goats.

Staff had hoped to get public participation to eradicate the feral sheep and goats. However, when they got down to the last few hundred, the hunting public was not interested. It was too hard to get them. So on June 9, they instituted staff hunting on Mauna Kea. It was for three days a week--Tuesdays, Wednesdays and Thursdays--and involved only full-time, bona fide employees of the department, primarily from the Division of Forestry and Wildlife. They continued this operation until July and the total take from the staff was 263 sheep and 36 goats. On the last day of July, prior to the August 1 deadline, there were approximately 40 sheep and 6 goats left. Mr. Landgraf felt confident that this is a stable number.

Mr. Landgraf said they are planning to let those few remaining sheep and goats settle down, and they are proposing to go back during the last two weeks in September, just before the mouflon season, and try to get these last few out. They are also making provisions when the hunters go in October for the mouflon hunting season that there be an unlimited bag limit on the feral sheep and goats. Mr. Landgraf said they have submitted a report as of August 1, 1981 to Deputy Attorney General Ed Watson, who forwarded it to the court.

ITEM D-1 SOIL AND WATER CONSERVATION DISTRICT DIRECTORS

ACTION On Mr. Higashi's motion and seconded by Mr. Hong, the board unanimously approved the appointment and certified the following elected persons for the terms shown below to serve as Directors of the respective Soil and Water Conservation Districts:

Mauna Kea District

Randy Cabral - Term to end June 30, 1984

Windward-Oahu District

Bunki Kumabe - term to end June 30, 1984

ITEM D-2      APPROVAL OF COOPERATIVE AGREEMENT WITH U. S. GEOLOGICAL SURVEY FOR WATER RESOURCES INVESTIGATION

ACTION      Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM D-3      APPROVAL OF APPLICATION FOR FEDERAL ASSISTANCE UNDER THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT FOR THE LAHAINA WATERSHED

ACTION      Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM D-4      APPROVAL TO CONTRACT HAWAII INSTITUTE OF GEOPHYSICS TO CONDUCT GEOPHYSICAL SURVEY, SOUTH KOHALA, HAWAII

ACTION      Unanimously approved as submitted. (Higashi/Hong)

Mr. Ono informed Mr. Chuck that since procedure on contracts calls for approval of the Governor to please proceed in that manner.

ITEM E-1      LAND ACQUISITION AT KAWAINUI SWAMP TO PROTECT THE ULU PO HEIAU, KAILUA, OAHU

Mr. Ralston Nagata said a recent proposal for housing development on a land parcel lying between the heiau and the swamp is under review by the department staff. The development proposed would cut off direct access from the heiau to the swamp, and in addition, would adversely affect the scenic views from the heiau across the swamp and any archaeological features that may be existent on the property.

Mr. Nagata further stated that a second land parcel, which also will block access and visual sighting of the swamp, lies between the parcel proposed for development and the heiau, and is contiguous with both.

Mr. Nagata made a few corrections to his submittal on page 2. The first line on page 2 should correctly read, "Acquisition of the two land parcels, all or portion of TMK 4-02-13:17 and a 3-acre, more or less, portion of TMK 4-02-13:38, will ultimately be required to protect the heiau site from undesirable encroachment, blockage of access to the swamp, and protection of the visual corridor from the heiau across the swamp."

Mr. Nagata recommended that the board authorize the staff to proceed with the acquisition of land parcels at Kawainui Swamp to protect Ulu Po Heiau, including 1.347 acres in TMK 4-02-13:17, or a portion thereof, and the critical 3 acres, more or less, in TMK 4-02-13:38; by negotiated purchase, condemnation, or land exchange as may be required; with priority, within the funds available to be placed on parcel 38.

Mr. Nagata mentioned that on the portion that is not under immediate threat of development (that is immediately in front of the heiau), there is a residence there, and probably this residence will not be considered for purchase. That is why the change in the language above from "all of the parcel" to "portion thereof."

ACTION      Mr. Ing moved to approve the request as amended. Mr. Hong seconded and the motion was unanimously carried.

Mr. Ono mentioned that this proposed acquisition has some unique features. The legislature provided a contingency fund to take care of emergencies such as this, and \$400,000 is available under this right now to be used for acquisition such as this.

ITEM F-1     DOCUMENTS FOR CONSIDERATION

HAWAII

Item F-1-a     CONSENT TO MORTGAGE AND ADDITIONAL CHARGE MORTGAGE  
AKESHI HASHIMOTO, husband of Mitsuko Hashimoto, mortgagor, to the  
BANK OF HAWAII, a Hawaii Corporation, mortgagee - GL No. S-4628

MAUI

Item F-1-b     REVOCABLE PERMIT  
WILSON KEAHI - Government land at Lahaina - for landscaping, maintenance  
and storage of small boats and trailers - \$18.00 per month

OAHU

Item F-1-c     REVOCABLE PERMITS  
WALTER Y. ARAKAKI GENERAL CONTRACTOR, INC. - Lot 526-A, Sand  
Island - for storage of construction equipment, materials, supplies - \$255  
per month

Item F-1-d     OKAZAKI & SUGAI PLASTERERS, INC. - portion of Sand Island Access Road,  
situate between the Coast Guard Station and Lot Nos. 110 and 111 - for con-  
struction baseyard - monthly rental to be determined later upon measurement  
and verification of lot size

Item F-1-e     SONODA BODY & FENDER - Lot 541, Sand Island, Honolulu - for parking and  
storage of customers' cars - \$216.00

Mr. Hong asked whether all of these parcels have been vacated by the prior tenants. The point that he was trying to make was that the commencement date for these new tenants is on or about August 16 (which is couple days from today), and if the area is not available to be turned over to them then the commencement date has to be adjusted.

Mr. Detor said not in all instances. However, hopefully within the next few weeks they expect to get them all out. He said they won't have problems on these.

Mr. Ono said Okazaki & Sugai Plasterers, Inc., under Item F-1-d, have not obtained the necessary clearances. Unless all clearances are obtained, he said such matters should not be brought to the board. He would like to see all clearances obtained before the matter is brought to the board.

Item F-1-f     ASSIGNMENT OF LEASES (THREE LEASES)  
EVERGREEN NURSERIES, INC., Assignor, to SERVCO PACIFIC, INC., a  
Hawaii Corporation, Assignee, covering the Waimanalo Agricultural Sub-  
division - Lot 16 (GL No. S-3764); Lot 3 (GL No. S-3754); and Lot 34 (GL  
No. S-3773)

Item F-1-g     VAL'S U-DRIVE, INCORPORATED, a Hawaii Corporation, Assignor, to PAT  
R. MOELLER and VALERIE M. MOELLER, husband and wife, as tenants by  
the entirety, Assignee - Lot 6, Shafter Flats Industrial Development, Unit I  
(GL No. S-4113)

Item F-1-h DIAMOND PARKING, INC. - triangular parcel situate at the intersection of Nuuanu Stream and Nimitz Highway and identified as Awa Triangle - for public parking lot - \$60 per month

Mr. Hong asked whether they report back to us when there is a substantial shift of stock ownership on one of these tenants.

Mr. Detor said technically they are not required to. If the stock in the corporation is sold, they technically do not have to come to the board for consent.

Mr. Hong said that's a loophole that could be detrimental to us because they could transfer to another corporation that is in very poor financial situation and eventually go bankrupt, which would leave us holding the bag. As we require approval to an assignment, he said we should also require such transfers to get approved. He said he would like to pursue this matter further.

Mr. Detor said he didn't know how far we can go on something like that. He said he can check with the Attorney General's Office on that.

ACTION Item F-1 was unanimously approved as presented. (Yagi/Yamamoto)

ITEM F-2 UNIVERSITY OF HAWAII APPLICATION FOR ROAD EASEMENT, PANAEWA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-3 RICHARD SMART REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO SATISFY FENCING REQUIREMENTS, G. L. NOS. S-4463, S-4464 AND S-4465, SOUTH KOHALA, HAWAII

This matter was partially deferred at the June 12, 1981 meeting. At that time Richard Smart requested, among other things which were approved, permission to postpone putting up boundary fences to a later date, but prior to lease termination so that the pasture lands involved can be better utilized. This particular aspect was deferred for further study.

An opinion from the Attorney General's Office indicated no legal objections to the requested extension of time.

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-4 DEPARTMENT OF HEALTH REQUEST FOR APPROVAL TO ISSUE REVOCABLE PERMIT FOR OPERATION OF PRIVATE MEDICAL LABORATORY AT HILO HOSPITAL, PIHONUA, SOUTH HILO, HAWAII

This was a request from the Department of Health for authorization to issue a permit to Clinical Laboratories of Hawaii, Inc., covering a portion of the Hilo Hospital area. The permit would be issued by the Department of Health. What they would do would be to furnish laboratory/pathological services to outpatient, inpatient and emergency-room patients of Hilo Hospital. The consent of the board is required in order for DOH to issue this permit.

Mr. Higashi said this is an unusual situation because the monthly rent includes employees' salaries, fringe benefits, overhead costs, and rental of space and equipment. He asked where the rental was going to.

Mr. Detor said the rent goes directly to the Department of Health, the fact that they are issuing the permit. He said this is the same situation as DOT's case.

Mr. Ono said it is not the same because DOT has special funds fully supported by user fees. He said the DOH program is not fully supported by revenues from the program.

ACTION Mr. Higashi asked for deferral and asked that a representative from DOH be present at the next board meeting to answer some of the questions which the board has, particularly on the disposition of funds.

The board had no objection to deferring this matter.

ITEM F-5 ACCEPTANCE OF ROADWAY DEDICATION AND SET ASIDE, PUUOHUMAU, NORTH KONA, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-6 CONVEYANCE IN FEE TO COUNTY OF HAWAII FOR ROAD PURPOSES, WAIAKEA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-7 PUUONE DEVELOPMENT REQUEST FOR RIGHT OF ENTRY FOR LANDSCAPING AND MAINTENANCE PURPOSES, WAIOHULI-KEOKEA BEACH RESERVE, KIHEI, MAUI

ACTION Unanimously approved as submitted. (Yagi/Higashi)

Mr. Yagi said at the present time we have twelve revocable permits in that area and fifteen rights of entries. On rights of entries they don't have to pay and on revocable permits they have to pay.

Mr. Detor said he did discuss this matter with his Maui staff. He recalled this same question came up at a previous meeting sometime ago. He said if he was not mistaken, the board was agreeable to cancelling those permits and putting them on a right-of-entry basis. He didn't know whether that was a formal action or not. He said it should be on a right-of-entry basis.

Mr. Yagi moved that all such permits be cancelled and converted to rights of entries instead. Mr. Yamamoto seconded the motion.

Since this matter was not on the agenda, Mr. Ono said the board cannot act on it today and asked the staff to bring it up at the next meeting.

Mr. Detor said it could very well be that it is documented. He said he will bring it back at the next board meeting.

ITEM F-8 COUNTY OF MAUI DEPARTMENT OF WATER SUPPLY REQUEST FOR PIPELINE EASEMENT, KAHULUI, MAUI

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM F-9 HAWAIIAN TELEPHONE COMPANY REQUEST TO ESTABLISH NEW MICROWAVE SYSTEM AT PAPAANUI, MAKAWAO (HONUULA), MAUI

Mr. Yagi moved for approval. Mr. Yamamoto seconded.

Mr. Ing asked whether there is a review of the rental in a situation where they put up improvements and get a higher benefit for the use of the land.

Mr. Detor said this lease does have that provision (under Paragraph 9. Improvements.) so there can be an adjustment of rent. However, for this particular lease, it was the staff's feeling that there be no change in rent due to the fact that it represents only replacement of an existing facility rather than an expansion of the use.

Mr. Ono said the capacity of this system, however, is increased three times.

ACTION Mr. Yagi withdrew his motion and asked for deferral. The board had no objection to the deferral.

Mr. Ono said staff should specifically check the basis upon which the original rent was based--whether it was based on the income or the value of the land.

ITEM F-10 CITY AND COUNTY OF HONOLULU APPLICATION FOR DRAINAGE EASEMENT, WAIAMOI, EWA, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-11 CITY AND COUNTY OF HONOLULU APPLICATION FOR ROAD AND SEWER EASEMENT, WAHIAWA, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-12 CITY AND COUNTY OF HONOLULU APPLICATION FOR SEWER EASEMENT, AUWAIOLIMU, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Yamamoto)

ITEM F-13 RESUBMITTAL - DOT REQUEST FOR CANCELLATION OF REVOCABLE PERMIT NO. S-5644, WAIKIKI, HONOLULU, OAHU

This matter was deferred at the last meeting. The proprietor was ill in the hospital. He has since contacted us but he has not fully recovered yet. Mr. Detor said there is also a question, in connection with DOT's adoption of new rules and regulations, as to whether there will be some kind of beach services allowed. He asked for further deferral.

ACTION There was no objection by the board to the deferral.

ITEM F-14 REQUEST OF DEPARTMENT OF REGULATORY AGENCIES TO ENTER INTO AGREEMENT WITH USA FOR USE OF MT. KAALA ACCESS ROAD AT MOKULEIA, WAIALUA, OAHU

Staff asked the board to defer this submittal. The reason for this is that the Civil Defense people are also involved, and they have asked that this matter be deferred because they have not fully coordinated this with the FAA.

ACTION The board had no objection to deferring this matter.

ITEM F-15 U. S. NAVY REQUEST FOR GRANT OF PERPETUAL NONEXCLUSIVE EASEMENT FOR WATER PIPELINE PURPOSES, AIEA, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

STAFF RECOMMENDATION FOR AMENDMENT OF PREVIOUS BOARD ACTION  
AUTHORIZING ISSUANCE OF A LEASE COVERING LOT 87, KOKEE CAMP SITE  
LOTS, WAIMEA, KAUAI

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ITEM F-16

Mr. Detor said he would like to withdraw Item F-16. He said this was a recommendation not to issue a new lease to Sam Tao, covering one of the Kokee Camp Site Lots on Kauai. Mr. Tao failed to respond to our letter and to comply with several of the requirements. However, since this submittal was written, he has fully satisfied all of the requirements.

Mr. Detor said he talked to Kauai Land Agent Sam Lee on Wednesday and he said Mr. Tao had come in that day and took care of everything.

Mr. Ono said the staff spends lots of time in processing these kinds of documents and getting the matters to the board. He said it takes the staff's time and the board's time. Then at the last minute the applicant comes to the board saying that they have satisfied all of the conditions.

He said he would like to see if we can draft some kind of legislation to permit the board to at least assess the administrative costs. He would like to at least consider or review the possibility of taking such action.

Mr. Detor thought this was a good idea. He said it is very irritating. The staff spends lots of time, writes lots of letters, makes phone calls and nothing happens. Then when we finally write to them to cancel the document, then they come running.

ACTION The board had no objection to withdrawing this matter.

ITEM F-17 DOT REQUEST FOR E. O. SETTING ASIDE SUBMERGED AND RECLAIMED  
LAND AT NIUMALU AND NAWILIWILI, LIHUE, KAUAI

ACTION Unanimously approved as submitted. (Yamamoto/Yagi)

ITEM F-18 U. H. KAUAI COMMUNITY COLLEGE, REQUEST FOR RIGHT OF ENTRY TO  
HANAPEPE SALT POND, HANAPEPE, KAUAI

This was a request from the University of Hawaii, Kauai Community College, for right of entry to utilize a portion of the Hanapepe Salt Pond. This is an annual thing.

Mr. Ono asked why do they have to come back every year if the terms and conditions are the same.

Mr. Detor said basically they are the same. He thought they could put it up on a continuing basis. The reason they have done this was to give the salt makers a chance to voice any objections which they may have. He wasn't sure whether this is going to continue every year. He said he will check this out with Mr. Lee.

ACTION Unanimously approved as submitted. (Yamamoto/Yagi)

ITEM F-19 HAWAIIAN TELEPHONE COMPANY APPLICATION FOR LEASE COVERING  
PORTION OF THE LIHUE-KOLOA FOREST RESERVE, KALAHEO, KAUAI

ACTION Mr. Yamamoto moved for approval. Mr. Yagi seconded.

Mr. Ing asked why the term is so long--65 years. He asked whether that is standard.



Mr. Detor said this is pretty much standard. He explained that there is, however, an abandonment clause. He said we can cancel it if they don't use it. They are tied down to specific use, plus they have to submit any plans if they plan to go in and do anything.

On the call of the question, the motion was unanimously carried.

ITEM F-20     RESUBMITTAL - AMFAC PROPERTY DEVELOPMENT CORP. REQUEST FOR RIGHT OF ENTRY FOR GRADING AND DISCHARGE OF WATER INTO DITCH, KEKAHA, KAUAI

Mr. Detor said Amfac has asked that this matter be deferred. It was previously deferred twice. This is a request to allow drainage to take place on state land next to their development at Kekaha. He said there has been a delay on their financing so they have asked that this matter be deferred indefinitely.

ACTION     There was no objection by the board to defer this matter.

ITEM F-21     DSSH REQUEST FOR ACQUISITION OF LEASE COVERING ROOMS 206 AND 210, 180 KINOOLE STREET, HILO, HAWAII

Mr. Higashi asked whether the statute allows us to go three years. Mr. Detor said this is not statutory. He believed that this is a Governor's Executive Order limiting it to three years.

ACTION     Unanimously approved as submitted.

Mr. Ono said we have another request from the Department of Social Services for some more space. He said he would still like to see some kind of a system worked out where DAGS and DLNR coordinate their efforts to locate suitable spaces for the various state agencies.

ITEM F-22     DSSH REQUEST TO LEASE OFFICE SPACE FOR ITS PROGRAM EVALUATION OFFICE, HILO, HAWAII

ACTION     Unanimously approved as submitted. (Higashi/Hong)

ITEM F-23     DOH REQUEST FOR ACQUISITION OF LEASE COVERING ROOMS 102 THROUGH 122, AND ROOMS 133 THROUGH 145, IN THE J. WALTER CAMERON CENTER, WAILUKU, MAUI

ACTION     Unanimously approved as submitted. (Yagi/Hong)

ITEM F-24     DLIR REQUEST FOR APPROVAL OF RENEWAL AND AMENDMENT OF LEASE COVERING SUITE 203, 1164 BISHOP STREET, HONOLULU, OAHU

ACTION     Unanimously approved as submitted. (Hong/Higashi)

ITEM F-25     DOH REQUEST FOR APPROVAL OF RENEWAL OF LEASE COVERING SPACES NOS. 216, 217 AND 218 OF THE AIEA SHOPPING CENTER, AIEA, OAHU

Mr. Hong noticed that the effective date of the lease is November 1, 1979. He asked why they are so far behind with their request. He asked that a representative from the Department of Health appear before the board at its next meeting so the board can ask some questions.

Mr. Detor said he talked to the deputy director of DOH who is handling this. He said they are trying to catch up on it and that they are going to correct

it. He said he can ask a representative of DOH to be present at the next Honolulu meeting.

Mr. Ing said each department is going on piecemeal basis and we are not really using the leverage for acquiring spaces for state agencies. He said we should review the procedure and try to work out something. He concurred with the sentiments of the board members that we should review the procedure in coordinating our efforts in requiring participation from the various state agencies.

Mr. Detor said as far as our department going out to find spaces and to act as rental agency for other departments, he said they are not really set up to do it. He said when a state agency wants to rent a private office space the first thing they have to do is go to DAGS from the standpoint of availability of funds to pay the rent and to get their okay that no government space is available. DAGS apparently does not go any further than that. Like the Health Department they don't have the staff that are really schooled in going out in making rental arrangements.

Mr. Ono said that is why if we pull our resources, between DAGS and DLNR, we may be able to help the line agencies.

Mr. Hong asked whether the lease rental is put into the computer so they know what buildings and where they are located. He said there are a number of agencies located on four floors of a building. He said in certain buildings perhaps the whole floors are rented and they are all going at it individually to the lessor and paying good rent. He said we should get it all at one time and get a cheaper rent.

Mr. Ing said with the amount of leasing that is going on, we should be able to create a new position.

Mr. Hong said it probably would be worth it to look into this.

Mr. Ono asked how the departments can pay the rent without the approval of the lease itself. He asked whether the pre-audit or the comptroller stop payment.

Mr. Detor said apparently not and cited the Old OR&L building case that was taken up recently. Apparently they are approving the payment before the board approval.

Mr. Ono said he would like to look at that particular aspect. He said it doesn't make sense. He said they are going ahead without getting board approval.

ACTION Unanimously approved as submitted. (Hong/Ing)

ITEM F-26 DOH REQUEST FOR APPROVAL OF RENEWAL OF LEASE COVERING ROOM 300 OF THE BETHEL-PAUAAHI BUILDING, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Yamamoto)

ITEM F-27 B&F REQUEST FOR ACQUISITION OF LEASE COVERING SUITE 412 IN THE ALII BISHOP BUILDING, HONOLULU, OAHU

Mr. Hong asked who at DAGS is coordinating this, and asked for a list of office spaces being rented.

Mr. Detor said Ernest Shima of DAGS is coordinating this. He said couple of years ago they did send us a list which was distributed to the board members. He said he can follow up on this and ask for an update.

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-28 DOH REQUEST FOR RENEWAL OF LEASE OF OFFICE SPACE FOR ITS WAHIAWA MENTAL HEALTH CLINIC, WAHIAWA, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-29 DOH REQUEST FOR RENEWAL OF LEASE OF OFFICE SPACE FOR THE KALIHI-PALAMA COMMUNITY MENTAL HEALTH CENTER BRANCH, WAIA-KAMILO ROAD, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-30 DOH REQUEST TO SUBLEASE OFFICE SPACE FOR ITS MAKIKI MENTAL HEALTH CLINIC, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-31 DLIR REQUEST FOR RENEWAL OF LEASE OF OFFICE SPACE FOR HAWAII STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEE, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

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Mr. Detor said the board had asked for a report on the Aloha Stadium. He was prepared to make a few remarks on it. The request of the board was to try to clarify where the board stands in relation to the Aloha Stadium and the Stadium Authority. What are this board's responsibilities? Legally where does the land board stand in relation to the stadium?

Mr. Detor said the land on which the stadium is situated was conveyed originally by the Federal Government to the City and County of Honolulu. At that time the city was going to put up a stadium. It is land that was purchased originally by the Federal Government. It is not ceded land. When the Federal Government conveyed the land to the city, there were certain restrictions for a period of twenty years that it has to be used for recreational purposes--operation of a stadium. Any changes or any new uses would have to be approved by the Federal Government, subject to them taking it back if the terms and conditions of the conveyance are violated.

Subsequently, when the state came into the picture and took over the construction and the operation of the stadium, the city, with the Federal Government's approval, conveyed the land to the state, so the state is bound by the same terms and conditions.

As far as the Stadium Authority Commission is concerned, Mr. Detor said it was set up by the Legislature and is covered by Section 109 of the Hawaii Revised Statutes. Section 109-2 defines the powers and duties of the Stadium Authority. Among them are to maintain, operate and manage the stadium and related facilities, to collect fees, charge and collect rents for the use and enjoyment of the stadium or its facilities.

As far as the Land Board is concerned, Mr. Detor said Section 171-11, which covers the issuance of executive order, requires that any government agency using state land must come to the board for approval for concessions, etc.

Mr. Detor said insofar as the stadium property is concerned, you have a situation where on one hand Chapter 109.1 gives the Stadium Authority the authority to regulate the use of the stadium. On the other hand, land that is set aside by executive order must also come to the board for approval.

As far as the stadium property is concerned it has not as yet been set aside to the Stadium Authority. The matter was brought before the board several times over the last two years, but it was deferred each time. So technically speaking the land has not been set aside to them. However, staff proceeded on the basis as though it has been. So the concession contract for the operation of the food facility was approved by the board on March 14, 1975 under Item F-7, and that contract was let and it runs until July 31, 1985. At that time they wrote to the Stadium Authority saying that if they let out contracts they have to come to the board. They were not aware of it. So they did come in and the board approved it. The only other one that is in existence is the swap meet. That was initially approved by this board in 1977 for a period of two years. That ran out in 1979 but they are still operating the swap meet. They have not come back to the board for approval.

So where we stand right now is that the food concession has been approved by the board. The swap meet has not. As far as the parking is concerned, the Stadium Authority operates the parking themselves, and the fees were set pursuant to a public hearing held under the Administrative Procedures Act.

Mr. Detor said he talked to Deputy Attorney General Johnson Wong and asked him whether they really are required to come to the land board. If they are, can they operate this facility without board approval. His initial reaction to it was that it would be somewhat like the Ala Wai Golf Course where they could set the fees. If it is set aside by executive order, any concession should come to the board. Mr. Wong also stated that if we want this definitely clarified that you have to go through the committee reports of the legislature.

Mr. Detor said if we want a written opinion Mr. Wong would be glad to furnish us with one. But based on his conversation with Mr. Wong, his answer was, "Yes, they do need to come to the board for concessions, but not for actual operation of the stadium."

Mr. Hong said we should get a written opinion from the attorney general's office and get that point cleared once and for all. He said there is also a State Fair that is also held there without board approval.

Mr. Detor said he knows that the Federal Government does come into the picture, so anything like the State Fair has to be approved by the Federal Government.

He said recently the Hawaii Housing Authority wanted to use part of the stadium property for recreational gardening. The staff came to the board for approval. However, they had such a hard time getting the Federal Government to get their okay that they dropped it.

Mr. Ono suggested that the staff sit down together with the manager, the chairman of the Stadium Authority and discuss this fully before asking for a written opinion.

RESUBMITTAL - AFTER-THE-FACT CDUA FOR ACCESSORY ADDITIONS TO EXISTING RESIDENTIAL USE (TOOL/SHED ENTRANCE GATE) AT HAENA, KAUAI (KURT BOSSHARD)

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Mr. Yamamoto disqualified himself from participating on this item since the County of Kauai is directly involved.

This was a resubmittal. This matter was deferred at the request of the applicant. Mr. Evans said he would like to enter into the record a letter dated July 30, 1981 which he had written to the attorney representing the applicant, as a result of the written request by the attorney for a Bill of Particulars which asked certain specific questions.

Before proceeding any further, Mr. Boyce Brown, the attorney representing the applicant, asked the board to clarify a few things on the procedure.

First of all, he asked whether this proceeding is being recorded. If so, he requested that the record be preserved in the event that it becomes necessary to transcribe.

Mr. Ono said this proceeding is being recorded and that the record will be preserved.

Before proceeding, Mr. Brown personally thanked the board for the past courtesies and he hoped that the board realizes that he was present to represent his client.

Mr. asked to clarify Mr. Evans' role in this proceeding. He asked whether he is to be an advocate or whether he is to be a witness.

Mr. Ono explained the usual procedure which this board has been following. Mr. Evans is a staff within the Department of Land and Natural Resources. He presents his staff's recommendation to the board. Mr. Ono said he didn't know what prompted Mr. Brown these series of questions, but the board will proceed in the usual manner.

Mr. Brown said what is prompting these questions is that this is a contested case proceeding.

Mr. Ing asked Mr. Brown the reason he is asking whether or not Mr. Evans is going to be a witness is because if he is, he would like to cross-examine him?

Mr. Brown said that is one of the reasons. He said if he is a witness he would like to cross-examine. He would like to have him sworn in. If he is not a witness he said he was not quite sure whether he is working in the nature of an advocate. If that is the case, then his argument is not evidence, he said. He said that should be clarified.

Mr. Ono asked Deputy Attorney General Ed Watson whether he had any reaction to the comments made by Mr. Brown.

Mr. Watson explained to Mr. Brown that the procedure outlined by the board has been and will be that Mr. Evans will present his staff's recommendation and evaluation to the board, upon which he or his client may then present any position they wish, either orally or in writing, and the board will then act on it. He said if he had any objection for the record, he can so state it and the board will proceed under that procedure.

Mr. Brown said he understands how the board is because he has come before the board in the past with this type of a request. He said Chapter 91 specifically provides that any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. He said in the past he has not chosen to avail himself with his client's rights under Chapter 91. He chose to do so today.

Mr. Watson said Mr. Evans is not appearing as a witness. He is merely presenting the staff's evaluation to the board. Any examination will be done only by the board members.

Mr. Brown asked Mr. Ono whether that is the chair's ruling.

Mr. Ono said that is correct.

Mr. Brown asked the board whether they have visited the premises.

Mr. Watson said one of the responsibilities of the department staff, in cases like this, is to evaluate the situation, obtain all necessary documents and evidence to support the staff's recommendation, then present it to the board. If the board, upon presentation of the evidence, feels that they do not have sufficient evidence and they need to go to visit the subject premises themselves, they may do so. It is their prerogative. However, if the board does not wish to do so it is also their prerogative.

Mr. Brown said he was not disputing the board's rights. He was just asking a question whether they have visited the site.

The board chose not to answer Mr. Brown's question.

Mr. Ing objected to the procedure that was being followed. It was his understanding that Mr. Brown is now asking the board members questions. He said the procedure that the board usually follows is that the staff makes the presentation. Then if Mr. Brown wants to make a presentation, fine. He said he does not intend to answer any of Mr. Brown's questions. He said he is not a witness and is not a part of the proceedings.

Mr. Brown said he was not trying to question the board. He was trying to find out the preliminary facts necessary to properly process this case.

Mr. Ono reiterated the board's position. The board will not respond to the specific questions, nor will the board be subjected to further questions.

Mr. Brown objected to the board's violation of Chapter 91-10, Section 4, which states: "Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed."

Mr. Brown objected to be denied the right to ask the members of the board whether they viewed the premises.

He further stated that he would like to clarify the nature of this proceeding. The submittal on the agenda is for a permit for construction of the tool shed. That was the application which was submitted. Yet the staff's recommendation has expanded beyond that application. Included with the tool shed permit request is a recommendation that an area under his client's house which was walled in be torn down. He asked whether this proceeding is only with respect to the tool shed or to the staff's recommendation.

Mr. Evans responded that the area in question is privately owned. The Tax Map Key is 5-9-05, parcel 4, at Haena. The area indicated is 37,180 square feet. So his response to Mr. Brown was that this application focuses on all land use, which may or may not be occurring, and took into consideration the entire parcel.

Mr. Watson said the application covers the tool shed as well as the violations. It covers everything within the parcel.

Mr. Brown said their application is only for a tool shed.

Mr. Watson said the land board is acting on this submittal, and the submittal covers not only the application but all of the violations on the subject premises.

Mr. Brown said this is a contested case proceedings with respect to the granting of a tool shed permit. It is also a contested case proceeding with respect to the alleged violation for enclosing the downstairs of the house. Inasmuch as Chapter 91 gave him the right, on behalf of his client, to cross-examine witnesses, under Chapter 91-10.3 ("Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence."), he specifically requested that the material not authored by Mr. Evans be excluded from the record because unless those witnesses are not present, he won't have the opportunity to cross-examine them.

Mr. Watson said Mr. Brown was given the opportunity to review the land board submittal. He advised the board, as their counsel, to accept the recommendation, document and report, as submitted by the staff. He said if Mr. Brown has any objections he can voice it for the record.

The chair ruled that the board will accept all of the exhibits as submitted to the board and if Mr. Brown has any objection he can so state it for the record.

Mr. Brown objected to all of the attachments, to the various reports and other information submitted by Mr. Evans to the extent that those attachments were not authored by Mr. Evans. He said he is entitled to cross-examine witnesses under Chapter 91 to the extent their documents are accepted and made a part of the record. He said he can't cross-examine a piece of paper. He said the burden is not upon him to produce the witnesses.

Mr. Brown objected to these proceedings on the basis that they contend that Regulation 4 is invalid as enacted and as administered. They contend that Regulation 4 is so overbroad and vague that it cannot provide the necessary constitutional guidance to the citizens governing his conduct. They contend that Regulation 4 is invalid and unconstitutional because the regulation violates the constitutional guarantee for equal protection.

Finally, he objected to the proceedings because when Regulation 4 was enacted, the criteria for inclusion of this subject property in the subzone

were arbitrarily and capriciously determined, and not based upon an on-site inspection to determine whether or not the property appropriately belonged in the subzone to which it was assigned.

Mr. Watson asked Mr. Brown to put his objections in writing just so that there will be no misunderstanding by the secretary who is taking the minutes.

Mr. Brown said he can put them in writing.

Mr. Watson asked Mr. Brown whether he was aware of the fact that the board is entertaining the submittal this morning at the request of his client.

Mr. Brown said his client never requested that the contested case be held with respect to any of the house construction. He asked for a permit for the tool shed.

Mr. Brown further objected to the proceedings with respect to each of his comments where the chair ruled adverse to his position. He objected to the failure to produce witnesses. He objected to the failure of Mr. Evans' role in the proceeding as a prosecutor and a witness, the fact that he was not required to testify under oath.

Mr. Brown's objections were noted.

Before proceeding with his presentation, Mr. Evans provided the board with a copy of his letter which was sent to Mr. Brown in response to his request for a bill of particulars.

Mr. Brown objected to the introduction of that letter as part of the record. He said it is not relevant to this proceeding.

Mr. Brown's objection was overruled.

Mr. Evans said this application (KA-217-81-1334) has a 180-day expiration of August 16, 1981. It was filed under our implementing Regulation 4 which was in effect at that time.

The land involved is privately owned and is identified as Parcel 4 of Tax Map Key 5-9-05, at Haena. The total area of the parcel is 37,180 square feet, and the area for the proposed use is 320 square feet. The proposed use is for a tool shed so that the applicant could clean up the noxious plants and get some beneficial plants like taro growing.

The application was sent out to a number of agencies for their comments, and the comments were listed on pages 2, 3 and 4 of the board submittal. Mr. Evans called the board's attention to the specific comments made by the various agencies, as follows:

The Fish and Game commented that they "note that the plans for the proposed tool shed depict a structure raised on pilings 34" above and connected by steps to its foundation footings, which appears impractical for ready access to tools and gardening machinery while working on the grounds."

The Division of Conservation and Resources Enforcement's (DOCARE) staff conducted an on-site inspection on the property on March 23, 1981, which disclosed that the tool shed is already constructed and seems to be a residence for someone.



The Division of Forestry recommended "that this request should be closely evaluated. The proposed tool house appears to be designed as an additional living quarter."

The Division of Land Management recommended "that this application be suspended or denied until the property owner resolves the matter of enclosing the bottom story of the single-family residence without Department of Land and Natural Resources' approval."

They go further on to state that, "You should also know that the storage shed which the applicant leads us to believe will be built in the future, presumably after all state and county clearances have been obtained, is already completed without any clearances whatsoever."

They concluded, "As a final note, we would ask that the need for a storage shed with a floor area of 220 square feet be carefully examined. The elevations show windows, louvers, etc. which cause us to wonder."

The Kauai County Planning Department commented that, "The plans submitted for the tool shed appear to be designed as an additional living quarters. The applicant states that the tool shed will be used as storage of equipment for maintenance and farming on the property. The applicant also states the tool shed will not be added to the utilities system (water and electricity, we assume). We recommend that the tool shed be redesigned to prevent any future additional living quarters on the property. Building setbacks should be indicated on the plot plans locating the tool shed on the property and a reference to the existing residence.

"In our field check of the site, we noted that the proposed shed has already been constructed and that a violation notice was sent twice to the applicant from the County Building Division (the second notice was dated February 3, 1981) for the construction of a temporary shed without a building permit. To date, a building permit has not been applied for."

Staff found that the proposed use is a conditional use in the limited/resource subzone according to departmental Regulation 4.

Mr. Evans said when staff began this analysis, the term of the proposal changes from "proposed to be constructed when the board approves it" to "after-the-fact use" due to the comments and reports that staff has received.

Mr. Evans said the objective of the limited subzone is to limit uses where natural conditions suggest constraints on human activities. The objective of the resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

On August 24, 1979, the board approved, under the nonconforming use provisions of Regulation 4, a single-family residence on the property at the location which indicated that the subsequent construction plans provided for a two-bedroom, two-bath house.

As a part of that application, the applicant made the following statements, among others:

1. The proposed use is for a single-family residence to be lived in by myself and my family. The only change in the properties appearance will be

the house and a general cleaning up of the grounds. Our objective is to keep the natural environment around the house the way it is.

2. Because we realize that our property is in the conservation district and appreciate the state's goals in minimizing the effects of building in the area, we have taken care to place the house in a natural clearing on flat ground where it will not be offensive to our neighbors or the state. There already is a driveway off Kuhio Highway that leads to the proposed house site. The utilities will follow this path so no additional clearing will have to be made. This proposed use is for a single-family residence.

On January 17, 1981, Kauai County informed us of work being done on that residence which was not approved by this department. This work involved the enclosing of the bottom section of the house which, according to the county, could lead to a multi-family residence which would not be in conformance with the intent of Regulation 4 as it relates to nonconforming use or in conformance with Regulation 4's definition of a single-family residence.

On January 19, 1981, Kauai County Planning informed our department that the applicant had completed enclosing the bottom story of the single-family dwelling. The area has been partitioned into several rooms with the installation of a sink and ice box. A review of our records indicate no such plans were presented to this department for approval although required by departmental Regulation 4.

On February 3, 1981 the Kauai County Building Department issued a second notice of violation relating to a "temporary shed" on the property. Staff's review of the records indicates no CDUA was applied for or granted for this "temporary shed".

On February 17, 1981, an application was filed for a "proposed tool shed" and gate on the property and processing commenced.

Based upon the sequence of events, staff viewed this matter as one with three separate and distinct aspects:

1. A nonconforming use was properly applied for, analyzed such that the specific criteria for such use applied, and finding that the proposed use met the criteria, the board approved the use.
2. Following completion of the residence, the applicant, with knowledge of the requirements of the conservation district, did commence to enclose the bottom of the existing, approved house without obtaining departmental approval for modification of construction plans as required under Section 6 of Regulation 4.
3. The applicant, with knowledge of the requirements of the conservation district, did construct a tool shed without obtaining departmental approval as required under Regulation 4.

Mr. Evans said staff is at a loss as to how the construction of the tool shed would have occurred without departmental approval. (He corrected a paragraph on page 6, paragraph 4, which should have read "tool shed" rather than "approved single family house".)

Mr. Evans said even if a CDUA for the detached tool shed had been approved, it would not recommend approval of subsequent construction plans of this magnitude. Considering the physical dimensions of the existing unit, staff

felt it unreasonable to consider the tool shed actually intended for such use as proposed by the applicant.

Staff viewed the land use of the proposed gate as reasonable and recommended approval, under the standard conditions.

Staff recommended denial of the after-the-fact tool shed for the following reasons:

1. The board's policy as it relates to Haena Hui lands provides for one single-family residence per lot.
2. The unreasonable definition, as exemplified by the physical characteristics, of the tool shed.

Mr. Evans further recommended that the board impose the following:

1. A fine in the amount of \$500 be levied for the construction of the tool shed without board or departmental approval, and that the tool shed be removed from the property, identified as TMK 5-9-05:4.
2. A fine in the amount of \$500 be levied for construction of an enclosure of the bottom part of the existing house without board or departmental approval; and that the enclosure be removed and the existing house be restored to that which was approved by this department in conjunction with construction plans.
3. Failure to perform as indicated within thirty days will result in requesting the Department of the Attorney General to pursue the matter within the courts in incorporating all costs of litigation.

Mr. Ing asked Mr. Evans what information was received by the department in connection with Mr. Bosshard's application.

Mr. Evans said the information consists of the information indicated in the exhibits which the board has, also comments that presently exist in file KA-1334, comments that have been made by various state and county agencies; also DOCARE's investigation report K-81-50, based upon a written complaint which was received from the Kauai County Planning Department.

Mr. Ing asked whether there is information contained in the file that is not presently before the board.

Mr. Evans said none. Everything that is in the submittal is generally correct and the submittal is complete.

Mr. Ing asked who prepared Exhibit 1.

Mr. Evans said it was prepared by his staff. However, Exhibit 1 is an exhibit that was given to us by the applicant as part of the CDUA.

Mr. Ing asked Mr. Evans which of those documents that he attached to the board submittal were prepared in the ordinary course of business with respect to department processing of CDUA's.

Mr. Evans said all of the exhibits (Exhibits 1, 2, 3, 4 and 5, which consists of 1 of 4, 2 of 4, 3 of 4 and 4 of 4).

Mr. Ing asked whether that is part of the department's files, Mr. Evans said yes.

Mr. Yagi referred to the staff's recommendation on page 7, under C.2.b regarding removal of the enclosure. He asked Mr. Evans in the event that the applicant came in properly, if it were done in the proper form and in a timely manner, what would be the staff's recommendation?

Mr. Evans said he would recommend removal.

Mr. Hong said in other words you would not have recommended approval even if they came in with proper form to put in this addition to the house?

Mr. Evans said he would not recommend approval based on the statements that have been made by the Kauai Planning Department that it does appear to make the unit multi family.

Mr. Hong said the application was not for another family dwelling but for the basement recreational room. Wouldn't that have been granted?

Mr. Evans said it is very difficult for him to answer that question at this time, not having had an application to go through the process.

Mr. Evans said given the knowledge that he has now on the case, it is hard for him to say yes. He said he has the knowledge now of expressed concerns by the Kauai County Planning Department. He has the knowledge of the board's strict limitation to one house per lot. He has the knowledge that the guy has come through a CDUA process before and understands the requirements. He is a relatively well-educated person. Mr. Evans said he has questions in his mind, "Is this potential enclosure really going to be used as a recreational room, or in fact is there some substance to what the county may be suggesting in terms of multi-family structure?"

Mr. Ono assumed from what Mr. Evans has said that if it is to be used as part of the single family for a recreational room, he has one opinion. If a multi-family unit is being created, then he has another response.

Mr. Evans said that is correct.

Mr. Watson asked Mr. Evans whether the County of Kauai Planning Department in this case would have approved of such a first-story level in light of the tsunami zone. He asked whether or not the Kauai Planning Department would approve of such an addition in the first-story level lot.

Mr. Evans said he cannot make representation for what the County Planning Department or the Building Department would or would not have done.

Mr. Yagi asked whether the applicant would go through the county process of obtaining the permit.

Mr. Evans said he has been informed from the Kauai Planning Department that prior to permit processing, the applicant was asked to verify the existing single-family dwelling and the applicant subsequently brought in a letter from DLNR verifying that the single-family use has been approved. Since the proposed use was in addition to the existing family dwelling which had obtained land board approval, a building permit was processed, and he understood that the building permit was issued on July 19, 1980. During the construction of the recreational room, the county building inspector notified us that

a probable kitchen would be set up in the bottom enclosure. If this kitchen is set up, then this would be the second kitchen in the house and could be used as another dwelling.

Mr. Ono asked had the plans, upon review, showed that it is going to be used as a tool shed, would it have been approved under the circumstances?

Mr. Evans said as a tool shed, recommendation would have been for approval.

Mr. Ono asked whether it is possible to have a second structure on the same property. Mr. Evans said yes.

Mr. Hong asked whether a kitchen in fact has been installed.

Mr. Evans said according to the statement by the Kauai County Planning Department a probable kitchen would be set up in the bottom enclosure. If the kitchen is set up, then this would be the second kitchen in the house and could be used as another dwelling.

Mr. Hong said this is presumptuous. A kitchen itself doesn't necessarily mean that a unit is going to be installed.

Mr. Evans said they further go on to state that they noticed that there is a refrigerator and sink located in the new enclosure. There was a stove being stored in the garage which they felt was going to be moved into the enclosed room. If the kitchen is set up, they felt that it was probably being used as a multi-family residence. Based upon those written statements and the observations made by the county, staff felt that the concerns were legitimate.

Mr. Ing asked, when a CDUA for such an addition is made to the board, that application is not necessarily a contested case?

Mr. Evans said normally it is not a contested case.

Mr. Ing moved to amend the proceeding that the after-the-fact CDUA for accessory addition to the existing residence use not be made a contested case, and that it be treated as a normal application submitted for board approval; and that it be severed from the consideration of the violations. It was his understanding that the board earlier had ruled that it was to be. Mr. Higashi seconded the motion.

Mr. Ono asked Mr. Watson what happens to all of the preceding discussions that took place in reference to the existing house upon doing this.

Mr. Watson said it would remain on the record as such. However, the board would be entertaining an action on the application itself with respect to the tool shed.

Mr. Brown said he didn't understand that to be the motion. As he understood it, we have a contested case with respect to the violation, and no contested case proceeding with respect to the application.

Mr. Ing said the motion was to sever the conservation district application with respect to the tool shed from the other consideration in the submittal, which involved the house and the construction of the additional unit, the bottom of the house, and the violation, including the violation for the tool shed.

Mr. Ono said with the understanding that the existing house matter would still proceed, except that it will not be a contested case.

Mr. Ing said it will proceed in the course of this hearing, but that we consider one separate and apart from the other.

Mr. Yagi asked Mr. Evans whether the tool shed or the enclosed area was rented out to anyone.

Mr. Evans said he would prefer to have the applicant answer that question.

Mr. Brown said he will bring this point out and answer that question during his examination of his client.

Mr. Yagi asked for a yes or no answer.

Mr. Brown responded that the tool shed was built before the house was built. After series of things were stolen, there was somebody living there and he was being paid to guard the area. Nobody has occupied there as a rental unit.

With respect to the main house, Mr. Bosshard said it was rented out because he was in law school. He has discontinued that since he finished law school. He said the downstairs has never been rented out as a rental unit.

Mr. Brown said he was here representing his client as a matter of professional courtesy to a soon-to-be lawyer, that Mr Bosshard has just finished law school at the U. H. and just took the bar exam. He said Mr. Bosshard felt that Mr. Evans is out to get him, and didn't feel that he could adequately represent himself in this proceeding.

Mr. Brown said Mr. Bosshard and his family bought this property and since he was living on the island and his family was not, he was delegated the task of developing the family residence on the property. This he did, and when he decided what sort of thing is going to be built, he sent off for a home-kit, pre-cut type structure. After that order was placed, he went to the building department on Kauai County and they did advise him that he needed a use permit from DLNR. Before he found that out, he had already built a tool shed to store the tools, equipment, etc. So at the time when the tool shed was constructed, he had no idea a conditional use permit was required. He didn't find that out until he went for a building permit on the main house, and he was told that he had to get a permit from the state, which he properly applied for and which he was granted approval.

Mr. Brown said at no time was the tool shed intended to be permanent at the time that it was built. It was his intention to be for holding materials. He applied for and received a permit from the board. Construction started on the house, and during the course of construction, he felt that an additional area was needed, so he then went to the Kauai County and asked them if he could get a permit under design modification for the house. They indicated to him (and that was reflected in Mr. Evans' exhibits) that because they had already been approved as a single-family use, they would issue the permit. So he got the permit and the house was built. Once the house was built, the county then said now he needed a building permit for the temporary shed. But in order to get a building permit he had to get a permit from the board, so he applied for a use permit for the tool shed.

Mr. Brown said Mr. Ing asked whether or not the exhibits correctly reflect the application. He said Exhibit 1 in the submission is not the same thing which his client submitted in connection with the tool shed application and correctly showed the plan which should have been Exhibit 1.

Mr. Brown informed the board that he would like to have Mr. Bosshard make some statements and asked whether they would like to have him sworn in. Mr. Ono said no.

In responding to the questions asked by Mr. Brown, Mr. Bosshard made the following statements:

- .. That he is a joint owner with his two brothers, sister and his father, and that he lives in Hawaii.
- .. That he just graduated from law school in May and got a job in Lihue.
- .. That his family put him in charge of developing plans for a house on the property and that he was in charge of getting permits and organizing those matters.
- .. That prior to applying for a building permit that he built the tool shed, and that it was built in a period of three or four days in February of 1979.
- .. That he found out that he had to file an application with the state when he went to the county. They told him that since he was in the conservation district, they could not process his house plans till he got a use permit for a single-family residence from the state.
- .. That his CDUA was approved by the Land Board on August 1979. He learned of this when he was apprised by the county that the board had approved it. When they told him that the state had given him the use permit for the house, he immediately went to the county for his permit. Within couple of months he started construction.
- .. That after construction was started, before certificate of occupancy was issued, he went to the county with the view of constructing recreational facilities downstairs and to get a design alteration from the county to include those three rooms downstairs.

He talked to the same people for the alteration since he was aware of his situation on his property, and he indicated that since he had a single-family use permit, that they could issue him a design alteration on the basis that he had a single-family use permit on his property.

- .. That before the county gave him the final inspection, he put in a sink. They said he could have a bar sink but not the sink that he had put in because it was too big. So he took the sink out and there is no sink in there now.
- .. That when the house was completed and the inspector was out there to give him his certificate of occupancy, they said he had to make up his mind by either keeping the tool shed and get a permit, or remove the tool shed. He said they indicated there was a possibility that he might have to go to the board first, then he submitted the application.

For the record, Mr. Brown filed a copy of the CDUA which he said was not made a part of the record, also a plan which was actually submitted to the county showing the upstairs and the area that was enclosed downstairs.

Mr. Yagi said Mr. Brown, in his opening remarks, made a statement that Mr. Evans is out to get him. "Get whom?" he asked.

Mr. Brown said that was an unfortunate choice of words. What he meant was that Mr. Evans was going to rigidly enforce all technical violations.

Mr. Yagi said Mr. Evans is just doing his job and a good one at that.

Mr. Yagi asked whether the unit is being rented out to someone. He was trying to determine whether a multi-family unit was constructed.

Mr. Bosshard said he has a person who is living with him and who contributes to the expenses for using part of the house.

Mr. Higashi asked Mr. Bosshard whether he received a letter from this department for the approval of the CDUA. He said Mr. Bosshard earlier stated that he was informed by the county that approval was given by DLNR.

He subsequently did receive a letter from the department. Mr. Bosshard said he first heard about it at the time when he was at the county office.

Mr. Higashi asked Mr. Bosshard, was it not specific that he had to submit his plans for any improvement to the department for approval.

Mr. Bosshard said he could not answer that question at this point.

Mr. Ono said Mr. Bosshard mentioned that he is not renting either the tool shed or the main house. He asked whether he ever intends to rent it.

Mr. Bosshard said now that he is done with his school and since he got a job in Lihue and intends to stay there, he is going to be spending a lot more time on Kauai. However, in meeting his payments he needed a roommate and he intends to have someone in the house with him.

Mr. Bosshard asked whether the board would consider that a commercial operation of his property and that he is guilty of it by having a person living with him, not of his own family, and contributing to the expenses? He said the board will drive him and a lot of other people in Haena area out of their houses if the board follows this.

Mr. Higashi said Mr. Bosshard knew what the approval was before he built the place.

Mr. Bosshard said he knew he could not use it for commercial purposes. He knew that was one of the stipulations of his permit application when the board approved it, that he was not to use it for commercial purposes.

Mr. Brown pointed out to Mr. Higashi that this action is not part of the proceeding and the question of rent or not rent is not an important point.

Mr. Higashi said it is part of the proceeding. It relates to the building in total which the violation occurred when they built on the bottom level.

Mr. Yagi asked whether the tool shed is located on the proper place.



Mr. Bosshard said it is properly located and meets all of the setback requirements.

Mr. Ing asked for a brief recess. He suggested a meeting between the board and Mr. Brown to resolve all of the matters that are presently before the board. He said if that is not possible, the board can then proceed.

The board had no objection.

The chair called for a brief recess. The board then reconvened and continued with the rest of the agenda while Mr. Watson and Mr. Ing met with Mr. Brown to discuss a possible resolution of this case.

(See page 28 for further action on Item H-1.)

ITEM H-2 CDUA FOR KIHEI BOAT LAUNCHING RAMP FACILITY CONSTRUCTION AT KEAWAKAPU, KIHEI, MAUI (DOT/HARBORS DIVISION)

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM H-3 RESUBMITTAL - CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT KAU, HAWAII (LYDIA S. YOUNG)

Staff's recommendation was for denial because the proposed use does not qualify for being considered as a nonconforming residential dwelling use; the proposed use, if considered as a conditional use, conflicts with the objective of the limited subzone; and the proposed use lacks justification and/or necessity for being granted a temporary variance.

The board was informed that the applicant could reapply, particularly if the attorney general's opinion is reversed to some degree.

Mr. Ono asked Mr. Edward Nakamura from Bishop Estate whether all materials have been forwarded to the Attorney General's Office. Mr. Nakamura said yes. They are not doing any more research. He asked whether this can be resubmitted with a condition that it be taken up within thirty days.

Mr. Evans said it would be difficult to say how long the Attorney General's Office would take to respond.

Mr. Ono said he too cannot commit the Attorney General's Office.

The board assured Mr. Nakamura that they will try their best to expedite this matter.

ACTION Unanimously approved staff's recommendation to deny as submitted. (Higashi/Hong)

ITEM H-4 CDUA FOR EXISTING DRAINAGE IMPROVEMENT AND EXPANSION USE AT KAHULUI, MAUI (ALEXANDER & BALDWIN, INC.)

ACTION Unanimously approved as submitted. (Yagi/Hong)

ITEM H-5 CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT NORTH KONA, HAWAII (STAN & BARBARA JORG)

ACTION Unanimously approved as submitted. (Higashi/Hong)

- ITEM H-6 CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT LANIKAI, KAILUA, OAHU (ROGER HARRIS PLANNING ON BEHALF OF RANDALL M. LONGFIELD)
- ITEM H-7 CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT LANIKAI, KAILUA, OAHU (ROGER HARRIS PLANNING ON BEHALF OF PEGGY BOST)
- ITEM H-8 CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT LANIKAI, KAILUA, OAHU (ROGER HARRIS PLANNING ON BEHALF OF CLAUDE STEPHENS)
- ITEM H-9 CDUA FOR NONCONFORMING SINGLE FAMILY RESIDENTIAL USE AT LANIKAI, KAILUA, OAHU (ROGER HARRIS PLANNING ON BEHALF OF DAVID HOWARD)
- ACTION Mr. Evans asked for deferral of Items H-6 to H-9 until the next meeting. He said the attorney for the clients and Deputy Attorney General Watson met, and there seems to be a legal question on the application in terms of nonconforming uses. He said there is time.
- There was no objection by the board.
- ITEM H-10 REQUEST FOR PUBLIC HEARINGS ON APPLICATIONS FOR USE OF LAND WITHIN THE PROTECTIVE SUBZONE OF THE CONSERVATION DISTRICT FOR COMMERCIAL LAND USE (HAWAIIAN TELEPHONE, DIAMOND BROKERS, KEKAHA SUGAR, PIONEER MILL & ROBERT WOLD CO., INC.)
- ACTION Unanimously approved as submitted. (Yagi/Hong)
- Mr. Yagi asked why the date was left out on Pioneer Mill's application. Mr. Evans explained that state land is involved and the application must be reviewed in-house, and the 180-day date would not start until the chairman signs the application.
- Mr. Yagi said the reason he is asking about this is because they are desperately in need of cane land.
- ITEM H-11 FILLING OF POSITION NO. 26433, PLANNER III, PLANNING OFFICE
- ACTION The board, on Mr. Higashi's motion and seconded by Mr. Hong, unanimously approved the appointment of Anne Kit Yu Lo-Shimazu to fill Position No. 26433, Planner III, effective August 24, 1981.
- ITEM H-12 SPECIAL-USE PERMIT APPLICATION BY NATIONAL GEOGRAPHIC SOCIETY
- ACTION Unanimously approved as submitted. (Yagi/Hong)
- ITEM J-1 LEASE - CONCESSION, MAIN TERMINAL LOBBY, HONOLULU INTERNATIONAL AIRPORT, OAHU (AMERICAN EXPRESS CO.)
- ACTION Unanimously approved as submitted. (Higashi/Yagi)
- ITEM J-2 AMENDMENT NO. 4 TO LEASE NO. DOT-A-73-5, HONOLULU INTERNATIONAL AIRPORT, OAHU (FAA)
- ACTION Unanimously approved as submitted. (Higashi/Yagi)

- ITEM J-3      ADDENDUM NO. 1 TO LEASE NO. DOT-A-76-20, GENERAL LYMAN FIELD, HILO, HAWAII (UNITED AIRLINES, INC.)
- ACTION      Unanimously approved as submitted. (Higashi/Yagi)
- ITEM J-4      SHOWER AND LOCKER ROOM CONCESSION, HONOLULU INTERNATIONAL AIRPORT, OAHU
- ACTION      Unanimously approved as submitted. (Hong/Higashi)
- ITEM J-5      APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS, AIRPORTS DIVISION
- Mr. Yagi asked where the Papillon Helicopters fly to. He said they have trouble with them in the past and asked that Permit No. 3555 to Papillon Helicopters be deferred.
- Mr. Ono said the board has taken the position that if an applicant has outstanding obligation to any other state agencies that it would not approve any application. He suggested that DOT get together with our staff on this particular permit.
- ACTION      Unanimously approved as submitted, except Permit No. 3555 to Papillon Helicopters which was deferred at the request of Mr. Yagi. (Higashi/Hong)
- ITEM J-6      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 1, HILO HARBOR, HILO, HAWAII (HILO TRANSPORTATION & TERMINAL CO., INC.)
- ACTION      Unanimously approved as submitted. (Higashi/Hong)
- ITEM J-7      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 49, HONOLULU HARBOR, OAHU (HAWAIIAN MARINE LINES, INC.)
- ACTION      Unanimously approved as submitted. (Hong/Higashi)
- ITEM J-8      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 9, HONOLULU HARBOR, OAHU (AMERICAN GLOBAL LINE, INC.)
- ACTION      Unanimously approved as submitted. (Hong/Higashi)
- ITEM J-9      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, SAND ISLAND ACCESS ROAD, NEAR KEEHI MARINA, HONOLULU, OAHU (MOTOR VEHICLE DISTRIBUTING CO., LTD.)
- ACTION      This was a resubmittal. Mr. Garcia asked to withdraw this item. Upon investigating this matter further, they found that a floating dock is already in existence.
- Mr. Ono asked what action DOT is taking on the floating dock. Mr. Garcia said they are requiring that this floating dock be removed.
- There was no objection by the board to withdraw this item.
- ITEM J-10      ISSUANCE OF VENDING MACHINE AGREEMENT, HARBORS DIVISION, ALA WAI BOAT HARBOR, OAHU (RUDY R. VELA, DBA ICE VENDING HAWAII)
- ACTION      Unanimously approved as submitted. (Yagi/Hong)

ITEM J-11      USE OF HARBORS DIVISION FACILITIES, PIER 9 PASSENGER TERMINAL,  
HONOLULU, OAHU (ALOHA UNITED WAY)

ACTION      Unanimously approved as submitted. (Hong/Higashi)

ITEM J-12      CONTINUANCE OF REVOCABLE PERMITS, HARBORS DIVISION

ACTION      Mr. Higashi moved to approve Item J-12, except Davies Marine Agencies, Inc. permit and the two Young Brothers' permits. Mr. Yagi seconded and the motion was unanimously carried.

Mr. Higashi, in addition, made the following motions:

1. Moved to approve Permit No. 79-783 to Davies Marine Agencies, Inc. Mr. Yagi seconded and the motion was carried. (Mr. Hong did not participate in any action taken by the board on this permit.)
2. Moved to approve Permit No. H-78-721 and H-240 to Young Brothers. Mr. Hong seconded and the motion was carried. (Mr. Ing did not participate in any action taken by the board on these two permits.)

ITEM J-13      RESUBMITTAL - ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION,  
HILO HARBOR, HILO, HAWAII (COMMANDER, FOURTEENTH COAST GUARD  
DISTRICT)

ACTION      Unanimously approved as submitted. (Higashi/Yagi)

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Mr. Garcia said on June 26, 1981 DOT received a construction right of entry on that portion which crosses state land for the Barbers Point Harbor. They will be coming to the board at the next meeting with a request for construction right of entry to the Corps of Engineers who will actually be doing the construction. He said they have not received the acreage that Campbell Estate will transfer to the State of Hawaii. They will be coming in with a request at the next meeting for right of entry to the Coast Guard so they can start with the construction.

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ITEM H-1      (Continued from Page 25)

Mr. Ing reported that the parties have reached a proposed settlement of all issues involved on Item H-1. The terms of the settlement were as follows:

1. With regard to the tool shed, a \$500 fine will be imposed and the tool shed is to be removed within sixty days from today.
2. With regard to the existing house, there will also be a \$500 fine imposed, and the applicant will be allowed to retain the improvements made at the first level of the existing house. The applicant has agreed not to utilize the first level improvement of the existing house as a separate dwelling.
3. The terms of the payment of the fines to be: \$500 to be paid within sixty days from today's date. The other \$500 to be paid within six months from today's date.

Mr. Brown agreed to the settlement as outlined by Mr. Ing above. He questioned, however, whether the gate was approved because no mention was made of this above.

He was informed that the gate was also approved.

Mr. Evans asked whether the action changes, or is it intended to change, any of the board's previous conditions in terms of land use when the board originally approved the house.

Mr. Watson said it does not, except for the fact that the enclosure now is approved.

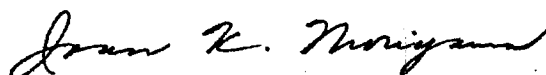
Mr. Ing said with regard to the proceedings, and any possible appeal, that will be resolved by this action and that there will be no further proceedings based upon this action.

Mr. Brown said this is correct.

ACTION Mr. Ing moved that the board accept the settlement as outlined above. Mr. Yagi seconded and the motion was unanimously carried.


ADJOURNMENT: There was no further business and the meeting was adjourned at 1:20 P. M.

Respectfully submitted,



JOAN K. MORIYAMA  
Secretary

APPROVED



SUSUMU ONO  
Chairman

jkm