

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

DATE: February 8, 1985  
TIME: 9:00 A.M.  
PLACE: Kalanimoku Building  
Room 132, Board Room  
Honolulu, Hawaii

ROLL  
CALL

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:05 A.M. The following were in attendance:

MEMBERS

Mr. J. Douglas Ing  
Mr. Roland Higashi  
Mr. Moses W. Kealoha  
Mr. Leonard Zalopany  
Mr. Susumu Ono

Absent & Excused

Mr. Thomas Yagi

STAFF

Mr. Henry Sakuda  
Mr. Libert Landgraf  
Mr. Takeo Fujii  
Mr. Ralston Nagata  
Mr. James Detor  
Mr. Gordon Soh  
Mr. Akio Serizawa  
Mr. John Corbin  
Ms. Pattie Edwards  
Mrs. LaVerne Tirrell

OTHERS

Mr. Edwin Watson, Deputy Atty. Gen.  
Messrs. Peter Garcia & David Higa, DOT  
Mr. Narahari Maharaja (Item E-6)  
Mr. Wakita (Item F-2)  
Mr. Bob M. Grinpas (Item H-5)  
Mr. Thomas Yim (Item F-13)  
Mr. Allan Kay (Item H-2)  
Mrs. Kimoto & Mr. Simms (Item H-6)  
Messrs. Jack Meyer, Bert Kobayashi and  
Gary Wong (Item J-5)

MINUTES:

Mr. Ing moved for approval of the November 30, 1984 minutes as circulated. Mr. Kealoha seconded, motion carried unanimously.

ADDED  
ITEMS

Upon motion by Mr. Ing and a second by Mr. Higashi, the board voted unanimously to add the following items to the agenda:

Division of Forestry & Wildlife

Item C-1 -- Filling of Position No. 15015, Wildlife Biologist V, Island of Oahu.

Division of State Parks

Item E-7 -- Filling of Nursery Worker I, Position No. 15211, Washington Place State Monument, Oahu Parks Section.

To accommodate those applicants present at the meeting, items on the Agenda were considered in the following order:

ITEM H-2

REQUEST TO MODIFY A CONDITION ON CDUA FOR THE CONSTRUCTION OF A 50-FOOT BY 100-FOOT ONE-STORY LIBRARY BUILDING AT TANTALUS, OAHU.

Mr. Soh explained that this library building houses a collection of literature on tropical botany.

On November 16, 1984 the Board approved this permit with twelve conditions. Condition No. 12 stated that no further additional structure on or subdivision of the lot be allowed. The applicant's attorney indicates, however, that based on the board's discussion of the application at that meeting it was his understanding that they could replace an existing structure with a new structure. As a result, the applicant's attorney requested Condition No. 12 be modified to read as follows:

" That no further additional structures on, or subdivision of the lot, be allowed provided that the existing structures may be replaced with new structures."

Mr. Ing said that where there is a nonconforming use, even where no structures have been built, we have allowed them to put a structure on the lot. In this case, where the structure pre-existed the subzone designations and the structure has been there for years he failed to see why they wouldn't be allowed to repair or replace part of the existing structure, particularly since they pre-existed.

Mr. Soh said that there would be no problem with repairing, but replacement of an existing structure would have the effect of continuing a nonconforming use. In this particular case, the continuance of more than one house on the lot. We are dealing with two types of nonconforming situations. One is where the use is in fact established and it is the ordinary and customary meaning of nonconforming. The second is a definition provided in the statute itself where it says that if a parcel is a small parcel and then it establishes a certain standard and conditions then a structure would be allowed. Use of that nonconforming parcel would be allowed. However, the Legislature was careful to establish definition of fences for that particular policy.

Mr. Ing asked whether Mr. Soh recalled what the definition of fences were.

Mr. Soh said that it be under ten acres in size, that it existed prior to 1957, and that the owner pay taxes on it continuously for residential/ agricultural purposes whether it was actually used for that purpose or not.

Mr. Ing asked for the lot size of this particular parcel.

Mr. Soh said that he did not have this information immediately at hand.

Mr. Allan Kay said that the land area totalled 13 acres.

Mr. Ing asked what would happen should the lot size be greater than 10 acres. He asked whether the board, in the past, ever made a distinction.

Mr. Soh said that there are almost no examples that come to mind that exceed 10 acres. There are more parcels under 10 acres. According to the statute, nonconforming is less than 10 acres.

Mr. Ono asked whether there was ever an attorney general's opinion regarding this type of situation.

Mr. Soh said that it was his understanding that with respect to nonconforming uses the Attorney General has suggested that eventually it be extinguished. He could not recall whether said opinion was in writing or rendered verbally.

Mr. Ing said that what is difficult to understand is how a nonconforming use is extinguished. Even where there has been a subdivision prior to existence of the subzone the board has allowed people to go in and put up a new structure even though it is a nonconforming parcel.

Mr. Soh said the reason is that the statute is very clear on this.

Mr. Ing asked how this type of use would ever be extinguished.

Mr. Soh said that only after a very long period of time all things would be brought into conformity.

Of the three nonconforming structures, Mr. Higashi asked how many had more than one kitchen.

Mr. Soh said that the main residence, the maid's quarters and the gardener's house he thought all had kitchens.

Mr. Ono asked whether it was the intent of the applicant to rebuild another structure of similar size for the same intended purpose as the original.

Mr. Soh said that that is what has been implied but has not been explicitly stated.

Mr. Ono stated that as currently worded, the applicant can tear down the gardener's house and rebuild another full-fledged residential structure so he could conceivably have three separate residential structures on the premises.

Mr. Kealoha said that when this application was approved on November 16, 1984, the permit was to build a 50-foot by 100-foot library. Now the applicant wants to modify Condition No. 12. He asked whether staff had any suggestions for amending said condition. The board understands that eventually they may be able to construct three buildings, one of which will be specifically designed for library purposes. Mr. Kealoha suggested that the condition be modified to read: "that should there be any additional structures that it be only for that specific use."

For clarification, Mr. Soh asked whether Mr. Kealoha meant that any new structures be of the same size and use.

Mr. Kealoha said yes.

Mr. Watson said that a provision like this would be opening up a whole new ball game contrary to the use of nonconforming use, which is to eventually wipe out nonconforming use and bring the subject parcel into conforming use. An individual may have a right to exist in nonconforming use -- he has a right to maintain and upkeep the building but he does not have the right to expand upon that use. For example, if the building is burnt or destroyed by a storm, he may not have the right to rebuild. But in this case he will be allowed to completely build a new structure.

Mr. Ing asked why we allow them to put up structures on lands designated for nonconforming use when the parcel had been subdivided for residential purposes prior to the existence of the subzone regulations.

Insofar as subdivisions, the question arose as to whether the subdivisions themselves were already subdivided back before the regulations were in effect. So the issue was whether or not the vested right would allow a subdivision, said Mr. Watson. So as not to hurt the landowner, the board has since filed a policy to allow one house per lot.

With regard to new structures, Mr. Ing said that the conditions seem to be clear with regards to additional structures. He is just concerned about the replacement of existing structures. He felt that maybe the board should take a look at what is involved at the time replacement is to take place. Right now the board is only guessing at what is to be done.

Mr. Watson said that the present provision provides that the existing structure may be replaced with a new structure. The theory of nonconforming use is that you have a right to maintain but not the right to expand or replace it with a new structure. The applicant is asking for something totally new.

Mr. Ing said that rather than approving that language modify it to indicate that with regards to replacement of existing structure, that it be subject to further application and board action.

Mr. Kealoha said that he wasn't sure if he understood the comments with respect to the existing size and shape. In extreme cases such as when a building is burnt or blown away, they replace that structure for the same use and same size. He asked Mr. Watson whether he was saying that this would not be permitted.

Mr. Watson said that in some cases the applicant did not have the right to replace. Mr. Kealoha said that whether they have the right or not, they can still come back to the board. The way he looked at it, this proposed amended condition is only saying that they may replace. Whether or not they will be eligible to replace the structure is another question.

Mr. Kay stated that this is a 13-acre lot and it has its own water system. He said that at the last meeting of the board this point was specifically raised. The minutes reflected the following language: The question addressed to him was "What would your client's reaction be if we imposed a restriction that this would be the last structure allowed on this property?" Mr. Kay said his answer was, "as far as a new structure, yes". However I asked whether it would be permitted if she wanted to rebuild her house. She may want to rebuild her house in the future but she has no intention at this time to subdivide her property. In response to my request that she did intend at some time to replace her existing house, Mr. Ono did reply in the affirmative although the minutes did not pick this up.

Mr. Ono said that one basic point might have been overlooked -- the portion about what Mrs. Marks intends to do with her house.

Mr. Kay again quoted from the minutes.

Mr. Ono asked whether the same language would be used for all structures presently existing on the property.

Mr. Kay said yes.

Mr. Higashi asked about the possibility of having limitations on the other two structures.

Mr. Kay said that would be satisfactory. However, insofar as her primary residence, Mrs. Marks would like permission to replace it and this new structure might be slightly larger.

Mr. Ono said that would be a problem. Therefore, if there are to be any conditions insofar as the size of the house is concerned, it would be better to put in such condition now rather than just wait until the plans come before the board for approval. Mr. Ono said also that he would like to have some of the points raised by Mr. Watson pursued a little more. He asked that the Attorney General's office review this and then have this item resubmitted to the board no later than sixty (60) days from today.

ACTION

Deferred for further review by the Office of the Attorney General. Item to be resubmitted to the board no later than sixty days from the date of this meeting.

ITEM F-2

RESUBMITTAL - JOSEPH WHITHERS, ET AL, APPLICATION FOR ROAD AND UTILITY EASEMENT, WAIAKEA HOMESTEADS, 3RD SERIES, WAIAKEA, SO. HILO, HAWAII.

Mr. Detor stated that this item was deferred at the last meeting because of concerns of possible drainage problems created by the subdivision which this easement over the government roadway would serve. Staff has since gotten together to discuss this with the applicant's representative and has not really come to an exact recommended solution.

Mr. Wakita of R. M. Towill represented the applicant.

ACTION

Deferred.

Mr. Ono asked that Mr. Wakita urge Mr. Grant and the others to get together and resolve some of the legal questions that have come up in order to get this item back on the agenda as soon as possible.

ITEM E-6

RESUBMITTAL - REQUEST TO CONDUCT INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. (ISKCON) RELIGIOUS ACTIVITIES AT NUUANU PALI STATE WAYSIDE, OAHU.

This item was deferred at the last meeting in order that staff could go out to the site with a representative from the organization. The board also asked for a map of the site. Mr. Nagata said that staff did go out to the site with the applicant and also that a map of said site is now available, together with photographs.

Mr. Nagata pointed out to the board those areas which were explored by the applicant and staff and which was being considered for possible use by the organization.

Mr. Nagata explained that, depending on the weather, their table may be located in various locations. However, the members of the organization are to operate within five feet of said table.

Mr. Ono asked whether the fact that the subject area was a historical site would have any bearing in determining whether to allow this type of activity to take place or not.

Mr. Nagata said that historical sites normally create additional concerns for staff. However, he understood that in this particular instance this cannot be grounds for denial.

Mr. Kealoha asked whether, under the first amendment, they are still entitled to occupy ceded lands inasmuch as we do have an obligation to OHA insofar as revenues are concerned. Mr. Kealoha had two concerns: 1) historic sites;

and 2) ceded lands. He also articulated his concern for Iolani Palace. He asked that these concerns be addressed before moving further on this application.

Mr. Kealoha expressed his concerns also regarding Conditions 3, 4 and 5 as shown on page 2 of the submittal. Mr. Nagata explained that the conditions listed on page 2 were proposed by the applicant and that the conditions submitted by staff started from page 5.

Mr. Nagata explained that Conditions 3 and 4 as recommended by staff were very similar to that proposed by the applicant. Condition No. 5 has been altered slightly. Staff has recommended that the escort or tour guide accompanying the person may decline on behalf of said person. Questions regarding constitutionality were raised at an earlier meeting. However, Mr. Nagata said that he did confer with the Attorney General's office and the language that was proposed by the organization's attorneys is appropriate and, on that, if we are considering that particular clause he recommended that staff's condition no. 5 (page 6) be revised as follows:

5. ISKCON members shall not persist in contacting or proselytizing any person after contact or after proselytization has been affirmatively declined by either that person or by an escort or tour guide accompanying that person "in the event that the person is a minor, disabled or mentally incapacitated."

Mr. Ing asked why they wanted a table.

Mr. Nagata understood that they have religious literature and religious food stuffs that they would like to distribute.

Mr. Ing was not in favor of them putting up a table in the area, especially because of the high winds. He did not feel that a table or any type of structure should be allowed. With regard to Item B.4, the condition would allow the members to rove about any of the walkways for proselytization, but not for distribution of literature and foods. He was not in favor of this condition also inasmuch as it would allow the applicants to go on any of the paved walkways to stop or attempt to stop people and in some way interfere with the movement. Again that is a restrictive area. Particularly if it is raining you can only move in the walkway. He felt this to be a restriction of the free movement of people visiting the area.

Mr. Nagata said that in speaking with the representatives he understood that they did not intend to rove about the walkways at the Nuuanu Pali Wayside. If a table is set up they will restrict their movements to within five feet of the table.

Mr. Ono asked whether it would be a problem if the table were to be set up in a fixed location every day.

Mr. Nagata said that they would probably be agreeable to a fixed location, depending on the location.

Mr. Higashi asked that all the concerns and amendments to the various conditions be put in writing and then resubmitted to the board for consideration. Also, the board should have the opportunity to review the attorney general's opinion on this matter.

Mr. Ono asked whether any discussion was held as to the applicant's picking up other than just their own rubbish as a community service.

Mr. Nagata said that this was not discussed. However, if the matter is deferred he will talk to the applicants to see what could be worked out.

Mr. Narahari said that they were advised by their Legal Counsel that a permit is not needed to go into sites such as the Pali Lookout in order to carry out their constitutional activities. But it is their intention to cooperate 100% to find out exactly what would make the government agencies happy so that they can work in a harmonious way.

Regarding the historic sites, Mr. Narahari recalled that subject being brought up at the last meeting and he felt that their counsel, Mr. David Lieberman, had addressed this point sufficiently.

Insofar as the dress code, Mr. Narahari said that he would strongly object to being limited to wearing their traditional clothing. It is not a part of their religion that they be required to wear the safron cloth. The reason he wears it is because he is a monk and life-long preacher. However, many fulltime harikrishnas do not dress in the same manner.

Provided all the questions are answered, Mr. Ing suggested that the board take final action at the next meeting.

Mr. Nagata said that he had one problem. He would have to contact the AG's office for some advice regarding some of the questions that were raised and he wasn't sure that they would be able to respond in time for the next meeting.

Mr. Watson suggested that a meeting be held with the AG's office instead of waiting for a reply.

Rather than the meeting which is to be held on the island of Molokai, Mr. Narahari suggested that this item be considered at the next meeting to be held on Oahu, which would be March 8, 1985.

ACTION

Deferred to the March 8, 1985 meeting, with the understanding that between now and then the Parks Division, the Attorney General's Office and the applicant get together to work out some of the problems which were brought up at today's meeting.

Mr. Ing suggested that the next submittal reflect today's discussion. Also, the submittal itself is not clear as to the area of solicitation.

Mr. Higashi asked also that Mr. Lieberman's letter be referred to the Attorney General's office for review.

SECOND RESUBMITTAL OF A CDUA FOR AN AFTER-THE-FACT CONSTRUCTION OF A 12-FOOT BY 12-FOOT TWO-STORY ADDITION TO A RECREATIONAL CABIN USE AND UTILITY EASEMENT AT KOKEE, KAUAI (GREG BRIDGES).

ITEM H-5

Mr. Soh explained that this item was deferred at the last meeting at the request of the applicant inasmuch as his attorney could not be present at the meeting.

Mr. Soh said that there are three violations of Land Use within the conservation district and fines are being levied at \$500.00 for each of the violations. Staff is recommending approval of the use subject to certain conditions.

Mr. Ono asked if the applicant was still delinquent as of today.

Mr. Soh said that staff did not make a recent check of the matter.

Mr. Ono felt that this was critical. The board's policy is that if a person is delinquent the board will not act on their request.

The applicant's attorney, Mr. Bob Grinpas, stated that his client objected to the imposition of the fine. The extremely long period of time that this thing has been pending has prejudiced him. In the meantime he has been forced to buy out his ex-wife's half of the lease interest at the appraised value which included the construction improvements. At least one of the ohia trees was dead and falling over and, under Kauai Ordinance, you are required to clear out any fire hazards. The other ohia tree as he understood it was only partially cut. He felt that being fined a thousand dollars for cutting two ohia trees was out of the ordinary. They had no objections to complying with all of the other requirements.

Mr. Grinpas stated also that the records did not reflect that this complaint arose as a result of his client's filing suit against his neighbor who had wild apes on the property next to his. One of the apes came over and attacked his pregnant wife and threw her on the porch. When Land Management was unable to control the apes or take action his client filed suit against the offending leaseholder. These complaints all arose as an immediate result of his filing suit against the leaseholder. Subsequently the apes have been removed.

Mr. Ono asked whether we had at one time in the past informed the applicant that no CDUA would be required.

Mr. Soh believed there was something in the submittal to that effect.

Mr. Ono asked Mr. Soh what his finding was.

Mr. Soh said that they had made an earlier mistake.

Mr. Ono said then that there was definite communication with the applicant that no conservation district application would be required.

Mr. Soh said that he did not make a personal investigation of the matter.

The applicant's attorney said that the matter was referred to Mr. Evans who had made an initial determination which then the Kauai Land Agent communicated to the leaseholders.

**ACTION**

Mr. Zalopany moved to approve this after-the-fact request for a 12-foot by 12-foot, two-story addition to a recreational cabin use and a utility easement at Kokee, subject to the conditions listed in the submittal and also that the fine be reduced from \$1500.00 to \$500.00 inasmuch as part of this was the State's fault. Mr. Higashi seconded, motion carried unanimously.

**ITEM F-13**

**RESUBMITTAL - DLIR REQUEST FOR ACQUISITION OF LEASE COVERING UNIT H-4, LAHAINA SQUARE, LAHAINA, MAUI.**

Mr. Ing said that the board was concerned inasmuch as these rentals exceed most Honolulu costs. The board also wanted to know whether DLIR had looked into other areas. He wondered why they had to be in Lahaina and, if they do have to be in Lahaina, why the Square.

Mr. Thomas Yim explained that at first they had an employment office in Wailuku but when the energy crisis came about they decided that it would be better if they took their services out to the people rather than have the people come in. A search was made back then and, at the time, Lahaina Square was a new development so they moved in. They have been there since 1975. For the last two years the rental was \$1.40 and the proposed lease is to continue occupancy at \$1.40 base rent for the next two years and \$1.50 for the following two years. Other costs e.g. air conditioning etc. are then added on. Mr. Yim said that they did check other areas within the Lahaina



area and the asking price is \$2.00 a sq. ft. So they feel that not only is the amount they are paying reasonable, it is also easier for their operation to approach the employer.

Mr. Ing asked whether there was any space available at the County Building.

Mr. Yim said that the building was already too crowded.

Mr. Higashi asked if it was necessary for DLIR to be in a shopping center.

Mr. Yim said no. However, at the time that they got the place it was the most suitable.

ACTION

Mr. Higashi moved to approve subject to the review and approval of the lease agreement by the Office of the Attorney General. Mr. Zalopany seconded, motion carried unanimously.

ITEM H-6

CDUA FOR GRADING, INSTALLATION OF WATERLINE, DRAINAGE CULVERTS, AND MAINTENANCE ROAD AT KAILUA, OAHU (LONE STAR HAWAII PROPERTIES, INC.).

Mr. Higashi said that before proceeding there was a procedural matter of a contested case request which question he felt should be disposed of first.

Mr. Watson said that he did review the request for a contested case hearing and, although he has not yet put it in writing, he will be coming back to the board with a reply that the request be denied.

Mr. Higashi asked then if it was the Deputy Attorney General's advice to proceed at this point based on a written recommendation following.

Mr. Watson suggested that, in light of the deadline, they proceed and thereafter should the court decide to further consider this request then they can do it by court order.

Mr. Ing asked whether there was an appeal of one of our prior decisions or was there a suit against the board? If there is an appeal, then the board may lack jurisdiction.

Mr. Watson said that he was familiar with the prior action of the board that the appeal was made from. There must have been some prior board approval which that decision was appealed from.

Mr. Soh said that normally within 30 days of an application we notify the applicant of several things: 1) whether the application has been accepted; 2) an SMA is either needed or it's use is outside of the Special Management Area; 3) determination has to be made whether or not an environmental impact statement is required or not and staff does it on the basis that it is required by EIS regulations of the OEQC. What staff goes on is a part of the application that deals with the assessment of the impact of the project, so the EIS is a part of the application and, from that, staff tries to determine whether or not an EIS is needed. In this particular case, the applicant was notified that no EIS was required.

Mr. Kealoha asked whether according to staff's letter more than one party was asking for a contested case hearing.

Mr. Soh said that the complaint made to the circuit court was made by only one party.

Mr. Ing asked whether the contested case hearing was made on the issue of the EIS or the CDUA.

Mr. Soh said that the contested case was made on the basis of:

1. There was a complaint that the procedure was faulty because the complainant did not receive proper notice.
2. The use of the conservation district was improper.
3. The use requested was being done because of commercial expediency.

Mr. Ono told Mr. Watson that he had received a request from Mrs. Kimoto to address the board which he turned down because of the court case. But if we are separating the court case and CDUA process as being pursued by staff, Mr. Ono asked whether it would be in order to have Mrs. Kimoto say something without jeopardizing anyone's rights or damaging their respective cases.

Mr. Watson said that as far as the request for a contested case hearing that was made, although it addresses the EIS procedures, insofar as the CDUA is concerned, he has no objections.

Mr. Ono asked whether in effect the board could proceed with the staff's presentation of the application.

Mr. Watson said that the pending appeal has nothing to do with the application so there should be no problem.

Mr. Ing asked if the Kimoto request for CDUA with regards to the substance of the CDUA use was being denied.

Mr. Watson said that his recommendation is that the board deny the request for contested case hearing.

In answer to the board's question, Mr. Watson said that they are not required to have a contested case hearing.

Mr. Ono felt that there would be no problem acting on the CDUA itself and then the board could decide to formally take a position on the contested case hearing request at some future meeting.

Mr. Watson said that the matter will probably be moot at that time inasmuch as the initial request does concern to some extent the merits of this application.

Mr. Ono said that he would entertain a motion addressing the contested case hearing request.

#### ACTION

#### WITH REGARD TO CONTESTED CASE HEARING:

Mr. Ing moved to deny Mrs. Kimoto's request for a contested case hearing. Mr. Kealoha seconded, motion carried unanimously.

Mr. Soh proceeded with staff's presentation of the CDUA itself. In essence, staff was of the opinion that the applicant's proposal is not in conflict with the objectives of the subzone.

Mr. Ing asked about the road.

Mr. Soh said that the road will be a service road until such time that it becomes a subdivision, at which time it will be a subdivision road.

Mr. Ono asked whether the applicant had had a chance to look at the conditions.

Mr. Soh said that the applicant was provided a copy of the submittal.

Mr. Simms, representing the applicant, objected to Condition No. 11. Going back to paragraph 9 on page 7, he said that the board would find that the boundary is ill-defined. He walked the whole property and he felt that he could demonstrate to anyone that no cutting was done in that area. Other than that he has no problems with the conditions.

Mrs. Kimoto commented that they had filed their appeal with regards to the EIS to the Circuit Court on November 22 or 23, 1984. Although their request for a contested case hearing has been denied, it includes similar issues of their concerns with the EIS.

Mrs. Kimoto said that they recently had a soil erosion specialist come out. She reviewed his soil characteristics and found that the top soil within the conservation district area are the worst soils for compaction and fill type area. It would have a tendency to slip. She has not been able to contact the U.S. Soil and Conservation Service to confirm how much of the Kapaa soil are within the conservation district.

**ACTION** Mr. Ing moved for approval of staff recommendation with the following amendment to Condition No. 11 that it be subject to verification. Mr. Higashi seconded, motion carried unanimously.

Mr. Ing asked whether a letter would be sent to the parties requesting contested case hearings that the request has been denied.

Mr. Ono said that the procedure is that notification go to the party requesting the contested case hearing on any decision of the board.

ITEM B-1 FILLING OF POSITION NO. 32236, AQUATIC BIOLOGIST III, IN THE DIVISION OF AQUATIC RESOURCES (MAUI).

**ACTION** The board unanimously approved the appointment of Mr. Skippy Hau to Position No. 32236. (Higashi/Zalopany)

ITEM D-1 SOIL AND WATER CONSERVATION DISTRICT DIRECTORS.

**ACTION** Upon motion by Mr. Ing and a second by Mr. Higashi, the board unanimously voted to certify the following appointed and elected persons for the terms shown to serve as Directors of the respective Soil and Water Conservation Districts:

<u>District</u>	<u>Name</u>	<u>Elected/Appointed</u>	<u>Term to End</u>
Central Maui	Edward Rice	Elected	6/30/87
	Patrick Sugai	Appointed	6/30/87
Molokai-Lanai	H. C. Waldorf	Elected	6/30/87
	Craig Newhart	"	6/30/87
	Shogo Ogata	"	6/30/87

ITEM C-1 FILLING OF POSITION NO. 15015, WILDLIFE BIOLOGIST V, ISLAND OF OAHU.

**ACTION** The board unanimously approved the appointment of Marie Morin to fill Position No. 15015. (Ing/Kealoha)

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

ITEM F-1-A KENNETH FUNAI REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4642, LOT 225, OLAA, PUNA, HAWAII TO AUSTIN F. KEENEY AND BETTY F. KEENEY, BEING TMK 1-8-06:102, CONTAINING 49.082 ACRES.

ITEM F-1-B

AUSTIN KEENEY REQUEST FOR CONSENT TO MORTGAGE G. L. NO. S-4642, LOT 225, OLAA NEW TRACT LOTS, OLAA, PUNA, HAWAII TO KENNETH S. FUNAI, BEING TMK 1-8-06:103, CONTAINING 49.082 ACRES.

ITEM F-1-C

FEDERICO GAMPON APPLICATION FOR REVOCABLE PERMIT COVERING PORTION OF LOT A-99, WELIWELI HOUSELOTS, WELIWELI, KAUAI BEING TMK 2-8-23:30, CONTAINING 5,000 SQ. FT.±.

ITEM F-1-D

MANAGEMENT BY ISLANDERS APPLICATION FOR REVOCABLE PERMIT, WAIANAE-KAI, WAIANAE, OAHU BEING TMK 8-5-18:1, CONTAINING 1.154 ACRE.

In answer to Mr. Ono's question, Mr. Detor said that the applicants would have no objection to other organizations also using the area.

ITEM F-1-E

CHIYOKI TANAKA REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4751, LOT 4, PANAWEA AG PARK, WAIAKEA, SO. HILO, HAWAII BEING TMK 2-2-56:30 CONTAINING 10.112 ACRES.

ITEM F-1-F

PERFECTO ANIBAN REQUEST FOR CONSENT TO MORTGAGE G. L. S-4799, LOT 9, PAHOA AG PARK, KEONEPOKO IKI, PUNA, HAWAII BEING TMK 1-5-116:36 CONTAINING 5,002 ACRES.

ACTION

Mr. Ing moved for approval of Items F-1-A through F-1-F as submitted. Mr. Kealoha seconded, motion carried unanimously.

ITEM F-2

RESUBMITTAL - JOSEPH WHITHERS, ET AL, APPLICATION FOR ROAD AND UTILITY EASEMENT, WAIAKEA HOMESTEADS, 3RD SERIES, WAIAKEA, SO. HILO, HAWAII.

(See Page 5 for Action.)

ITEM F-3

STAFF RECOMMENDATION FOR CANCELLATION OF G. L. S-4475 COVERING PARCELS 7-A AND 7-B, KALOPA AND KAOHE 3, HAMAKUA, HAWAII.

Mr. Detor explained that this is a pasture lease which was put up for public auction in 1975 where the prices went way up. This particular one, K. K. Ranch, bidded in at the time for \$77,600.00 a year. They have had some difficulties and have been unable to pay their rent. A Notice of Default was served but the defaults remain uncorrected.

Mr. Higashi said that he did have an opportunity to meet with Mr. Toledo, together with Mr. Kawamoto and they have worked out some cash flow projection which has not yet been given to staff. He asked that staff review this projection and then work with Mr. Toledo to try and work out some kind of payment schedule. Insofar as the Performance Bond, Mr. Toledo has no cash but he is willing to put up some of his real property as collateral. As far as the insurance is concerned, Mr. Toledo assured Mr. Higashi that the insurance would be in effect.

Mr. Higashi said that Mr. Toledo's cattle is in Hawaii Meat's pen, however it has not yet been sold. His cattle has a value of \$500,000.00 and is going to market in a period of time.

Mr. Detor said that he understood that the payment for the cattle through Hawaii Productions would come directly to DLNR.

Mr. Higashi said that it would probably be more difficult than that. Hawaii Production has a debt ratio that they have to live up to. When they lower the debt ratio, the balance thereafter will be allocated.

Mr. Kealoha said that several more ranchers would be having the same problem.

Mr. Ono asked whether the board had the flexibility to extend beyond the 60-day period.

Mr. Detor explained that the law does provide for extending the cure.

Mr. Ono asked what flexibility do they have. The sixty-day cure period ended November 30, 1984 and now we are past the cure deadline.

Mr. Watson said that the cure period could be extended by the board beyond the sixty days with good cause.

Mr. Ono asked if this could be done once the cure period has expired.

Mr. Watson said that the board can either honor the sixty days or extend it even after it has expired. He stated also that this question had come up in the past after the board had cancelled the lease and they tried to come back and get the board to act on it.

Mr. Ono asked what then was the significance of the cure period if you have that much flexibility.

Mr. Kealoha said that at this point we just gave him 120 days. The first 60 days expired November 1984 so now Land Management is saying, O.K. cancel. We are already in motion trying to cure this beyond the 120 days. The question is do we have the kind of flexibility to continue this after the second cure period.

Mr. Watson said that it was to the Lessee's benefit to come up with all these proposals and to drag it on as long as possible. The board however can say that within the sixty days I did not ask you to submit proposals, we asked that you pay up or come up with an acceptable plan. He indicated that this here is only a proposal.

In trying to clarify some of the questions raised regarding the cure period, Mr. Detor pointed out that in the past, recognizing for example in this particular instance that the cattle industry is in bad shape, it has been a tendency on staff's part to call them up, send them letters and let it go beyond the sixty days. He suggested that hereafter staff would immediately come to the board after the sixty days is up. If the board feels that they want to give them more time, fine.

ACTION

Mr. Higashi moved to defer this item for thirty days in which time staff is to go over the report which he submitted and then report back to the board.

ITEM F-4

STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-4818 COVERING LOT 28, PAHOA AG PARK, PHASE II, KEONEPOKO IKI, PUNA, HAWAII.

ACTION

Unanimously approved as submitted. (Higashi/Zalopany)

ITEM F-5

STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-4840 COVERING LOT 27, KEAHOLE AG PARK, PHASE II, KEAHOLE, NO. KONA, HAWAII.

Mr. Detor said that he was happy to report that the applicant had paid up but in order to satisfy the technicality, he suggested that the board extend the cure period to today. That would cover the technicality of paying within the cure period.

ACTION

Mr. Higashi moved not to cancel G. L. S-4840 and, instead that the cure period be extended. Mr. Zalopany seconded, motion carried unanimously.

ITEM F-6 STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-4315 COVERING LOTS 1 AND 2, KALAPANA-KUPAHUA HOMESTEADS, KALAPANA & KUPAHUA, PUNA, HAWAII.

ACTION Unanimously approved as submitted. (Higashi/Zalopany)

ITEM F-7 STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-4788 COVERING LOT 18, PAPA HOMESTEADS, PAPA 1ST, SO. KONA, HAWAII.

Mr. Detor said that the Lessee is willing to pay \$1,000 monthly plus \$400.00, which is the current rental, until it comes up to date. Mr. Detor suggested that the board approve this proposal but with the provision that the going interest rate of 4% be charged.

Mr. Watson said that once you agree on a schedule, hereafter you can only sue her on the schedule.

Mr. Detor asked if it would be possible to automatically cancel her lease if she doesn't live up to her agreement.

Mr. Watson therefore suggested she sign a Promissory Note. If you want to sue her for the payment, you can sue her on the Promissory Note. In case she doesn't make good on the lease, you have to go against the lease. The difference between the cancellation of the lease and suit on the Promissory Note is that she will have to pay the rent on the note.

Mr. Ono asked if it was possible to jump from one to the other.

Mr. Watson said that you cannot attempt to cancel the lease in order for her to pay the scheduled payments.

Mr. Detor seemed to think there was a technicality. Should the Board say O.K. we accept the \$1000.00 a month, does that cure the breach? In other words you cannot have the cure period continue to run.

Mr. Watson said that there will be two separate agreements. The Promissory Note would satisfy the payment requirement and it would satisfy the cure. The cure of the breach is her entering into the Promissory Note and agreeing to pay pursuant to the schedule.

Mr. Ing explained that because you have reached an accord and satisfaction, in other words you have reached a new agreement. This cures the breach.

ACTION Mr. Higashi moved to extend the cure period to August 31, 1985 at which time the total payment would be due. Failure to pay by said date would be cause for said lease to be automatically cancelled. Mr. Zalopany seconded, motion carried unanimously.

ITEM F-8 STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-4671 COVERING LAND AT KEONEPOKO NUI, PUNA, HAWAII.

ACTION Unanimously approved as submitted. (Higashi/Zalopany)

ITEM F-9 DEPARTMENT OF TRANSPORTATION REQUEST FOR EXECUTIVE ORDER SETTING ASIDE LAND FOR ROAD WIDENING OF WAIEHU BEACH ROAD, PAUKUKALO, WAILUKU, MAUI.

ACTION The board voted unanimously to approve of and recommend to the Governor issuance of an Executive Order setting aside Parcels 13 and 15 to the DOT for the Waiehu Beach Road project subject to disapproval by the State Legislature in any regular or special session next following the date of the Executive Order. (Zalopany/Higashi)

ITEM F-10	RESUBMITTAL - CITY & COUNTY OF HONOLULU REQUEST FOR APPROVAL OF ISSUANCE OF FOOD CONCESSION RIGHTS, HONOLULU ZOO, EXECUTIVE ORDER NO. 22, WAIKIKI, HONOLULU, OAHU.
ACTION	Unanimously approved subject to the conditions listed in the submittal. (Kealoha/Zalopany)
ITEM F-11	PRINCEVILLE COMMUNICATIONS CO. REQUEST FOR RIGHT OF ENTRY, MOUNT WEKIU, KAWAIHAU, KAUAI.
ACTION	<p>Mr. Zalopany moved to authorize an immediate right of entry to the applicant at Mt. Wekiu for the taking of soil samples and making preliminary observations. This right of entry to be subject to the terms and conditions listed in the submittal. Mr. Higashi seconded, motion carried unanimously.</p> <p>Mr. Ono called to Mr. Detor's attention that rental still has to be set on this. The board had concerns as to how the rental rate was arrived at.</p> <p>Mr. Detor said that he did talk to the applicant and what he would like is a direct lease as a public utility. The applicant was told to submit any material he may have which would be submitted to the Attorney General's office to see whether or not he qualifies as a public utility.</p>
ITEM F-12	DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES REQUEST FOR GRANT OF EASEMENT (TO CITIZENS UTILITIES CO.) FOR ELECTRIC TRANSMISSION FACILITIES, LIHUE, KAUAI.
ACTION	Unanimously approved as submitted. (Zalopany/Higashi)
ITEM F-13	RESUBMITTAL - DLIR REQUEST FOR ACQUISITION OF LEASE COVERING UNIT H-4, LAHAINA SQUARE, LAHAINA, MAUI.
	(See Page 9 for Action.)
ITEM H-1	APPROVAL FOR OUT-OF-STATE TRAVEL FOR ATTENDANCE AT "FIRST PACIFIC REGIONAL WORKSHOP ON INFECTIOUS DISEASES OF SHELLFISH," SEQUIUM, WASHINGTON: MARCH 25-28, 1985.
ACTION	The board unanimously approved the out-of-state travel request for Dr. James A. Brock to attend the abovementioned workshop. (Higashi/Zalopany)
ITEM H-2	REQUEST TO MODIFY A CONDITION ON CDUA FOR THE CONSTRUCTION OF A 50-FOOT BY 100-FOOT ONE-STORY LIBRARY BUILDING AT TANTALUS, OAHU.
	(See Page 5 for Action.)
ITEM H-3	CDUA FOR PLACEMENT OF BEE HIVES FOR HONEY PRODUCTION AT PUUWAAWAA, HAWAII (POWERS APIARIES).
	<p>Mr. Ono asked if it mattered to the applicant who has jurisdiction over that piece of land where the bees are going to be placed. He asked whether it was a technical question or a legal question.</p> <p>Mr. Soh said that it is state land leased to Puuwaawaa Ranch. Land Management thought that there would be no problem.</p>
ACTION	Mr. Higashi moved to approve the use of the area subject to those conditions listed in the submittal and also to approval of the Division of Land Management insofar as the activities of the bees are concerned. Mr. Zalopany seconded, motion carried unanimously.

- ITEM H-4      PETITION FOR A DECLARATORY RULING.
- ACTION      Deferred. Mr. Higashi felt that the County should provide the board with the scope of work in order for a determination to be made.
- ITEM H-5      SECOND RESUBMITTAL OF A CDUA FOR AN AFTER-THE-FACT CONSTRUCTION OF A 12-FOOT BY 12-FOOT TWO-STORY ADDITION TO A RECREATIONAL CABIN USE AND UTILITY EASEMENT AT KOKEE, KAUAI (GREG BRIDGES).
- (See Page 8 for Action.)
- ITEM H-6      CDUA FOR GRADING, INSTALLATION OF WATERLINE, DRAINAGE CULVERTS, AND MAINTENANCE ROAD AT KAILUA, OAHU (LONE STAR HAWAII PROPERTIES, INC.).
- (See Pages 10 and 11 for Action.)
- ITEM J-1      MODIFICATION NO. 2 TO LEASE NO. DOT-A-75-3, LAGOON DRIVE SUBDIVISION, HONOLULU INTERNATIONAL AIRPORT, OAHU (HAWAIIAN ELECTRIC CO., INC. (HECO))
- ACTION      Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-2      APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 3971, ETC., AIRPORTS DIVISION.
- Mr. Garcia asked that Revocable Permit No. 3966 be withdrawn.
- ACTION      Unanimously approved as amended, said amendment being the withdrawal of Revocable Permit No. 3966. (Kealoha/Higashi)
- ITEM J-3      DIRECT SALE OF LEASE OF EASEMENT AT KAHULUI HARBOR, MAUI (MAUI ELECTRIC CO., LTD.).
- ACTION      Unanimously approved as submitted. (Zalopany/Higashi)
- ITEM J-4      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI SMALL BOAT HARBOR, OAHU (DUANE BOOTH).
- ACTION      Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-5      ISSUANCE OF A PARCEL OF LAND BY DIRECT NEGOTIATION, HARBORS DIVISION, ALA WAI BOAT HARBOR, HONOLULU, OAHU (JACK E. MYERS).
- The applicant is in the process of acquiring the adjacent property (Kaiser Medical Center Site) for the development of a mixed use hotel/condominium complex and has requested the issuance of a lease for the State-owned parcel in conjunction with said development.
- Mr. Garcia asked that Mr. Myer make his presentation and, after that, he would address the issue of public interest on behalf of the Department of Transportation.
- Mr. Ono felt that unless Mr. Myer had something new to present it would not be necessary for him to address the board. He felt that whatever was presented at previous discussions have given the board members enough background information on the project.
- Mr. Higashi asked where this money would go.
- Mr. Garcia said that it would go to the boating special fund which is a statewide system and benefits all islands.



Regarding the determination of the fair market rental value, Mr. Ono said that when they met on Kauai there was discussion on some other factors to consider in appraising. Mr. Ono did not feel that what was discussed on Kauai and what was being presented today was not quite the same.

Mr. Garcia presented the board with a more detailed breakdown. He stated that the rental amount as determined by an independent appraiser shall be based upon the fair market rental value of the parcel. The fair market rental value of the parcel shall be equal to 30% of the appraised fair market value of the parcel. Fair market value shall be based upon the parcels unimproved value and its potential highest and best use and shall take into account its use at the time the appraisal is taken. The loss in revenues to the State from the office building and the 46 parking stalls on the parcel, the depreciated value of the office building and public rest room facilities and the enhancement in value to the hotel/condominium project. All of these have to be taken into consideration.

Mr. Garcia said that the public restroom facility and the commercial office building will be demolished at the expense of the developer.

Mr. Garcia said that the need of the boating public for a restroom will be provided by the developer. Such restroom will be maintained and secured by the developer eliminating that expense and potential liability for the State. The State parcel will be beautified by having the the developer, at no cost to the State, construct sidewalk improvements and landscaping on the leased area. They are also considering the possibility of having the lessee improve the sidewalk and place planters on the area fronting the water.

There will be no loss of the 54 spaces for the public and, in fact, the parking situation will be upgraded at the expense of the developer who will be required to replace those stalls within his own structure.

Mr. Ono asked whether these will be reserved stalls for each boater.

Mr. Garcia said no. It will be open stalls -- first come, first served, in a reserved area. No specific stall, but the area is reserved.

Mr. Ono asked where the boaters are presently parking.

He said that they are now parking right on the roadway itself -- in the metered stalls.

Mr. Garcia said that DOT has reviewed the traffic plan and the traffic requirements of the developer's project and the way it is proposed right now they find that the use of the roadways during the peak periods will be less than the use that is presently required by Kaiser's Medical Center.

Mr. Kealoha asked if anyone could tell the board members why the traffic would be improved.

Mr. Garcia did not know and asked that the question be referred to someone else.

As far as public input, Mr. Garcia said that DOT has required that the lease shall be subject to any developer's obtaining an SMA Permit, which permit requires public hearings and public input. The State, in addition, retains a use of the parcel for open space purposes and the lessee will have to jointly agree to maintain the entire harbor roadway from Ala Moana Blvd. to Hobron Lane which fronts the Kaiser Medical site.

Mr. Higashi asked how this should be handled. DOT is asking that the board take into consideration the testimony of the SMA and at the same time ask the board to issue the lease prior to that hearing.

Mr. Kealoha asked whether it was necessary for the disposition to occur before the SMA. DOT's response is that it is hard for the developer to present his case which does not seem to answer the question.

Mr. Kobayashi said that the lease agreement would be subject to the ruling of the SMA so he felt that at that point the DOT would still be in control of the terms and if there were terms that the public dictated at the hearing, they would not be disagreeable to having it open to the extent that DOT retain the right to negotiate input from the public sector.

Mr. Ono was concerned that after the SMA hearing does take place, new information may come up that this board may want to impose additional conditions but they have already relinquished that opportunity to add new conditions unless they can say "o.k., this is the first cut, let it go through. If there are any new conditions the board may want to add after DOT gets a chance to look at the transcript or the decision of the City, then give this board another crack at it inasmuch as the board does have different interests from DOT.

Mr. Kobayashi said that they would have no problem with that inasmuch as the City has taken the position that they might allow the density anyway.

Mr. Watson stated that basically what the developer might be looking for is approval by the board if the board would be agreeable to approving issuance of a lease with the minimum conditions so that the developer can go forth on the SMA with the concept because the type of input that the public generates will be based upon his concept. After all this input is received, the terms and conditions of the lease itself can be brought to the board at which time the board can address all individual concerns as to the specific terms and conditions.

Mr. Kobayashi said that unless the minimum conditions are approved they cannot proceed.

Mr. Garcia presented the following minimum conditions for the lease itself:

1. The lessee must improve the sidewalks and streets in the area of the lease consistent with the requirements of our department and consistent with the preliminary plans presented today to the Board.
2. Subject to working out a proper realignment of the Harbors road, the lessee must agree to improve the sidewalks and to provide planters on the sidewalks closest to the ocean which are in front of the project and not within the easement area.
3. The lessee must agree to remove the public restroom facility and to provide the boaters access to a comfort station within the project subject to the developer's maintenance and security.
4. The lessee must agree to replace the parking spaces lost with covered parking stalls within the project at a price to the boaters not to exceed the State meter rate.
5. The lessee must not construct any loan bearing structure on the lease area and must limit the use of the area to the plans as presented today by the developer.

6. The lessee must agree to pay to the Department of Transportation as lease rent a rental based upon an appraisal within a format to be agreed upon by the Department of Transportation and the Lessee which will return a greater rental then is currently being obtained from the parcels.

Mr. Garcia said that with these assurances, they believe that not only the Harbors Division and the boating public, but the general public will be served by the lease of these lands.

Mr. Ono asked about the method of disposition.

Mr. Garcia said that they propose to go under Section 171-59 which calls for direct negotiation based on the Attorney General's opinion.

Mr. Kealoha voiced the board's disturbance with DOT and the applicant saying that they are all of a sudden up against a deadline when in fact this particular item was presented to the board quite sometime ago and, after a long period of time, there was no word from the applicant and then all of a sudden time is of the essence.

RECESS: 1:45 p.m.

RECONVENE: 1:50 p.m.

**ACTION**

Mr. Kealoha felt that Mr. Garcia had addressed the board's concern and given the board a broad view of the applicant's proposal and the board has been almost totally satisfied with responses and therefore moved that the board approve the application for direct negotiation with the added condition that specifically the public notice should be published in all the news media in every county, including all newspapers of general circulation throughout the State and all trade papers such as the Pacific Business News. In other words, Mr. Kealoha wanted it published more than is required by law and obviously noticeable to the public. This would give everyone an equal opportunity to review the notices of disposition. Also that the minimum conditions be set and that pursuant to the SMA hearings DOT return to the board with that input. He also recommended that one or two board members, upon notification by DOT, make every effort to attend that SMA hearing and return to the board with that input. Mr. Higashi seconded, motion carried unanimously.

ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, UNDER CONVEYOR SHED, PORT ALLEN, KAUAI (RICK MARVIN).

ACTION Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI SMALL BOAT HARBOR, HONOLULU, OAHU (ANTHONY FRANKLIN).

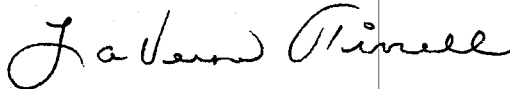
ACTION Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI LAGOON, HONOLULU, OAHU (KEEHI MARINE CENTER).

ACTION Unanimously approved as submitted. (Higashi/Zalopany)

ADJOURNMENT: The meeting was adjourned at 2:05 P.M.

Respectfully submitted,



Mrs. LaVerne Tirrell  
Secretary

APPROVED:



SUSUMU ONO  
Chairperson

lt