

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

DATE: September 25, 1987  
TIME: 9:00 a.m.  
PLACE: County Building  
County Council Chambers  
4396 Rice Street  
Lihue, Kauai, Hawaii

ROLL  
CALL

Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 9:00 A.M. The following were in attendance:

MEMBERS: Mr. J. Douglas Ing  
Mr. Moses W. Kealoha  
Mr. Leonard Zalopany  
Mr. John Arisumi  
Mr. Herbert Arata  
Mr. William W. Paty

STAFF: Mr. Ronald Walker  
Mr. Ralston Nagata  
Mr. Michael Shimabukuro  
Mr. Roger Evans  
Mr. Samuel Lee  
Mrs. Geraldine M. Besse

OTHERS: Johnson H. Wong, Esq.  
Mr. Peter Garcia, D.O.T.  
Mr. Michael Burke (Item F-6)  
Mr. and Mrs. Michael Sussman (Item H-3)  
Mr. Edward Bittner (Item H-3)  
Max Graham, Esq. (Item H-3)  
Mr. James L. Hunt (Item H-4)  
Mr. Bruce Matsui (Item H-6)

ADDED  
ITEMS

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

Item H-7 -- Approval of a Personal Services Contract for Mr. Susumu Ono, Consultant.

Item H-8 -- Authorization to Appoint a Public Hearing Master to Hear Conservation District Use Applications.

Items on the agenda were considered in the following order to accommodate those applicants present at the meeting.

AFTER-THE-FACT CDUA FOR A SINGLE-FAMILY RESIDENCE AND ACCESSORY USES AT ANAHOLA, KAUAI, HAWAII - FILED BY MICHAEL AND GEETEL SUSSMAN, AND EDWARD BITTNER

ITEM H-3

Mr. Evans stated that the application has been deferred several times; at one Board meeting, one party appeared and, at another meeting, the other applicant appeared. At the last meeting, the Board asked that the matter be deferred to the Kauai meeting in order that a State survey could be completed of the property at Anahola. The survey has been completed, he said, and distributed the survey results to members of the Board.

Mr. Evans asked to make a modification to the application: On page 8, add to said section that the landowner be assessed the administrative cost of the survey, which amounts to \$928.

To summarize the application, Mr. Evans stated the privately-owned property in the conservation district is owned equally by each party. The total acreage involved is 1.8 acres in the general subzone. A number of improvements were made without permission from the Board, resulting in a report from the Division of Conservation and Enforcement. Photographs are available, showing a single-family dwelling and a workshop constructed by Mr. Sussman. The other applicant, Mr. Bittner, has constructed a "guest house," which is livable and approximately the same dimensions as the Sussman residence. Mr. Bittner has also erected a carport, which the survey indicated is not located on the private property.

Mr. Evans noted that the after-the-fact application was for the Sussman residence, and was signed by both property owners. Staff analysis is that violations have occurred and are specifically listed on pages 7 and 8 of the submittal. The staff recommends a fine of \$500 per improvement for a total of \$4,500, together with the survey cost of \$928. Should the Board clear the violation in this manner and those fines paid by both property owners, the staff would recommend approval of the after-the-fact application for one single-family residence, that being the Sussman residence, one storage structure, one cesspool, one driveway, landscaping and one non-exclusive access easement. Mr. Evans stated that staff is recommending that all other improvements on the applicants' property and on State-owned land be removed within 60 days after notice of the decision. Staff also recommends that no utility easement use be considered until the existing lines are removed. Absent compliance, Mr. Evans stated that the matter would be turned over to the Department of the Attorney General for appropriate action.

Mr. Zalopany suggested that the utility easements be allowed to remain. Mr. Evans stated that should the Board choose to modify the submittal, staff would have no difficulty with the modifications. In reference to Mr. Bittner's structures, Mr. Zalopany asked Mr. Evans to clarify what would need to be removed. Mr. Evans stated that it would be the guest house, which could easily be used as a single-family residence if anyone elected to live on the property. Mr. Evans stated that the staff recommendation is that everything be removed except the six listed improvements noted under item no. 10. Mr. Evans stated the recommendation is that the following be removed: Mr. Bittner's sleeping quarters, guest house, the shipping containers, and one cesspool.

Mr. Kealoha asked Mr. Evans if anything would be accomplished by the removal of the utility easements and then a reinstallation of those utilities. Mr. Evans stated that staff analysis did not address that question.

Mr. Zalopany asked that item no. 11 be amended. Mr. Evans stated that in staff discussion, enforcement reported that this is not the first time that Mr. Bittner has been involved in conservation activities without Board approval. The records show that in 1979, one of the landowners was aware of the conservation rules. The records did not show any similar previous violation on the part of Mr. Sussman. Mr. Evans stated that at one point one of the landowners, he was informed, offered to buy out the other landowner but is not aware that it came to fruition.

In answer to a question from Mr. Ing, Mr. Evans stated that the structures were built subsequent to 1977. He stated that when the property was purchased in 1977, the only structures on the property were a termite-infested house, a concrete water tank, and a water pipeline. Since then, most of the house has been torn down and all the improvements made.

Mr. Kealoha asked whether at the time of the purchase the two owners purchased the property together or whether it was purchased by one party subsequent to that. Mr. Evans stated that he believed Mr. Sussman became a 50% owner in 1977; that the enforcement report only indicates that improvements were on the property. The report does not indicate which structure was built first. Since Mr. Bittner was charged with a violation in 1979, Mr. Arisumi, stated that it was important to know when the structures were built and by whom. Mr. Evans stated that all he had was a CDUA signed by Mr. Bittner in 1979, which, he believes, indicates that the applicant recognized that there is such a thing as a conservation district and a manner by which to obtain use. Mr. Evans indicated on August 24, 1979, the applicant, Mr. Bittner, on a different piece of property, did undergo a process that incorporated a violation but that there is no analogous action on the part of Mr. Sussman. In answer to a question from Mr. Zalopany, Mr. Evans answered that the CDUA had been denied but was not aware of a fine.

Mr. Paty asked for a clarification of whether the applicants would be fined singly or jointly and what was required to be removed by Mr. Sussman and by Mr. Bittner. Mr. Evans went on to diagram the parcel and the improvements. In summary:

In reference to Mr. Sussman, staff recommends approval of:

- \* Sussman's after-the-fact residence
- \* storage structure
- \* one cesspool
- \* driveway
- \* landscaping
- \* non-exclusive access easement

Staff recommends penalties of \$4,500, plus \$928, against the property.

In reference to Mr. Bittner, staff recommends removal of the carport, guest house and possibly a cesspool, along with any remaining shipping containers, and utilities. In answer to a question from Mr. Kealoha, Mr. Evans stated that Mr. Bittner's carport is erected on State land, which may be under lease to Lihue Plantation and that it is conservation land.

Mr. Arata wanted to know what would happen if the parties are unable to come to an agreement on the payment of the fine and cost. Mr. Evans stated that it would have to be referred to the Attorney General which is part of the staff's recommendation should the parties fail to pay the fine and cost within 60 days. Potentially, he stated, a lien might possibly be put on the property.

Mr. Paty called Max Graham, Esq., attorney for Mr. Bittner. He stated that his client informed him that the property is free and clear and there are no mortgages or liens. His understanding is that Mr. Sussman originally purchased the property and shortly thereafter sold a 50% interest to Mr. Bittner. Construction on the property occurred in 1977-78. Mr. Bittner had indicated that Mr. Sussman may have started his residence first but it is believed construction occurred around the same time. Mr. Graham stated that Mr. Bittner primarily uses his share of the property for agricultural purposes and his residence is not on the property but in Molowaa and, therefore, has no residence needs on the property. He has a beekeeping operation and has approximately 50 fruit trees and a vegetable garden. The honey is sold commercially to businesses on Kauai. Mr. Graham asked that the Board consider allowing the guest house to remain solely for storage and farming purposes with the understanding that any and all sleeping quarters be removed, and it will not be used for residential purposes at all. Mr. Graham said he has checked with the County of Kauai and they indicated they would not have a problem issuing a permit for the use of the building as an accessory building. The building is approximately 500 square feet in size.

His other request is that he be allowed to maintain the cesspool near the shed. Toilet facilities are located in the shed and Mr. Bittner requests that he be allowed to keep it since he works there. He confirmed that Mr. Bittner did appear before the Board on the Molowaa property. Construction on the Anahola property was in 1977-78. In 1979, he was involved in a violation on the Molowaa property. In that case, he said, he had constructed a single-family dwelling on the Molowaa property and was required to remove that dwelling from the property. The fines were waived. He removed the residence from Molowaa, bought another piece of property, moved the dwelling there, and presently resides there. He did not engage in construction on the Anahola property once he formally appeared before the Board on the violation.

Mr. Graham stated that Mr. Bittner is agreeable to remove any and all other structures, storage sheds, and the containers and have all the equipment stored in the containers moved to the shed. He will destroy the carport. He would not object to the removal of the telephone line but would like to be able to maintain the water line. Mr. Graham stated that rather than remove his shed and then come in with another application to build the shed, he suggests fining Mr. Bittner and assessing a separate fine against him personally for the construction of the shed, apart from the staff recommendation.

Mr. Arata remarked that he has never seen a storage shed with windows and two lanais. Mr. Arata stated that he did not believe the structure could be described as a storage shed and that he believed that only total demolition could accomplish that. Mr. Ing asked whether Mr. Bittner was willing to make modifications to the structure. He stated he would do whatever was necessary to make the structure look like a shed.

Mr. Kealoha wanted to know how many containers were on the property. Mr. Graham stated that only one was presently on the property and is approximately 300 square feet and is a Matson container. Mr. Kealoha asked whether the container could be used as a storage shed. Mr. Bittner answered in the affirmative.

Mr. Graham stated that as an alternative to removal of the shed, his client was agreeable to a separate fine against him, combined with the requirement that the structure be reconstructed as required to ensure that in use and appearance it is in fact a storage area. In response to a question from Mr. Ing, Mr. Graham stated that a building permit was never obtained for the shed and that the County has not taken any action against Mr. Bittner.

In answer to a question from Mr. Arisumi, Mr. Bittner stated that he worked on the property every day.

Replying to Mr. Paty, Mr. Bittner answered that the source of water is spring water, which he uses for domestic and irrigation purposes, and the honey operation. Regarding the utility line, Mr. Bittner stated that he is not using the electricity, that he only uses the telephone, which is not really essential to his honey operation. In response to a question from Mr. Arisumi, Mr. Bittner indicated that the beekeeping operation was a major part of his income, and showed the Board products that use his honey.

Mr. Ing stated that the Department of Health report indicated that one of the cesspools had caved in and recommended that it be filled with sand and gravel. Mr. Bittner stated that he believed the report referred to his cesspool. Mr. Ing stated that there was some concern regarding the location of the cesspool and the proximity to either the stream or the ditch. Mr. Bittner stated he believed the report was referring to Mr. Sussman's cesspool. Mr. Bittner indicated that his cesspool is not located within 50 feet of any ditch or stream.

Mr. Kealoha asked that Mr. Bittner indicate on the map the approximate area of the spring water source. Mr. Bittner stated that in relation to the property it is located above the property, approximately 100 feet in elevation and the length of the pipe is approximately 1,000 feet, located on the adjacent property. It is a 1-1/2 inch pipe installed by Mr. Sussman and Mr. Bittner and is spring water coming from an old tunnel.

Mr. Kealoha asked whether Mr. Bittner had applied for a bee operation in Kekaha. Mr. Bittner answered in the negative. Mr. Kealoha asked whether he had applied for a commercial use permit. Mr. Bittner again answered in the negative.

There being no further questions by the Board, Mr. Paty called Mr. Sussman to appear before the Board.

Mr. Sussman stated that he is concerned with the loss of utilities and said that his wife asked to address the Board regarding the importance of the utilities to their family.

Mr. Zalopany asked Mr. Sussman whether he accepted Mr. Evans' report; he answered that he did and thought the report was reasonable.

Mr. Arata asked whether his primary interest in the purchase of the property was for farming. He stated that it was purchased primarily for a family home and to be able to grow vegetables and fruit trees.

In response to a question from Mr. Ing, Mr. Sussman stated that his cesspool is located near the pond, from the tailwater runoff from the hydro. He stated that to comply would entail enclosing the tailwater runoff an additional 50 feet. He also stated that he has not had any discussion with the Department of Health regarding this. Mr. Sussman stated that he did not obtain a construction permit for the residence and has had discussion with Mike Laureta of the County. Mr. Sussman stated that Mike Laureta indicated that the situation on his side of the property would be "ok." Mr. Laureta saw a problem with the Bittner situation. The next day Mr. Laureta informed him that the property was in the State conservation zone and turned everything over to Honolulu. Mr. Ing asked whether his residence could be brought into compliance with the building code. Mr. Sussman answered in the affirmative.

There being no further questions asked of Mr. Sussman, Mrs. Sussman was called forth. She said she is a State licensed massage therapist presently in a program going from neighborhood center to neighborhood center massaging seniors. For eight years she has taught CPR and first aid and has worked for the Red Cross. Mrs. Sussman stated that they had purchased the property when she was five months pregnant. The property is quite isolated and she was afraid to be alone there so they invited Mr. Bittner to move on the property. Over the last nine years they have barely communicated and have offered to buy Mr. Bittner out; however, Mr. Bittner has not been interested. There was no profit when they sold to Mr. Bittner. She stated that it took them seven years to obtain a telephone. Before they had the phone installed, she said she was transported by air ambulance to Kapiolani Children's Medical Center because the baby was premature. She said she was in the hospital for seven weeks and there was no way to communicate with her family. She said she also needs the water. Previously she built a fire for hot water. She said it would devastate her family to have the utilities removed.

Mr. Arata stated that even with differences with Mr. Bittner, where the property is jointly owned, she must realize that they need to work out their financial differences, i.e., the Board may not be able to permit two residences and one home may need to be demolished, and if Mr. Bittner wanted to then sell, two separate appraisals and arbitration might be

necessary. In response to a question from Mr. Arata, Mrs. Sussman stated that they could probably obtain a loan with their residence as collateral.

Mr. Graham noted that various letters have been submitted and should be a part of the record on behalf of Mr. Bittner, attesting to his work as a farmer. As far as the County building process and enforcement, if the Board were to approve the use of the guest house as a shed, it would require modifications and the County would require compliance with its ordinances.

RECESS

Mr. Paty called a recess at 10:14 a.m. The meeting resumed at 10:24 a.m.

Mr. Kealoha asked for clarification of a previously asked question. In response, Mr. Bittner stated that the water he used was spring water. The tunnel goes straight back into the cliff and the water comes down from the ceiling, out of the ground.

Mr. Kealoha asked that Mr. Evans check out the type of water that Mr. Bittner is using, i.e., the source of water supply. As he understands it, Mr. Kealoha said, one cannot transfer spring water. Mr. Evans suggested that should there be approval of the CDUA that an additional condition be placed on the approval that would basically separate the water question from the land use question, with the water question addressed separately. Mr. Kealoha asked that a check be also made on whether avian use requires a permit under the conservation district use. Mr. Evans stated that this could be an added condition.

Mr. Zalopany moved for approval with amendments. Under A-4, assessment of a fine of \$3,000--\$1,000 on Sussman and \$2,000 on Bittner. The administrative cost of the survey of \$928 to be paid on a 50-50 basis. Under B-10, add the approval of the shed for Mr. Bittner with the conditions that lanais and windows be removed and the drawings and photographs of the shed to be submitted after modification for approval of the Chairperson. Also added approval of the utility easement for the phone lines and water; delete condition 11. The motion was seconded by Mr. Arisumi.

Mr. Kealoha asked whether the carport had to be removed. Mr. Zalopany answered in the affirmative.

ACTION

Unanimously approved as amended.

ITEM H-6

CDUA FOR SINGLE-FAMILY RESIDENTIAL USE, TANTALUS, OAHU - FILED BY MR. BRUCE MATSUI, AGENT FOR DR. & MRS. GARDNER BEMIS

Mr. Ing asked to be excused from participating on this item since his law firm represents the Bemises. Mr. Evans stated that as a result of comments from federal, state and local agencies the staff analysis found: unauthorized incroachment on State land for which a fine of \$500 is recommended and that upon payment of the fine, the single-family residential use be allowed subject to the 13 enumerated conditions. One of the conditions requires a follow-up on the part of applicant to obtain a land disposition from the Land Management Division for the use of the encroachment. Mr. Evans feels that the action is appropriate since the staff has physically examined the property, and it would be difficult to recommend that this not be allowed because of the physical topography. Mr. Evans also recommended that condition no. 12 be deleted.

In response to a question from Mr. Kealoha, Mr. Evans stated that the fine would cure the violation and that part of the dwelling would be on State land. Mr. Kealoha asked whether an easement or permit was being recommended or an appraisal to establish a value for the use of that parcel. Mr. Evans stated that the staff recommends some form of disposition, either by way of easement or permit, and this is the function of the Division of Land Management.

Mr. Arisumi noted that the staff recommendation is that the cesspool be 10 feet away from the existing dwelling. Mr. Arisumi wanted to know whether the cesspool was already installed. Mr. Evans stated that there is an existing cesspool and there is no additional request for a cesspool.

Mr. Matsui, representing the applicants, appeared before the Board. He stated that the cesspool is already in, and it is his understanding that, based on the building plans, it will be located more than 10 feet away from the residence. Mr. Matsui asked for clarification of condition no. 3. The applicants, he said, are asking for authorization to use the area, subject to disposition and appraisal by Land Management. Mr. Shimabukuro confirmed that Land Management Division would recommend disposition and this is normally done in the form of an easement.

ACTION Mr. Kealoha moved for approval as amended. Motion seconded by Mr. Zalopany and unanimously approved.

ITEM F-1(f) ISSUANCE OF REVOCABLE PERMIT TO C. LEE'S TOWING, TMK 3-2-03:POR. OF 7, NAWILIWILI, KAUAI

ACTION Unanimously approved as submitted (Zalopany/Kealoha).

ITEM F-6 WITHDRAWAL OF LANDS FROM GENERAL LEASE NO. S-4222 AND SET ASIDE FOR WILD BIRD SANCTUARY PURPOSES AT MANA, KEKAHA, KAUAI

Mr. Shimabukuro asked that the submittal be amended by substituting the word "wildlife" wherever the word "wildbird" appears. The area concerned is property where Kekaha Sugar removes material to be used for road repairs, etc., which is allowed under the present general lease. In that connection, Mr. Shimabukuro amended condition no. 3 that Kekaha Sugar Company, Ltd., be allowed to continue the removal of materials from a five-acre portion at no cost for maintenance of plantation roadways until December 31, 1993, which is the expiration date of the general lease.

Mr. Walker stated that there is a small wildlife sanctuary about one-half mile away, consisting of approximately 2-1/2 acres, and is located makai of the highway. He stated that Kekaha Sugar would have exclusive use of the five acre portion. Others would have to obtain licenses or permits.

Mr. Michael Burke appeared on behalf of Kekaha Sugar. He said their concerns were: the sand located on this site is an important resource which Kekaha uses to maintain the plantation roads. This work, he said, is required as part of the general lease. The sand source is the most centrally located and the most economical for Kekaha to mine, he said. The lease specifically excludes sand from minerals which can be mined by the State or authorized agents on the demised premises, and the provision is located on page 7 of the lease. The proposal to withdraw the land first and disregard the lease provision is not consistent with the intent of the lease. Mr. Burke further stated that the provision was included to prevent exactly what is being proposed. The commercial mining of this resource has no benefit to Kekaha Sugar and would probably incur additional expenses to Kekaha in the long run. The plantation's long-term needs must be considered. The status of the present bird sanctuaries in Mana should be examined and evaluated with respect to the beneficial effect on the environment. Pictures were circulated, comparing the number of birds within the sanctuary sites and what naturally occurs on the plantation lands. Typically, he said, there are more birds in the reservoirs.

He proposed an alternate solution: a site of approximately 7-1/2 acres has already been mined and Kekaha Sugar has less objection to the withdrawal of the 7-1/2 acres. The Division of Forestry and Wildlife could then begin a portion of the project at an additional area once Kekaha Sugar has removed the sand from the remaining 30 acres.

Mr. Arisumi stated that cost must be considered. Mr. Burke said that mining at this site would be the cheapest way.

Mr. Burke said that neither the five acres nor the amount of sand within the site have been clearly defined. Another representative from Kekaha stated that in other areas, they have mined about 10 acres in 25 years. They are looking at the point when the present lease expires and they might have to go to pasture or other land, and this would have a long-term impact on Kekaha Sugar. In Field 323, near the triangle of the highway, there are approximately five acres of the existing refuge. It is suggested that this might be a site to develop further for a total of 10 acres. Another suggestion would be consideration of salinity question.

Mr. Walker stated that the recommended site was selected because of sand and having it removed at no State expense, location, State ownership and potential for a 30-acre site. Mr. Walker stated that the site would be developed in steps and phases but would also depend on the removal of sand and other details to be worked out with the Land Management Division and Kekaha Sugar. Mr. Walker stated that the 7-1/2 acre site does not constitute a habitat for birds now because of the lack of water. The purpose of the proposed site was to remove the sand to the level where there is water. At present it is of no value to the birds. He stated the demand for the sand would determine the number of years it would take to remove the sand. It could be five years or because of a low demand it might take 10-15 years.

ACTION

Mr. Zalopany moved for deferral because of the number of unanswered questions and suggested a meeting with Kekaha Sugar and that a report be made at the next meeting. The motion was seconded Mr. Arisumi and unanimously carried.

ITEM H-4

CDUA FOR SINGLE-FAMILY RESIDENTIAL USE - FILED BY MR. JAMES HUNT

Mr. Evans stated that several corrections were necessary:

page 1 - incorporate that this was deferred by the Board to allow the applicant to be present

pages 5 & 6 - recommendation of denial for the following reason: to allow the department to resolve the alleged outstanding violation, the imposition of a fine of \$500, and that all structures be removed from the property within 90 days and the applicant may then resubmit an application.

Mr. Evans stated that the structure is a two-story single-family building with a two-car garage. Applicant proposes to convert a small structure on the property, which he currently lives in, to a storage shed for tools, agricultural implements, etc. The DOCARE staff did visit the property and reported there is a two-story building, 20 x 16, which is used as a dwelling, and another building, 20 x 16, which appeared to be used as a storage shed. Staff analysis indicated that when the property was purchased there was a small shack on it and applicant improved the tool shed and is now living in it until he completes the first room of his proposed single-family dwelling. Upon completion, he will then remove the

offending structure. This structure has not been approved by the Board nor the building used as a storage shed. Therefore, Mr. Evans stated that because of the 180-day deadline they are recommending denial and this would allow them to go in and further complete the review of the violation. If sustained by the Board, they are also recommending the \$500 fine and removal of all structures. Upon questioning by Mr. Zalopany, Mr. Evans stated that he does have photographs which are with the enforcement staff.

Mr. Evans stated that about 7-8 years ago, they were in a situation where an individual would do something in the conservation district without Board approval and yet when the individual would appear before the Board they would have a set of approved County plans. Subsequent to several of those instances, they sat down with County and the County's position as he understands it today is that if an individual walks in to the County with a set of building plans they check the zoning and if it is in conservation, they will not approve until the Board acts first. Mr. Evans' representation to the Board is that there are no approved County plans for the building. The same also applies to the Board of Health.

Mr. Paty called the applicant forward. Mr. Hunt stated he felt it inconsistent of the planning staff to recommend that Mr. Sussman keep his residence and workshop and then recommend denial of his application. He stated that its basically been in the same use it's always been. Before he purchased the property, it was in agriculture and some was living there. Regarding the shack he rebuilt after the hurricane, the County waived the building permit process for rebuilding. Applicant admitted he did improve it by adding an 8 x 12 loft, which would make it a two-story structure. It was never intended as a permanent house. His idea was to build a house on top of the cliff and the shack would be a temporary place to live until the house on the cliff was completed. Applicant asked to keep it as a fertilizer shed and does not see any reasoning in tearing it down and then reapplying to build it again; he sees it unlikely that the Board would deny his request for a storage shed. The other structure, he stated, is a tin structure with two walls to hold it up. It doesn't have a floor. It keeps the rain off his tractor and fertilizer. Upon completion of the other house, having a two-car garage, would give him room to park his tractor and if he had the other storage shed he could keep his fertilizer and other implements. It would be a great inconvenience to him if he could not have some sort of shed on the lower part of the property, being that is where he works. The two sites, he stated, are practically two pieces of property. It's several hundred yards to the bottom part. Therefore, he is asking permission to build the residence and there would never be two dwellings on the property. As soon as he moved into the first one, the second one would be a storage shed. In response to Mr. Zalopany, Mr. Hunt stated that he never obtained a building permit because when he built it after the hurricane, Mayor Kunimura allowed building without permit. In reference to the house, the applicant stated that this would be the first step as Mr. Evans stated. He went to the planning department and they informed him he would have to go to the Board because it is in conservation land. In the meantime, he had rebuilt the shed. He didn't see any point applying for a permit to build the other house because he couldn't afford it; he was still paying off his mortgage. At this point, he could financially obtain a loan.

In response to Mr. Arisumi, Mr. Hunt stated that he is not quite sure he is violation. The use of the property is the same since prior to 1964. He stated he knows basically what the rules are. Mr. Arisumi further questioned the applicant regarding the modification without a permit. Mr. Hunt stated he did that because it was raining and at the time he was not living there but in Princeville. His residence there was blown away by the hurricane, he had no place to stay and it would take 180 days to apply for a permit to rebuild it. He also needed to get out of the rain. He reiterated that he never intended the house to be a permanent structure and would never really call it a house but a "shack."

Mr. Zalopany asked whether the applicant was aware that DLNR had a land agent on Kauai. Mr. Hunt replied in the affirmative and stated that he has spoken with Sam Lee. He stated he talked with him many years ago about applying to build a house, and Mr. Lee informed the applicant what it entailed. Mr. Hunt stated that the bureaucratic work scared him. Mr. Lee informed the applicant that the Board might put a limit, if approved, that it would have to be completed within three or four years and that if he did not have the funds, it would be a waste of time to apply. Mr. Hunt stated that if the Board insists that he tear the structure down, he would not really have a problem with that except that he would need something down there. Mr. Hunt didn't think it made sense to tear it down and rebuild it but if the Board decides it must come down he would like to request that he at least be able to keep it until he finishes his house. Mr. Hunt stressed that he needs a place to live while building if approval is given to build it. Mr. Hunt stated that he thinks he is at a point where he can obtain a loan and is ready to start. Hopefully within six months to a year he would have the funds to build the house. In response to a question from Mr. Zalopany, Mr. Hunt stated that he could take down the garage and tool shed in an hour with a chain saw, that all it was doing was keeping the fertilizer and his tractor dry. He stated that after the house is built, he would have no use for it and was planning to tear it down anyway. It's just sitting there, he said, there is no floor.

In response to Mr. Arisumi's question, the applicant stated that he started out growing vegetables and in between he planted fruit trees, which he has collected from all over the world. He stated he just returned from Asia with more varieties. Since the trees grew larger and the ploughing was getting close to the roots, he now has only a small area where he can grow enough vegetables for himself. He has stock now so he is propagating the trees to sell wholesale. It is a source of income and he does contract work with his tractor--to clear a field or plough. It's basically the same work but not on the property. If someone buys 1,000 trees from him and they want them planted, he does. If he is asked to tear the garage down, then the tractor has to stay in the rain. He stated that the reason he built it was that some water got into the transmission and it cost him about \$600 to repair it. His mechanic told him he would have the same problem if he didn't cover it.

Mr. Zalopany inquired on the type of utilities he has. Mr. Hunt stated he has water and electricity--12 volt--from solar panels. The water comes from a neighbor's line that comes through his property. He has a field phone put up on the road and just laid the cable on the ground to his house--that for as long as it lasts, it's there.

Mr. Zalopany inquired as to the length of time it would take to complete his home. Mr. Hunt stated it would depend on whether he can obtain a

loan. This is his first experience with applications, and it has taken 180 days so he is not sure how long the County permit process will take but he hopes to start in about six months.

Mr. Zalopany moved that the Board give Mr. Hunt six months to come up with building plans and financial arrangements with whatever lender to the Board. If Mr. Hunt does not comply with this request, the Board will move ahead with the staff's recommendation. In the meantime, Mr. Zalopany stated, the Board would fine the applicant \$500 and let the house remain for six months.

Mr. Hunt asked whether that meant he had to have enough cash in six months to complete the house. Mr. Zalopany stated that he must have his building plans, his financing settled with whatever lender, and applicant is ready to start construction, or the applicant can start construction within six months and would be allowed to maintain his living quarters. Mr. Hunt also asked whether this would take care of the County. Mr. Zalopany advised that he would have to go to the Planning Department and they would tell him what procedure to take, that this was the first step in the process. If he had any other questions, he was advised to take it up with Mr. Evans. Mr. Arisumi seconded the motion; however, he asked how Mr. Hunt could obtain plans without the approval of a CDUA. Mr. Evans stated that his understanding is that the Board is charged with making a decision on a CDUA. Basically, he said, the Board is saying that approval is given to a single-family residence, subject to the following conditions: One, payment of a \$500 fine; two, within six months applicant must come up with a building plan plus the financing arrangement to the Department. Failure to do that, the Board would accept the staff's recommendation and the structures must come down. The basic decision is that the Board has approved the request, subject to the conditions.

RECESS

Upon the request of Mr. Kealoha to confer with legal counsel, Mr. Paty called a recess from 11:26 a.m. to 11:32 a.m.

Mr. Evans stated that he had an opportunity to meet with counsel, and the staff thinks that a letter can be framed based upon Mr. Zalopany's motion indicating what needs to be complied with, what dates, which standard conditions apply, subject to further review by the Board. Mr. Evans stated that this would be appropriate at this stage. Mr. Arisumi asked whether there were any limits. Mr. Evans stated that the applicant is required in six months to come up with approved building plans and financial arrangements. Absent that, the approved CDUA would be null and void. Mr. Ing asked whether the use would be subject to all of the standard conditions that apply to single-family structures in conservation districts. Mr. Evans stated it would be so unless determined otherwise by the Board.

ACTION Approved with conditions.

ITEM F-1-b ISSUANCE OF REVOCABLE PERMIT TO YAMADA PACIFIC, INC., TMK 4-5-01:53, LAHAINA, MAUI

ACTION Unanimously approved (Arisumi/Zalopany).

ITEM B-1 REQUEST TO FILL CLERK-TYPIST II POSITION NO. 11459 IN THE DIVISION OF AQUATIC RESOURCES (OAHU)

ACTION Mr. Ing moved to appoint Jean Y. Lee to Position No. 11459, Clerk-Typist II. The motion was seconded by Mr. Kealoha and unanimously carried.

- OUT-OF-STATE TRAVEL REQUEST FOR CARL T. MASAKI TO ATTEND THE ANNUAL MEETING OF THE CALIFORNIA-NEVADA-HAWAII FOREST FIRE COUNCIL, OCTOBER 28-29, 1987 IN RENO, NEVADA
- ITEM C-1
- ACTION Unanimously approved (Ing/Kealoha).
- ITEM C-2 FILLING OF POSITION NO. 11447, FORESTER IV, ISLAND OF HAWAII
- ACTION Mr. Ing moved to appoint Roger H. Imoto to Position No. 11447, Forester IV. The motion was seconded by Mr. Kealoha and unanimously carried.
- ITEM C-3 REQUEST TO ENTER INTO A JOINT AGREEMENT WITH THE NATURE CONSERVANCY OF HAWAII TO CONDUCT RESOURCE INVENTORIES AND ESTABLISH A DATA BASE FOR THE NATURAL AREA RESERVES SYSTEM
- ACTION Unanimously approved (Kealoha/Zalopany).
- ITEM E-1 FILLING OF POSITION NO. 36113, GROUNDSKEEPER I
- ACTION Mr. Zalopany moved to appoint Matthew Reis to Position No. 36113, Groundskeeper I. Seconded by Mr. Arisumi and unanimously carried.
- ITEM E-2 ALLOCATION OF HISTORIC PRESERVATION GRANTS-IN-AID
- ACTION Unanimously approved (Arata/Zalopany).
- ITEM F-1 DOCUMENTS FOR CONSIDERATION
- ITEM F-1-a CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-4861, LOT 2, PARTS 1 AND 2, KAPAA HOMESTEADS, KAWAIHAU (PUNA), KAUAI, TMK 4-6-02
- ITEM F-1-b Approved. See page 11.
- ITEM F-1-c CONSENT TO SUBLEASE, CORMAX CORPORATION TO HAWAII FAMILY DENTAL CENTER, GENERAL LEASE NO. S-4644, KALAUAO, EWA, OAHU
- ITEM F-1-d CONSENT TO SUBLEASE, CORMAX CORPORATION TO SILK FLOWER AND PLANT COMPANY, INC., GENERAL LEASE NO. S-4644, KALAUAO, EWA, OAHU
- ITEM F-1-e ISSUANCE OF REVOCABLE PERMIT TO ALFRED D. SILVA, LOT 3, KAPAA RICE AND KULA LOTS, KAPAA, KAWAIHAU (PUNA), KAUAI
- Mr. Shimabukuro asked to amend the date retroactively to January 1, 1987.
- ITEM F-1-f Approved. See page 7.
- ITEM F-1-g ISSUANCE OF REVOCABLE PERMIT TO RUSSELL K. MATSUYAMA, SR. DBA RUSSELL'S RADIATOR SERVICE, TMK 4-5-15:34, KAPAA, KAWAIHAU, KAUAI
- ITEM F-1-h ISSUANCE OF REVOCABLE PERMIT TO RALPH W. ADAMSON, TMK 4-5-11:07, KAPAA, TOWN LOTS, KAPAA, KAUAI
- ITEM F-1-i ALLIED AGGREGATES CORP. REQUEST FOR LAND LICENSE, KAOHE 3, HAMAKUA, HAWAII
- Mr. Shimabukuro asked to add a condition. The U.S. Army from time to time requests helicopter landings. The added condition would allow for that.
- ITEM F-1-j CAFE 100, INC. REQUEST FOR REVOCABLE PERMIT, PORTION OF WAILOA RIVER STATE PARK, WAIAKEA, SO. HILO, HAWAII
- ACTION Mr. Kealoha moved for approval of Items F-1-a, -c, -d, -e, -g, -h, -i, and -j. Seconded by Mr. Arisumi and unanimously approved.

- ITEM F-2      RIGHT OF ENTRY AND DIRECT SALE OF EASEMENT AT KIHEI ELEMENTARY AND INTERMEDIATE SCHOOL, WAIOHULI-KEOKEA, MAKAWAO (KULA), MAUI, TMK 2-2-02:43  
ACTION      Unanimously approved (Arisumi/Zalopany).
- ITEM F-3      LEASE AT PUBLIC AUCTION, LOT 34, KAPAA HOMESTEADS, 1ST SERIES, TMK 4-6-04:13, KAPAA (PUNA), KAUAI  
ACTION      Unanimously approved (Zalopany/Arata).
- ITEM F-4      COUNTY OF KAUAI, DEPARTMENT OF WATER REQUEST FOR SET ASIDE OF STATE LANDS FOR WATER STORAGE TANK PURPOSES, KIKIALOA, WAIMEA (KONA), KAUAI, TMK 1-2-06:18  
ACTION      Unanimously approved (Zalopany/Arisumi).
- ITEM F-5      SET ASIDE OF STATE LANDS AT NAWILIWILI, LIHUE, KAUAI FOR HARBOR RELATED PURPOSES  
ACTION      Mr. Shimabukuro asked to amend his submittal by deleting parcel 30 from the land to be set aside.  
Mr. Ing asked to review the 2010 Master Plan.  
Mr. Kealoha moved for deferral of this item; seconded by Mr. Zalopany and motion unanimously carried.
- ITEM F-6      Deferred. See page 8.
- ITEM F-7      ACCEPTANCE AND SET ASIDE OF PEDESTRIAN RIGHT-OF-WAY, WAILUA, KAUAI  
ACTION      Unanimously approved (Zalopany/Arisumi).
- ITEM F-8      SET ASIDE OF ACCESS TRAIL EASEMENT, WAILUA, KAUAI  
ACTION      Unanimously approved (Zalopany/Kealoha).
- ITEM F-9      LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF THE ATTORNEY GENERAL, ISLAND OF OAHU  
ACTION      Unanimously approved (Ing/Zalopany).
- ITEM F-10      REQUEST OF THE CITY AND COUNTY OF HONOLULU FOR SET ASIDE OF STATE RECLAIMED (FILLED) LAND AT MALAE, KANEOHE, KOOLAUPOKO, OAHU FOR SEWER PUMP STATION SITE PURPOSES  
ACTION      Unanimously approved (Ing/Kealoha).
- ITEM F-11      DEPARTMENT OF HUMAN SERVICES REQUEST FOR BOARD'S APPROVAL TO CHANGE THE COMMENCE DATE OF GENERAL LEASE NO. S-4826 TO GOODWILL INDUSTRIES OF HONOLULU, INC., LOT 3, SHAFTER FLATS INDUSTRIAL DEVELOPMENT, UNIT II, MOANALUA, HONOLULU, OAHU  
ACTION      Because of additional work required, it was moved by Mr. Kealoha and seconded by Mr. Zalopany to withdraw the item from the agenda.
- ITEM H-1      APPROVAL TO ENGAGE THE SERVICES OF DATA HOUSE, INC. TO PROVIDE ELECTRONIC DATA PROCESSING (EDP) MAINTENANCE SUPPORT SERVICE  
ACTION      Unanimously approved (Ing/Kealoha).

AMENDMENT TO CDUA FOR GUIDED TOURS IN THE KOKEE STATE PARK AND WAIMEA CANYON ALAKAI STATE FOREST MANAGEMENT AREA AT WAIMEA, KAUAI - FILED BY MR. DOUGLAS N. FU

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ITEM H-2  
 ACTION Unanimously approved (Zalopany/Kealoha).

ITEM H-3 Approved as amended. See page 6.

ITEM H-4 Approved with conditions. See page 11.

CDUA FOR AFTER-THE-FACT CLUBHOUSE DECK AND PROPOSED ROOF CONSTRUCTION OVER SUBMERGED STATE LANDS, MAKAI OF TMK 4-5-1:5, LAHAINA, MAUI, FILED BY MR. GLENN KEARNS

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ITEM H-5  
 Mr. Evans asked to amend his submittal on page 7, B.3., to include back rent.

ACTION Unanimously approved as amended (Arisumi/Arata).

ITEM H-6 Approved as amended. See page 7.

ADDED  
ITEM H-7 APPROVAL OF A PERSONAL SERVICES CONTRACT FOR MR. SUSUMU ONO, CONSULTANT

ACTION Unanimously approved (Arata/Arisumi).

ADDED  
ITEM H-8 AUTHORIZATION TO APPOINT A PUBLIC HEARING MASTER TO HEAR CONSERVATION DISTRICT USE APPLICATIONS

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ACTION Unanimously approved (Arata/Arisumi).

ITEM J-1 CONCESSION AGREEMENT, VARIOUS SPACES AT KAHULUI AIRPORT, MAUI (SMARTE CARTE, INC.)

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ACTION Unanimously approved (Arisumi/Zalopany).

ITEM J-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4363, 4382 AND 4385, AIRPORTS DIVISION

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ACTION Unanimously approved (Arisumi/Zalopany).

ITEM J-3 EXTENSION OF SUPPLEMENTAL AGREEMENT - LICENSE DATED JUNE 10, 1947 AND CONSENT TO SUPPLEMENTAL AGREEMENT TO SUBLICENSE DATED AUGUST 3, 1983, HARBORS DIVISION, PIER 1, HILO HARBOR, HAWAII (MATSON NAVIGATION COMPANY, INC. (MATSON)

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ACTION Unanimously approved (Arisumi/Zalopany).

ITEM J-4 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 2, KAHULUI, MAUI (YOUNG BROTHERS, LTD.)

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Mr. Ing asked to be excused from participating on this item as his firm represents the applicant.

ACTION Unanimously approved (Arisumi/Zalopany).

ITEM J-5

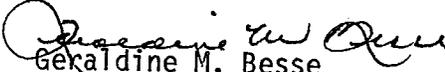
ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 39, HONOLULU, OAHU  
(BLUE HAWAII ENTERPRISES, INC.)

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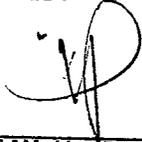
ACTION Unanimously approved (Ing/Zalopany).

ADJOURNMENT There being no further business, the meeting was adjourned at 12:17 p.m.

Respectfully submitted,

  
Geraldine M. Besse  
Secretary

APPROVED:



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WILLIAM W. PATY, Chairperson