

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

DATE: December 18, 1987  
TIME: 9:00 A.M.  
PLACE: Kalanimoku Building  
Room 132, Board Room  
1151 Punchbowl Street  
Honolulu, Hawaii

ROLL  
CALL

Chairperson William W. Paty 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. Moses W. Kealoha  
Mr. John Arisumi  
Mr. Herbert Arata  
Mr. William W. Paty

Absent & Excused

Mr. Leonard Zalopany

STAFF: Mr. Henry Sakuda  
Mr. Ronald Walker  
Mr. Manabu Tagomori  
Mr. Ralston Nagata  
Mr. Mason Young  
Mr. Archie Viela  
Mr. Roger Evans  
Mrs. Anne Furuuchi  
Mr. Melvin Young  
Mrs. LaVerne Tirrell

OTHERS: Ms. Dona Hanaike & Mr. Edwin Watson, Deputy A.G.  
Mr. Peter Garcia, Dept. of Transportation  
Mr. Melvin Kalahiki (Item E-5)  
Mr. James Kaleo (Item F-26)  
Mr. Clinton Ashford (Item F-29)  
Mr. Hisao Ito (Item F-31)  
Ms. Gae Rusk (Item H-2)  
Mr. David Lacock (Item H-4)  
Messrs. James Funaki and Tom Fee (Item H-5)  
Ms. Sandra Schutte (Item H-6)  
Messrs. John Farias and George Oscar (Item H-12)  
Mesdames Barbara Smith, Karen Chung, Marguerite  
Gonsalves, Messrs. Ben Matsubara, Fred Van Dyke,  
Richard Mirikitani, Dennis Mahoney, Doug Meller,  
Bob Zimmerman, Andrew Mirikitani, Edward Pestana,  
Charles Wilson, Tom Finney, Senator McMurdo,  
Rep. Bill Crozier and Rep. Sam Lee, and  
Councilwoman Marilyn Bornhorst (Added Item H-14)

MINUTES: The Board voted on the Minutes as follows:

- . August 14, 1987 - Deferred (Kealoha/Ing)
- . October 9, 1987 - Unanimously approved (Ing/Kealoha)
- . October 23, 1987 - Unanimously approved (Ing/Kealoha)
- . November 6, 1987 - Deferred (Ing/Kealoha)
- . November 20, 1987 - Deferred (Ing/Kealoha)

ADDED

Upon motion by Mr. Ing and a second by Mr. Kealoha, the following items were added to the Agenda:

- Item G-2 -- Lateral Transfer to Land Document Receiving Clerk I, Position No. 140, Oahu.
- Item H-14 -- CDUA to Amend Title 13, Chapter 2, Administrative Rules and to Establish Single-Family Residential Use.
- Item H-15 -- Filling of Position No. 148, Registrar of Conveyances, Oahu.
- Item H-16 -- Filling of Position No. 9636, Land Management Administrator, Oahu.
- Item H-17 -- Filling of Position No. 15705, Account Clerk III, Administrative Services Office, Oahu.

Items on the Agenda were considered in the following order to accommodate those applicants present at the meeting:

ITEM E-5

SPECIAL USE PERMIT REQUEST FOR IOLANI PALACE GROUNDS.

Whereever the word "hookup" is shown in the submittal, Mr. Nagata asked that it be changed to "hookupu".

In answer to Mr. Arisumi's question as to why no liability insurance was required, Mr. Nagata said that the applicant had asked if the insurance could be waived because the cost of liability insurance was so substantial. This requirement has, in the past, been at the discretion of the board.

Mr. Paty asked Mr. Nagata what kind of cost was involved for liability insurance. Mr. Nagata believed that the cost was about \$200 to \$400 dollars, provided you could get coverage.

Mr. Arisumi voiced concern because of the many suits against the State of Hawaii.

Mr. Nagata said that such a condition could be imposed if it was the pleasure of the board.

ACTION

Mr. Ing moved to approve as submitted by staff with the exception that the applicant be required to seek liability insurance coverage. However, if they are not able to get insurance because of the cost, then the Chairperson will have the discretion to allow or not allow a permit. Seconded by Mr. Arata, motion carried unanimously.

ITEM H-2

CDUA FOR A JAZZ FESTIVAL AT DIAMOND HEAD CRATER, OAHU (THE HAWAII JAZZ PRESERVATION SOCIETY).

Mr. Evans presented the board with a letter from the applicant asking that this item be withdrawn. He said that they did explain to the applicant that, while the option is opened to them, because the matter had already been listed on the Board Agenda, it would be, at this point and time, a judgment by the board whether or not to accept the letter of withdrawal.

Mr. Ing asked why this item was being withdrawn.

Ms. Gae Rusk, Treasurer for the Society, said that they needed nine months lead time in order to do the festival adequately and meet all of the expectations in making it a general success. If they did get the crater, they would not be able to put on a festival during the last weekend in May. Because of that, they thought it best to withdraw their application.

ACTION

Mr. Ing moved to accept the withdrawal. Mr. Kealoha seconded. Motion carried unanimously.

ITEM H-6

CDUA FOR A CONTRACTING/TRUCKING BASEYARD AND UTILITY EASEMENT AT NORTH KONA, HAWAII (MS. SANDRA PECHTER SCHUTTE).

Mr. Evans presented this item with a recommendation for approval. He informed the board that counsel for the applicant was present to answer any questions the board may have with respect to this application.

Mr. Paty called Ms. Sandra Schutte, counsel for the applicant, to come forward.

Mr. Arata asked Ms. Schutte whether she had a chance to review the thirteen conditions listed with her client.

Ms. Schutte said she had and all conditions were acceptable.

ACTION

Mr. Arata moved to approve as submitted. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM H-10

REQUEST TO MODIFY PERMIT SYSTEM FOR COMMERCIAL FILMING ON CONSERVATION-ZONED AND/OR STATE-OWNED LANDS (FILM INDUSTRY BRANCH, DEPT. OF BUSINESS AND ECONOMIC DEVELOPMENT).

Mr. Evans said that the board, on October 13, 1978, approved a CDUA which would allow filming on all conservation lands. Subsequently, and in response to what was a growing industry, staff came back to the board later and the board made some changes to expedite the processing. They also, later on, included state-owned land, regardless of the zoning. In April of 1986, the Board entered into an agreement of understanding with the then Department of Planning of Economic Development, which set up procedures for commercial filming activities in the State of Hawaii.

Mr. Evans said that staff is before the board this morning with a draft agreement to modify the present agreement. Basically, where there is a pre-approved filming at a pre-approved site, staff is suggesting that DBED be allowed to issue the permits per se. Also suggested, is that on non-pre-approved sites, where the current agreement requires a DOCARE officer to be there all of the time, regardless of the location, that in certain areas it may be appropriate when they need to have somebody out, that that person not be required, necessarily, to be from DOCARE. Lastly, staff is asking for a change in the fee structure. When the film agreement was first put into effect, the charge was \$100 a day rental fee for the use of State lands. While funds have been generated, the money all ends up in the general fund (for fiscal year 1985 \$55,900; 1986 \$35,700; and 1987 \$66,315). DLNR realizes little, if any, monetary benefits.

Staff took a look at what agencies were doing and found that DAGS does not charge for the use of any of their facilities. The City, however, charges \$10.00. DOT, also, charges in certain areas except Waikiki. DOT's reason for charging is because when they collect their funds it goes into their special funds that are administered by their department as opposed to DLNR's, which goes into the State's general fund. Staff is asking the board to ratify the agreement which would eliminate rental fees.

Ms. Georgette Deemer said that they had worked with the DLNR staff in drafting the agreement and would like to show their support in carrying said agreement.

Mr. Ing asked what would happen in a situation, which had actually occurred a few years ago, where the film crew dropped litter from a helicopter and ended up strewn across the beach, drifted with the tide, and it ended up on beaches on the north shore for about a one mile stretch -- what happens in a case like this, under these amended conditions?

Ms. Deemer assumed that this would constitute a fine.

Mr. Ing asked how this would be done under the proposed CDUA.

Ms. Deemer said that it is discussed with staff and they would leave it up to them to determine what action should be taken.

Mr. Ing asked if there were provisions in the authorization that is given to a film crew for violations in the parks.

Ms. Deemer believed that this was listed as a condition.

Mr. Evans confirmed Ms. Deemer's statement. Also listed in the conditions is a requirement for performance bond and it conceivably could find staff in a situation where the performance bond is not enough to cover the clean up work. In this case, staff would have to come before the board on the aspect of a violation to recover administrative costs. This, however, would revert back to coming before the board as basically a conservation violation.

Mr. Ing asked, "who would be the violator in this case, DBED or the film crew."

Mr. Evans felt that if DBED's role is limited to issuing the permit then it would be to whomever it was issued. Staff would ask DBED for assistance to pursue that violation to some kind of resolution.

Mr. Arisumi asked Mr. Evans whether there were any complaints that the fees were too high.

Mr. Evans replied, "yes and no". Yes, from people who are on a rather limited budget and would like to do a one day shoot -- they have complained that \$100 is a lot. No, from, for example, the Tour of Duty group, which is a major mainland film crew. \$100 for their budget is really minimal.

Mr. Arisumi felt that supervision by staff people is a cost to the State so, to completely eliminate the fee, he did not feel was right. He felt that there should be some kind of fee.

Mr. Evans said that there are two kinds of fees. The fee worked out with DLNR and DBED is only the rental fee. If there is a requirement that we have to send personnel out, that remains. In answer to Mr. Paty's question, Mr. Evans said that they are billed under these circumstances.

Mr. Arisumi still did not feel that the fee should be eliminated. Maybe \$100 a day is too high, but some minimal fee should be charged.

Mr. Evans asked if the board could consider adopting this without answering the question on the fee structure and then directing staff to come back to the board with that particular element addressed specifically.

This was fine with Mr. Arisumi.

Mr. Kealoha said that he would like to see included in the Agreement which makes direct reference to violation that occur e.g. what method and/or procedure would be applied to handle any violation.

Mr. Evans said that the question of violation is a difficult one because if you have the authority to grant the permit -- who enforces it is an ongoing question.

Mr. Paty stated that he thought it was the sense of the board that some of these people may get carried away in their enthusiasm for shooting and exceed the bounds of common sense.

Mr. Evans informed the board that there was no deadline on this so they could come back to the board and address this question a little more clearly.

ACTION

Mr. Ing moved to defer this item for further review and amendment to the proposal. Mr. Arisumi seconded, motion carried unanimously.

ITEM F-15

DIRECT SALE OF A PORTION OF THE KIPAPA BYPASS ROADWAY SITUATE AT WAHIAWA, OAHU, MILILANI TOWN, INC., APPLICANT.

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-29

REQUEST OF PROPERTY OWNERS AT KAALAWAI, KAPAHULU, TO RECONSIDER LAND BOARD ACTION OF 11/21/86 (AGENDA ITEM F-12) REGARDING DISPOSITION OF "OLD GOVERNMENT ROAD," KAALAWAI, KAPAHULU, HONOLULU, OAHU.

Mr. Mason Young said that on November 21, 1986 three actions were taken by the board:

1. Denied the applications from the abutting property owners to purchase or lease;
2. Authorized the issuance of revocable permits to the abutting property owners; and
3. Requested the staff to formulate a permanent solution for public use of the beach road.

Mr. Young continued that the solution of the public use of the beach road was not possible because of legal issues of the ownership of the road. Certain property owners indicated a willingness to take this to court and their premise was based on the fact that they felt that the successors to the Lunalilo Trust were not given due process to argue. They felt that the Highways Act of 1892 was unconstitutional. They felt that the abandonment of fee title of an easement was only an easement to them that they felt that they had title. In addition, they said that under the Land Court Application to the Trust, the Trustee does not have suitable title for registration, that the land belonged to the abutting owners along the mauka boundary and that the State had failed to prove its claim to ownership of the land. As a result of these contentions, an attorney from one of the owners has come in with a settlement. In essence, this settlement suggests that the State convey to the abutting owners certain lands along the beach and the owners convey to the state certain lands along the beach. (Mr. Young pointed out the affected areas for the board's information.)

Mr. Paty then explained to the audience that the board would first hear from staff, then the applicant would be asked to review and enlarge on the basis in which they see this proposal, then those who have an interest will be asked to come forward.

Mr. Young continued that because of concerns of the matter of legal ownership the settlement before the board is made, because if we were to litigate it would be a very lengthy litigation and possibility of the state claiming title may be uncertain so the owners have come up with this settlement for the board's consideration. After staff's review, they felt that this was essentially status quo. They are still using what we are using and they are getting what they presently occupy. Staff is recommending that the proposal be denied and that, as part of the resolution, the revocable permits issued for the property be continued.

Mr. Paty invited the applicant's representative to come forward.

Mr. Clint Ashford, attorney, representing John Magoon, and author of the proposal, testified as follows:

"What the board is concerned with here is an area of approximately three acres. (He pointed out the area on the map.) That strip is part of the ili of Kapahulu which was awarded to King Lunalilo back during the Mahele. In the mid-80's, Lunalilo's Trustees, after his death, disposed of most of the ili, including all of the lots along the Diamond Head Shore. In 1959, the Trustees of the Lunalilo Estate, filed an application in the Land Court to confirm their title to the 3-acre strip. That application was contested by all of the abutting owners, it was also contested by the State of Hawaii. The abutting owners claimed title, the State of Hawaii claimed title, Lunalilo Trustees claimed title. In that application the Land Court judge found that the Lunalilo Trustees did not have title, that the abutting owners did because it had been conveyed to them in conjunction with a conveyance of these lots and that the State had not proved its claim to the area.

'Two days after the Lunalilo Trustees filed their application, Roy Kelly filed application for a portion of the strip which was in front of his Diamond Head lot. The two cases were consolidated for trial, the decision, as mentioned earlier, was in favor of the abutting landowners, including Kelly. Kelly later went on with his application to try and establish his title, more specifically to that portion in front of his lot. The land court judge granted that, it went on appeal to the Hawaii Supreme Court, the Supreme Court reversed, and it is on the basis of that, known as the Kelly case, that the Legislature and the public in general apparently have acquired the impression that that case settled title to the whole beach in favor of the State. What we have invited to the board's attention is that that is an incorrect misimpression. The Kelly case dealt only with that portion of the strip in front of Kelly's property. The Lunalilo case dealt with the entire strip and was decided in favor of the abutting owners. The Lunalilo Trustees had appealed that case in the Supreme Court, the appeal was later abandoned, and so the lower court's decision became final.

'My position, on behalf of Mr. Magoon and, I believe, many of the landowners take the same position is that the State is bound by that decision that the abutting owners, in fact, have title to the disputed strip. The State does not. My client has financed one lawsuit in this matter and he does not wish to finance another so what they have offered here is what we think is a creative solution which will get this thing behind all of us and let us go on with our business.

'With due respect to Mr. Young, this is not a status quo proposal. Some of these landowners are going to be giving up substantial portions of what they have been using for a hundred years or more of which they have a right to believe is their property. It is very valuable property. What we have tried to do in this case is give the State the majority of the area, not to encroach at all upon the beach, which the public has been using, and to offer a consistent solution which we think would be acceptable to the landowners, and we hope will be acceptable to the State."

In the Lunalilo application, Mr. Ing asked whether the State was a party to that.

Mr. Ashford replied that the State was very much a party and a very active participant in the case.

Mr. Ing asked whether the State's ownership of the strip of land was raised as an issue.

Most definitely, answered Mr. Ashford. The State was claiming title to the whole disputed strip, the abutting owners were claiming title, and the Lunalilo Trustees were claiming title. It was a three way contest and Judge Hewitt decided that contest in favor of the abutting owners.

Mr. Ing asked, "isn't the function of the Land Court or the jurisdiction of the Land Court limited to registration of title?"

Mr. Ashford said that it was but that there is a Land Court statute, which says if a decree is entered without prejudice, and this one was not, the decree is binding as to all contested issues of fact and the issue of title here was a contested issue of fact and it is our position that that decree of Land Court is binding upon the State, the abutting owners and the Lunalilo Trustees.

Is that language that you refer to contained in the decision of the Land Court, asked Mr. Ing?

Mr. Ashford said that it is contained in Section 501-53, HRS. However, he did not know if that section is specifically cited in the decision or not.

Mr. Ashford read from the last page of Judge Hewitt's decision of July 3, 1962, paragraph 7, as follows:

"The Trustees clearly intended to convey title in fee simple, and did convey title in fee simple, to the disputed area to their grantees. The owners of lots abutting the disputed areas, by their deeds dated April 27, 1855, and introduced in evidence. I conclude that the applicants have no title in the disputed area to register and the State has failed to establish any claim to this area. A decree to this effect will be signed on presentation."

Mr. Ashford felt that it was pretty clear that the issue of title was addressed and specifically decided by the court.

In reply to Mr. Ing's question, Mr. Ashford said that he was reading from the consolidated decision.

Mr. Ing asked if this wasn't the same decision that the Supreme Court considered in the Kelly case.

Mr. Ashford replied, "in part." The Kelly case involved only the portion of the strip which was in front of Mr. Kelly's parcel, so the Supreme Court's decision, while it purported to speak of the entire disputed strip, was binding only as to the parties before the court in that appeal which were the State and Mr. Kelly and did not include the Lunalilo Trustees and/or abutting owners.

The rationale at which Judge Hewitt resolved the Lunalilo application in favor of the adjoining landowners, said Mr. Ing, was the same rationale that was rejected by the Supreme Court in the Kelly case.

"Correct", said Mr. Ashford.

As a result of the Lunalilo application, there was a decree entered, said Mr. Ing. He asked if that decree registered title in the disputed strip to the adjoining owners.

Mr. Ashford answered no, because they had not applied to register the title and the Land Court can register title only in the applicable but the Land Court nevertheless has jurisdiction to decide disputed questions of fact and law in arriving at its decision. Under the statutes and under the common law, that decision, if not appealed, becomes final and binding. That is where the State, and the applicants, and the Lunalilo Trustees find themselves as a result of the Lunalilo application.

Mr. Ing said that he has heard it stated and he knows that it has been raised in legal memos that the Land Court cannot decide ownership. It can only decide who has title to the land that is submitted for registration.

Mr. Ashford said that the Rosenberg case is to that effect. The statute that he was speaking of was enacted following that case and it was a legislative response to that Supreme Court decision on Rosenberg.

Mr. Ing asked whether any of the current landowners had registered title to the disputed strip.

Mr. Ashford replied, "not so far as I am aware."

Mr. Ing asked, "isn't it true that several of the adjoining landowners, when they did seek to register title in the period of time between 1916 and 1930, only registered title up to the mauka boundary of the disputed strip?"

Mr. Ashford said that he was not familiar with that history so he could not respond.

Mr. Ing asked whether some of the adjoining landowners had disclaimed an interest in the disputed strip in the Lunalilo application.

Mr. Ashford said that some of them did not appear and contest.

Mr. Ing remarked, "as that strip exists today on the ground, we understand that there have been landowners that have been in the past occupying that part. As far as I am aware, there have been only two applications which have attempted to register title to that strip -- one was the Lunalilo one, and one was the Kelly and, in both cases, both parties were denied registration of title to that." He asked Mr. Ashford if he was aware of anyone else attempting to register title.

Mr. Ashford said that the last judicial proceeding concerning the strip was the Lunalilo application and the Kelly application, to the best of his knowledge.

Mr. Ing asked Mr. Ashford if he wouldn't agree that, in order to perfect ownership of that strip, someone else would have to come in and seek title to that strip.

Mr. Ashford did not agree. He said that only about 20% of the land in Hawaii has registered title. The rest is all owned by someone, or another, notwithstanding, the title is not registered. Registering title gives you some benefits that non-registered title does not have, but you do not have to register title in order to have ownership.

Not having registered title, Mr. Ing asked Mr. Ashford if he would agree that ownership could still be contested. Mr. Ashford said that ownership could be contested even if the title were registered and the State had contested land, particularly along the shore.

Mr. Ing asked if, in the Lunalilo application, the Highways Act of 1892 was raised as a part of its claim for ownership.

Mr. Ashford believed it was but did not know this for a fact.

In answer to Mr. Ing's query, Mr. Ashford said that the appeal in the Lunalilo case was dismissed. Mr. Ing asked also whether the State's claim pursuant to that appeal was also dismissed. Mr. Ashford said that the State did not appeal. The appeal was by the Lunalilo Trustees, whose successor came in and dismissed the appeal. The State, in the mean time, had moved to consolidate both appeals in the Supreme Court and, when the Supreme Court dismissed the Lunalilo appeal, they ruled that the State's motion to consolidate was moot. In effect, the dismissal of the appeal rendered the judgement of the Land Court final and that was the end of the litigation and, as far as the title to the dispute is concerned, it was his position that that finally determined, as among the parties, including the State of Hawaii.

Mr. Ing asked, "your position is that, while in the Kelly application the Kelly's are not able to register title to that section of the disputed strip fronting their property because the Land Court, in the Lunalilo application, held that title to that disputed strip was passed to the adjoining property owners and that was not appealed successfully by the State that therefore the State is barred from re-litigating that issue.

"Precisely", answered Mr. Ashford.

Mr. Paty assumed that that would be one of the basis in which you would proceed if this went to court -- that the State did not have title.

Mr. Ashford replied, "you are correct Mr. Paty, and we think that we have a very solid legal foundation for our position but I would reiterate that we have come up with this solution in an attempt to get the matter behind all of us. I always counsel my client to stay out of court if they can and that getting the matter resolved in court is expensive in many ways -- time, emotion, money, etc. If a satisfactory settlement could be reached to both the property owners and the State, I think it would be in everyone's best interest. That is why we are proposing a solution which we think is fair to both sides and which avoids a totally "I win, you lose" situation for either the property owners, or the public."

Mr. Arata asked to recess for five minutes to review the proposal by Mr. Ashford.

Mr. Paty asked Mr. Arata if the board could first hear what the others in the group might want to say and, if he still felt at that time that he might want to recess then the board could do it at that time.

This was o.k. with Mr. Arata. Mr. Paty then called for participation from the audience. First speaker was Senator McMurdo.

Senator McMurdo testified as follows:

"I am here to oppose any action by the Board of Land and Natural Resources that would allow private interest to continue, with State blessings, to encroach on public land. I would like to define the word "encroach". My source is Webster's Ninth New Collegiate Dictionary.

'ENCROACH -- to enter by gradual steps or by stealth into possessions or rights of another. To advance beyond the usual or proper limits.

'I have spoken out on this matter before. Many of you are well aware of my position. Let me assure you my position has not changed. I believe we are talking about public lands - land that belongs to all the people of Hawaii. And, I believe private individuals have over the years encroached on those lands with the full intention of denying, to the rightful owners, free and unrestricted access to those lands. Those private individuals have, in fact, been trespassing on public property for years.

'Now those private individuals come to the Board of Land and Natural Resources to take permanent possession of public land upon which they have encroached. They ask that the State either sell or lease the land to them, or that the state allow them to retain possession of what they have come to consider their private front yards. They ask that they not be required to remove the fences and other improvements that they, of their own free will and without concern for the rights of others, have placed there. Well, I say:

'No Sale - No lease - No compromise! Take the fences down or move them back -- but no more encroachment on public lands."

Senator McMurdo added that when she read the paper this morning it reminded her that during a hearing in tourism last session there was information about this offer to buy the property for \$5 million. This, she said, showed her, and it did at that time, that these individuals know they don't have any rights to this beachfront property because one does not offer to buy property if one already owns it.

Mr. Ing, in response to Senator McMurdo's testimony, said that when the board addressed this issue a year ago the matter of the Lunalilo application had not been raised at that time. He said that if you look at the material cited by Mr. Ashford and if you read the decision by Judge Hewitt in the Lunalilo application, which was consolidated with the Kelly application, the Judge clearly says in that decision that ownership of that disputed strip rests with the adjoining property owners and that there was an intent by the Lunalilo Trustees to convey that strip by deed to the adjoining property owners. That aspect of the case was not on appeal to the Supreme Court and, if you look at the Kelly decision, all you see in the Court's description and on the map that's contained in the decision, is the strip in front of the Kelly residence. Mr. Ing asked Senator McMurdo if she was willing to look at a complete loss of that entire strip, except for the Kelly parcel.

Senator McMurdo said that as she understands it, Mr. Ashford is only representing one person.

Mr. Ing remarked, "that is true, he only represents Mr. Magoon. But do you think that any of the other adjoining property owners will take a different position?"

Senator McMurdo replied, "not necessarily but I think there are some big holes in this. Again, if all of that land belongs to them then why are they coming here with a compromise? It simply does not make any sense. If they feel they own it and they have a proper law case, then let them take it to the court and prove it. But to come in and offer money and, I have seen that in writing, or to come in and compromise -- say, well we'll let you have this and I know that most of it appears to be under water, but it just does something to what I consider logical. If you own something, one does not offer compromise to keep it.

Senator McMurdo continued that she is not a lawyer and some of the facts she was not even aware of until Mr. Ashford spoke this morning, but it really does not change her position because she would like the board to consider that one little item "why are they offering anything if they already have title, or whatever it is?"

Representative William Crozier presented the board with a copy of House Concurrent Resolution No. 18, which was passed in the past legislative session. He said that the purpose of the concurrent resolution was to advise the Department of Land and Natural Resources that the Legislature is firm in its position that the "Old Government Road" at Diamond Head should remain open to the public, and to request the Department to take necessary actions to prevent the sale or long term lease of any portion of the Road to any private land owner or for any non-public use.

He reiterated his testimony before the board at an earlier meeting on this issue asking the board to take a strong position and pledging that he would do anything within his legislative powers to support the board. He talked about the heavy lobbying at the legislature by representative of two of the property owners. He referred also to Dona Hanaike's opinion that the State owns the land.

Mr. Arata asked Representative Crozier that, if there is a way that this can be settled out of court, would his backing still be with the board.

Representative Crozier knows that if we go to court the cost will be great but it is the responsibility of the Legislature to protect the people of Hawaii, so they are back of the board.

Mr. Ing asked Representative Crozier if he would be willing to risk loss of the entire strip by taking this thing to court.

Representative Crozier said, "I think the risk is minimal. When we get an opinion from our attorney general saying that we own the land..."

Mr. Ing said that the original attorney general's opinion did not consider the Lunalilo application.

Representative Crozier said that what Mr. Ashford presented to the board today was also presented to the Legislature so he was aware of the Lunalilo application.

Representative Sam Lee, said that they were under intense pressure to give this land away. However, he felt that they had nothing to lose because precedence was on their side -- there is a Supreme Court decision, none of the other owners have registered the disputed land, they have a clear title in the Richard Kelly case and there is only one application before the board. He stressed that the people involved in the resolution are quite strongly opposed to erosion of a public trust. He said that if the board needed money, they will appropriate the money. If the board should lose in the case there are other measures that can be taken. He appealed to the landowners not to create a situation analogous to the squatters at Makapuu. He continued his testimony as to why this request should not be approved.

Senator McMurdo added that she will be prepared in the Senate to back up any efforts for money needed by DLNR.

Councilman Bornhorst realized that this was a very difficult decision for the board. Listening to Mr. Ashford, she was thinking about how we could get into a McBryde Water cases, which goes on year after year. She heard the board say something about losing it entirely and her thought was that they have already lost the use entirely. It has been in private use for all these years and she is concerned about getting back as much as she can for public use. She said that back when the first seawalls encroached on the old government road there was not such a need for shoreline access as there is now. However, with the rising population, the public need is so great for access to any beach they can get that she did not think we should give up something where we seem to have a very good claim of public ownership without a fight. The fight, she hopes, could be done out of court. She stressed that she would like to see the law enforced on this.

Mr. Richard Mirikitani, speaking as a concerned citizen, presented the board with 1,582 petitioned signatures of concerned citizens, in addition to the thousands submitted before, which says, in part, that the State beach lands at Diamond should be reclaimed for their best use by the public. A five page written testimony was also presented urging the board to reject the proposal as recommended by the DLNR staff report.

Mr. Ing asked Mr. Mirikitani if he was aware that only one of those lots was before the supreme court and if he had read the Lunalilo case.

Mr. Mirikitani said that he did receive the material presented to the Legislature.

Mr. Ing asked Mr. Mirikitani if he was also aware that in the Lunalilo case the court ruled that the adjoining landowners owned the property and that aspect was untouched by the decision in the Kelly case.

Mr. Mirikitani said that as he read the Kelly case, they had decided that the Kelly's could not own that portion of the old government road because it was owned in its entirety by the State of Hawaii. As a necessary process in their reasoning they stated: "we find that there was a government road, which became a property of the State by the Highways Act of 1892" and by this reasoning they asserted that the Kelly case could not register title to their portion of the old government road. He submitted that perhaps these kinds of legal arguments are more properly addressed to a judge.

Mr. Ing, while agreeing that this may be true, nevertheless said that the legal arguments form the basis for which different parties claim ownership.

Mr. Mirikitani, as far as he could tell, had proclaimed that these lands were owned by the State.

Mr. Ing asked whether the adjoining property owners were parties to that supreme court decision.

Mr. Mirikitani noted that these are arguments probably more properly addressed to the court.

Mr. Ing said that the board had to make a decision based upon ownership.

Ms. Corinne Ching of Life of the Land presented written testimony asking that the board reject any offer of compromise and to affirmatively take all necessary and appropriate action in accordance with the laws and policies to reclaim these State beach lands for public use.

Dennis Mahoney, one of the Diamond Head property owners, said that the reason he did not sign the application was because it was his contention that his parents were parties to the Lunalilo litigation so he felt that the property he inherited from them was rightfully his. Secondly, in response to the issue of squatters, he said that all taxes were paid up in 1969 on the property in question, and such amount has not been refunded. Finally, he added his support to Mr. Ashford's compromised solution, even though Mr. Ashford was not his attorney and he had never met Mr. Ashford, but he wanted to avoid a lengthy litigation.

Mr. Ing asked Mr. Mueller how he felt about gaining 90%. Looking at the compromise, Mr. Mueller did not feel that the State would get 90%. "What if they did," asked Mr. Ing? "Would you be willing to take that instead of going to court and risk losing all of it?" Mr. Mueller felt that if the State's chances of winning in court was about 75-80%, he would say, "all or nothing" again.

Bob Zimmerman, a political writer and student at the University of Hawaii, addressing the board as a private citizen, said that in his travels around the world, he found one consistent fact concerning beaches -- where there are walls, where there are roads, erosion eventually develops. From erosion the beaches disappear. When the beaches disappear, the public is denied access to those beaches, thus, almost all beachfront development is harmful to the interest of the public. Walls, he said, are ugly everywhere, and particularly on beaches.

Mr. Andrew Mirikitani, a member of Save our Beach and as a board member of the Waialae-Kahala Neighborhood Board, presented written testimony firmly in opposition to the proposal which was made by a few Diamond Head beachfront owners. He opposed any proposal which would result in the loss of any publicly-owned beach land to private interest. He said that nineteen years ago the Hawaii Supreme Court decided that all of the Diamond Head beach land along the Diamond Head Beach Road was owned by the public and should remain in State hands, in trust for the people of Hawaii and for future generations. This decision covered all portions of the government road and especially with respect to other abutting property owners as is disclosed by the necessary findings in that case. He felt that that decision stands and is controlling in this case.

Mr. Edward Pestana, speaking as a concerned citizen, on behalf of his family, relatives and friends, presented written testimony asking that the board reject any proposal for the State and the public to lose any of these priceless beach lands and that the board take action to finally reclaim these state beach lands for their rightful owner, the people of Hawaii. He stated also that there is less beach frontage today than in his days and made reference to a wall built by Mr. Santangelo about two years ago, being one of the reasons.

A resident, Mrs. Marguerite Gonsalves, begged to differ with Mr. Pestana. She said that Mr. Santangelo did not construct a new wall. He removed the fence on top of the wall and replaced it with a new fence.

Mr. Charles Wilson, a private citizen, felt that there was a clear decision by the Hawaii Supreme Court in this case that indicates the ownership of the old government road as belonging to the State and not to the private individuals, which was found in the Kelly case, so, by extension, should apply to the entire government road. He felt that the only way the Land Board could change this was to go against the decision of the Hawaii Supreme Court.

Ms. Marguerite Gonsalves, owner of one of the properties in question, testified as follows:

"I'm a little uptight this morning listening to the fact that we are wealthy squatters. We are not wealthy, and we are not squatters. The erroneous statements that have been made that we are denying these people access to the beach is pretty wild. If they come off Kulamanu Beach, over 500 feet, through my property, to go to the beach, then that is denying access on our private property. We have two sets of signs up there -- "No Trespassing" and "Beware of Dog", which are completely ignored. As recently as a week ago tomorrow, this couple came down, I went out the back door and said, "pardon me, are you looking for someone?" They said, "we are going to the beach." I said, "I am sorry, but you are on private property. If you want to go to the beach you do down Kulamanu Place." They said, "we know about you, you're denying us access." I said, "wait a minute, I am not denying you access, you are on private property." This goes on week in and week out.

'As far as the statement that was just made about the beach, it depends on the tides whether we have a wide beach or narrow beach. It has nothing to do with the walls. Our wall was built by our father and a yardman in 1920 and has withstood tidal waves and extreme high tides and if the board wants to come out and see it now with what we've had in the recent few days with these storms, sure, naturally, you're going to have beach erosion, at that point and time. If we are denied this, behind our walls, take it away, what is going to happen then? They still won't have any beach, which they say we are denying them access. The way to get down to the beach is at the end of Kulamanu Place -- why come through people's private property, and this is property we own, period! We will fight this to the bitter end. My brother and I were born in that house, built by our parents in 1920."

When asked by Mr. Paty if she had lived in the area since 1920, Ms. Gonsalves said that her grandparents, on her mother's side, owned property on the ewa side. They were the first to live in Kaalawai, permanently, since 1911, so their family has been there for three generations. Since that time, they were told by their mother that there was no road on the beach.

Mr. Tom Fee, although he was before the board on another matter, recommended that this issue be sent to the Dispute Resolution Agency for resolution.

Mr. Paty thanked Mr. Fee but stated that there are times when this board would like to refer some matters to an agency of this kind. However, in this case the board can, and will, make a decision, taking all testimony into consideration.

Mr. Kealoha said that since last year's meeting in November, formulation of a permanent resolution for the public use of this beach road has not been possible. Quite obviously, because of several legal issues regarding ownership of this public road. Also, the public already has, in the minds of the board, an implied public easement across the parcel in question. A decision today, one way or the other, he felt was not possible. He, therefore, moved to defer the decision making action in this matter to the board's next meeting on Oahu, which is scheduled for January 22, 1988. Mr. Arisumi seconded, motion carried. Mr. Ing was excused from voting on this matter.

RECESS: 11:15 A.M.

RECONVENE: 11:25 A.M.

ACTION Mr. Kealoha moved to amend his earlier motion on Item F-29 by requesting approval to extend the revocable permits to January 31, 1988. He said that, at the board's meeting of November 21, 1986, under condition B.3, the revocable permits were to run no later than December 31, 1987. Motion carried with a second by Mr. Arisumi. Mr. Ing was excused from voting on this matter.

ITEM F-31 AMENDMENT TO G. L. NO. S-4276 AND CONSENT TO SUBLEASE, IOLANI SPORTSWEAR, LTD., TMK: 1-8-08:40, HANAPEPE, KAUAI.

ACTION Unanimously approved as submitted. (Ing/Arisumi)

ITEM F-12 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4895 TO ARTHUR K. KALEIKINI, TMK 2-5-24:13, MAKIKI, HONOLULU, OAHU.

Mr. Young said that Mr. Kaleikini was served a Notice of Default on said lease for failure to keep real property tax payments current. The Notice was served the lessee via certified mail dated July 20, 1987 and delivery accepted on July 21, 1987. The Notice afforded the lessee a sixty day cure period to correct the default by paying the delinquent real property tax of \$2,171.57 as of October 8, 1987, for the tax years 1984-85, 1985-86, 1986-87 through 1987-88. Staff has been notified by the City and County of Honolulu that the lessee has not cured the default.

Mr. Kealoha asked Mr. Young whether he had made any personal contact with Mr. Kaleikini. Mr. Young said that he had, back in July. Three different defaults were served. Mr. Young said that he had a hard time locating him but finally did after speaking with family members. However, he had not make personal contact since July 21st. In answer to Mr. Kealoha's question as to whether any of the certified letters were returned, Mr. Young replied, "no".

ACTION Mr. Ing moved to approve as submitted. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-13 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4909 TO JAMES M. PERRY, TMK: 2-5-24:06, MAKIKI, HONOLULU, OAHU.

ITEM F-14 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4902 TO BONNIE-LEE H. SHEA, TMK: 2-5-24:24, MAKIKI, HONOLULU, OAHU.

Mr. Kealoha asked Mr. Young if there were any problems with Items F-13 and F-14. Mr. Young replied, "as a matter of fact, I was going to ask to withdraw these two items inasmuch as rental and taxes were paid."

ACTION Mr. Arisumi moved to withdraw Items F-13 and F-14. Mr. Ing seconded; motion carried unanimously.

ITEM F-26

FORFEITURE OF HOMESTEAD LEASE NO. 53 TO THE ESTATE OF CLARA K. KAMAKEEAINA, LOT 18, HAUULA HOMESTEADS, HAUULA, KOOLAULOA, OAHU, TMK 5-4-14:03.

Mr. Kaleo was asked by Mr. Paty to come forward. Mr. Kaleo stated that this was the third time he was before the board and was very sorry that the board had to spend this kind of time on this matter. Realizing that he had probably already lost the lease, he wanted the board to know that they were not just a bunch of squatters. He said that they had spent about \$27,000 on improvements and about \$10,000 on taxes in the three years that they have been out there. He continued to inform the board on the problems they encountered in trying to pay the taxes and not being able to catch up because of the high interest and penalties, which were added to the back taxes.

Mr. Ing felt that since this item had been before the board no dent had been made in the back taxes that it would seem that Mr. Kaleo would be better off letting it go then to put money into it and continue to slide back.

ACTION

Mr. Arata moved to cancel as recommended by staff. Seconded by Mr. Ing, motion carried unanimously.

ITEM F-25

AMENDMENT TO G. L. NO. S-4369 (WAIANAE DISTRICT COMPREHENSIVE HEALTH AND HOSPITAL BOARD, INC.), LUALUALEI, WAIANAE, OAHU, TMK: 8-6-01:03.

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

ITEM H-12

CDUA FOR THE ATLANTIS SUBMARINE TOUR OPERATION OFFSHORE OF KONA, HAWAII (MR. ERIC GUINHER, AGENT FOR ATLANTIS SUBMARINE, INC.).

This item was presented by Mr. Evans with a recommendation to approve, subject to the conditions listed in the submittal.

Mr. Kealoha asked about the hours of this operation as well as the number of trips a day.

Mr. Evans understood that the trips would be continuous, each taking about one hour. He did not know what the hours would be.

Mr. Kealoha asked that this information be incorporated into the conditions. It was one of the board's strong concerns -- as to how many trips would be made in one day.

Mr. Kealoha asked if docking would remain at the Kailua Pier.

Mr. Evans said that the Kailua Pier would be used for the loading and unloading of passengers. If Kailua Pier is used on a first come, first served basis, DOT will issue a permit. The storage of the submarine overnight is being proposed for Honokohau Harbor. For the present time, DOT has said that they would be willing to issue a first come, first served, permit. In the future, however, they feel that, because of congestion, they may have to place some kind of restriction at which point and time the applicant may be forced to go to Honokohau Harbor.

If they change to Honokohau, asked Mr. Kealoha, how would the CDUA be affected?

"Very little, if any", said Mr. Evans. The CDUA is neither for the Kailua Pier or Honokohau Harbor, it is only for the submerged lands.

With respect to anything that is presently on the submerged lands, Mr. Kealoha asked whether there was a condition where the applicant would have to come to the board for the removal of any substance.

Mr. Evans said that there is a condition as to what they are going to put down. Also, as a standard condition, they will have to submit an artificial reef construction plan for approval before putting the reef down. It would be through these conditions that this would be accommodated.

Mr. Kealoha asked, "what if there is an existing old sunken ship or airplane of some kind, since World War II, and now they want to move it three feet or 300 feet, would this require a CDUA?"

"If it was determined that this would be a land use and they wanted to change that land use, then they would need to come in for a new CDUA or amend this one", replied Mr. Evans.

Mr. Kealoha felt then that this should be a part of the condition. Determination could be made later as to whether it was a use or not.

Mr. George Oscar of the Atlantis Submarine, in answer to Mr. Arata's question, said that he was aware of and satisfied with the conditions listed in the submittal and also the 27th condition being proposed, which was that the CDUA be amended prior to the movement of any existing submerged objects.

Mr. Kealoha said that he was not concerned as to whether or not they have to go through a CDUA process, but there may be government property, or whatever object is down there, which may require administrative or whatever approval before it is removed.

Mr. Evans said that a 27th condition would be added, taking in Mr. Kealoha's concerns.

ACTION

Mr. Arata moved to approve as amended. Mr. Arisumi seconded.

Mr. Paty called for the question. Mr. Ing said that in the approval section there is "approval of the application for installation of artificial reefs and moorings", but the number of reefs and moorings are not specified. Because the board has had problems with that in the past, he felt that it should be specified. With respect to condition no. 17, it seemed to indicate that you are allowing for ships or planes to be sunk, but it is not included in the description of what is being approved.

Mr. Evans said that they could be more specific, but the representation throughout has been that the artificial reef would go at the nearshore site at what they call the deep site. They intended to sink an object and, an example of an object, was an old plane.

Mr. Ing felt that this should be specified -- what is being allowed -- so there is no question.

Mr. Oscar said that what the application and environmental impact statement called for in regards to sunken vessels are a vessel sunk in shallow water -- approximately 100 feet of water -- near the artificial reef site, specially converted to act as an artificial reef in itself and at some later point and time a position in deeper water, a second vessel.

Mr. Arata asked that drawings of the artificial reef be submitted to staff.

Mr. Oscar said that the conditions require them to submit four sets of drawings before they do any deploring of the reef. These final plans will have to be worked out with DLNR, National Marine Fisheries, the U. S. Army Corps and the University of Hawaii.

In answer to Mr. Ing's question as to how many reefs will be built, Mr. Oscar said that there will be only one reef, but there may be individual pods or modules.

Mr. Ing felt then that the scope of the approval would need to be defined so, for example, we don't end up with a reef from Keahole to Kona.

Mr. Oscar said that this is not their intent and the scope is clearly defined in the environmental impact statement.

Mr. Ing said that the scope would need to be defined in the approval because we may approve something that is different in the environmental impact statement.

Mr. Ing asked, "how many moorings were requested in the EIS?"

Mr. Evans answered, "two", and are to be located in Kailua Bay.

Mr. Oscar said that one will be Kailua Bay for the purpose of mooring the transfer platform and one at the dock site. Also, everything they are proposing to do will be within an area of 400' x 500'.

Mr. Ing said that there should be a condition with respect to insurance coverage. However, that could probably be handled by Land Management.

Mr. Arata called for the question.

Mr. Paty asked what the number of people would be per tour. Mr. Oscar said that the maximum for any tour would be 46 people.

Mr. Paty called for the vote. Vote was unanimous; motion carried.

ITEM H-5

CDUA FOR AN EASEMENT ACROSS A CONSERVATION-ZONED STATE-OWNED RIGHT OF WAY AT MAMALAHOA TRAIL, NO. KONA, HAWAII (KONA BEACH DEVELOPMENT VENTURE, L.P.).

Mr. Paty called for the applicant's representative to come forward.

Messrs. James Funaki and Mr. Tom Fee came forward. Mr. Funaki said that they did not receive a copy of staff's recommendation. After receiving a copy, they took a few minutes to review same and said that they had no objections to staff's recommendation.

ACTION

Unanimously approved. (Arata/Arisumi)

ADDED  
ITEM H-14

CDUA TO AMEND TITLE 13, CHAPTER 2, ADMINISTRATIVE RULES AND TO ESTABLISH SINGLE-FAMILY RESIDENTIAL USE.

Mr. Evans explained that this was a request for an amendment to our administrative rules, Title 13, Chapter 2, which is on private land at Lanikai. The parcel involved is about 76 acres. The request is to change about five of those 76 acres from Limited to General Subzone and, once that is accomplished, then the proposal is to allow for construction of a single family residence in this newly created subzone.

Mr. Ing asked to be excused from voting on this request.

Mr. Evans went on to point the subject area out on a map. Also pointed out was the area where the residence would be located.

Mr. Evans said that a number of people came to the public hearing on this issue. Also presented at the time was a petition. When staff began their analysis on this issue, based upon the information they had, it seemed to them that the real issue had not surfaced -- in staff's view, the issue was spot zoning. Staff felt this way inasmuch as all the Conservation land in this area was within the Limited Subzone.

Mr. Evans explained why the board had voted to place the area in the Limited Subzone -- for reasons such as flooding and erosion -- and went on to explain staff's reasons for recommending denial. One of the reasons being the question of spot zoning, which is when you take a piece of land that is zoned in some fashion, carve out of that, an island, and then allow something to be done on that island that is not allowed in the surrounding land.

Mr. Kealoha asked, "Roger, you're saying that to change a portion of this Limited Subzone to the General Subzone is known as spot zoning?" Mr. Evans replied, yes, and went on to say that we could be challenged and, from staff's perspective, there would be a risk that it could be a very successful challenge.

Mr. Kealoha said that this would not change the Conservation to Urban. However, Mr. Evans did not feel that it had to. Spot zoning, for example, could occur in an Urban area, where you have a residential use and then you still are in Urban, but change something to business, or commercial. There is no requirement that it is only limited to Conservation or Urban. In fact, the spot zoning cases, for the most part, have been taken up in the Urban areas.

"You recommend that the applicant go to the Land Use, for what purpose," asked Mr. Kealoha?

Mr. Evans explained that if the applicant were to petition the Land Use, the purpose would be to change the Conservation District to something else. Mr. Kealoha felt that it would be more appropriate to spot zone in the Conservation -- to remain in Conservation, then to go to the Land Use and have it rezoned Urban. "Conceptually," said Mr. Evans, "that is correct. However, the difficulty with that is spot zoning is illegal from staff's perspective."

Mr. Kealoha asked whether there had been any substantial change in the physical environment of the entire 76 acres. Mr. Evans said that there has been no evidence presented or to staff's knowledge, testimony given, of any substantial change in the condition on that piece of property since the board first placed it in the Limited Subzone.

Mr. Arisumi asked, "Mr. Evans, if this particular parcel was less than 10 acres, and it falls in "nonconforming", what would happen?"

Mr. Evans said that if this applicant had come in for non-conforming use and would have met the criteria, which is spelled out in the statute and the rule for non-conforming use, staff would be sitting before the board this morning with a recommendation for approval of a non-conforming use, which is a single family house. Part of staff's difficulty, in terms of a policy, what if they say yes here -- there is limited subzone, going to take a portion, change it and give the guy a house, from staff's perspective they would tend to emasculate the whole conservation district because they would get someone who is in the Protective Subzone, that has acreage, people elsewhere, and, instead of coming in under a conditional use, when it would get denied, would come to staff to change administrative rules, which once they've said yes to the first time, how can we then say no another time. This was something that also entered into staff's thinking.

Mr. Arisumi seemed confused. Here was someone with 76 acres that wants to put up one house in that 79 acres and we are recommending denial. Then, if somebody else owns another parcel around there, which is 10 acres or less and meets the criteria of non-conforming, he is granted permission to build. It seemed awkward to him.

Mr. Evans explained that the purpose of non-conforming is to eventually bring all zoning, or uses, into conformance with whatever rules are in effect. The difficulty with that non-conforming statute is that when, in the Legislature's wisdom, they set up the criteria, what they did not do was amortize it out for a period of time so that even though it was done several years ago, someone who has a piece of land can trade it and/or sell it and they will still have that non-conforming provision. It never expires. The purpose of the zoning is generally to stabilize community values and property.

Mr. Ben Matsubara, attorney for the applicant, said that staff's recommendation was based principally on the fact that the approval of the CDUA would amount to spot zoning. He continued testifying as follows:

"Although the term spot zoning is seemingly simple, I think it is subject to multiple and various definitions. For example, staff recommends denial on the basis of spot zoning because we are asking to have the subzone changed from Limited to General. We are not asking to change the Conservation designation. On the other hand, the second recommendation just below that, is that they recommend that we petition the Land Use Commission to take some other action to remove the property from the Conservation district. I, on the other hand, would interpret this action as spot zoning. If I attempted to change the classification of the Conservation District and place an urban island, so to speak, within the Conservation District, that, to me, would amount to spot zoning.

'Before this application was filed, various alternatives were considered, one, of which, was to file a Land Use petition. Factors in favor of filing a petition included the fact that an adjoining property was urban, and, as a staff accurately observed, similar in nature physically to our property. The adjoining property that was designated urban was also densely populated with single family dwellings. This alternative was not taken because it was felt that the property should stay in Conservation District, not in the "L" subzone, but in the Conservation District. To do otherwise would constitute spot zoning and it was felt that the nature of the surrounding property should be governed by this body. I believe that any use of this property is subject to the rightful jurisdiction of this particular body. By changing the classification of that property, if we went to the Land Use Commission and requested an urban classification and were fortunate enough to get it, jurisdiction of this property, which in turn is surrounded by conservation property, would follow under the jurisdiction of the City and County of Honolulu and, that, we felt, would not be consistent with use of the property of the surrounding Conservation District.

'The staff also has a problem with a concept of bootstrapping and they are contending that we're saying that we are going to improve the property and therefore we should be permitted to build a house. I think the record will reflect, and testimony today will reflect, that the erosion and the flooding on the property has gone on for years. That is a natural state of the property as it exists. Our proposal, yes, is to improve that property and I think to improve it in terms of sound conservation principles and policies, which is to prevent Conservation District Use lands from erosion and floods. I can see if the property was not suspect to such problems, then our suggestion to make improvements, which really amounts to nothing, would, in fact, be bootstrapping. But I think what we are proposing to do is cure the natural and existing problem of longstanding.

'I think that the problems that we are going to cure have already been brought forth to this body in the public hearing we had which would be to minimize flooding, improve the culvert, reduce erosion and boulder roll-off. I think by doing these measures to Conservation District property, we are, in fact, improving a Conservation District use property. I think that is a factor that has got to be considered in terms of whether or not it amounts to spot zoning. I agree if we put an Urban island in there and everybody else

can then come and say "add on an urban piece to that" it would be detrimental to the Conservation policy principles. But, if what we are doing, in effect, preserves the Conservation District, and enhances it, then I think that spot zoning has also got to be viewed in that light in terms of the policies and conditions behind the zoning that presently applies and what we are asking for.

'I would like to point out that in staff's report the application and comment that relates to this particular petition was circulated to other planning agencies at the state and county levels. The Department of General Planning of the City and County of Honolulu, page 3 of this report and the DBED, on page 5 of the report, had no objection to our proposal and they have not raised the issue of spot zoning. I think that if it was that clear of an aspect, those two responsible planning agencies would have raised spot zoning as an issue.

'As a final comment, I would just like to point out that the staff has referenced the fact that, in 1978, the subzone designation of this property was changed from General. It was previously General to Limited. As far as the 1978 action goes, no testimony or evidence was ever presented that what the board did in 1978 was wrong or erroneous, or criticized. I agree that we have not presented any testimony to that because I think there are two ways to handle a case: one, we can come back and say that what you did in 1978 was wrong, what you did was unfair, you should change it. It was not right and it was not proper. The other way of doing it is to take the property as it is, presently, and, through the gathering of facts and evidence, take the property on its merits and present it again to you and argue that the property on its own, with its basic characteristic, has a requisite qualities and qualifications to be in the general subzone and that is the tact we took. I would not want the board to think that my client, when he learned of the action in 1978 agreed to it or was pleased with it. He was not, but we chose to present the case in this way and that is why a mention of that was not made.

'On behalf of his client, Mr. Matsubara thanked the board for their consideration of this petition and requested that they at least consider the request of placing just one dwelling on 75 acres. Mr. Evans indicated that they would be creating a general island in a Conservation District, but it is an island that is surrounded by water that is also owned by him and this is the only use to which he will be putting this property."

"You mentioned that prior to 1978 it was in General Subzone", said Mr. Kealoha?

Mr. Matsubara said, yes.

Mr. Kealoha asked if he knew for what reason it was changed to Limited.

Mr. Matsubara said that Mr. Englestad was not his client at the time; however, he said that he was not informed of the proceeding and learned about it later so he did not know what the basis for change was.

Mr. Evans said that from 1964 through 1978 there were only two subzones in the Conservation District. Those areas where we had our watershed which were considered restricted watershed and all other conservation lands regardless of the reason, were placed in Conservation, were placed in what was then called the General Subzone so the General Subzone pre-1978 is a very different thing from the General Subzone today. Today, we now have lands in our Protective Subzone, that, in 1978, were in the General Subzone.

Mr. Kealoha asked if the process would be the same to change the subzone, of notifying the property owners of the intent to change.

Mr. Evans said that the way it was structured in 1978, you would have to notify the property owners, but the department could not effectively keep track of all the property owners in the Conservation District so, what occurred instead, the Legislature okayed a one time shot whereby, for the purpose of one revision of the then Reg. 4, you notify everybody in the newspaper and that met the notification requirement. If we wanted to change something today, we would have to go to the landowners.

Mr. Arisumi said that, during the public hearing, there was some concensus from the public that the applicant was going to build a mansion up there. He asked Mr. Matsubara if the guy ever considered building a smaller home.

Mr. Matsubara said that the proposed residence is a large home that is comparable to what he is now living in. He intends to make this residence his primary residence after he retires. If this was to be his vacation home, then he would agree that it should be more appropriate in size.

Mr. Paty thanked Mr. Matsubara and asked whether anyone else wanted to testify on this application.

Ms. Barbara Smith, representing the Lanikai Association, thanked the board for listening to their concerns and comments at the public hearing and said that she did not hear anything else stated today that would have changed their minds. She believed that the issue of a small portion of a piece of land within a larger parcel that is zoned a specific use in a Conservation District is a valid point. You have a large acreage that Mr. Englestad owns, which is approximately 75 acres, but it is part of a whole hill that is zoned Limited and it affects lands on the other side of Kaiwa Ridge, as well as the area in Lanikai so, if you ask for one small portion of that, you are apt to set a precedence as other people on the other side of the ridge and on other portions of the ridge to also come back and ask for a small portion to be zoned General. It is not just his land that that affects.

Mr. Fred Van Dyke, who presently lives in Lanikai below the proposed project, said that right now he is trying to keep his house from being washed away and this has been going on for about a week and a half now. He said that Lanikai is normally dry but when the rain comes it is like a flood in the desert -- it just comes and devastates, which is an issue that has been brought up many times. He made reference to Mr. Matsubara's many statements which were prefaced with the words "if" and "I think". He said that when you're doing a project as important as this one, "if" and "I think" does not show him a factual, eventual possibility. Either it works or it doesn't.

Mr. Arisumi asked Mr. Van Dyke what his real basic concern was.

Basically, his concerns were flooding, erosion and also the very simple fact that this is Conservation land and many hundreds or thousands of people use it as that particular purpose -- they look at it or walk upon it.

Mr. Arisumi asked Mr. Englestad what his feeling would be if Mr. Englestad were to put up a sump to collect all the water that comes down to flood the area.

Mr. Van Dyke's major concern about having anything built up there was that already the things are caving away. If you put a structure like concrete, it's going to come around it and eventually it will erode underneath and eventually the water is going to take away something that is not necessary to take away.

#### ACTION

After questioning Mr. Van Dyke further, Mr. Kealoha said that, like Mr. Arisumi, he too was somewhat confused about this item and staff's recommendation. However, he moved that the board approve staff's recommendation to deny the subzone. Mr. Arata seconded.

Mr. Paty called for the vote. Messrs. Paty, Arata and Kealoha voted yes, Mr. Arisumi opposed. Mr. Ing abstained from voting inasmuch as his firm, at one time, had represented the applicant. Motion failed to carry for lack of a majority vote.

Mr. Kealoha requested a five minute recess.

RECESS: 1:05 P.M.

RECONVENE: 1:20 P.M.

Mr. Kealoha asked that the board reconsider his motion to approve the recommendation made by staff, which is to deny the application, and moved instead to accept staff's recommendation.

Mr. Paty asked, "you're moving to reconsider your motion?"

Mr. Kealoha said, yes.

Mr. Paty called for a second. There was no response so Mr. Paty seconded.

Mr. Paty called for the question. He then called for the vote to reconsider Mr. Kealoha's motion. Messrs. Paty, Kealoha and Arata voted yes. Mr. Arisumi voted no. Motion failed again to carry for lack of a majority vote.

Mr. Paty pointed out that it takes a CDUA application four votes for approval so, in effect, the motion has failed and CDUA Application No. 2051, under the Conservation District use provision to deny, has failed to pass and the use will automatically be effective on 12/21/87, which is the date we have. However, the conservation rules for construction will prevail and that is that the board will require the applicant to submit to the board for final approval before any construction begins. The way it worked out, we had a 3 to 1 vote since one member was absent and another abstained.

ITEM H-4

AFTER-THE-FACT CDUA FOR AN ART STUDIO AND STORAGE SHED AT HAENA, KAUAI (MR. DAVID M. LA COCK).

Mr. Arisumi asked the applicant why he wasn't present at the last meeting on Maui.

Mr. LaCock said that he was told that he was not going to be able to keep the structure. However, he was then called by someone on Kauai to come to the board and present his pictures, etc. and this is why he was at today's meeting -- to present photographs of the structures. He pointed out the things that were in the structure and also what was there, such as bathtub, etc., and which was subsequently removed.

Mr. Arisumi felt that anyone who does farming is entitled to storage space. However, looking at the pictures, it appeared that some commercial work was being done in one of the structures.

ACTION

Mr. Arisumi moved to keep Room B, for storage purposes only and that Room A be removed (Rooms A & B shown in Exhibit 5), and that the \$500 fine be paid.

Mr. Paty called for discussion on the motion.

Mr. Ing said, then the motion is to grant in part and deny in part, the request to convert the guest house into a storage shed and that portion be removed. Mr. Arisumi said, yes.

Mr. Ing seconded; motion carried unanimously. Mr. Ing asked also that the pictures received from Mr. LaCock be made a part of the records just in case this matter comes up again.

- ITEM B-1      REQUEST FOR AUTHORIZATION TO HIRE A CONSULTANT TO ASSIST IN THE IMPLEMENTATION OF A HAWAII SMALL-SCALE COMMERCIAL FISHING VESSEL SURVEY.
- ACTION      Unanimously approved as submitted. (Arata/Kealoha)
- ITEM C-1      APPLICATION FOR F.Y. 1988 RURAL COMMUNITY FIRE PROTECTION FUNDS (KAUAI, MAUI, AND HAWAII COUNTIES).
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM C-2      PERMISSION TO ADVERTISE FOR BIDS - PROJECT NO. DOFAW 87-1, REPAIR AND RENOVATION OF THE OLINDA ENDANGERED SPECIES STAFF HOUSE AND GARAGE, MAKAWAO, MAUI.
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM D-1      APPLICATION FOR A STREAM CHANNEL ALTERATION PERMIT, AHUIMANU STREAM, KOOLAUPOKO, OAHU.
- ACTION      Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM D-2      PERMISSION TO ADVERTISE FOR BIDS - JOB NO. 80-HP-D, STATEWIDE FACILITIES FOR THE HANDICAPPED, RAINBOW FALLS, WAILUKU RIVER STATE RECREATIONAL AREA, HILO, HAWAII.
- ITEM D-3      PERMISSION TO ADVERTISE FOR BIDS - JOB NO. 89-HP-D, KAMOA PT. ARCHAEOLOGICAL COMPLEX SITE CLEARING, SO. KONA, HAWAII.
- ITEM D-4      PERMISSION TO ADVERTISE FOR BIDS - JOB NO. 80-OP-D-3, CONSTRUCT WALKWAYS AND TOILET FACILITIES FOR THE HANDICAPPED, AINA MOANA STATE RECREATION AREA, HONOLULU, OAHU.
- ACTION      Mr. Arata moved to approve Items D-2, D-3 and D-4 as submitted. Seconded by Mr. Arisumi, motion carried unanimously.
- ITEM D-5      PERMISSION TO HIRE AN ENGINEERING CONSULTANT FIRM TO PREPARE CONSTRUCTION PLANS AND SPECIFICATIONS FOR JOB NO. 61-OQ-9, MAHIMAHI PROJECT AT KAPALAMA, OAHU.
- ACTION      Unanimously approved as submitted. (Kealoha/Arata)
- ITEM D-6      PERMISSION TO ENTER INTO CONTRACT FOR SOIL ENGINEERING SERVICES FOR JOB NO. 4-OW-P, PUMP AND CONTROLS FOR KULIOUOU WELL, OAHU.
- ACTION      Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM D-7      PERMISSION TO HIRE CONTRACTOR TO REPAIR THE KOKEE STATE PARK WATER SYSTEM, KAUAI.
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM D-8      SOIL AND WATER CONSERVATION DISTRICT DIRECTORS, MOLOKAI-LANAI.
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM D-9      FILLING OF POSITION NO. 9715, ENGINEER (CIVIL) IV, DIVISION OF WATER AND LAND DEVELOPMENT, OAHU.
- ACTION      Mr. Kealoha moved to approve the appointment of Mr. Stephen K. Chang to Position No. 9715, effective January 1, 1988. Seconded by Mr. Arata, motion carried unanimously.

- ITEM E-1 FILLING OF POSITION NO. 13124, PARK CARETAKER II, WEST UNIT KAUAI PARKS SECTION.
- ACTION Mr. Arisumi moved to approve the appointment of Mr. Clifford Bukoski to Position No. 13124. Seconded by Mr. Arata, motion carried unanimously.
- ITEM E-2 FILLING OF PLANNER III POSITIONS NOS. 26373 AND 27440, DIVISION OF STATE PARKS, OAHU.
- ACTION Mr. Ing moved to approve the appointment of Mr. Palani Schuster to fill Position 26373, assigned to the Planning Branch, and Ms. Lauren Tanaka to fill Position No. 27440, assigned to the Statewide Recreation Planning Program. Seconded by Mr. Kealoha, motion carried unanimously.
- ITEM E-3 CURATOR AGREEMENT FOR THE MAINTENANCE OF POLIAHU HEIAU, HIKINAAKALA HEIAU, AND KAUOLA (PLACE OF REFUGE), WAILUA RIVER STATE PARK, KAUAI.
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM E-4 APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE A STABILIZATION PLAN FOR KANIAKAPUPU, A SUMMER RESIDENCE OF KING KAMEHAMEHA III.
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM E-5 SPECIAL USE PERMIT REQUEST FOR IOLANI PALACE GROUNDS.
- (See Page 2 for Action.)
- ITEM E-6 PERMISSION TO NEGOTIATE AND ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE PARK DESIGN AND PHASE I CONSTRUCTION DOCUMENTS FOR RUSSIAN FORT ELIZABETH STATE HISTORICAL PARK, WAIMEA, KAUAI.
- ACTION Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM E-7 FILLING OF POSITION NO. 15211, NURSERY WORKER I, WASHINGTON PLACE, OAHU PARK SECTION.
- ACTION Mr. Ing moved to approve the appointment of Mr. Jon H. Nakahara to fill Position No. 15211. Seconded by Mr. Arisumi, motion carried unanimously.
- ITEM F-1 DOCUMENTS FOR CONSIDERATION.
- Item F-1-a CONSENT TO ASSIGNMENT OF GENERAL LEASE (G.L.) NO. S-5082, RAYMOND P. RAPOZO, ET AL, TO GERALD L. POTTORF AND MARVIN T. KUNIKIYO, LOT 53, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TMK 1-4-02:53.
- Item F-1-b ISSUANCE OF LAND LICENSE TO TOWER CONSTRUCTION, INC. FOR CINDER REMOVAL AT WAKIU, HANA, MAUI, TMK 1-3-04:POR. OF 12.
- Item F-1-c ASSIGNMENT OF G. L. NO. S-4309, THE INVESTMENT CORP. TO WESTERN PACIFIC INVESTMENTS, WAIAKEA, SO. HILO, HAWAII.
- Item F-1-d ASSIGNMENT OF GRANT OF EASEMENT, F. NEWELL BOHNETT TO PUU LANI RANGER HOMEOWNERS ASSOCIATION, PUUANAHULU, NO. KONA, HAWAII.
- Item F-1-e ISSUANCE OF REVOCABLE PERMIT (R.P.) FOR RECREATIONAL BOAT PIER PURPOSES, KANEOHE BAY, KANEOHE, KOOLAUPOKO, OAHU, TMK: OFFSHORE 4-5-47:47 (KYOKO ZAHA).
- Item F-1-f ISSUANCE OF REVOCABLE PERMIT FOR RECREATIONAL BOAT PIER PURPOSES, KANEOHE BAY, KOOLAUPOKO, OAHU, TMK: OFFSHORE 4-5-58:33 (C. BRYSON BUSH).
- Item F-1-g ISSUANCE OF LAND PATENT IN CONFIRMATION OF L.C. AWARD 4437, APANA 1 TO KAIWI (MAKE), PUHEMIKI, KOOLAULO, OAHU, TMK: 5-3-05:37.

- Item F-1-h ISSUANCE OF LAND PATENT IN CONFIRMATION OF L.C. AWARD 10185, APANA 1 TO MAKAI, KAPANO, KOOLAULO, OAHU, TMK: 5-3-05:30.
- Item F-1-i CONSENT TO SUBLEASE, HONOLULU COMMUNITY THEATRE TO CALVARY CHAPEL, G. L. NO. S-4411, KAPAHULU, HONOLULU, OAHU.
- Item F-1-j CONSENT TO ASSIGNMENT OF G. L. NO. S-4573, R.K.U. ENTERPRISES, INC. TO KURT Y. KAMIKAWA, LOT 23, HANAPEPE BUSINESS LOTS, HANAPEPE, WAIMEA, KAUAI.  
Mr. Young asked that the Assignee's name be changed from Hanapepe Center Associates, Inc. to Hanapepe Place Associates, Inc.
- Item F-1-k KARL HORI REQUEST FOR CONSENT TO ASSIGNMENT, G. L. NO. S-4636, PANAWEA FARM LOTS, 2ND SERIES, WAIAKEA, SO. HILO, HAWAII.  
ACTION Mr. Kealoha moved to approve Items F-1-a through F-1-i, as submitted, F-1-j, as amended, and F-1-k, as submitted. Seconded by Mr. Ing, motion carried unanimously.
- ITEM F-2 J. & J. R. T., INC. REQUEST TO PURCHASE DIRECT GRANT OF EASEMENT FOR ROAD AND UTILITY PURPOSES AT PAO'O, NO. KOHALA, HAWAII.  
ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-3 REQUEST TO FILL VACANT LAND AGENT IV POSITION, HAWAII DISTRICT OFFICE.  
ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-4 WITHDRAWAL OF LAND FROM GOVERNOR'S EXECUTIVE ORDER NO. 2427 ISSUED TO THE DEPARTMENT OF TRANSPORTATION, KAHULUI AIRPORT, KAHULUI, MAUI.  
ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-5 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES REQUEST TO ACQUIRE ELECTRICAL/ TELEPHONE TRANSMISSION LINE EASEMENT TO SERVE KIHEI ELEMENTARY AND INTERMEDIATE SCHOOL, KULA, MAKAWAO, MAUI, TMK: 2-2-02:42.  
ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-6 ONE (1) YEAR HOLDOVER OF G. L. NO. S-3717, WEST MAUI A.J.A. VETERANS CLUB, TMK: 4-5-14:51, WAHIKULI, LAHAINA, MAUI.  
Mason Young asked to change Section 171-40, as shown under STATUTE on page 1 of the submittal to Section 171-43.1.  
ACTION Unanimously approved as amended. (Arisumi/Arata)
- ITEM F-7 SALE OF PASTURE LEASE AT PUBLIC AUCTION, LOT 10, KAHAKULOA HOMESTEADS, KAHAKULOA, KAAHAPALI, MAUI.  
ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-8 REQUEST OF COUNTY OF MAUI FOR RIGHT-OF-ENTRY TO ENCUMBERED STATE LAND FOR DRILLING AND TESTING OF WATER WELL, KAHAKULOA, WAILUKU (KAAHAPALI), MAUI, TMK: 3-1-01:POR. 29.  
ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-9 FEDERAL AVIATION ADMINISTRATION REQUEST OR EXTENSION OF FAA LEASE NO. FA-PC-245 AT DIAMOND HEAD CRATER, FT. RUGER, HONOLULU, OAHU, FOR PARKING FACILITY.  
ACTION Unanimously approved as submitted. (Ing/Kealoha)

- ITEM F-10 DIRECT SALE OF RECLAIMED (FILLED) LAND AT KANEOHE, OAHU, LAND SEAWARD OF  
TMK: 4-4-06:14.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-11 DIRECT SALE OF RECLAIMED (FILLED) LAND AT EWA BEACH, EWA, OAHU, LAND  
SEAWARD OF TMK: 9-1-23:18.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-12 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4895 TO ARTHUR K.  
KALEIKINI, TMK: 2-5-24:13, MAKIKI, HONOLULU, OAHU.
- 
- (See Page 14 for Action.)
- ITEM F-13 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4909 TO JAMES M. PERRY,  
TMK: 2-5-24:06, MAKIKI, HONOLULU, OAHU.
- 
- ITEM F-14 STAFF RECOMMENDATION, FORFEITURE OF G. L. NO. S-4902 TO BONNIE-LEE H. SHEA,  
TMK: 2-5-24:24, MAKIKI, HONOLULU, OAHU.
- 
- Items F-13 and F-14 were withdrawn. See Page .
- ITEM F-15 DIRECT SALE OF A PORTION OF THE KIPAPA BYPASS ROADWAY SITUATE AT WAHIAWA,  
OAHU, MILILANI TOWN, INC., APPLICANT.
- 
- (See Page 14 for Action.)
- ITEM F-16 AUTHORIZATION TO CANCEL G. L. NO. S-3978 TO RALPH AJIFU AND RICHARD AZAMA,  
KALUAPUHI, KANEOHE, OAHU.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-17 CANCELLATION OF EXECUTIVE ORDERS, ISSUANCE OF AN EXECUTIVE ORDER TO THE  
DEPARTMENT OF HEALTH, AND DIRECT LEASE TO UNIVERSITY OF HAWAII COVERING  
STATE LANDS AT KEAAHALA, KANEOHE, KOOLAUPOKO, OAHU.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-18 ACQUISITION OF ADDITIONAL LAND FOR KAHUKU ELEMENTARY SCHOOL SITUATE AT  
KAHUKU, OAHU, DAGS JOB NO. 12-16-1482.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-19 DIRECT SALE OF RECLAIMED (FILLED) LAND, KANEOHE, OAHU, LAND SEAWARD OF  
TMK: 4-4-21:25.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-20 SET ASIDE OF THREE AGRICULTURAL PARKS TO THE DEPARTMENT OF AGRICULTURE,  
ISLAND OF OAHU.
- 
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-21 REQUEST OF MRS. ANNA HAM FOR ASSIGNMENT AND EXTENSION OF G. L. NO. S-3793,  
LOT 18-A, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU,  
KOOLAUPPOKO, OAHU, TMK: 4-1-10:06.
- 
- ACTION Unanimously approved as submitted. (Ing/Arisumi)
- ITEM F-22 GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT FOR SEAWALL AT KUALOA,  
KOOLAUPOKO, OAHU, TMK: 4-9-08:05, NALANI KELE, APPLICANT.
- 
- ACTION Unanimously approved as submitted. (Ing/Arisumi)

- AMENDMENT OR PRIOR BOARD ACTION (2/14/86, ITEM F-12) REGARDING SET ASIDE OF MICRO-WAVE SYSTEM SITE AT TANTALUS TO THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES.
- 
- ITEM F-23  
ACTION Unanimously approved as submitted. (Ing/Kealoha)
- GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT FOR WATERLINE PURPOSES AT WAIKIKI, HONOLULU, OAHU, ALA WAI CANAL AND ALA WAI GOLF COURSE.
- 
- ITEM F-24  
ACTION Withdrawn, at Mr. Young's request.
- AMENDMENT TO G. L. NO. S-4369 (WAIANAE DISTRICT COMPREHENSIVE HEALTH & HOSPITAL BOARD, INC.), LUALUALEI, WAIANAE, OAHU, TMK: 8-6-01:03.
- 
- ITEM F-25  
(See Page 15 for Action.)
- FORFEITURE OF HOMESTEAD LEASE NO. 53 TO THE ESTATE OF CLARA K. KAMAKEEAINA, LOT 18, HAUULA HOMESTEADS, HAUULA, KOOLAULO, OAHU, TMK: 5-4-14:03.
- 
- ITEM F-26  
(See Page 15 for Action.)
- AUTHORIZATION TO CAUSE FORFEITURE OF REVOCABLE PERMITS FOR FAILURE TO POST LIABILITY INSURANCE, ISLAND OF OAHU.
- 
- ITEM F-27  
ACTION Unanimously approved as submitted. (Ing/Kealoha)
- CITY & COUNTY OF HONOLULU REQUEST FOR AUTHORIZATION TO SUBMIT BIDS FOR THE KAPIOLANI GOLF DRIVING RANGE AND SNACK SHOP CONCESSION, KAPIOLANI PARK, HONOLULU, OAHU.
- 
- ITEM F-28  
ACTION Deferred. (Arisumi/Arata)
- Mr. Kealoha asked Mr. Young if staff had seen the plans. Mr. Young replied that no plans were submitted but that there was no indication that any changes would be made. Mr. Kealoha felt that we should get information as to exactly what they plan to do.
- REQUEST OF PROPERTY OWNERS AT KAALAWAI, KAPAHULU, TO RECONSIDER LAND BOARD ACTION OF 11/21/86 (AGENDA ITEM F-12) REGARDING DISPOSITION OF "OLD GOVERNMENT ROAD," KAALAWAI, KAPAHULU, HONOLULU, OAHU.
- 
- ITEM F-29  
(See Page 14 for Action.)
- WAIVER OF REPURCHASE OPTION, LOT A-17, WELIWELI HOUSELOTS, WELIWELI (KONA), KAUAI, TMK: 2-8-23:13.
- 
- ITEM F-30  
ACTION Unanimously approved as submitted. (Ing/Kealoha)
- AMENDMENT OF G.L. NO. S-4276 AND CONSENT TO SUBLEASE, IOLANI SPORTSWEAR, LTD., TMK: 1-8-08:40, HANAPEPE, KAUAI.
- 
- ITEM F-31  
(See Page 14 for Action.)
- LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HEALTH, MEDICAL SERVICES DIVISION, OAHU.
- 
- ITEM F-32  
AMENDMENT TO EXISTING OFFICE LEASE FOR THE DEPARTMENT OF HUMAN SERVICES, PUBLIC WELFARE DIVISION, OAHU.
- 
- ITEM F-33  
LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HUMAN SERVICES, HEALTH CARE ADMINISTRATION DIVISION, KAUAI.
- 
- ITEM F-34  
ACTION Mr. Ing moved to approve Items F-32, F-33, and F-34 as submitted. Mr. Kealoha seconded; motion carried unanimously.

- ITEM F-35      LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, MOLOKAI ECONOMIC DEVELOPMENT COORDINATOR, KAUANAKAKAI, MOLOKAI.
- ACTION      Unanimously approved as submitted. (Arisumi/Ing)
- ITEM F-36      AMENDMENT TO LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HUMAN SERVICES, PUBLIC WELFARE DIVISION, LIHUE, KAUAI (APPROVED ITEM F 20 OF JULY 10, 1987).
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-37      LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HUMAN SERVICES, PUBLIC WELFARE DIVISION, KAILUA-KONA, HAWAII.
- ACTION      Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-38      LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HEALTH, CHILDREN'S MENTAL HEALTH PROGRAM, LIHUE, KAUAI.
- ACTION      Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-39      LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF EDUCATION, OFFICE OF LIBRARY SERVICES, HONOLULU, OAHU.
- ACTION      Unanimously approved as submitted. (Ing/Kealoha)
- ITEM F-40      ANNUAL REVIEW OF REVOCABLE PERMITS FOR THE ISLANDS OF HAWAII, MAUI, MOLOKAI, OAHU, AND KAUAI.
- Mr. Young presented this item with a recommendation to approve the continuation of the revocable permits listed in the Agenda on a month-to-month basis for another year without any change in the present rent.
- Mr. Ing objected -- he felt that the rent was too cheap and needed to be raised.
- Mr. Arisumi questioned rentals being charged for Permit A-5272 to DeCoite Trucking with 0.264 acre and paying \$191.00 and Permit A-5280 to Maui Excavation with 0.253, paying \$223.00. Since both permits were issued in 1976, he wondered why the one with the lesser area was paying more than the one with more acreage. Both these permits are listed on page 7 of the Maui Permits.
- Mr. Young did not know the answer. Mr. Arisumi asked that staff provide him with an answer. With respect to pasture lands, he asked if staff could let the board know what percentage of the total area was usable and what was not.
- Referring to Kauai Permit No. 6134 to Olokele Sugar Co., Mr. Arisumi asked, 1.87 acres for sugar cane and pasture, and they pay a rent of \$11, 998.00 - he asked if that was correct. Mr. Young did not know, but said that he would follow up. He thought that the acreage should be 1800 acres.
- Mr. Arisumi moved to approve as amended. Mr. Ing asked, at 4%? He felt that the 4% should be increased, same as last year, but a minimum of \$1.00. Mr. Arisumi amended his motion to include all permits, except the sugar lands, at the 4% increase.
- So, said Mr. Ing, the motion is to increase all permits by 4% except for lands in sugar production, but with a minimum of \$1.00. Mr. Arisumi said, yes. Mr. Ing seconded; motion carried unanimously.
- ITEM F-41      ACQUISITION OF LAND FOR ADDITION TO THE SACRED FALLS STATE PARK, KOOLAULOA, OAHU.
- ACTION      Unanimously approved as submitted. (Kealoha/Ing)

- ITEM G-1            FILLING OF POSITION NO. 6619, ABSTRACTING ASSISTANT III, OAHU.
- ACTION            Mr. Ing moved to approve the appointment of Mr. Rodney S. Takeuchi to Position No. 6619. Seconded by Mr. Kealoha, motion carried unanimously.
- ADDED
- ITEM G-2            LATERAL TRANSFER TO LAND DOCUMENT RECEIVING CLERK I, POSITON NO. 140, OAHU.
- ACTION            Unanimously approved as submitted. (Ing/Kealoha)
- ITEM H-1            CDUA FOR A SUBDIVISION OF STATE-OWNED LANDS TO CREATE A MICROWAVE RADIO SITE AT MANUKA, HAWAII (COUNTY OF HAWAII POLICE DEPARTMENT).
- ACTION            Unanimously approved as submitted. (Arata/Arisumi)
- ITEM H-2            CDUA FOR A JAZZ FESTIVAL AT DIAMOND HEAD CRATER, OAHU (THE HAWAII JAZZ PRESERVATION SOCIETY).
- Withdrawn. See Page 2.
- ITEM H-3            CDUA FOR THE CONSTRUCTION OF ADDITIONAL BERTHING FACILITIES AT HALEIWA BOAT HARBOR, NORTH SHORE, OAHU (STATE DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION).
- ACTION            Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM H-4            AFTER-THE-FACT CDUA FOR AN ART STUDIO AND STORAGE SHED AT HAENA, KAUAI (MR. DAVID M. LACOCK).
- (See Page 22 for Action.)
- ITEM H-5            CDUA FOR AN EASEMENT ACROSS A CONSERVATION-ZONED STATE-OWNED RIGHT-OF-WAY AT MAMALAOHA TRAIL, NO. KONA, HAWAII (KONA BEACH DEVELOPMENT VENTURE, L.P.)
- (See Page 17 for Action.)
- ITEM H-6            CDUA FOR A CONTRACTING/TRUCKING BASEYARD AND UTILITY EASEMENT AT NORHT KONA, HAWAII (MS. SANDRA PECHTER SCHUTTE).
- (See Page 3 for Action.)
- ITEM H-7            AFTER-THE-FACT CDUA FOR THE RIGHT OF ENTRY AND EASEMENT AND REPAIR OF A JETTY AT MAILIILII CHANNEL, LUALUALEI, WAIANAE, OAHU (DEPT. OF PUBLIC WORKS, CITY & COUNTY OF HONOLULU).
- Mr. Evans said that the jetty was constructed in 1965 and now they want to make some modifications. Staff's Recommendation B. is for approval and Recommendation A. is an acknowledgement that it is an after-the-fact application but that a \$500.00 fine be imposed. However, he pointed out that the fine came about basically that, in 1964 the agency came to the board and said that they wanted an easement, which was granted at that time. From 1965 to 1967, based on the initial board approval, did the work but the necessary easement document was never done and the necessary conservation application was never done. This time frame was from October, 1964, within a month or two, that the original Reg. 4 (Conservation Rule) went into effect.
- ACTION            Mr. Kealoha moved to approve staff's Recommendation B, but not Recommendation A. Seconded by Mr. Arisumi, motion carried unanimously.

- ITEM H-8 REQUEST FOR TIME EXTENSION ON AN APPROVED CDUA FOR A NONCONFORMING SINGLE-FAMILY RESIDENTIAL USE AT WAILUA, OAHU (MR. FREDERICK J. TITCOMB).
- ACTION Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM H-9 REQUEST TO MODIFY CONDITION OF APPROVAL ON CDUA FOR AN OVERHEAD POWERLINE AT MAKUA, OAHU (MR. LYLE E. TOEPKE).
- ACTION Unanimously approved as submitted. (Kealoha/Arisumi)
- ITEM H-10 REQUEST TO MODIFY PERMIT SYSTEM FOR COMMERCIAL FILMING ON CONSERVATION-ZONED AND/OR STATE-OWNED LANDS (FILM INDUSTRY BRANCH, DEPT. OF BUSINESS AND ECONOMIC DEVELOPMENT).
- Deferred. See Pages 3, 4 and 5.
- ITEM H-11 REPORT TO THE BOARD BY OCEA - DEEP SPACE SEARCH AND TRACKING FACILITY AT HALEAKALA.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM H-12 CDUA FOR THE ATLANTIS SUBMARINE TOUR OPERATION OFFSHORE OF KONA, HAWAII (MR. ERIC GUINHER, AGENT FOR ATLANTIS SUBMARINE, INC.).
- (See Pages 16 and 17 for Action.)
- ITEM H-13 AUTHORIZATION TO APPOINT A PUBLIC HEARING MASTER TO HEAR CONSERVATION DISTRICT USE APPLICATIONS.
- ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ADDED ITEM H-14 CDUA TO AMEND TITLE 13, CHAPTER 2, ADMINISTRATIVE RULES AND TO ESTABLISH SINGLE-FAMILY RESIDENTIAL USE.
- (See Pages 21 and 22 for Action.)
- ADDED ITEM H-15 FILLING OF POSITION NO. 148, REGISTRAR OF CONVEYANCES, OAHU.
- ACTION Mr. Kealoha moved to approve the appointment of Mr. Archibald Viela to Position No. 148 effective December 31, 1987. Seconded by Mr. Arisumi, motion carried unanimously.
- ADDED ITEM H-16 FILLING OF POSITION NO. 9636, LAND MANAGEMENT ADMINISTRATOR, OAHU.
- ACTION Mr. Kealoha moved to approve the appointment of Mike Shimabukuro to Position No. 9636. Seconded by Mr. Arisumi, motion carried unanimously.
- ADDED ITEM H-17 FILLING OF POSITION NO. 15705, ACCOUNT CLERK III, ADMINISTRATIVE SERVICES OFFICE, OAHU.
- ACTION Mr. Kealoha moved to approve the appointment of Ms. Doris Wu to Position No. 15705. Seconded by Mr. Arisumi, motion carried unanimously.
- ITEM I-1 OUT-OF-STATE TRAVEL REQUEST FOR FREDERICK CHUN.
- ACTION Unanimously approved as submitted. (Kealoha/Arisumi)

- ITEM J-1      AMENDMENT NO. 12 TO LEASE NO. DOT-A-78-2, HONOLULU INTERNATIONAL AIRPORT, OAHU (MARRIOTT CORP.).
- ACTION      Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-2      CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (HONOLULU FUELING FACILITIES CORP. - HAWAIIAN INDEPENDENT REFINERY, INC.).
- ACTION      Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-3      RESUBMITTAL OF APPROVED CONTRACT FOR A GIFT AND APPAREL CONCESSION, KEAHOLE AIRPORT, HAWAII.
- ACTION      Unanimously approved as submitted. (Arata/Arisumi)
- ITEM J-4      RESUBMITTAL OF APPROVED CONTRACT FOR A METERED TAXICAB SERVICES CONCESSION, KAHULUI AIRPORT, MAUI.
- ACTION      Unanimously approved as submitted. (Arata/Arisumi)
- ITEM J-5      APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 4402, GENERAL LYMAN FIELD, HAWAII (10 AVIATION, INC.).
- ACTION      Unanimously approved as submitted. (Arata/Arisumi)
- ITEM J-6      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, ALA WAI BOAT HARBOR, HONOLULU, OAHU.
- ACTION      Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-7      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 60, HONOLULU HARBOR, OAHU (AMERON HC&D).
- ACTION      Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-8      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 18 SHED, HONOLULU HARBOR, OAHU (MR. EDWARD HO KIL UM, DBA ONE KI INC.).
- ACTION      Unanimously approved as submitted. (Ing/Keloha)
- ITEM J-9      RESUBMITTAL OF SALE OF LEASE BY PUBLIC AUCTION, HARBORS DIVISION, ALA WAI BOAT HARBOR, HONOLULU, OAHU.
- ACTION      Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-10      LEASE - KAHULUI AIRPORT, MAUI (PAPILLON HELICOPTERS, INC.; SUNSHINE HELICOPTERS, INC.; HEMMETER AVIATION, INC.).
- Mr. Ing asked to be excused from voting on this item.
- ACTION      Mr. Arisumi moved to approve as submitted. Motion carried with a second by Mr. Arata. Mr. Ing was excused from voting.
- ITEM J-11      APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4408 AND 4409, AIRPORTS DIVISION.
- Mr. Ing asked to be excused from voting on this item.
- ACTION      Mr. Kealoha moved to approve as submitted. Motion carried with a second by Mr. Arisumi. Mr. Ing was excused from voting.

ITEM J-12 AMENDMENT NO. 3 TO LEASE NO. A-62-34, HONOLULU INTERNATIONAL AIRPORT, OAHU (AIR SERVICE CORP.).

ITEM J-13 CONSENT TO ASSIGNMENT OF LEASE NO. A-62-34, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (AIR SERVICES CORP. - MID PACIFIC AIR SERVICE CORP.).

ITEM J-14 LEASE - BASE FACILITIES, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (MID PACIFIC AIR SERVICE CORP.).

ITEM J-15 LEASE - FIXED-BASE FACILITIES, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (AIR SERVICE CORP.).

ACTION Mr. Ing moved to approve Items J-12, J-13, J-14 and J-15 as submitted. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM J-16 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 4410, KAHULUI AIRPORT, MAUI (LEI ALOHA ENTERPRISES, INC., DBA LEI-ALOHA HELICOPTERS).

ACTION Unanimously approved as submitted. (Arata/Ing)

ITEM J-17 RENEWAL OF REVOCABLE PERMITS 3800, ETC., AIRPORTS DIVISION.

ACTION Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM J-18 CONTINUANCE OF REVOCABLE PERMITS H-86-1383, ETC., HARBORS DIVISIONS.

ITEM J-19 CONTINUANCE OF REVOCABLE PERMITS H-80-879, ETC., HARBORS DIVISION.

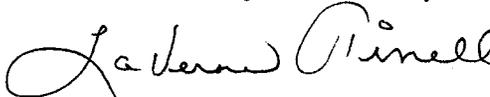
ACTION Mr. Arisumi moved to approve Items J-18 and J-19 as submitted. Seconded by Mr. Arata, motion carried unanimously.

RESOLUTIONS Resolutions, expressing the board's appreciation for services rendered, were unanimously adopted by the board for the following persons:

- . Charles Frederick Neumann, Registrar of Conveyances and Division Chief of the Bureau of Conveyances for more than forty-four years.
- . Helen Muramoto, Abstractor VI in the Bureau of Conveyances for more than twenty-six years.
- . Jane Yoriko Nakazaki, Account Clerk IV in the Administrative Services Office for more than twenty-one years.

ADJOURNMENT: There being no further business, the meeting was adjourned at 3:00 p.m.

Respectfully submitted,



Mrs. LaVerne Tirrell  
Secretary

APPROVED:



WILLIAM W. PATY  
Chairperson

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