

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

DATE: June 23, 1989
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
1151 Punchbowl Street, Room 132
Honolulu, Hawaii 96813

ROLL CALL: Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

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

STAFF: Mr. Henry Sakuda
Mr. Ronald Walker
Mr. Mike Shimabukuro
Mr. Roger Evans
Mr. John Corbin
Mr. Maurice Mutsuzaki
Mrs. LaVerne Tirrell

OTHERS: Mr. Randall Young, Deputy A.G.
Mr. Art Delos Reyes, Dept. of Transportation
Mrs. George Ilae, Ms. Ululani Hernandes, Ms.
Ilona Harding and Mr. Gordon Lee (Item F-9)
Mr. George Playdon (Item F-16)
Mr. Joe Vierra (Item H-2)
Mr. Stanley Roehrig (Items H-3 and H-4)
Messrs. Ron Albu and Al Hee (Item H-4)
(Item H-4)

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

Item B-7 -- Request for Approval to Enter into an Agreement with the University of Hawaii, Sea Grant Program to Conduct Research for the Main Hawaiian Islands Marine Resources Investigation of the Department.

Item C-2 -- Out-of-State Travel Request for Mr. Ronald L. Walker, Wildlife Program Manager, to attend Western Regional Technical Committee Meeting of the 1990 National Survey of Fishing, Hunting and Wildlife Associated Recreation.

Item C-3 -- Request for Board Approval to Acquire Aerial Photography of the State.

Item C-4 -- Filling of Position No. 13361, Temporary Appointment, General Laborer I, Wildlife Branch, Island of Hawaii.

Item C-5 -- Filling of Position No. 02887, Forester IV, Administration Office, Oahu.

Item D-1 -- Approval for Award of Contract - Job No. 10-OW-A, Pia Exploratory Well No. 1744-03, Honolulu, Oahu.

Item F-20 -- Filling of Position No. 02734, Clerk-Steno III, Kauai District Office.

Item H-6 -- Chinese Tallow Tree Contract with Governor's Agricultural Coordinating Committee.

Item H-7 -- Permission to Hire a Consultant to Assist in the Planning and Design of the Center for Applied Aquaculture.

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

ITEM H-4
RECONSIDERATION OF TWO PETITIONS FOR A CONTESTED CASE HEARING ON THE CDUA FOR THE HONOLII HYDROELECTRIC POWER PROJECT.

Mr. Evans explained that this item was being brought back to the board as a result of a single transaction that had occurred subsequent to the last time staff was before the board. At that time, there was a request to hold a contested case hearing. That particular request was predicated upon action that was taken on the part of an individual at the public hearing that was held for the Honolii Hydroelectric Power Project.

What happened is that during the public hearing on this project, a particular entity, in this case the Sierra Club, made an oral request to the Board for a contested case hearing. Subsequent to the close of the public hearing, the petitioner then followed up with a written petition as required by DLNR rules. Also, in addition to that transaction, staff did receive subsequent requests from two other parties, Mr. Daniel J. Lutkenhouse and a couple of surfers identified as Stan Lawrence and Jerry Johnson, to piggy back on that request. Staff sought advice from Counsel specifically with respect to the Sierra Club. The consensus was that, indeed, the Sierra Club did have a legal right to a contested case hearing, which is why staff is coming before the board for the contested case hearing and, at the same time, felt that the surfers and Mr. Lutkenhouse could also be included. The Board sustained staff's action and, subsequent to that action, have been in the process of gearing up to this contested case hearing.

Some initial statements have come in and there is a schedule towards that hearing. It also became known to staff that the original petitioner, the Sierra Club, had engaged a series of negotiations with the applicant. As a result of those negotiations, an agreement was entered into. That agreement was that the applicant was to perform certain things and, as a result of that performance on the part of the applicant, which staff understands to be studies, that the petitioner would withdraw their request and not reinstitute it based upon that agreement. Staff is now in a position where the original petitioner has entered into an agreement whereby there will be no contested case. That leaves staff with the other parties.

Staff is recommending this morning that the board not grant a contested case hearing and the specific rationale is that the board not waive the time. Under the Department's Administrative Rules for contested cases, the language reads that an oral or written request for a contested case hearing must be made by the close of the public hearing, if one is required, or the Board meeting, at which the matter is scheduled for disposition. Insofar as neither of these parties, or entities, made oral request by the close of the public hearing, it is staff's feeling that the contested case hearing should not be held. There is provision in the board's administrative rule that they can grant a waiver to that. Staff does not recommend the waiver be granted.

Mr. Evans continued that Mr. Lutkenhouse and the surfers concerns may have a great degree of merit. However, staff does draw a distinction between respecting their concerns, trying to work out their concerns with them, and going through the contested case hearing process. Should the board sustain staff's recommendation, the result would be that there would be no contested case. However, staff would continue to listen and try, where possible, to work with the concerns expressed by the two parties. Should the board, eventually, consider this CDUA in any form, those concerns will also have been addressed.

Mr. Evans replied yes to Mr. Ing's questions 1) whether a petition was filed by the Sierra Club at the public hearing which was followed by written petition; and, 2) did the department rule on the petition? The rule, said Mr. Evans, was that it was valid and a contested case would occur. Subsequent to that, the petition has been withdrawn. Mr. Ing asked whether the board had taken official action on the withdrawal. Mr. Evans explained that this submittal is that request.

Mr. Paty said, since that time, we have received substantial representation regarding this from both the surf group and the Lutkenhouse people. Mr. Evans said that we have. The reason being that once the board approved the request for the contested case then what this act does is that staff starts to put the gear into motion so that when the contested case is actually held the motions are in, a pre-hearing conference is held, etc. If the board rules today to sustain staff's recommendation, then this will all stop. However, if the board rules to waive the time and have the contested case hearing, then staff will continue gearing up. Mr. Evans went on to explain what had taken place in the H-3 Freeway case.

Since a contested case was granted, Mr. Ing asked if we had treated the Lawrence/Johnson/Lutkenhouse as parties, subsequent to the granting of the contested case. Mr. Evans said, yes.

Mr. Apaka asked if the issues of the Sierra Club and the Lawrence/Johnson/Lutkenhouse issues were related. The way it began, said Mr. Evans, the answer would be no. Basically, the Sierra Club issue was that "you have so much water running down the stream and we are not necessarily against that." The rationale for decreasing this amount of water should be biologically based and they felt that the applicant had it economically based. In the case of Mr. Lutkenhouse, he is a nearby landowner and his concern is primarily the noise. The surfers' concern is that where they surf right now, what will happen with the placement of this hydroelectric plant. Will the surfing area be altered? In East Hawaii, this is the primary surfing area.

Mr. Paty asked anyone else wanting to testify to come forward.

A representative for the surfers said that they have a situation where their clients, all of whom are present today, had become concerned about this proposed project and all showed up at the hearing. He said that Mr. Arnold Lum represented the Sierra Club at the public hearing, and, as he understood it, they presented testimony and did hear the Sierra Club attorney request a contested case. They did not realize, and did know about this rule requirement of making this request. Mr. Lutkenhouse's understanding was he had to file something in writing within ten days, which amounts to the petition as he now understands the rules. They have done that. They have also filed a separate written request asking for the contested case. He said that he has sent in material regarding testimony which they propose to submit. They have a technical problem with the rules and ask that the board waive the rule, which they are entitled to do under their administrative rules.

Mr. Roehrig said that he was not present at the Hilo meeting. The initial EIS that was done for this project, as he understood, did not address anything about surfing and even though it didn't, Jerry Johnson and Stanley Lawrence were at the hearing and they did voice their concerns about the surfing area. They did not realize that there was a requirement that they had to file. By the time the word got around amongst the surfing community in Hilo, one week had gone by. He thought that at that time both Messrs. Johnson and Lawrence had sent in a letter. As far as doing it within the time required by the rule, apparently they did not do it in time. They made a mistake; they did not have counsel. Mr. Roehrig said that he did not get involved in this matter until some time later but he did send a letter with his concerns to DLNR and the U.S. Corps of Engineers. He then met with Messrs. Lawrence and Johnson and they received a letter from the board saying that they were accepted as parties. Based on that letter, they started going and sent in all their witness statements and they contacted some of the professors to help on the issue of the surfing. Mr. Roehrig said that this is a major concern for the people who use this area, that this project will not jeopardize it. Based on what they have so far from Dr. Garrison from the Dept. of Ocean Engineering at Manoa, and Professor Harrison and Professor Eckern of Manoa, the three of them have taken a look at the EIS and they have just made the preliminary statement which they said in the letters is that there have got to be some very fundamental studies done about how this thing is going to affect the wave action and sediment buildup where they surf because the surfing area is right at the edge of the river. The beach is built up, so it appears, from the sand that comes down the river. If there is going to be a substantial change in that, that is going to dramatically alter that area.

Mr. Roehrig said that he is mindful of Mr. Evans' concern about setting some kind of precedent on waiving the ten day period. However, he commented that his clients did speak up at the hearing but did not know the technical requirements i.e. the ten days. Mr. Roehrig continued that he could find nothing in our rules which said that once you are accepted as a party you can later be rejected if someone else pulls out.

Mr. Arata asked about a model which was made by the Corps of Engineers with respect to a flood in Kona. Mr. Roehrig said that he was involved with some people whose properties were flooded February, 1982. He had Dr. Udosky from Hydro Research Science in Santa Clara make a model for them. They actually tested a watershed by running water down a specific speed and they videoed it to determine the runoff characteristics of that particular watershed. His suggestion was that before this petitioner had a hydroelectric plant actually constructed in the Honolii Stream that it would be extremely beneficial for everybody that at least a major model be done of the Honolii River and how it interacts with the ocean, and have either the Corps of Engineers or Dr. Udosky or some other engineering firm that does this type of models consider making one. Dr. Francisco Garretson of Manoa might also want to comment since he wrote the book on the surf in Hawaii, etc.

Mr. Arata said that he would like to afford the people from Hilo to present their case and therefore moved to defer this item to the next meeting in Hilo.

Mr. Ing said that other people might want to speak on this matter before the board considered the matter. He felt that the board should rule on the issue today rather than defer the decision to hold a contested hearing or not.

Because there were others wanting to speak on this issue, Mr. Arata consented to hold up on his motion to defer.

Mr. Ronald Albu, attorney for the applicant, commented that this is not a new project. In the procedure of applying for a CDUA, there are several requirements which Mr. Lutkenhouse should have been aware of. The process began October 23, 1988. The OEQC publishes its bulletin announcing an EIS preparation notice, inviting anyone who is interested, to make themselves be heard, to notify the applicant. After the draft EIS is done, another notice is published in the bulletin. That was done December 23, 1988, January 8, 1989 and January 23, 1989. That gave everyone until February 6, 1989 to submit comments on the draft before the final was done. None of the parties who are asking to be allowed as intervenors commented. The EIS came before this board, and the board accepted the EIS as adequately addressing all of the environmental issues.

Mr. Ing asked when it was that this board accepted the EIS. Mr. Albu believed it was May 5, 1989. He continued that Mr. Lutkenhouses's attorney, on June 5th, filed his preliminary statement for the contested case hearing. He stated that the primary issues are the failure of the EIS to adequately address the downstream impact of the proposed project and alternatives to the project. Mr. Albu said that the whole purpose of the EIS is so everyone would have a chance to comment.

Mr. Albu said that Mr. Hee would like to get along with the community and would like everyone to be happy with this project. He firmly believes that this is a good project for the community. Hilo does have power problems and this project will help in some small way.

Mr. Albu continued voicing his frustrations with the new requests for a contested case hearing. He felt that this contested case hearing should not be granted to the parties who were not timely. The one party who was timely, said Mr. Albu, is now satisfied on all environmental counts and has withdrawn his request for a contested case hearing.

Mr. Arata said that this item could be deferred until September 12 and he would like to see that the surfers are given an opportunity to present their case. Mr. Albu didn't think they would have any objections to the surfers presenting their case at the next board meeting.

Mr. Hee said that his difficulty with addressing the surfers is something that is not defineable. He said that he had the Army Corps experts from Mississippi, who are highly regarded in the hydrolic field, go out to the stream. He took them on the helicopter to video the project, etc. He said that he spoke to several ocean engineering companies in town and it is not defineable what the real issue is and each of the experts he has met with have told him that they could not develop a model. They can develop a model to show run-off characteristics, and develop a model to show coastal characteristics. But when you get into run-off and estuary action, there are a thousand variables so they could not stand behind any model they would do. I then asked them what the next step would be.

Because there is only one surfing beach in Hilo, Mr. Arata wanted to ensure that whatever the decision, it would be one that they could live with. For this reason he felt that this item should be deferred to the Hilo meeting.

Mr. Hee understood. He said that there is a model that closely resembles this area.

Mr. Paty said that what has to be kept in mind is that the issue today is one of rules and regulations and not whether surfing is a plus or minus.

Mr. Albu said that if the motion is granted it would put them in a very difficult position because there is a final pre-hearing conference scheduled for Monday afternoon and all the motions filed by the intervenors asking for time do not know who their witnesses are, etc. He felt that they really need to know where they stand before the pre-hearing conference.

In reply to a question raised by Mr. Ing, Mr. Albu said that he would prefer an answer today, even if it was adverse.

Mr. Ing said that under issues that have come before the Supreme Court, even if the board were to deny the contested case, because Mr. Roehrig's clients testified at the public hearing they do have appeal rights. Mr. Albu felt that they were free to appeal if they were not happy with the Board's decision.

If they appeal and the case is returned on procedural grounds, said Mr. Ing, then wouldn't the route be longer than really necessary? Mr. Albu said that they are satisfied on the issue and do not believe that it is a problem.

Mr. Ing said that he understood Mr. Albu's position. Even if this matter were deferred to Hilo the result would be that the board would allow the contested case and if that is the case then the board ought to just rule today.

With all due respect to Mr. Ing's opinion, Mr. Arata said that he would still like to defer this item to the Hilo meeting.

Mr. Paty called for the vote to defer this item to the Hilo meeting. Messrs. Paty, Kealoha and Ing voted no. Motion failed to carry for lack of a majority vote.

Mr. Paty entertained a motion for action.

ACTION Mr. Ing moved that the board deny the request to withdraw the contested case proceeding but allow Sierra Club to withdraw as a party, and to extinguish their issues but allow the contested case to proceed.

Mr. Ing felt that this is the most expeditious way to dispose of this matter and there would be substantial questions whether the board can dismiss the contested case proceeding, having gone this far into the proceedings without substantively affecting the rights of those who have been allowed as parties.

Mr. Kealoha seconded. Motion carried unanimously.

GRANT OF NON-EXCLUSIVE EASEMENT FOR SEAWALL AT PUNALUU, OAHU, TAX MAP KEY 5-3-08:28.

ITEM F-16

Mr. Shimabukuro said that the applicant has agreed to purchase an easement for that portion of State land between his property and the toe of the seawall. Should the Board approve this easement, the State surveyor will recommend that the shoreline be certified at the toe of the seawall, in accordance with Chapter 13-222 Hawaii Administrative Rules.

Staff believes that the existing seawall, which straddles the property line, does not prohibit public access nor take public beach area. This agreement was developed with the Department of Attorney General to resolve the encroachment. No fine is being recommended because staff is unable to determine who originally constructed the seawall.

Mr. George Playdon said that he purchased the property two years ago from Bishop Estate and he has been trying to get a building permit ever since. His property is only 50-feet wide and the only lot that hasn't been built on. He has been trying ever since to also find out who put up the rock wall but has not been successful.

ACTION

Unanimously approved as submitted. (Ing/Arisumi)

ITEM H-2

CDUA FOR THE DEVELOPMENT OF A WELL SITE, SOUTH KOHALA, HAWAII (APPLICANT: PARKER RANCH; AGENT: BELT, COLLINS AND ASSOCIATES).

Mr. Ing asked to be excused from acting on this matter.

With respect to Condition No. 9, Mr. Kealoha asked if the same preservation view plain would be taken in that area as opposed to the resort area. Mr. Evans said no, only because no plans have been submitted yet. Mr. Evans said that this could be clarified by recommending approval only of Phases I and II, and not Phase III.

Mr. Joe Vierra understood that what was really being done is that they would be allowed to go ahead with Phase I and II and at the end of Phase II that they would submit a report indicating what the results of their field tests of the well were, and also to identify what Phase III would be. However, before Phase III would be allowed, they would have to submit the necessary construction plans and specifications for the board's approval. He thought that meant that once they had identified the program, this would be brought before the board and they would ask for review and approval rather than go through a CDUA.

Mr. Evans understood why there could have been some mis-communication. But what staff has before the board is something that is consistent, and this is separating exploration from development. Mr. Vierra said that a CDUA was submitted for exploration and development.

Mr. Vierra asked if that meant that another CDUA would have to be submitted. Mr. Evans said, yes. For the development stage.

ACTION

Unanimously approved as amended. The amendment being that the board approve the application for drilling of an exploratory well (Phase I), and testing (Phase II) and not approve production support well (Phase III) (Arata/Arisumi)

Mr. Ing was excused from voting on this item.

ITEM H-7

PERMISSION TO HIRE A CONSULTANT TO ASSIST IN THE PLANNING AND DESIGN OF THE CENTER FOR APPLIED AQUACULTURE.

ACTION

Unanimously approved as submitted. (Arisumi/Arata)

ITEM H-3

CDUA FOR A SUBDIVISION TO IMPLEMENT A COURT ORDERED PARTITION AT SOUTH KONA, HAWAII (APPLICANT: LESTER OSHIRO; AGENT: STANLEY H. ROEHRIG).

Mr. Kealoha asked Mr. Evans to define Condition No. 2, that no development shall be allowed within the Conservation District portion of the property. Mr. Evans explained that the parcel is about 100 acres. Within that 100 acres, only two acres is in conservation. This two acres is within the Limited Subzone, so if they were to apply to build within this two-acre parcel staff would recommend denial anyway.

Mr. Stanley Roehrig said that it had never occurred to him and his client to build something on this piece in front of the ocean. However, because there are so many people in the family, they may want to clear the boulders at the cliff and maybe use the area to camp out. His client feels that "no development" might mean that they cannot even camp on the property. They would have no objections to the "no development" if camping is not restricted. Mr. Kealoha said that there is another process for this -- as to the extent of development. Mr. Evans said that one of the problems on a property like this is that when there are a number of undivided interests and they subdivide it out and still there is undivided interest, it is difficult because if you want to put a house up you need to get everyone's signature.

ACTION	Unanimously approved as submitted.
RECESS:	10:35 - 10:50 a.m.
<u>ITEM B-1</u>	<u>REQUEST FOR APPROVAL TO ENTER INTO THREE AGREEMENTS WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII DURING FY 1989-90.</u>
ACTION	Unanimously approved as submitted. (Ing/Arisumi)
<u>ITEM B-2</u>	<u>ADOPTION OF TWO ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AMENDMENT OF CHAPTER 13-92, OPIHI, AND NEW CHAPTER 13-100, O'OPU AND HINANA.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM B-3</u>	<u>ADOPTION OF TWO ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AMENDMENT OF CHAPTER 13-62, WAHIAWA PUBLIC FISHING AREA, OAHU, AND AMENDMENT OF CHAPTER 13-89, SPINY LOBSTER OR ULA AND SLIPPER LOBSTER ULA PAPAPA.</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
<u>ITEM B-4</u>	<u>ADOPTION OF ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AMENDMENT OF CHAPTER 13-64, KOKEE PUBLIC FISHING AREA, KAUAI.</u>
ACTION	Unanimously approved as submitted. (Apaka/Arisumi)
<u>ITEM B-5</u>	<u>REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE UNIVERSITY OF HAWAII, HAWAII INSTITUTE OF MARINE BIOLOGY TO CONDUCT BASELINE STUDIES FOR A KANEHOE BAY MARINE RESOURCES INVESTIGATION.</u>
ACTION	Unanimously approved as submitted. (Ing/Arisumi)
<u>ITEM B-6</u>	<u>REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE UNIVERSITY OF HAWAII TO DEVELOP A ONE-STEP SOL PARTICLE IMMUNOASSAY FOR THE DETECTION OF CIGUATOXIN IN FISH TISSUES.</u>
ACTION	Unanimously approved as submitted. (Apaka/Kealoha)
<u>ADDED ITEM B-7</u>	<u>REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE UNIVERSITY OF HAWAII, SEA GRANT PROGRAM TO CONDUCT RESEARCH FOR THE MAIN HAWAIIAN ISLANDS MARINE RESOURCES INVESTIGATION OF THE DEPARTMENT.</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)

- ITEM C-1 LIMITED TERM APPOINTMENTS FOR GENERAL LABORER I, POSITION NOS. 13344, 13170 and 13337, ISLAND OF KAUAI.
- ACTION Upon motion by Mr. Apaka and a second by Mr. Kealoha, the board unanimously approved the appointments of Rogue R. Cattigay, Peter J. Diorio, and James A. Hutchison, to fill General Laborer I Position Nos. 13344, 13170 and 13337, respectively, WB-02, on the island of Kauai.
- ADDED ITEM C-2 OUT-OF-STATE TRAVEL REQUEST FOR MR. RONALD L. WALKER, WILDLIFE PROGRAM MANAGER, TO ATTEND WESTERN REGIONAL TECHNICAL COMMITTEE MEETING OF THE 1990 NATIONAL SURVEY OF FISHING, HUNTING AND WILDLIFE ASSOCIATED RECREATION.
- ACTION Unanimously approved as submitted. (Ing/Arisumi)
- ADDED ITEM C-3 REQUEST FOR BOARD APPROVAL TO ACQUIRE AERIAL PHOTOGRAPHY OF THE STATE.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ADDED ITEM C-4 FILLING OF POSITION NO. 13361, TEMPORARY APPOINTMENT, GENERAL LABORER I, WILDLIFE BRANCH, ISLAND OF HAWAII.
- ACTION Unanimously approved the appointment of Matthew M. Majamay to Position No. 13361. (Arata/Arisumi)
- ADDED ITEM C-5 FILLING OF POSITION NO. 02887, FORESTER IV, ADMINISTRATION OFFICE, OAHU.
- ACTION Unanimously approved the appointment of Mark Scheffel to Position No. 02887. (Ing/Arisumi)
- ADDED ITEM D-1 APPROVAL FOR AWARD OF CONTRACT - JOB NO. 10-0W-A, PIA EXPLORATORY WELL NO. 1744-03, HONOLULU, OAHU.
- ACTION Unanimously approved as submitted. (Kealoha/Apaka)
- ITEM F-1 DOCUMENTS FOR CONSIDERATION.
- Item F-1-a ISSUANCE OF REVOCABLE PERMIT TO MR CHARLES G. CARTER AND CHRISTOPHER SMITH, JOINT TENANTS, KAHAKULOA VALLEY, WAILUKU, MAUI, TAX MAP KEY 3-1-04:101, 104, AND 106.
- Item F-1-b ISSUANCE OF REVOCABLE PERMIT TO PHILIP FLECK, JR. AND GLORIA FLECK, PORTION OF GOVERNMENT LAND AT WAIHULI-KEOKEA HOMESTEADS, MAKAWAO, MAUI, TAX MAP KEY 22-17:17.
- Item F-1-c CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-3940, MCBRYDE SUGAR COMPANY, LTD., ASSIGNOR, TO CITIZENS UTILITIES COMPANY, ASSIGNEE, NON-EXCLUSIVE EASEMENT FOR ELECTRIC TRANSMISSION SYSTEM, HANALEI, WAILUA, KALAHEO, LIHUE AND KOLOA, KAUAI.
- Item F-1-d CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-3660, K. SAKAI ENTERPRISES, INC., ASSIGNOR, TO HARRY ATSUSHI AND YUKINO ENDO, LOT 9, KANOELIHUA INDUSTRIAL LOTS, TAX MAP KEY 2-2-50:77, WAIAKEA, SO. HILO, HAWAII.
- Item F-1-e CONSENT TO SUBLEASE OF GENERAL LEASE NO. S-4306, LOT 2, HILO INDUSTRIAL DEVELOPMENT, POHAKU STREET SECTION, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-58:4.
- Mr. Shimabukuro asked that Item F-1-e be withdrawn. Staff needs to take another look at the rental rate.

ACTION	Mr. Apaka moved to approve Item F-1-a, b, c and d as submitted. Mr. Kealoha seconded. Motion carried unanimously.
	Item F-1-e was withdrawn.
<u>ITEM F-2</u>	<u>REQUEST FOR HOLDOVER OF GENERAL LEASE NO. S-4238 TO YEISHUN AND AKIKO GUSHIKUMA, PIHA, NO. HILO, HAWAII.</u>
ACTION	Unanimously approved as submitted. (Arata/Arisumi)
<u>ITEM F-3</u>	<u>AMENDMENT TO PRIOR BOARD ACTION REGARDING DIRECT SALE OF EASEMENT, KAIEIE HOMESTEADS, SO. HILO, HAWAII.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-4</u>	<u>GRANT OF EASEMENT TO COUNTY OF MAUI FOR WATER PIPELINE AND ACCESS PURPOSES, LAHAINALUNA SCHOOL GROUNDS, LAHAINA, MAUI.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-5</u>	<u>DIRECT SALE OF PERPETUAL NON-EXCLUSIVE EASEMENT FOR REPAIR AND MAINTENANCE OF EXISTING SEAWALL AND ROCK REVETMENT, KAHANA, LAHAINA, MAUI, TAX MAP KEY 4-3-05:26.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-6</u>	<u>DIRECT SALE OF ACCESS AND UTILITY EASEMENT AND CONSTRUCTION RIGHT OF ENTRY, TAX MAP KEY 2-9-11:PORTION OF 8, HANEHOE, HOALUA, HANAWANA AND PUUOMAILE, MAKAWAO, MAUI.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-7</u>	<u>GRANT OF CONSTRUCTION RIGHT OF ENTRY, TAX MAP KEY 5-8-02:PORTIONS OF 6 AND 12, HONOLIWI, MOLOKAI.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-8</u>	<u>AMENDMENT TO PREVIOUS BOARD ACTION RELATIVE TO ISSUANCE OF REVOCABLE PERMIT TO OBIE BROADCASTING OF MAUI, INC., TAX MAP KEY 2-2-04:PORTION OF 01, KEOKEA, MAKAWAO (KULA), MAUI.</u>
ACTION	Unanimously approved as submitted. (Arisumi/Arata)
<u>ITEM F-9</u>	<u>RESUBMITTAL - FORFEITURE OF GENERAL LEASE NO. S-5167 TO MR. AND MRS. GEORGE ILAE AT WAIMANALO, OAHU, TAX MAP KEY 4-1-10:37.</u>
	Mrs. Ilae asked to defer this item to the end of the Agenda. She hoped that her attorney, Mr. Gordon Lee, would be back by that time to represent her on this matter.
ACTION	See Pages 13-17.
<u>ITEM F-10</u>	<u>GRANT OF NON-EXCLUSIVE EASEMENT FOR BEACH SIDEWALK UTILITIES, FOOT SHOWER AND DRAINAGE PURPOSES AT DUKE KAHANAMOKU BEACH, KALIA, WAIKIKI, HONOLULU, OAHU.</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
<u>ITEM F-11</u>	<u>CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 1556 AND RESET ASIDE OF THE AREA TO THE DEPARTMENT OF EDUCATION FOR ADDITION TO THE HAWAII STATE PUBLIC LIBRARY AT HONOLULU, OAHU.</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)

<u>ITEM F-12</u>	DIRECT SALE OF REMNANT, UNPAVED PORTION OF CAPTAIN COOK AVENUE, SITUATE AT AUWAIOLIMU LOTS, HONOLULU, OAHU.
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
<u>ITEM F-13</u>	SET ASIDE OF LAND TO DEPARTMENT OF EDUCATION FOR MAKALAPA ELEMENTARY SCHOOL PURPOSES, TAX MAP KEY 98-9-75:28, HALAWA, EWA, OAHU.
ACTION	Unanimously approved as submitted. (Arisumi/Kealoha)
<u>ITEM F-14</u>	DEPARTMENT OF TRANSPORTATION REQUEST FOR CONSTRUCTION RIGHT OF ENTRY, INTERSTATE HIGHWAY, KEEHI INTERCHANGE, FEDERAL AID PROJECT I-H1-1(82) AT MOANALUA, HONOLULU, OAHU, TAX MAP KEY 1-1-03:04 (GOVERNOR'S EXECUTIVE ORDER NO. 1550).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
<u>ITEM F-15</u>	DIRECT SALE OF REMNANT, OLD ABANDONED GOVERNMENT ROAD TO WAIMANALO AT AULOA, PUUKAEAO AND MAKAWAO, MAUNAWILI, KAILUA, KOOLOAUPOKO, OAHU.
ACTION	Withdrawn.
<u>ITEM F-16</u>	GRANT OF NON-EXCLUSIVE EASEMENT FOR SEAWALL AT PUNALUU, OAHU, TAX MAP KEY 5-3-08:28.
ACTION	Unanimously approved. See Page 7.
<u>ITEM F-17</u>	TERMINATION OF GENERAL LEASE NO. S-3941 TO REHABILITATION UNLIMITED, KAUAI AND SET ASIDE OF THE AREA AS ADDITION TO THE WAILUA RIVER STATE PARK, TAX MAP KEY 4-1-04:21, WAILUA, KAUAI.
ACTION	Unanimously approved as submitted. (Apaka/Kealoha)
<u>ITEM F-18</u>	WAIVER OF LEASE PERFORMANCE BOND, GENERAL LEASE NO. S-4648 TO MICHAEL W. AND LINDA S. H. WARRINER, TAX MAP KEY 4-5-12:05, KAPAA, KAWAIHAWA (PUNA), KAUAI.
ACTION	Unanimously approved as submitted. (Apaka/Kealoha)
<u>ITEM F-19</u>	ADOPTION OF RESOLUTION AUTHORIZING THE THREE DEPUTIES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO SIGN DOCUMENTS.
ACTON	Unanimously approved as submitted. (Arisumi/Arata)
<u>ADDED ITEM F-20</u>	<u>FILLING OF POSITION NO. 02734, CLERK-STENO III, KAUAI DISTRICT OFFICE</u>
ACTION	Unanimously approved the appointment of Veronica A. Rapozo to Position 02734. (Apaka/Kealoha)
<u>ITEM H-1</u>	CDUA FOR A SINGLE FAMILY RESIDENCE AND PERIMETER FENCING IN HAENA, KAUAI (APPLICANT: WILLIAM F. KELLIE).
ACTION	Unanimously approved as submitted. (Apaka/Arata)
<u>ITEM H-2</u>	CDUA FOR THE DEVELOPMENT OF A WELL SITE, SO. KOHALA, HAWAII (APPLICANT: PARKER RANCH; AGENT: BELT, COLLINS AND ASSOCIATES).
ACTION	Approval with amendments. See Page 7.
<u>ITEM H-3</u>	CDUA FOR A SUBDIVISION TO IMPLEMENT A COURT ORDERED PARTITION AT SO. KONA, HAWAII (APPLICANT: LESTER OSHIRO; AGENT: STANLEY H. ROEHRIG).
ACTION	Unanimously approved. See Page 8.

<u>ITEM H-4</u>	RECONSIDERATION OF TWO PETITIONS FOR A CONTESTED CASE HEARING ON THE CDUA FOR THE HONOLII HYDRO ELECTRIC POWER PROJECT.
ACTION	See Page 6.
<u>ITEM H-5</u>	REPORT TO THE BLNR ON CDUA AMENDMENT HA-2056A - STATE LAND USE COMMISSION CHANGE OF ZONING APPROVAL (APPLICANT: ISEMOTO CONTRACTING CO., LTD., SJA PARTNERSHIP AND MARCH E. TAYLOR).
ACTION	Unanimously approved as submitted. (Apaka/Arisumi)
<u>CONTESTED CASE HEARING:</u>	Mr. Evans announced that Mr. Johnson Wong will be the attorney at the Honolii contested case hearing and Mr. Wong has suggested that this hearing start at about 1:00 p.m. on July 12th and running through July 13, 1989.
<u>ITEM H-6</u>	CHINESE TALLOW TREE CONTRACT WITH GOVERNOR'S AGRICULTURAL COORDINATING COMMITTEE (GACC).
	Mr. Ing asked Mr. Walker whether the Division of Forestry had the background to undertake this project. Mr. Walker said that they do, for portions of the proposal; they do not have staffing or the administrative capability to run the entire contract. Forestry's expertise would be restricted to the germplasm collection and improvement propagation, possibly field trials, harvesting technology and bulk seed collection. He said that seed chemistry and processing, fats and oils product development and marketing and economics are clearly beyond their capabilities.
	Mr. Paty added that he has known Mr. Stan Mason, who is the principal figure in this effort to develop the Chinese Tallow Tree as an alternate energy source, off and on for some period of time. He and his associate, Robert Boon, have expressed extreme frustration in their inability to shake loose the funding that was allocated by the Legislature to the GACC and the lack of opportunity to do any work with the College of Tropical Agriculture. Out of that came the question as to whether or not DLNR could help out. Mr. Paty said that he did indicate that we would take a look at it and this is how this got passed over to DLNR. He felt that because of the substantial funding he would like to see it put to proper use.
	Mr. Ing asked Mr. Walker whether he would rather see the funds go elsewhere and have his staff available to work on other projects. Mr. Walker said that they would be available for technical expertise and would be willing to do this.
	If the funds were encumbered then we could direct, by the approval process, where they should go, said Mr. Paty. Mr. Walker agreed. He felt that the Division of Forestry could serve as a conduit and a source of expertise and advice on how this should be done.
	Mr. Ing saw this as more of an Agricultural function rather than a Forestry function.
ACTION	Mr. Ing moved for approval with the condition that the Board move ahead to encumber the funds but allow the Division of Forestry the flexibility to recommend to the Chairman the best method to undertake the project, whether it be by way of subcontracting or by handling and supervision by a more appropriate State agency. Mr. Kealoha seconded; motion carried unanimously.
<u>ITEM H-7</u>	PERMISSION TO HIRE A CONSULTANT TO ASSIST IN THE PLANNING AND DESIGN OF THE CENTER FOR APPLIED AQUACULTURE.
ACTION	Unanimously approved. See Page 7.

<u>ITEM I-1</u>	<u>APPOINTMENT OF LICENSE AGENT; HUALALAI GARAGE, ISLAND OF HAWAII.</u>
ACTION	Unanimously approved as submitted.
<u>ITEM J-1</u>	<u>APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4558, ETC., AIRPORTS DIVISION</u>
ACTION	Unanimously approved as submitted. (Kealoha/Apaka) Mr. Ing was excused from voting on this item.
<u>ITEM J-2</u>	<u>SECOND EXTENSION OF CONSTRUCTION RIGHT OF ENTRY, WEST BEACH, HONOLIULI, EWA, OAHU, HARBORS DIVISION (WEST BEACH ESTATES, A HAWAII GENERAL PARTNERSHIP).</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
<u>ITEM J-3</u>	<u>ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HONOKOHAU BOAT HARBOR, HAWAII (JAMES P. HENRY).</u>
ACTION	Unanimously approved as submitted. (Arata/Arisumi)
<u>ITEM J-4</u>	<u>ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 8 SHED, HONOLULU HARBOR, OAHU (HOLIDAY PROMOTIONS, INC.).</u>
ACTION	Unanimously approved as submitted. (Ing/Arisumi)
<u>ITEM F-9</u>	<u>RESUBMITTAL - FORFEITURE OF GENERAL LEASE NO. S-5167 TO MR. AND MRS. GEORGE ILAE AT WAIMANALO, OAHU, TAX MAP KEY 4-1-10:37.</u>

Mr. Shimabukuro said that on May 26, 1989 the Board deferred action on this forfeiture at the request of Ilae's legal counselor, Mr. Gordon Lee. Mr. Lee requested the deferral to allow him additional time to resolve this matter without his client's forfeiture of the lease. To date, staff has not been contacted by Mr. Lee.

Because Mr. Lee was not present to represent the Ilae's, Mr. Shimabukuro suggested deferring this item to the next meeting; however, he called to the board's attention the fact that this next meeting would be in Hilo.

Mr. Kealoha informed Mrs. Ilae that either she or her attorney would have to go to Hilo. He could not see bringing this back to Honolulu, since this would not be until August.

RECESS: 12:10-12:15

(continuation of Item F-19)

Mr. Shimabukuro recommended that the Board:

- A. Authorize the cancellation of General Lease No. S-5167 in the manner specified by law.
- B. Authorize the retention of all sums heretofore paid under General Lease No. S-5167 as liquidated damages.
- C. Terminate all rights and obligations of the lessee, Mr. and Mrs. George Ilae, effective May 31, 1989.
- D. Authorize the Attorney General's office and/or the department's private collection agency to collect all monies due the State of Hawaii under General Lease No. S-5167.

When asked by Mr. Arisumi about the use of the land, Mr. Shimabukuro replied that the lease reads that the lessee shall use or allow the premises hereby demised to be used solely for general agricultural/employee residential purposes and covers an area of 4.6 acres in Waimanalo.

In reply to questions raised by Mr. Kealoha, Mr. Shimabukuro submitted the following background information. He stated that on January 30, 1989 the Ilae's were notified by certified mail of their 1) failure to execute General Lease S-5167; and, 2) failure to keep lease rental payments current. They were afforded a thirty-day cure period to correct the default status. To date, this has not been done; the thirty-day cure period expired on March 1, 1989. As of May 3, 1989, Mr. and Mrs. George Ilae are in arrears on their lease rent in the amount of \$15,213.91.

Mr. Shimabukuro explained that this January 30, 1989 letter was a follow-up to the initial transmittal of the lease documents to Mr. and Mrs. Ilae on October 3, 1988. Throughout this entire process, neither the Ilae's nor their representative has contacted DLNR regarding the execution of their lease documents and/or their delinquent lease payments.

Mr. Gordon Lee, attorney for the Ilae's, requested Mrs. Ilae to explain to the Board exactly what had happened to them in regard to the last year and why they have not been able to execute the lease and pay the rent.

Mrs. Ilae explained that her husband had become ill with cancer and was having problems on the job so he overlooked everything else. He lost his business and went into the hospital for surgery last October. He is still at home with cancer.

Mr. Lee called, also, Mrs. Ilae's daughter to come forward to add to her mother's testimony. Ululani Hernandez said that basically the business they were operating filed Chapter 11, Bankruptcy, in January, 1988. About two months later they lost a real big contract with Pearl Harbor which was worth \$125,000 a month in revenue. In reorganizing they tried to reduce debt wherever they could and it took them five months to reduce one of their bigger bills. However, by that time they had incurred \$100,000 more in current liability. At the same time their Dad found out that he had cancer, which seemed to affect his thinking and decision-making. He just was not able to follow up on the things he should have been doing. He then went into the hospital to remove a cancerous lung. Presently he has an in-operable tumor and has been given one year to live. Ms. Hernandez said that they were here today to ask that the board take these things into consideration.

Mr. Ing asked, "what business was he in?" Ms. Hernandez said that he was a private contractor in the rubbish business -- all government contracts.

In reply to Mr. Ing's question, Mrs. Ilae said that her only source of income was from her husband's business.

Mr. Ing asked how the bid document read. Mr. Shimabukuro replied, "George M. and Hazel K. Ilae."

Mr. Ing stated that he could not see how the Ilae's could get out of this situation -- Mr. Ilae is seriously ill and there is no income. Even if the lease were executed, he asked Mrs. Ilae how the lease rental would be paid. Mr. Lee said that based upon his review of the correspondence and the documents regarding the auction he believed that to a large extent the auction really should not have occurred. What had happened to the Ilae family is that prior to the time that this land was auctioned for lease, they were on a revocable permit. Mr. Ing said that Mr. Lee could not go back in history to erase what had occurred.

Mr. Lee said that all he wanted was to give the board a historical background of how the Ilae's got to be where they are today. Prior to the time they bid on this auction, they were revocable permittees. As permittees, under a law that was supported by this board and passed by the legislature, permittees were allowed to engage in direct negotiations with the State and the board. The only reason the Ilae's were not permitted to do that is because there was a provision put in their revocable permit which said that they would waive their right to any future legislative inaction. He believed that this provision did not appear to have been authorized by this board and he could see no public purpose for this provision. He has asked staff the reason for this provision and they have had no reason. They would like to ask the board to review what has happened in the past and look at the revocable permit to determine whether that provision was in there properly. If it wasn't in there properly then they would have gained the right to renegotiate the lease directly with the State and the rent, he felt, would have been a lot lower than it is today. He added also that the tax map key shown on the permit is not the same as that shown in the auction document. This, he said, might question the validity of the auction itself.

In reply to some of the questions raised by Mr. Lee, Mr. Shimabukuro said that Mrs. Ilae had a lease with the State for the same parcel, which was due to expire in 1991. That particular lease was cancelled sometime in 1981 (he did not have the exact date), for violation of the lease terms. The City and County cited that Mr. Ilae was an independent contractor in the disposal business and, instead of taking the rubbish to the City Dump, he was putting it on the State property. The City cited the State for this. That is when staff started cracking down on the Ilae's. The reason for the cancellation is because he did not pay the rent. Mrs. Ilae did not agree.

Mr. Shimabukuro continued that, after the cancellation of that lease, they tried to evict the Ilae's. They then filed an injunction against the State citing all the reasons why the State should not have taken the action they did. In any event, the result of that court case was that the State entered into a stipulated agreement that the Ilae's would be issued a revocable permit retroactive back to the time when the lease was cancelled to the time a new auction would be held. This is all in the agreement. Also, at the time of the new auction, the Ilae's would be allowed to bid for the new lease but that the Ilae's would not qualify for the revocable permit conversion in the event the law would pass (this is now Act 237). This is all stipulated in the agreement. So, if they are going back to say that staff did not allow him to convert his revocable permit, this is because the revocable permit was issued on a special basis.

Ms. Hernandez said that when the permit was issued the Ilae's paid the State the back lease payments of \$13,700 in the form of a cashier's check and this was part of an agreement regarding a revocable permit. It was the Ilae's understanding that they would have a chance for a revocable permit and to live in the home they had lived in for 22 years. When the Ilae's noticed the waiver in the permit that they would not be allowed the opportunity of other revocable permittees to do a direct lease with the State, it was their understanding, even though there was nothing in writing, that they would be allowed the revocable permit for the rest of their life. When this came up for auction, which was about a year after the permit, they questioned why only their piece of property was being put up for re-auction. They were informed by Ms. Hines not to bid on the property because there was this resolution going on. However, her Dad was being threatened with the loss of his home so he felt that he had no other choice but to bid on the property.

As far as the business, her father has had a business license since 1977 with the City and County of Honolulu and she can attest that he has dumped the rubbish at the Kapaa Landfill since she has been involved with him since that time. There had been problems with the truck being parked at home -- that was only one. When they got big and ended up with 20 trucks, they cleared the land and moved everything to a shop facility. Up to that time he drove the truck, picked up rubbish, etc. to make a living. Initially he raised Peking Ducks with the hope of selling salt eggs but because they were in the bushes when they moved out there in 1963 the mongooses made it difficult for him to keep up with this business. He tried to get an FHA loan, which, when he finally got the loan, lost his lease. He did dump rubbish on the land at one time but that area is now planted with bananas which she has been encouraging her mom to try and sell. She did not want the State to think that her Dad has just been living off the land for free. He did try, but the lack of expertise to follow through on things encouraged many problems.

Mr. Shimabukuro said that the board did approve issuance of a revocable permit back in November 21, 1986 and one of the conditions of the permit was that the permittee would be allowed to bid for the lease when it is offered for public auction, if qualified. However, the permittee shall waive any and all rights to direct issuance of lease in the event the legislature passes a law in the future authorizing such disposition.

Mr. Ing told the Ilae's that from what he has seen, they really do not qualify for the revocable permit situation. They acquired the permit because of a default on the general lease. They were lessees -- something which those people on revocable permits did not have. The only reason they got a revocable permit was the result of a summary of the lawsuit brought by the attorneys. They are not the traditional permittees, who have had permits for years.

To quiet some of the questions raised by Mr. Lee regarding the settlement agreement, Mr. Ing explained that once a matter goes into litigation, the Attorney General has the right to settle that claim under terms and conditions which they feel are appropriate -- as a separate department. They do not have to come back to the Board for approval of those terms and conditions. Frequently, they do consult the board, as a matter of courtesy, but they have their own right to settle litigation and the only approval they have to get is from the Attorney General and not the Board.

Mr. Ing asked Mr. Lee what was it he wanted to solve this problem. One of the alternatives, said Mr. Lee, is that there is a statute which provides that when you have conditions of physical disability or economic hardship that the lessee is allowed to assign a portion of their lease. What they have been trying to work out is to see if the board would allow the Ilae's additional time to find someone to sublease, or assign this lease to, and someone who would allow them to remain on the lease for the remainder of Mr. Ilae's life. The problem, said Mr. Kealoha, is that they do not have a lease. Mr. Lee said that they would like an extension of time to cure the back rental or, if possible, if the board would waive the claim for the back rent, and if the Ilae's could find someone to assume the lease as it is now and that person would take over the current obligations of the lease and allow the Ilae's to remain on the premises. If the lease were either cured, or the back rent was waived, then they could have a valid lease. Mr. Kealoha asked how the board would address the unsuccessful bidders.

Ilona Harding, also daughter of the Ilae's, said that she should have some money by the end of next week to pay a portion of the back rent. At that time her parents should know when the balance of the money would come in.

Ululani Hernandez said that she and her sister are working on ways of getting this money from other business dealings. Ilona asked for another week. Their alternative, after that, would be to find a potential assignee.

Mr. Paty asked what was on the property now, income wise. Ms. Hernandez said that the only thing they have on the property now are bananas.

Mr. Ing asked Mr. Shimabukuro if the request today was only to terminate the rights of the Ilae's. Mr. Shimabukuro said, correct. The next step would be, if they continue to live on the land, the eviction notice. Because they have signed a Memorandum of Agreement, which requires them to execute a lease which they have not yet executed, they are in now in violation of the Memorandum of Agreement.

Mr. Ing asked permission to consult with Deputy Attorney General Johnson Wong regarding the legal implications of taking certain courses of action.

EXECUTIVE SESSION:

1:00 p.m. - 1:20 p.m.

Mr. Paty called the meeting back to order at 1:20 p.m. and asked Mr. Ing if he would summarize the board's concerns.

Mr. Ing stated that they were not able to really come to a conclusion in their discussions with the Deputy Attorney General. But his feeling is that the Board should do one of two things and that is:

1. Take action as recommended by the staff and terminate whatever remains over rights the Ilae's have to the property; or
2. The Board should defer this so they can have additional time to consult with Counsel to see what options are available under the circumstances.

In a situation where there is no executed lease, after the lease has gone to auction, the high bidder at the auction presently occupies the land but only under a Memorandum of Understanding and they have a serious default which he sees no way where they will be able to come up with the funds to satisfy that default. While the board realizes that the Ilae's are looking for mercy from the board, it's a tough situation which the board does not like to be in. In the past these things have caused problems and continued litigation. Those being the viable options, Mr. Ing requested that this item be deferred while the board consults with the Attorney General with respect to the legal issues involved and various courses of action before further action on this matter are taken. The board's sentiment is that the best thing for the Ilae's is for this to be terminated.

ACTION The board concurred unanimously that this item be deferred to the next Oahu meeting. (Ing/Kealoha)

ADDED ITEM Chairperson Paty introduced a motion to extend the Board's appreciation for the kokua which Mr. Ing has given in his distinguished service to the board. Also, in addition to this expression of Mahalo and Kokua, that Mr. Ing make himself available to the board for advice and counsel on sensitive issues, and also for social support. Mr. Kealoha seconded; motion carried unanimously.

Mr. Ing will be missed.

ADJOURNMENT: 1:40 p.m.

Respectfully submitted,

LaVerne Tirrell

Mrs. LaVerne Tirrell
Secretary

APPROVED:


WILLIAM W. PATY
Chairperson

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