

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

**DATE:** JANUARY 25, 1991  
**TIME:** 9:00 A.M.  
**PLACE:** BOARD ROOM  
KALANIMOKU BUILDING, ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII

**ROLL CALL** Chairperson William Paty called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS:** Mr. John Arisumi  
Mr. Herbert Apaka  
Ms. Sharon Himeno  
Mr. Christopher Yuen  
Mr. William Paty

**STAFF:** Mr. Roger Evans  
Mr. W. Mason Young  
Mr. Ralston Nagata  
Mr. Michael Buck  
Mr. Gordon Akita  
Mr. Ed Sakoda  
Richard Fasseler  
Mr. Nathan Napoka  
Ms. Dorothy Chun

**OTHERS:** Mr. Randall Young, Deputy Attorney General  
Mr. Edwin Watson, Deputy Attorney General  
Mr. Peter Garcia, Department of Transportation  
Rep. Cynthia Thielen, Rep. Jackie Young, Sen. Stanley Koki,  
Sen. Mike McCartney, Ms. Bonnie Heim, Ms. Donna  
Wong, representative for Councilman Felix,  
and Mr. Terrence Carroll (Item H-5)  
Messrs. Ivan LuiKwan, John Reppun, Charles Reppun, Mr. Uesugi,  
Sen. McCartney, Sen. Koki (Item H-9)  
Messrs. Jeff Watanabe, Bill Sewake, Marshall Medoff (Item F-2)  
Mr. Herman Brandt, Mrs. Kaaii (Item F-5)  
Ms. Sarah Sykes, Ms. Patricia Tummons (Item H-1)  
Messrs. Douglas Legrande, Robert Strand (Item H-2)  
Messrs. Dennis King, Timothy Hurst, Brian Gray, Fritz Johnson,  
Tom Cesstaire, Ms. Barbara Smith, Mary Schimdsky (Item H-3)  
Mr. David Slipher (Item F-8)  
Messrs. Stanley Suyat, Orville Dant, Eric Guinther (Item H-7)  
Messrs. Tom Fee, Gregg Morris, Dan Lum (Item H-8)  
Ms. Susan Matsuura (Item E-3)  
Mr. David Parsons (Item H-11)  
Mr. Glen Hara (Item F-1c)

**MINUTES** The minutes of September 14, 1990 and October 26, 1990 were approved as circulated.  
(Arisumi/Apaka)

**ADDED ITEM** Upon motion by Mr. Arisumi and second by Mr. Apaka, motion carried to add the following to the agenda:

Item H-11 Conservation District Use Application for Day-Use Moorings Including A Subdivision, Offshore the Kohala-Kona Coast, Hawaii; Applicant: Department of Transportation

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

**ITEM H-5**

**DESIGNATION OF SIGNIFICANT GEOLOGICAL AND UNIQUE AREA ON OAHU, HAWAII (MOUNT OLOMANA)**

Mr. Evans said that Item H-5 is a departmental proposal by the Office of Conservation and Environmental Affairs relative to the designation of significant geological and unique area on Oahu, Mount Olomana. He then continued to give the background on the department's Administrative Rules and went over the entire submittal.

Responding to Chairman Paty's question regarding a special subzone, Mr. Evans replied that a protective subzone in the conservation district was designed to carryout one of the dual definitions of conservation that is expressed in the Constitution. The Constitution as we understand it and as has been reported by the Legislative Auditor, is defined in two ways. One way is the protection by natural resources, preservation. The other definition in the Constitution relative to conservation is utilization of our natural resources. The protective subzone is designed specifically to carryout the first definition, which is the protection of those natural resources. It's the most pristine subzone that we have in our hierarchy. Mount Olomana is not 100% in the conservation district. We are asking you this morning, to designate Mount Olomana in the protective subzone, we need to let you know that we're somewhat limited that the entire mountain does not lie in the conservation district. We can only ask this board to apply such a designation to those lands at Mount Olomana which consist of about 850 acres to be put in the protective subzone. About 568 acres of what would be generally considered Mount Olomana is actually in the State's agriculture district, we are not addressing that acreage at all this morning.

The land ownership is not 100% State land. There are private landowners, that's why we are asking that due process be given to these landowners, that they be given an opportunity to comment, respond in what ever their best interest is.

Mr. Apaka asked, "To change designation from one use to the other, is it necessary to go Statewide for that change?"

Mr. Evans said that through a verbal discussion with the A.G.'s, it is their understanding that at a minimum, they must incorporate all the landowners whose property is directly affected and let them know. There may not be a requirement to go statewide for something such as this.

Mr. Apaka asked how the landowners in the area would be affected with the change especially those that owned their property prior to the conversion to conservation lands. Do they come under a different category of the Administrative Rules, will it allow them to build?

Mr. Evans responded that should the Board eventually adopt the rule after going through the process, there would be a major change and what the private property owners could do with their land. Should there be a public hearing this will be covered for their information.

Mr. Yuen asked if they were expecting to actually change the subzone designation going through a Chapter 91 ruling procedure.

Mr. Evans said that was correct and he had mentioned the due process.

Chairperson Paty then called on those who would like to comment on this issue.

Representative Cynthia Thielen said that she was testifying in support of Item H-5 the "Designation of Significant Geological and Unique Area on Oahu, Hawaii (Mt. Olomana)." She said that she had been privileged to join with the dedicated people who worked to preserve Mt. Olomana. "We need to ensure that this Windward landmark is preserved in perpetuity." She continued to read her testimony into the record. (Copy of her testimony has been placed in the Departmental Board Folder.)

Representative Jackie Young spoke in support of this item and said that this is an area that is pristine and needs to be protected.

Senator Stan Koki said he would also like to lend his support to this item. He is working with windward legislators not only to make the State Park but also a historic site and appreciates the steps that have been presented this morning.

Senator Mike McCartney said he would like to go on record to show that he supports this measure and anything we can do to protect and preserve Mount Olomana.

Ms. Bonnie Heim, Chair of the Kailua Neighborhood Board said that her board and the entire windward community strongly support the staff recommendation to designate Mt. Olomana as a significant geological feature and site, and a unique area. She continued to read her testimony into the record. (Copy of her testimony has been placed in the Departmental Board Folder.)

Ms. Donna Wong, a member of the Mount Olomana Association also voiced her support of Governor Waihee's commitment to protect the unique resource, Mount Olomana. She said after hearing Mr. Evans she had to add a big "but". She claims that she hears ominous words in his presentation that appear to have deviated from the staff report that she has. She said that staff's map is extremely poor and she said that they know who the owners are of the parcels on Mount Olomana and would be glad to share it with the department and with the Board. From the Governor's address, she said that she heard a commitment and now she's hearing something less from the department. She hoped that there will not be a great divide here. She hoped that the continued commitment as stated by the Governor will be carried out with the help of the Governor's Office, DLNR, this Board and the community in anyway they can help.

Chair Paty asked Ms. Wong what less did she hear.

Ms. Wong said that it was not stated whether they can build or not and that has been the contention all along with the Fazendin property. Mr. Evans says that it has been the practice of the Board, and she felt the auditor's report pointed that out, practice and policy that's got to be tied down.

Chair Paty responded that what Mr. Evans said with respect to the protective subzone, is a guaranteed no, no. As far as building was concerned, he said indeed if that were true and they expect it to go through by adoption, that the landowners will have a real problem if they intended to build.

Ms. Wong said, "True, but it's the interpretation on what can be built on general, what is permitted on general and I think that is what needs to be clarified being the practice and procedures and policy."

A representative from Councilman John Henry Felix's office made the presentation of testimony for Councilman Felix who was in Washington, D.C. He then read the prepared testimony which fully supported the proposed designation and strongly urged the Board to act immediately to effect the change. (Copy of the testimony is

being filed in the Departmental Board Folder.)

Mr. Terrence Carroll, resident of Kailua area said that he supports the staff recommendation to add Mount Olomana to preservation so that no building will be allowed there if possible and he urged the Board to adopt staff's recommendation.

**ACTION**

Unanimously approved as submitted. (Arisumi/Apaka)

**ITEM H-9**

**REVIEW OF CONSERVATION DISTRICT USE PERMIT FOR MINAMI GOLF COURSE AT KOOLAUPOKO, OAHU; TMK 4-5-42:1 & 6;  
APPLICANT: MINAMI GROUP (USA), INC.**

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Mr. Evans made the presentation of Item H-9 first giving the background then staff's recommendation to allow a time extension until December 31, 1991. He then referred to page 2 of the submittal. He said that he would read through them (Understandings) and then elaborate a little more on them.

Mr. Evans stressed the point that we are not at the beginning but at the very end of a permit process. Applicant could not complete their project within the three year time frame. There are about 13 items or Understandings which he read to the Board. He then continued to elaborate on the different items.

In terms of conditions, staff is asking the Board to impose two conditions:

- 1) That the Board approval on the original CDUA along with the proposal before you this morning, be placed in recordable form and recorded as part of the deed instrument at the Bureau of Conveyances within 60 days; and
- 2) That Items 1, 2, 3, 5, 6 and 8 be completed by the time the landowner opens the golf course and clubhouse for play.

Mr. Arisumi asked, "Who initiated this move to have the developer come in with all this different givings to the community? Did the community ask for it or the staff asked the developer to provide these things?"

Mr. Evans responded that staff did not ask the developer. What staff did say to developer was that it would be in his interest, to indicate what he would intend or propose to address as a good corporate citizen to provide community support.

Mr. Arisumi said, "I have some concern as a Board member, for the State to make this move to ask the developer to provide some community services of this nature and spend millions of dollars just to get this project going, I don't think we should be the ones to participate."

Mr. Evans said, "Your staff did not participate in the negotiations. The negotiations, the interactions were between the developer and the community leadership. Once those negotiations were reached then they were brought to us for our analytical review which you have before you this morning."

Ms. Himeno asked, "Mr. Evans, isn't it true when a developer comes back in for an extension, our rules permit us to consider new circumstances that may have arisen since the permit was originally granted?"

Mr. Evans said, "Correct."

Ms. Himeno continued, "And new circumstances could certainly be the community input which has changed or which has increased since the time the permit was originally granted."

Mr. Evans replied, "That is correct."

Ms. Himeno, "And if the community feels very strongly that these community contributions or, to be a good corporate citizen, or working with the community to get the project off the ground, and the community comes before us to give us this information, the Board can certainly consider that information, whether or not, a new circumstance is now in existence as to grant the extension."

Mr. Evans replied, "That is correct because they were the ones that came before you, the request for the time extension."

Mr. Ivan Lui Kwan, counsel for the Minami Group, representing the applicant said they really appreciate the sincere efforts made by the community leaders, Senator Mike McCartney, Reverend Bob Nakata, John Reppun, Fred Shiroma, Hank Iida and also the efforts made by the Director of the Office of State Planning (OSP) and the chair of this Board, Mr. Paty. He began by describing the process of the negotiations and felt everyone would understand where they are and how the agreement came to be. He also had some modifications to the staff report as he felt it did not accurately reflect what was agreed between the community and Minami. There were lots of discussions about contribution of community benefits that would be given by Minami to the community. The total package contribution by Minami was approximately \$16,151,000.00 and that was what they believed to be contributions made in connection with this project from its inception. They really came up with a package that totaled to \$25,461,000 and both of those items which comprised each of those numbers are contained in Attachment No. 4. They asked the OSP and the Chair of DLNR to help reconcile their positions to come up with something that was acceptable to both sides and that is Attachment No. 5 (staff had to get a copy.) In Attachment No. 5, it reaches a conclusion which the community leaders and Minami agreed to.

Mr. Lui Kwan then requested to make comments on the staff recommendation. He said that Mr. Evans was not involved in these discussions and so he is at a disadvantage in reflecting or representing what actually the agreements were. He then went over the items that they felt should be modified.

Senator McCartney representing the 8th Senatorial District said he would like to help clarify the different points being brought up this morning by Mr. Lui Kwan and make his own comments.

Discussion continued between Senator McCartney and Mr. Lui Kwan.

Chair commented that it seems that the negotiations had not ceased at 7:00 a.m. this morning and was ongoing. He suggested that action on this item be deferred to allow them to clean up the suggested conditions and then return later on the agenda. He suggested they walk through the other concerns.

Mr. Lui Kwan asked to clarify Item No. 5 regarding certain kinds of management personnel that requires specific training, for instance the golf pro, the general manager and other people in managerial positions. On Item No. 7, the concern here is control and number of people in a group. The way it is now, it seems that anyone who wants to come and say they have a right to use the clubhouse. There has to be some kind of management of the clubhouse use.

Senator McCartney concurred with what Mr. Lui Kwan just stated. For the record No. 5, non-key management staff, he doesn't recall that he doesn't mean to escalate it and raise tensions, but he felt that their community has people that would qualify to be in key-managerial positions.

Mr. Yuen said he thought it would be a good idea for the two parties to discuss this further as it was a little awkward in what they were doing before the Board. The one question he had was, "Who would have the right to enforce that if someone felt that a Windward resident were turned down for a job and he or she felt that he or she should have been given preference for the position?" Other than that, this could be deferred until a later time in the meeting.

Senator McCartney said he didn't know if it were appropriate, technically they haven't settled yet and there still were some things that he wanted to say. The Chair said he could put it on the record now.

Senator McCartney said John Reppun is present and Mr. Bob Nakata could not be present because his father just passed away. Senator McCartney said he wanted to make it clear that in 1987 when the original permit was coming up before the Land Board, no way they would be here and trying to go over this document and negotiate what they felt was good for the community. He said they would have been clearly on record opposing this golf course and they feel it's an inappropriate use of Conservation land. He thinks that they have wrestled real hard in the community between their philosophical position and a practical position. They've gone to the Kahaluu and Kaneohe Neighborhood Boards. They've formed a group called "Friends of Kaneohe Watershed," debated this issue in public and in their community. Many people have mixed feelings about this and it's uncomfortable for the three of them to be in this negotiations position because they have never done it before.

"We've always been associated with stopping golf courses, stopping projects and if we do agree to something like this it will be a first. I think we wrestled very hard with the philosophical argument. Many people in the community said about extortion. What are you doing? Are you extorting money from these guys? No, we're not, what we're doing is trying to offset the environmental and social impacts and do the best that we can given where we are in the permitting process. I think we wrestled very hard looking at the legal parameters. If we stood up philosophically today and fought this course and came to you and said, 'No more new permits,' it was our judgment call that it would still go through. And even if it didn't, the other side would take us to court and ultimately win because they had tremendous vested rights already in the property. We want to make it clear that even though we have reservations about this and we were to find common ground with Minami on this project, we don't want to send a message that this is a precedent for future use of conservation land. We strongly feel that there should be some policy set on how to use Conservation land. We're concerned about the cumulative impact on Kaneohe Bay being bombarded by golf courses all over the region. We see this as an opportunity, a dangerous opportunity to offset some of that impact. Hopefully the money from the trust fund, our primary goal, was a life for life land exchange where we would take land that would be proposed for golf course development and use the money from Minami to buy out another golf course, mainly the Nanatomi Project or the Bayview Project and again help the community. We don't know for the trust fund but at least we have a vehicle that we can go after money and we see that as a positive. We're going to continue to be active as a community. Just because we're getting involved with Minami in trying to find a common ground and look for mutual community benefits doesn't mean that we're going to be lax on the other golf courses that are being proposed in the region. In fact we're going to be proposing a golf course bill that will strengthen golf course policy and environmental impact parameters for the rest of the

State. Just on a personal it was real uncomfortable, but I think we make a judgment call and I know some people in the community did not agree with us and do not agree with us and they made it very clear in the community meetings. We're trying to find common ground here, trying to minimize, not extort, minimize and mitigate social and environmental impact and do the best job we can given where we are in the permitting process. That's where we're coming in as a group as Friends of Kaneohe Watershed. I must say that the Minami Group has been receptive to the negotiations, receptive to our concerns."

Mr. Lui Kwan commented that all the community leaders and representatives really did a great job of trying to reach a common ground. He also wanted to commend the Minami Group for trying to reach that common ground. Based on the law of the land, lots of these contributions that were being sought were not required by the law, in other words if they made any requirements of government agencies it would be improper and illegal and so that was an option that the Minami Group had based on advice from its counsel and despite that it was decided that several things, 1) that it was important to work with the community, 2) was important before the community and 3) that Hawaii was a special place, special people, special land and they want to do what was right and work together as neighbors.

Mr. Charlie Reppun said that he was addressing the item that was in the original CDUA permit, item no. 8, applicant conduct periodic water quality monitor, before during and after construction and take necessary measures to insure that the fertilizer, pesticide runoff on the project site so not have an adverse effect on the wildlife refuge on the Hoomaluhia Park. He then read his testimony into the record regarding this item and relating to the watershed area. He mentioned great concern of the streams that flow into Kaneohe Stream and bay affecting life in the bay. He also expressed concern on the different chemicals, how they would be applied and testing responsibilities. He felt Minami should be responsible for these testings.

He quoted a recent study by Mr. Richard Kline, "In comparison to other land uses, our study reveal that the impact of a typical golf course is about twice that of a farm and more like the degradation associated with residential development."

He talked about wells being dug in the Halekou area and use of the water by others in the community.

Mr. Yuen questioned the study by Richard Kline.

Mr. Reppun said it was about protecting the aquatic environment from the affect of golf courses done in May 1990. Mr. Kline has a lot of new information regarding golf courses. One of them was what sort of environmental requirements should be made of them.

Ms. Himeno asked if he could make a copy available for the Board to review.

Senator Stan Koki went on record saying that he supports the work that the Friends of the Kaneohe Watershed has done and appreciates their efforts in this regard in trying to bring this to a fruitful conclusion.

Chairperson Paty called for a recess and announced that item H-9 would be continued later. (Continued on Page 35.)

**RECESS**

**11:00 a.m.-11:08 a.m.**

Chairperson Paty called the regular meeting back to order.

**ITEM F-2**

**RESUBMITTAL--WATER COMMISSION OF THE COUNTY OF HAWAII REQUEST FOR ADDITION TO THE LALAMILO WATER SYSTEM AT LALAMILO, WAIMEA, SOUTH KOHALA, TAX MAP KEY 6-6-1:POR. 2**

Mr. Young presented the resubmittal by the Water Commission of the County of Hawaii for addition to the Lalamilo Water System. At the last meeting the Board had deferred action. The reason for the deferral was with respect to clarification on the sustainable yield with the Lalamilo aquifer area. He introduced Mr. Ed Sakoda of the Division of Water Resource Management to present the findings with respect to the sustainable yield in the area.

Mr. Sakoda presented his report using maps, charts and graphs to explain the sustainable yield. The estimated sustainable yield in that area, which is the Waimea Aquifer System is 24 million gallons per day. The present existing uses in the area are about 8 million gallons per day. In response to a question that was asked at the last meeting, whether there is sufficient room for more wells within State land, he said that we feel that there is sufficient here (pointing to map) for two or perhaps three wells approximately 1 million gallons per day, per well.

Ms. Himeno asked if the State had any immediate plans to sink those wells. Mr. Sakoda said he didn't know if there were any plans right now, but there would be room.

Mr. Yuen asked if the Nansay Well was a producing well. Mr. Sakoda said the first well was drilled and tested and its a good well. There's no permanent pump yet.

Mr. Arisumi said he mentioned earlier that there was a drawing of 8 million gallons per day for existing uses and would there be more. Mr. Sakoda replied, "Yes."

Ms. Himeno's question related to the 2 to 3 million gallons per day on State land. She asked how much would that support. How much would a residential development need or there was mention of the University of Hawaii's needs and Hawaiian Home Lands. As an example, she asked how many millions of gallons per day would be needed for a residential development. Mr. Gordon Akita of the division of Water Resource Management said for about 2,000 homes, it would be approximately one million gallons per day.

Chairman Paty asked staff if they would review the procedure that the Board could use to determine a sustainable yield.

Mr. Sakoda explained that the sustainable yield is based on the amount of rainfall discharged in the area and all of their water is from the rainfall. These aquifers were delineated by a consultant and the amount of rainfall, from calculating the area, the rainfall, they need to track the amount that runs off and the amount that recharges or evaporates. These are the factors that are considered in determining or estimating the sustainable yield for an area. This has been done statewide and this is the number they get for this area.

Ms. Himeno asked, "The petition before us right now is simply to move a reservoir to another site. It's not to sink another well?" Mr. Young said that was correct. She asked if Mauna Lani or Mauna Kea developers have plans to sink another well in the near future.

Mr. Jeff Watanabe, of the law firm representing both Mauna Lani and Mauna Kea responded to Mr. Himeno's question. He said for them to do so would require them

to obtain permission from the State. There is no further obligation from the State, either contractually or any other way of allowing any private firm or public development. Keep in mind that this is a County system that is requesting this.

Mr. Bill Sewake, County of Hawaii, said that their request is for the reservoir sites which is going to be built with the original Lalamilo Water System. Because of lack of funds at that time, that portion of the construction was deferred to a later date which is now. They will need those sites now to finish up the two reservoir construction.

Mr. Apaka directed his question to Mr. Sewake, "In the application you are asking for a move from one site to another. What is the reason for that?"

Mr. Sewake responded that when the original parcel was made, the exact elevation was not known, the reservoir should be at a certain elevation for pressure. Now with a more refined survey they have found that the lower site would be a better location.

Mr. Arisumi had a question for Mr. Young, "If we were to say, no, you cannot move the reservoir, they could dig the reservoir now at the current site that was approved in the past, right?" Mr. Young said that was correct.

Mr. Marshall Medoff, "I'd like to first resubmit and reassert the letter that I submitted to the Board on January 11, 1991, not necessary do it physically but to reassert the statements that were in it and the request for the rights for Contesting any action of the board and the like as being put forth again this day." He then asked to respond to Mr. Ed Sakoda's information to the Board. He said, "I think it's accurate but also inaccurate ..." He claimed that the data on sustainable yield was questionable and not to be trusted or relied upon. He also said that last year the department attempted to find water in the Lalamilo State land in the Kawaihae well drilling process, spending to date about \$400,000 with no success for one of these existing pockets of water that Mr. Sakoda spoke of today.

Mr. Medoff said that what he understands the issue here today was about a closed tank, storage of ground well water protected from the environment and the like. He continued, talking about the wells, the site change and whether sufficient amount of water will be found. He cited a Chapter in the State law 174c and the State Water Code Section 181, under definitions, 'pumps and pumping equipment means any equipment or material utilized or intended for use in withdrawing or obtaining ground water and it includes seals, tanks, fittings and controls'. What is being asked here to be built is tanks, which are herein called reservoirs. He talked about 174c and issuance of permits, claiming no permits were issued or requested and he claims there is a violation here.

Mr. Medoff again repeated what he had stated at the last meeting regarding what he felt was a violation. He strongly urged the Board not to approve the set aside this morning.

Mr. Yuen said that he had one question, which he addressed to Mr. Sakoda to point to where the Kawaihae well was built. Mr. Sakoda pointed it out on the map and mentioned that it was in a different aquifer system from the Lalamilo Well system.

## **MOTION**

Mr. Yuen moved approval of this item.

Mr. Yuen added these comments saying that at the last meeting he had a lot of questions of the availability of water in the area because of the State's position as a major landowner and also because the State had been limited to 600 gallons per day on couple of applications for water. Before the Board today is a very small part of a

very large project that is virtually completed and for which the basic policy decisions were made quite some time ago. Given what staff has reported, he said that he feels satisfied that the best to anyone's ability that there will be water available for other uses of the State.

His next comment was addressed to Mr. Sewake, he wondered, given the fact that all of the water out of Lalamilo System does come from State property, if the County could see fit that they are more generous with State applications for water usage in the area. He did mention that this will not be made a condition of this item.

**ACTION**

Motion was seconded by Mr. Arisumi and motion carried.

**ITEM F-8**

**ADOPTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF HAWAII AND U.S. NAVY ON THE POSSIBLE ACQUISITION OF THE MANANA STORAGE FACILITY AT WAIAWA, EWA, OAHU, TAX MAP KEY 9-7-24:POR. 6**

Mr. Young informed the Board that the exhibits that are attached says that the State and the Navy have entered into a tentative agreement to construct the causeway from Pearl Harbor Base to Ford Island, in return the State would get the Manana land from the Federal government and the State would provide the funding. He said that this submittal proposes two phases, 1) The first phase is to have the State and the Navy appraise the Pearl City lands, about 14 acres. Once an agreement to the first phase of the appraisal and the considerations reached, the moneys would be used by the Navy to do the design of the Ford Island causeway bridge and design a construction of the replacement facilities and relocation. 2) Phase two, the Navy together with the State would decide whether to proceed when they get the designs at a 35% completion and approximate cost for the causeway. If the Manana moneys could facilitate the construction, then proceed to phase two and that is to acquire the properties from Manana for the Navy. With those moneys, turn around and give to the Navy for construction.

Mr. David Slipher, Consultant for the State working with the Navy gave a background of what began two and one-half years ago, where Federal legislation was enacted which set the basis for this proposed transaction. Essentially for some time the Navy has identified a need for further improvement and utilization of Ford Island about 300 acres. Conditions now are very critical for the Navy. In order to effect that increased utilization of Ford Island, it's necessary to be able to move more people efficiently and goods and services back and forth. Ford Island at present is an abandoned airport and other low end uses. It is contemplated that in today's Navy needs, Ford Island has special benefits to the Navy. At the same time, the core of Ford Island, under the Navy's thinking will be utilized for housing, which will tend to reduce the impact on the community at large. The Manana lands, approximately 108 acres, are presently occupied by old World War II warehouses of which some are in use. They were identified as good location for improvement of our housing supply for the general community. That was what triggered this legislation 2 1/2 years ago. A concept of an exchange is a trade. Building of a causeway with funding made available through or with the State of Hawaii would be compensated by the delivery of the 108 acres of land to the State for development. The 108 acres, Manana, is also inclusive by an amendment through the legislation of an additional 14 acres. That is just a brief description. Time has gone by, the last several months have been used at arriving at a point with navy personnel of an approach. That approach has taken the turn as expressed in the Memorandum of Understanding, the Navy will accept the responsibility for design, identification of the kind of bridge or causeway and would carry forward that part of it and at this point because there is a sense of urgency on the part of the navy as well as a sense of urgency on the part of most of us that have been involved in it to take a next important step. That is to identify the potential for

fund generation from the development of the Manana lands. This proposal has been presented in a Phase I and a Phase II, the basic reason being Phase I allows for sufficient refinement of cost estimates and design to make it feasible to make better economic judgments about whether the project should proceed beyond that point.

Emphatically if I may, Phase I gives us a better base for making a useful decision to proceed.

**ACTION** Unanimously approved as submitted. (Himeno/Arisumi)

**ITEM J-2** **APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4742 AND 4744, AIRPORTS DIVISION**

Ms. Himeno requested to be excused from acting on this item due to a conflict.

Mr. Garcia made the presentation of this item.

Mr. Apaka asked for clarification that the area under question is not a new area but just over grown with weeds. Mr. Garcia said that was correct, the company that will take over will clear the area and maintain it to beautify the area.

**ACTION** Approved as submitted. (Apaka/Arisumi)

**ITEM F-3** **STAFF RECOMMENDATION TO ADOPT GUIDELINES FOR DISPOSITION OF STATE LANDS STATEWIDE TO HOUSING FINANCE AND DEVELOPMENT CORPORATION OR HOUSING DEVELOPMENT PROJECTS**

Mr. Young requested that this item be withdrawn from the agenda as staff has not had enough time to get to the affected parties for review and comments. Staff is requesting that this item be deferred to the next Oahu meeting.

**WITHDRAWN  
AND  
DEFERRED**

There being no objections from the Board, the item was allowed to be withdrawn and deferred to the next Oahu meeting.

**ITEM F-5** **AUTHORIZATION TO ACQUIRE THROUGH EMINENT DOMAIN PROCEEDINGS, ACCESS AND UTILITY EASEMENT ACROSS GENERAL LEASE NO. S-4906, MAUNALAHA, HONOLULU, OAHU, TAX MAP KEY 2-5-24:22**

Mr. Young made the presentation giving the background of the item. He also passed out additional information to the members of the Board and an exhibit showing where staff is presently in this situation.

One exhibit showed 32' radius, the necessary curvature for a normal automobile to execute a turn which the Department of Transportation feels is necessary. The next exhibit showed how the 32' radius curvature would appear over the properties in question.

Discussion followed on the usable portions of the lots in question and the egress and ingress to the properties.

Mrs. Kaaiai, mother of Mr. Kaaiai, owner of the lot, said she was here today for her son. She argued that the property is very steep and should the State condemn the piece of property as suggested by staff, her son will have no place to park his car. She explained how the parking area came about. She also mentioned that they tried to give Mr. Brandt a driveway and some kind of help but encountered difficulty in

getting the equipment to the area because of the erosion.

Mr. Arisumi asked Mrs. Kaaiai how were they getting to their property and was it through her son's property.

Mrs. Kaaiai said, "yeah." Mr. Arisumi asked if there was another way. Mrs. Kaaiai said that they could but it would be quite an expense for them to put up a retaining wall to get to their property. She then gave a background of the first owner of the property, Mrs. Helen Oku who refused to give consent for an easement to the property until she found out that she was dying.

Mr. Herman Brandt addressed the Board saying that he was issued this lease back in 1983 and since December 1983 up until now he has tried to get an easement established legally to get in and out of the property. As Mrs. Kaaiai indicated, Mrs. Oku consented back in April 1986. He said he has a letter from DLNR which indicated to him that she had approved it and also that he was authorized to proceed with whatever building he wanted to do subject to him getting a regular permit.

Mr. Brandt said that he had full support from Mrs. Kaaiai in his trying to get an easement until her two sons became the lessees, then her position changed. Now he has to proceed in this manner rather than trying to work something out.

Mr. Brandt said all he needs is what he had originally intended to do from the start, no more, no less, get an easement, get into the property and out of the property as agreed upon with Mrs. Oku.

Mr. Apaka asked if he had a design of his proposed driveway. Mr. Brandt said no, not really, but it would be at least 24 feet across. Mr. Apaka asked if there was a possibility to provide an access also for Mr. Kaaiai at the same time. Mr. Brandt said what they initially wanted to do was share the access because of it going up the hill, but under the latest configuration for construction being proposed it would overlap this easement access that they had sought from Mrs. Oku. He said he is not adverse to that and would even consider paying some of the additional cost that they would incur in order to build a retaining wall.

Mrs. Kaaiai said that she was not aware of that and when Mrs. Oku had the property they did try and even after her son got the property she said they made concrete slabs to try to get their machines up above to build the house above so that he could have that driveway. They have to build about 15 feet back of the property line now and the cesspool cannot be relocated higher because of the pumping. She said that they don't mind trying to share a driveway but they couldn't come to an agreement.

Some difference of opinion was exchanged by Mr. Brandt and Mrs. Kaaiai and Chairman Paty asked that the questions and answers be directed by the Board.

Mr. Arisumi expressed concern and would prefer a field trip visit to the area and see how steep the property was and whether there is a possibility of putting in a driveway.

**DEFERRMENT** Mr. Arisumi requested that this item be deferred to the next Oahu meeting. Seconded by Ms. Himeno, motion carried.

Ms. Himeno asked the applicant if they had ever considered going to a neighborhood board or neighborhood mediator for help. Mr. Brandt answered, "No." Ms. Himeno suggested to them now that it's going to be continued for a couple of weeks, that they reconsider using the services of the neighborhood justice center.

**CDUA FOR A SINGLE FAMILY RESIDENCE AND LEARNING CENTER/  
DORMITORY AT WAILAU VALLEY, MOLOKAI, TMK 5-9-5:16:  
APPLICANT: SARAH SYKES**

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**ITEM H-1**

Before beginning his presentation, Mr. Evans made a correction under staff's Recommendation, page 6, "That the Board of Land and Natural Resources approve this application for a single family residence and learning center/dormitory at Wailau... Staff would like to cross out the words "and Learning Center/Dormitory." That is not part of staff's recommendation this morning, although it was part of their proposal.

This item was deferred at an earlier board meeting at the request of the applicant. A temporary variance was granted in 1990 and the purpose of that was to construct a temporary shelter on the parcel so that they could collect information and prepare this application. Mr. Evans continued to read the rest of the proposed use in the submittal.

Mr. Evans mentioned that the proposals of the applicant were sent to a number of agencies, both Federal, State and local for their review and comments. Many came back and most suggested that with proper conditions they thought that it could be consistent. Staff has received a number of verbal reports of crowded groups camped in the valley at one time creating sanitation problems. months. Winter months is much less of a problem.

In terms of staff's analysis they feel that the proposal to use two structures for a single family residence should not be approved. Multiple structures for a single family dwelling is contrary to past Board decisions. The proposed single family dwelling, not including the storage shed should be limited to one structure.

Staff can recommend approval for only the single family dwelling.

Mr. Arisumi said that he noticed that there still is a stallmate of permit from the Water Resource Management people, to which Mr. Evans said, "Yes, that's correct. Also relative to the sewage, sanitation, whatever they do, basically she would need the Department of Health's approval."

Mr. Arisumi had a question as to non-conforming use of this area. Mr. Evans said this was not processed as a non-conforming use. It was processed as a conditional use.

Discussion continued on how the applicant would get her building material into the valley as there were no roads but an overgrown trail that's sometimes used. Mr. Evans said that applicant was planning on using the helicopter to bring in building materials. He also replied that he did not know of any other homes in the valley. In Pelekune Valley there was a cultural camp previously that wasn't done properly.

Mr. Apaka asked if the applicant was the only owner of this property. Mr. Evans responded that she was only owner of this 1.71 acre parcel. There are 72 other parcels. He mentioned that one of the conditions is that she get a metes and bounds survey done. Mr. Apaka expressed concerns of the use of the valley and felt it should be looked as a whole, not individual applications.

Mr. Yuen asked what is the estimated acreage of the 72 lots, to which Mr. Evans said under ten acres.

Ms. Sara Sykes, applicant approached the Board and said that it is pristine but not that rugged as she hikes the trail all the time. She gave a history of her 6 years living in Molokai in the valley. She said before she purchased the parcel in Wailau she

contacted the DLNR that she wanted to put up a permanent or temporary structure as she tried to be as responsible as possible. She first purchased a 55 acre parcel back of the bowl and when she first bought it she felt no one should build anything there. So she looked for another parcel so that she could have another place where she could stay more than a week and sometimes more than a month without using someone else's property. She wanted to do it properly.

She wrote to the Department of the Interior, the Department of Agriculture looking for national protection if necessary. She would like to stay there about six months of the year. She has two boys, they do not have a father and it's important to her that they have that type of upbringing. She herself grew up in a national forest inholding. She retired 4 years ago and she talked to an advisor at the MCC camp that they have moneys available for gifted and talented as well as abused children. This learning dormitory thing came about when she was calling DLNR on advice on how to process this CDUA. When she first made application for a CDUA she was advised to take the most complete use and apply it to that.

Her single family dwelling would simply be available to them. She would also like to put in a ham radio in conjunction with the Molokai Coast Guard auxilliary. Some of the reasons why she would like a lockable permanent structure is to have first aid material available, the ham radio (means of communication), and to set up an example, self-composting toilet. That may be the reason for showing two structures, the self-composting toilet and shower house, it would basically be under one roof.

She said she submitted with her application with a copy of her trust. If the Nature Conservancy chooses not to accept the property, it next goes to the Sierra Club and next reverts back to the State of Hawaii. The original building plans are very rough versions. If she does die, it can go to the State as an interpretive center and not so much as a shelter for camping but emergency shelter. She talked about the single family dwelling as being used as a public house for students. She mentioned that the whole point is to protect Wailau, use it the way the local folks and the Hawaiians used it to see the restoration of the taro lohis and growth of local foods.

She's only lived in Hawaii for a few years but has always been interested in conservation. If you deny me you certainly can't let anyone else build in there.

She informed the Board that the ancient trail does not cut through her property. One project would be to work with the Na Ala Hele Group to restore the trails. Sanitation is one of biggest concerns. The entire valley, the northshore is watershed. The Department of Health told her she would need a septic system, a leach field and she explained to them that it would not be appropriate.

Ms. Sykes said that she did not have any problems with any of the conditions and wouldn't mind more. She did want to put up the matter of the learning center dormitory thing but she does want to have house for the small kids.

Mr. Yuen questioned the applicant that she deeded 55 acres to the Nature Conservancy of Hawaii and had her point it out on the map. He also questioned the trust that she spoke of on the 1.7 acres. Ms. Sykes said that she put the 55 acre parcel in the trust and she now has to do the paper work to add it to the trust and protect it in the same way.

Mr. Yuen asked if her proposed structure was screened from view. She replied that her object was not to have it visible. She was going two floors because Wailau has been susceptible to tidal waves and tremendous flooding. Until she does the metes and bounds survey, she's not really sure where she's going to put the structure up.

Mr. Arisumi asked why the idea of having this learning center there? Ms. Sykes said that her proposed project is for the young children. She needs the structure to be there to make it possible for the kids to come in. It's not so much a dormitory as dry roof cover for the children.

Mr. Akaka reconfirmed with applicant that she wants to keep the place strictly left in conservation, no development and for the State to protect all other areas and the water. As he understood that she would not object if the Board denied her application until they could come up with a further plan or study of what can be done throughout the State regarding areas like Wailau, and she could come back after the study is finished with another application.

Ms. Sykes responded that she would like to see the land use and the water use planning go down firmly with appropriate public input. Especially on Molokai regarding fishing and hunting. She would say, "no", as one of the things that people warned her when she bought this parcel, "you'll never even get it before the Board unless you are a hotel. It seems there is a thinking on Molokai that if you're an individual or private person you won't get far but if you're a hotel, if there's money involved with development you'll get it." So that's her only worry now.

#### **EXECUTIVE SESSION**

Mr. Arisumi requested an executive session to confer with legal counsel.

Ms. Sykes asked if this application were to be denied, what happens to the temporary variance. Can it be extended? Chairperson Paty advised her that this could be taken up after the executive session.

#### **1:00pm-1:30pm**

The regular meeting was called back to order by Chairperson Paty.

Ms. Pat Tummons then gave testimony on behalf of Dr. Emmett Aluli and herself urging the Board deny the application on the basis that the proposed use is inconsistent with the Resource subzone objectives. If the Board is unwilling to deny the application, they are asking that the Board grant a 90-day extension, during which time a public hearing on the possible commercial aspects of this proposed use could be held on Molokai. If the Board approves this CDUA, Ms. Tummons said that she has been authorized by Dr. Aluli to request a contested case hearing on behalf of him and other residents of Molokai. (A copy of her written testimony has been filed in the Departmental Board Folder.)

#### **MOTION**

Mr. Arisumi said, "I don't really know whether or not if the applicant will agree to what he would like to propose here, is that until such time that we have a comprehensive study in that area, we, I personally feel that we shouldn't allow a large residential structure like what you are proposing before us, but maybe if the board would agree with me that you can go along with a shed, just a shed that need to be approved by the department and also have an understanding that you don't have any vested right to that particular shed. If and when the comprehensive study is done, and everything has to go, then that shed has to go. With that in mind, I don't know if the rest of the Board members would agree with me, I'd like to make a motion on that basis.

The Chairperson attempted to clarify Mr. Arisumi's concerns saying, "Essentially that the Board will approve a shelter, a shed type structure with suitable sanitation facility pending a review of the utilization of the Wailau and or the northshore of Molokai insofar as usage is concerned. And that should a study develop with a proviso that no structure should be permitted within the valley, that then that structure will have to go. Chairperson Paty asked Mr. Arisimu if he would mind restating his motion.

**MOTION  
(Restated)**

Mr. Arisumi said he wants to make a motion on that basis, without any vested rights. Just in case, 5 to 10 years down the line if any study is made, applicant comes back and says that the Board granted me this in 1991, so I should continue to have it, that's not what it is. If it has to go when the study is made, it has to go. Motion was seconded by Mr. Apaka.

**DISCUSSION:**

Mr. Yuen asked to make an amendment to the motion. That a condition be added to that, that the structure be landscaped to provide a visual screen from other properties and that public use of the trail segment that passes through the corner of the property be allowed. That there be no rental of the structure, use of the structure would be approved for the use of the owner and guests. Mr. Arisumi had no objection to the motion as amended.

Mr. Apaka: One thought he had in mind, is that in the event you decide to sell your property, what occurs today would not be transferred to the new owner.

Ms. Sykes said if the Board got to see her letter in her application and the attachments, there was enclosed copies of the three pages of plans, the house for the back parcel would be duplicated for the front parcel, that property can't be developed, can't be sold, can't be built on, not even her grandchildren could put anything on.

Mr. Watson said, "Under those premises, you should have no objection to the condition that the right is not assignable?" Ms. Sykes responded, "No." She added that she understands that she can put up a sufficient structure to deal with the sanitation, to put in a self-composting toilet and to deal with the communications, that she could have something that she could lock. This has been a problem before. Her only other question is, "Because we have small structure up there now for shelter, during construction and really it was for when we worked in the valley enough to figure out where the water runs, what do I do about that?"

Mr. Arisumi said, "You're talking about putting up a ..."

Ms. Sykes said, "We just have a temporary structure in there now, we gotta have a temporary variance. Do we need to take that down, can we continue to use that while we put up the other? What's the status with that?"

Mr. Arisumi said that he had no problem with that. He said, "One thing that you missed was that, the department wants to look at what your structure is going to look like, in other words it has to be approved by our department. If we allow you to put up a shed, but a shed can be 20' x 20', a shed can be 50' x 50' or it can be 10' x 10'.

Ms. Sykes said, "Gotcha," (she understood).

**ACTION**

The Chair called for a vote on the amended motion and motion carried unanimously.

Ms. Sykes asked Mr. Evans for written instructions to make it real clear what she would be allowed to do.

**ITEM H-2**

**RECONSIDERATION OF AFTER-THE-FACT CDUA FOR A RECREATIONAL CABIN, WAILAU, MOLOKAI, TMK 5-9-05:74 APPLICANT: MR. DOUGLAS T. LEGRANDE; AGENT: MR. ROBERT STRAND**

Mr. Evans said that this is a reconsideration of an after-the-fact CDUA in Wailau, Molokai. Subsequently staff has received from counsel for the applicant, that essentially represents that the other potential landowners have been clarified and

resolved. A land survey was conducted on the property and it is verified that the cabin and structure itself is properly located on the property and legal access is afforded to the property as its original kuleana. Based on staff's analysis, they feel that the applicant has been attentive to Board findings and instructions that original staff concerns regarding the application have been satisfactorily resolved. Staff feels that applicant has attempted in good faith to resolve the problem areas of concern and based upon that is recommending approval.

Mr. Yuen asked if the toilet system had gotten the approval of the Department of Health. Mr. Bob Strand, representing the applicant replied, "Yes."

Mr. Evans said that there are only 11 conditons, but should the Board sustain the staff's recommendation of approval, he would ask that the Board consider the same non-vested right aspect as was placed in the immediate preceeding approval.

Mr. Arisumi questioned the building permit. Mr. Evans responded that the County would generally not issue a building until they receive signed constructions plans approved by DLNR and approval of land use from the Land Board.

Mr. LeGrande responded to questions of Mr. Arisumi saying that the structure is 12' x 16'. There is no addition to that. The only addition is the self-composting toilet which is about 40' away from the cabin. He also stated that applicant has seen the conditions and has no objections. They have no intentions of renting the cabin and also it is very difficult to find. There are no trails across the property that the public might use although there is a trail that leads to his property. He is also very conscientious of keeping the area clean.

**MOTION**

Mr. Arisumi moved for approval of Item H-2 with the understanding that when the State takes a comprehensive review of the area and feels that all structures should be demolished, then you shall demolish your structure too. The Board will not give any grandfathered clause or vested-rights because you are presently there. Also there should be a picture or photo of the structure in file.

Mr. Yuen seconded the motion but requested to make couple of amendments with the approval of the moving party to make this consistent with previous applications, that there be a no rental clause; and that the rights under this permit would not be assignable and natural thickness which provides a visible screen be retained.

Mr. Arisumi concurred with the motion as amended.

**ACTION**

Chairperson called for the question and motion carried unanimously.

**ITEM H-3**

**OVERVIEW OF CDUA FOR A SINGLE FAMILY RESIDENCE, KAILUA, OAHU, TMK 4-2-02:27; APPLICANT: WACOR, INC. AGENT: MR. DENNIS KING**

Mr. Evans said presented Item H-3 to the Board saying that this was an overview of a single family residence in Kailua, private land in the General Subzone as defined originally by what was then called Regulation 4, Limited Subzone under current rule. What transpired here is that the original owner died, the property was sold, the new owner comes in and wants to build a house on the property, questions arose relative to the validity of the permit and the first opinion to the Department of the Attorney General, came back saying it was valid and staff then researched it more. It was brought to their attention that there had been placed and recorded a condition requiring that construction be started within one year, it was pointed out to staff by members of the community that construction had not started within one year and therefore the permit is dead. Given that new information, staff again went back to the

Department of the Attorney General and asked them to consider this information which they did not have previously in their memorandum back to staff. The Department of the Attorney General has basically indicated to staff that, "yes, as of today this permit is still valid, however it is voidable by the Board for the reasons that construction did not start within that time frame." In this regard, staff is recommending that the Board confirm that the single family residence and land use did become void on December 29, 1989, in that the applicant failed to initiate construction as mutually agreed and recorded on the deed instrument at the Bureau of Conveyances. Secondly, that the Board authorize the Chairman to notify the parties that the permit is cancelled. Staff is recommending the voiding because of mutually agreed actions. We understand the applicant and agent are in the audience and do wish to address the Board on this matter.

There being no questions of Mr. Evans, Chairperson Paty invited the applicant's representative to come forward.

Mr. Dennis King, attorney for WACOR, Inc. said also present with him were Timothy Hurst, President of Wacor Inc., Brian Gray, engineer and Fritz Johnson the architect. Mr. Gray and Mr. Johnson had to leave for some other meetings but may return in time to make some comments on this item.

Mr. King passed out to the members of the Board 17 exhibits and he said that he would read parts of it. He mentioned that Mr. Evans had given background on this matter which goes back to 1978. His client has not been involved in it for that length of time but his involvement began in 1988. In December 1988, his client entered into a DROA to purchase the property and part of closing of the purchase he received a letter. It was sent to the attorney for the seller, exhibit 1, dated December 1, 1988. He directed the Board's attention to the third paragraph which states, "In addition, any activity formally approved but not undertaken at Tax Map Key 4-2-2-17 is no longer approved." That was a letter sent by Mr. Paty to Mary Blaine Johnson, seller's attorney. She responded on December 9th, a letter of her own to the Department of Land and Natural Resources. In that letter she pointed out a number of reasons why the permit should not be cancelled and should still be in effect. Roger Evans, who was the administrator of the Office of Conservation and Environmental Affairs wrote back to her on December 21st, which is Exhibit 2. In that letter he stated, Mr. King pointed out in the third paragraph, "As a result with the complete CDUA file OA-1030 once again in tact, it is evident that the above stated CDUA permit is still in effect; therefore this letter should serve as an update to Mr. Paty's correspondence of December 1, 1988. So, we initially had a position taken by Mr. Paty that the permit was not in effect and within 20 days thereafter, the department is taking the position that the permit is in effect. I think that since the commencement of my client's involvement with this property, the conduct of the Department of Land and Natural Resources most charitably could be described as inconsistent in some events, creating the inability for my client to go forward with its efforts to construct on the property. My client's reliance upon Exhibit 2, closed on the purchase of the property. Closing took place on December 29, 1988. Mr. Hurst will, when I'm finished, describe his activities in 1989 to construct on the property. By December 11, 1989, Mr. Hurst had encountered obstacles in obtaining his grading permit at the City level from the Department of Public Works. He was informed on or about that date to contact the Department of Land and Natural Resources. He did that and spoke to Roger Evans and he learned at that time that Mr. Paty had written another letter. That letter had been written on September 29, 1989, during that one year time period. That letter was written by Mr. Paty to the Lanikai Association to the attention of Daniel Orondenker. You'll see that as Exhibit 3. In that letter, Mr. Paty states in the third paragraph, "As such, the department views the Conservation District Use Permit on this land, cancelled." What is significant, is not only had that decision been made, but the

reasoning in the letter is the same reasoning that was utilized a year earlier in the December 1, 1988 letter from Mr. Paty. But there's no reference in this letter to the one that had been written by Mr. Evans stating that the permit is in effect. More importantly you will notice no copy of this letter was furnished to WACOR, Inc. or to its attorney.

Mr. King continued: "So we got a letter that says the permit was not in effect, was cancelled, but notices given to WACOR, Inc. When my client learned about that in December of 1989, almost two and a half months after action had been taken by Mr. Paty, he filed a Petition for a Declaratory Ruling with the DLNR. It was filed on December 29. After the filing of that, Mr. Paty wrote another letter and this written on May 4th of 1990. That letter is Exhibit 4 from your staff. In that letter it states in the second paragraph of the first page, "Following review of pertinent files covering CDUA OA-1030, we affirm that the subject property has current approval to establish one single-family residence on the property, subject to identified Board conditions established on February 12, 1979." So now we've had second reversal of position by the DLNR. We've had two letters indicating that the permit was not effective and now we've got two letters that say it's back in, it's effective again.

"The third inconsistent event occurs when Mr. Paty writes his letter on December 20, 1990, that's Exhibit 5 in the stack. This letter was written after a great deal of public controversy arose around September of 1990. A number of you will probably recall a lot of newspaper articles that indicate that there was a great deal of public sentiment in the community against this project going forward and various members of the community had just learned about Mr. Paty's last letter that appears to reverse the position that was popular with the environmental groups. So, at that time Mr. Paty was quoted at least in the newspapers, saying we're looking into the validity of the permit again. Then on December 20, 1990, he writes his current letter, and on the second page of that letter he states at the top, "As such, we have concluded that the CDUA OA-1030 may be in default and the CDUA permit may be voidable by the Board of Land and Natural Resources as WACOR, Inc. failed to initiate construction within the specified time frame." After that letter was written, we then received the staff report that you folks all have here today, we received it this past Tuesday. That staff report essentially takes the same position that Mr. Paty took in his letter. The reason that's given for seeking to void the permit is an argument that my client WACOR, Inc. when it purchased the property, agreed that the permit would be void if it didn't commence construction within one year. Well, that's just not true, and the facts don't support that.

"The document that's been referred to as the basis for that, by the staff of DLNR, is a document entitled, "Security Instrument." You have a copy of that attached as Exhibit H to the handout you received from staff of DLNR. Taking a look at the Security Instrument, there is one particular paragraph upon which the staff is saying the permit should be voided. Page 3 of Exhibit H, paragraph 4 reads, "Owner must begin construction within one year and complete construction within three years of the recording of this document." It's the position of WACOR, Inc. that that particular paragraph does not create a basis for the department to void the permit for a number of reasons. When WACOR, Inc. filed its Petition for Declaratory Ruling on December 29, 1989, to reverse Mr. Paty's second letter of cancellation, there were two versions of that Security Instrument contained with that petition, that petition is in DLNR's file. The first version was one where Mr. Hurst and his wife were going to sign as individuals, it contained the same paragraph 4. The second version where Mr. Hurst just before closing decided for various reasons to purchase the property through a corporation that he is the principle stockholder in. That also has the same paragraph 4. Both of those versions are contained in the Petition we filed. An argument has been made by staff today that for some reason, WACOR didn't bring the Security

Instrument to the attention of DLNR when it filed its petition. Well, at the time that petition was filed, the issue wasn't whether or not the one year had expired, it was whether Mr. Paty's second letter of cancellation was correct or incorrect. We had no incentive or reason to bring that to the attention of DLNR, but nevertheless we included two copies of that Security Instrument, both of those were unexecuted versions. We also included with that petition as Exhibit 9, a letter that was sent from the seller's attorney, and you have a copy of that letter in the stack of documents that I've just distributed to you. That I believe is Exhibit 9, a letter written on January 30, 1989 from the seller's attorney asking the DLNR to release the Security Instrument that Mr. Noel had placed on the property back sometime around 1980 or 1981. Ms. Johnson has informed me that the Board has never released that original Security Instrument. There are two Security Instruments on the property now. In that letter, she also says, "I wanted to inform you that a new Security Instrument was recorded in the name of WACOR, Inc. purchaser of the property, I enclose a copy. The department has had a copy of that Security Instrument since at least, they received that letter on January 31, 1989 and that was an executed recorded copy of the Security Instrument. That's been in the file of the department all this time, then to come back now and say, we didn't realize that there was some type of a one year time period, it's just erroneous. What difference does that one year time period make in any event? We just read through the language, it's our position that that does not establish a condition, it's not stated as a condition, it doesn't say, "If you don't finish construction within one year, the permit, the CDUA permit is invalidated. It doesn't say that at all." It's worded and structured as a covenant, that the owner will commence construction within a one year time period. I think you have to bear in mind that the language is not prepared by Hurst or by his counsel. It was prepared apparently by the seller's attorney and approved by the DLNR, as they approved the language before it was executed by WACOR, Inc. If it had been the intention of the department that this be a condition subsequent, then it should have stated that and it doesn't say that. Mr. Hurst, when he purchased the property, did not have the understanding that if he did not commence construction within one year that the permit would be invalidated. Look back at the history of this case, when the conditions were originally imposed, this is condition no. 18 of the February 19, 1979 approval by the Board, paragraph 18 required a \$6,000 bond to be posted for the purpose of protecting the area to be landscaped and graded, so that there would not be run off. Mr. Noel was able to persuade the department to take the Security Instrument in lieu of the \$6,000 bond. Mr. Hurst, when he purchased the property, believed that he had the choice of putting up a \$6,000 Bond or executing a replacement Security Instrument. He went forward with the Security Instrument. But if the construction didn't commence, it wasn't his understanding that the permit would be invalidated. You have to look where that language is placed, in a Security Instrument. It's not put in a separate document where he's asked to agree that he loses his permit if construction doesn't begin. At most, a proper sanction, if there were to be one, would be that the Security Instrument might be invalidated. In that case, Mr. Hurst would have posted a \$6,000 bond to cover condition no. 18. I think it also very important to bear in mind that we've got two security instruments on the property at this time, so there's probably double coverage in the amount that was originally imposed under paragraph 18, condition 18.

Mr. King continued: "Let's suppose for just a moment that this paragraph in the security instrument, not in something else that Mr. Hurst has signed, is in fact a condition to the effectiveness of the permit even though it doesn't say that. If that were to be the case, then is the Board in a position to terminate or void the permit. We don't think so. One of the questions is whether or not the Board itself would have the power to impose a time limitation in the security instrument. Mr. Hurst, when he bought the property, understood that he had to sign this or he couldn't buy the property. Could the Board, did it have the power, in fact we're not even talking about

the Board, we're talking about the Department itself because this didn't go back to the Board at the time that WACOR purchased it. It just went through the department and the department imposed these requirements in the security instrument. Did the department have the authority to establish a time limitation when the original approval had no time limitation? I think the answer to that is clearly, 'no' and that's evidenced by correspondence from Mr. Paty. If you'll look at Exhibits 7 and 8 in your stack of documents, No. 7 is an April 9, 1985 letter, that's a letter from the Attorney General's Office and the question posed right at the start is, 'This is in response to your memorandum dated March 13, 1985 requesting whether Conservation District Use Permit OA-1030 is still in effect?' We answer in the affirmative. On the second page, at the top of the page, it states, "February 9, 1979, the Land Board approved construction plans subject to 18 conditions before construction could begin." From a review of the files it appears that compliance to all conditions was completed by October 1981 although we cannot find any formal notice to Mr. Noel that he could commence construction. Then if you go to Exhibit 8, July 11, 1989, this was during the one year period that WACOR has purchased the property, Mr. Paty writes to Barbara Smith, President of the Lanikai Association. On the second page of the letter, top paragraph, 2nd line he says, "the approval therefore does not include a time constraint, furthermore, additional conditions cannot be imposed at this time without infringing on the landowner's right to due process." Mr. Paty, I think, based upon an Attorney General's opinion felt that no time limitations could be imposed. To the validity of the permit itself. That's our position, 'no time limitations could have been imposed at that time.' And if it had been the intention to impose them, the document as a security instrument, clearly doesn't establish a condition to the effectiveness of the permit, and even if it did, we do have a security instrument that satisfies condition no. 18 in the original approval.

"During the year 1989, Mr. Hurst, after he purchased the property, retained the engineer and the architect that had worked previously for Mr. Noel. When he retained them it was to go forward to be able to construct. There were efforts made, documents were submitted by the engineer in June 1989 to the city to obtain approved grading plans but for some reason those plans didn't move forward. Then Mr. Hurst finds out in December of 1989, that the reason that they're not moving forward is because two and one-half months earlier, Mr. Paty had cancelled the permit. The department's actions of cancelling that permit during the first twelve months interfered with the ability of WACOR to actually commence the construction during that one year time period. So even if it was a condition, subsequent, WACOR can't be put in a position where it's prevented from being able to construct because of actions of the department itself and nevertheless that's what's occurred in this case.

"If it were a condition subsequent, nevertheless, it's a position of WACOR that it did commence construction at least to the extent that it was able to do that during that first twelve months. Mr. Hurst will describe that further. Essentially what he did, was he had surveying of the property conducted, the property was staked, he had soil drilling on the property by Dames and Moore, he negotiated with the adjoining neighbor, Mr. Scott and the easement was agreed to with the adjoining owner. To the extent that he was able to commence construction, notwithstanding Mr. Paty's termination letter of September of 1989, he did do that. Now after purchasing the property, Mr. Hurst has made a proposal to DLNR that he would be willing to put a Declaration of Restrictive Covenants on the property, that wasn't required in the original 18 conditions when it was passed. He's proposed to do that and he's submitted a proposed declaration to the department after Mr. Paty wrote his May 4, 1990 letter saying, 'now you can go ahead with the project again.' That document is attached as Exhibit 6 to the handout given to you and it contains with it a Declaration of Restrictive Covenants signed by WACOR. Puts all the original 18 conditions in that document to be recorded on the property. We asked for approval of DLNR to that

document so that it could be recorded, but we've never received a response to it. WACOR remains ready, willing and able to record that document so that if anyone else succeeds to the property by sale or otherwise, it will be bound to the single family residential use of the property.

"In 1990, after various of these problems had arisen with regard to developing the property, WACOR decided to resell the property and it did negotiate with a potential buyer to sell the property to them. The terms that were negotiated although not put into an agreement, not signed, were that the property would be purchased for 3.9 million dollars, the house would be built by WACOR, Inc. prior to the closing of the sale. The sale would then close after the house was constructed but the purchaser would be bound to all the restrictions. The single family use, the plans that were previously approved in 1981 for grading and for construction of the house. There was not going to be any change in those plans from that time period. If the Board voids this permit, WACOR will be damaged at least to that 3.9 million dollar amount that the buyer would have purchased it for. The buyer became reluctant to go forward with the purchase at about the time the publicity arose in the press, where Mr. Paty was quoted as saying, "The Attorney General's Office was going to look at this issue again." But for that problem with this permit, that we have before us right now, Mr. Hurst's belief is that buyer will go forward with that purchase.

"We believe that voiding the permit would constitute a taking of WACOR's property as an adverse condemnation, would also constitute a deprivation of substantive and procedural due process under the United States and Hawaii Constitution as well as perhaps a violation of equal protection provision. I believe it would be an impairment of his purchase contract rights, where we relied upon a letter by DLNR when he purchased the property, but then was not afforded the full twelve months to construct at the beginning. That would be violation of Article 1, Section 10 of the United States Constitution. We believe also that there will be claims for equitable or promissory estoppel against the DLNR in light of the prior correspondence.

"WACOR request that the Board provide it with fair treatment to the same extent it would to any other landowner who has vested rights in the property. That prior inconsistencies and the pending request to void the permit, at least in our mind, raised doubts about the fair treatment that this corporation, which is not a Hawaii corporation, has received and may receive on this matter. In addition, concern has been heightened by the fact that there is a great deal of publicity on this matter and there are a lot of community groups that have been actively involved. On top of that there are a number of letters that have been written by Mr. Paty in the last year and I direct your attention to Exhibit 10, 11, 12 and 13, all these letters were written on September 26, 1990, this was just after the publicity in the newspaper. For example in the first one, Barbara Smith, I believe she's with the Lanikai Association, the second paragraph, Mr. Paty says, 'However, we are in receipt of information that indicates that may not be the case. We are again asking our legal people to reconsider their position based upon this information. Hopefully, we'll be able to find ourselves in a position consistent with the Lanikai Association.' The next letter to Representative Whitney Anderson, the second paragraph, second sentence, 'Hopefully this review will be more in tune with the community desires.' The next letter to Jackie Young, second paragraph, second sentence, 'We are asking the Attorney General to review this which hopefully will result in a department position more in line with the wishes of the community.' And lastly, Exhibit 13, second paragraph, this is a letter to Representative Cam Cavasso, 'Hopefully the review will result in something more in line with the community's wishes.' I think that these letters in light of past inconsistencies by the department, at least in our minds, create the impression that the department chairman has a pre-disposition to favor the position of the community contrary to this landowner's CDUA permit and for that reason we would request Mr. Paty refrain from

or abstain from voting and deliberating on the vote for this particular matter. The question we ask is, "Where is the governmental neutrality that should be here, why is the department advocating, or apparently advocating a position on behalf of the community?" Where does the landowner's rights fit into this? Secondly on that subject matter, we understand that there has been another letter from the Attorney General's Office that apparently supports the position that the staff is recommending today or may support it. We haven't been able to obtain a copy of that. We've been inform that it is protected by the attorney/client privilege, so we haven't seen it. My understanding is member Himeno is married to the Attorney General, I may be wrong on that, I read that somewhere. If that's the case, if that opinion letter that's been written by the Attorney General or at least approved by the Attorney General, the question that we have on our mind is, 'Can member Himeno divorce herself, not legally but figuratively, perhaps from a position that her husband has taken on behalf of the Attorney General's Office to support the voiding of this permit?' Especially where the Attorney General is a key member of the cabinet of the Governor. The Governor this past week has indicated some strong feeling for protection of areas on the windward side. Before a vote, I would just ask Member Himeno if she feels there's no basis to excuse herself, at least express audibly so the mike line is aware of it that she feels that she could vote even against the popular opinion, but in any event, her relation with the Attorney General would not act upon her vote upon this subject matter. We don't raise those concerns to alienate any members of the Board but just to be assured that there are no other predispositions that would affect the vote here and would be simply looking at the issues."

Chairperson Paty said, "I think we would be prepared to respond to that, probably undertake a motion for an executive session and following that be prepared to respond to your concern."

Mr. King added, "Just a couple last comments and that is, the community does have a number of concerns as we're aware, reading the newspaper articles. We think that many of those concerns may be legitimate concerns but they were addressed in 1979 when the Board approved this permit and they were addressed, and the conditions that were imposed upon the construction. There really isn't any basis to look at those issues at this time. I think this landowner should be allowed the opportunity to go forward and construct as he intended to do and those issues have already been addressed. The architect is here now, will have a few comments with regard to one or two of the concerns that have been raised by the community. We think they were addressed in 1979, but just to make it clear because a lot of time has passed, we don't think there are any, there isn't going to be any substantial harm from this construction. We submit that, Mr. Paty's recommendation to void the permit, because of lack of construction in the first one year time period through December 29, 1989 should be denied since we think it's without merit based on the facts of this case as to all of the other events that have transpired. I'll let Mr. Hurst now comment about his efforts in 1989."

Mr. Hurst addressing the Board began by giving a short background of himself and his corporation, WACOR, INC. saying that they are not a large mainland corporation, his wife and he are the sole stockholders. He is a licensed land surveyor and held licenses in general contractor for ten years prior to moving to Hawaii in 1985. In 1988 he was a resident in Kailua and became aware of the property through a broker. He negotiated an offer and the purchase was predicated on the understanding that the existing CDUA permit was valid and would be transferred to him.

He did quite a bit of research with the DLNR going through their records and was first told that the permit was cancelled, then further investigation was told that it was still valid. He entered into an agreement to purchase this property and there was a long

escrow period to determine whether that permit could be transferred or not. In early December he was called by the broker and was informed that Mr. Paty had rescinded the permit. At that time he told the broker that he would not continue and would not close on the property. He needed to get back to the seller's lawyer and the DLNR and see if they could resolve this. Ms. Mary Blaine Johnson did quite a bit of work in the first part of December.

He received a call on December 21 that Mr. Evans had sent out a letter reversing the position of Mr. Paty and he said in fact that the permit was valid and so on that basis he went ahead and closed escrow on the property. In January he hired Brian Gray with Gray, Hong and Bills, Civil Engineers to act as project engineer and he discussed having Mr. Fritz Johnson handle the architecture on it. In February he did have an approved grading plan that was signed off in 1981 and that was passed on to him by Mr. Brian Gray. It was his understanding that this grading plan was still in effect and he was familiar with the design and grading of hillside properties and he wanted to verify the topography and grading design. So he brought in two of his former employees who were in the civil engineering business in San Francisco Bay area, two gentlemen who specialized in hillside design and surveying. They stayed two weeks and established the boundaries of the property and sent each of the individual angle points along the approximately 2,000 linear foot access road up to the property. They compared the grades that Brian Gray's office had designed with some preliminary topol maps and prepared new topols to confirm those grades. They went ahead and set construction stakes because he thought it would just be a matter of a couple months before they would get their grading plan approved by the city, since they already had the grading plan approved in 1981. They went ahead and set what they called 'cut and fill' stakes for the construction for the roadway up to the property. Then in February and March he worked on locating the original plans so that Mr. Johnson did not have to work from scratch as one of the conditions were that they stay with the existing house plans and not alter from those, through a contact of a structural engineer who had done some work on the property before he was able to resurrect a set of the original plans.

In April, one of the conditions they had was to work with the adjacent homeowner, Dr. Frank Scott in relocating the easement through his property. He had some rare trees that landscaped up to his property which he did not want the roadway to go through. They worked with him on the relocation. He suggested to relocate the roadway through some property owned by Bishop Estate. Bishop Estate felt there would not be any benefit to them and suggested they keep the right-of-way where it was.

They worked with several plans with Dr. Scott and finally came up with an alignment that they could stay within his property but shift their easement over to his boundary line. Came up with that alignment and talked with Brian Gray about that and he said he thought that would work out alright.

In May, he hired Dames and Moore, soils engineers to do a field inspection and analysis on the access road and homesite.

In June of '89, Brian Gray had resubmitted grading plans to the City Engineer. Several changes had been made that incorporated some of the suggestions from the soil engineers. They also decided to add some retaining walls on each side of the roadway which he thought would be an addition to the safety of the roadway.

In July, he continued on processing their plans and he understands that's when the letter was written to Barbara Smith stating that the grading plans were approved in November of 1981 and Mr. Paty also stated there was no time restraint.

In August '89 he was quite anxious to start the grading that fall and talked to Brian Gray again. (He had moved back to San Francisco because his wife was in an auto accident and was coming over about every month.)

Sometime in September there was more correspondence from the Lanikai Association requesting that Mr. Paty consider his position on the property and on October he was able to reach an agreement with Dr. Scott and had his lawyers prepare all the documentation to realign the easement and there were several documents to process.

November he received the final soil report which was favorable for the proposed design. In early December, Brian Gray had resubmitted what they thought and felt was the final market for the plans. He came over for almost the whole month as he was anxious to get the construction started. He uncovered a lot of the key control points along the access road and reset a lot of the stakes that had been pulled up by kids. He checked with the engineering department to see what was taking so long to process this grading plan.

At that point he was told there was a hold on the plans and he should talk to Roger Evans. He met with Mr. Evans who pulled out a letter that was dated September 29 and it indicated to him that the permit was cancelled. He said he was in shock as he had heard nothing about this and was never notified.

Mr. Hurst said he asked Mr. King if he could come back to Mr. Evans' office and discuss the situation. Basically, Mr. Evans reiterated the same things that were told to him. He felt that he had done everything to get the property on the way and feels that he had been impeded at every level in the processing. He has some concern about the property as he was up there the other day and the kids were still spray painting graffiti on the bunkers and it is a potential hazard. He wants to build the access road and improve the hiking trail. They have agreed to dedicate an easement for a hiking trail around their property and he intends to improve that and make it much easier to walk on.

Mr. Hurst said he would like to appeal to the Board as a sense of fair play and justice. He thinks that they should consider individuals basic property ownership rights and would like to see this go forward.

Mr. Brian Gray, Civil Engineer with Gray, Hong, Bills and Associates said that he was engaged by Mr. Noel back in the late '70's and subsequently by Mr. Hurst on behalf of WACOR with regard to the design and processing an approval for the driveway and site work for this project. When the Board approved the CDUA permit back in 1989, there were still couple remaining conditions related to the construction of improvements. One being that the Board had to approve the final construction plans for any construction and secondly, that the owner of the property had to obtain permits from the County.

Mr. Gray said, "Subsequent to that, I have a copy of letters, departmental letters or memos, Exhibit 15 to Robert Chuck from Roger Evans stating that he has no difficulty with the house plans, this was January 16, 1981. I was not involved at that time. There is a memorandum about the site work to Roger Evans from Robert Chuck which is Exhibit 16 which indicates that the grading plans were satisfactory. The department normally doesn't sign construction plans for approval but I believe that it was probably for purposes of getting a building permit from the City so that they did, the Chairman signed three copies of the construction plans for the grading, that was in 1981. I had a copy of that which Mr. King may have submitted.

"The other thing that was being considered at that time was the revised alignment.

Although that wasn't a condition on the permit they had discussed it with staff and tried to work with the adjacent landowners to get an alignment that gave them a more gentle grade and make it easier for access and also drop the driveway down below the ridgeline and make it less obtrusive. Mr. Noel was pursuing that but shortly thereafter he passed away."

Mr. Gray said he was involved over the next several years inquired from Mrs. Noel and people tried to help her to keep the permit moving several years probably to '75. He didn't hear anything for some years until WACOR took over the property. He was engaged by Mr. Hurst in late '88 or early '89. He was aware that he was trying to carry out the surveying and investigation. He did submit the construction plans for the grading which had been approved by the Board back in 1981. Took it to the City for their approval in June of 1989. Those plans were identical to the ones that the Board had approved because there was no time limit presumably, or at least they assumed they did not have to come back to the Board for approval, they submitted it directly to the City. Mr. Hurst has testified about the delay that went on. Normally we get plans within a couple of months and in this case it took from June until December and they still weren't approved. Everytime they called to find out what was happening, they got the excuse that they need more time to approve.

Mr. Fritz Johnson said he was not going to try to convince everyone that you're going to have the house on the ridge, that it's going to be the best design on the ridge and he was not going to convince anyone that you're going to end up with a good neighbor. He said he was just going to give some numbers. The drawing that is indicated on the drawing board is not exactly to scale but the numbers are real. The average height at the top of the ridge is 526 feet above sea level. At the closest point, the house is set back 30 feet from the edge of the ridge on the Makapuu side. On the Lanikai side the house is set back approximately 35 feet from the edge of the ridge. The house is no higher than 25 feet above grade. The garage is buried into the ground, the house steps back as it steps under profile. If we take a 30 foot minimum, the Makapuu side, we go up to 25 foot height restriction, take the closest point of the house, we draw a sight line down to the edge of the ridge, from the center of the house to the edge of the beach about the longest point at the beach at Lanikai is three quarters of a mile. If you take the sight line from the house to the edge of the ridge and project that out, you would be about a mile and a half into the ocean before the house would become visible. He presented a slight sketch to the Board. His only comment is the house would have no visible impacts until you're at least a mile and a half out in the ocean. From the Makapuu side it's probably close to two miles out in the ocean.

Mr. Yuen asked, "How far from the ridge is your high point of 25 feet?"

Mr. Johnson answered, "Actually I was very conservative. I took 30 feet minimum from the front edge of the front fascia which is only 9 feet above grade, so what I did was pick a 25 foot mark as if the upper roof also came out 30 feet minimum, in reality it's about 35 feet back. If the front edge of the roof is 30 feet away, the 2nd part of the roof, the highest part of the roof is about 35 feet away and I'm also picking the lowest point of the ridge at 526. On the Lanikai side, the ridge actually slopes up a little higher to about 530 which might make the projection maybe 2-1/2 or 2-1/4 miles out into the ocean.

Mr. Yuen said, "What I don't understand is, if you're at the beach at Lanikai and you're looking up to the ridge, you've got about 13% sight line from the horizontal and you continue that sight line back 30 feet or so, your sight line is only going to exclude the bottom 4 feet of structure. There's something I'm missing."

Mr. Johnson said that there's a lot more than 13%. Pointing to the exhibit, let's assume, 1) that you go up 25 feet and that would be at the top of the roof way back here, this roof here is actually 19 feet high but let's say 20 for round numbers. Your 526 feet you add 20 feet, that's 546 feet and then you divide that, the height of the house in the distance from here and you'll be projected out to 1.79 miles at the shore. If this is your sight line, like this right here, and from the center of the house to the edge of the beach at the Lanikai is approximately 3/4 mile. With 526 feet at the lowest point from the front edge of the house, I didn't take it from this back side, the one that projects out at the closest point about a mile and a half.

Mr. Yuen, "Well from the beach looking up, isn't your sight line about 13% to the top of the ridge?"

Mr. Johnson responded, "Three quarters of a mile what, Brian, is maybe 3,000+ square feet and then you divide the height by 526 square feet and so from the beach line looking at the edge of the ridge, you wouldn't be able to see any part of the house.?"

Ms. Barbara Smith, past president of the Lanikai Association, past land use chairman and presently just a board member and a community representative and member of the association addressed the Board. "I would like to briefly state that the association and many other groups oppose the original CDUA application in 1978 or 1979 and that application was denied and I believe within two weeks Mr. Noel asked that it be reheard and at time it was reheard, the associate was still in opposition and raised the point that when it was reheard it should have been reheard under the new rules that had been adopted in June of that year which would have put time constraints on any permit that was granted. Apparently that was not done because Mr. Noel must have successfully argued that it should be processed under the old rules. I also would like to make reference to the fact that I have been reading through the file.

"I believe there was some kind of recommendation, either from staff or the previous chairman, Mr. Ono when the Noel Estate asked to have the lien released on the property. There were a number of suggestions and alternatives made and one of the suggestions was that when a new owner signed a ..., purchased the property, that time constraints be applied to a security lien. So I don't know if Mr. King has seen that, but I believe that it is in the very voluminous file that is on file with the Department of Land and Natural Resources.

"I'd also like to make reference to the fact that this is a unique geological area. It's referred to in the esteemed late Dr. Gordon MacDonald's book on the geology of Oahu where you can see the outcropping of the dike system of the Koolau volcano. As a result, that cliff below the property is rather sheer. There have been numerous landslides on it and that was one of the reasons why the association wrote after the storms of '84 and '85 asking if they could put further restrictions on it because I believe there were close to 8 landslides that came down the ridgeline onto residents and property on Kaohooho Place.

"I do have a concern myself that when I didn't know there was a buyer, but I did know that as the plans were apparently getting ready to be finally approved late last summer that the parcel was put on the market for 3.7 million more than Mr. WACOR or Mr. Hurst or WACOR paid for it. To me that's a little bit appalling. I'm also concerned as this was an issue that was brought up originally and it still seems to be a concern throughout Kailua, Waimanalo, Lanikai and Kaneohe that the ridges between communities that were placed in conservation to provide open spaces and greenbelt are gradually being intruded upon and this house, although it will visually be seen from Lanikai, I disagree with Mr. Johnson. It will be much more seen from the town from

Kailua and immediately as you come through the Pali tunnel. That impact is greater over there, visually than from Lanikai. But you can see it from the beach, you can see it from Aalapapa, as you enter the community, you can see it from the Waimanalo community. I also had a chance to look at the plans and I don't know if any of the Board members have looked at the plans but when I saw the plans in the DLNR's office, it looked like the house was planned to be built on top of the pillbox which is the highest on the property and the most Makapuu side. I looked at the sketch, I'm sorry I didn't have written testimony for you today. I would hope that you would concur with the staff's recommendation, but I'd like to say thank you for allowing me to testify. If you have any questions, I'll be glad to answer them."

Mr. Hurst responded that the existing bunker that's up there is located approximately right here (pointing to exhibit), the scale is at 1" equals 30, projecting another inch to inch and a half. The home would be set back about 35 feet from the bunker, where it exists today. It will not be visible from Lanikai.

Ms. Mary Schimdky said she was representing Councilmember Steve Holmes today. "I'd like to read a short statement in support of the staff recommendation and to void the permit, prepared by Councilmember Holmes. It is time to recognize a mistake has been made in allowing this CDUA permit to proceed. I urge you to void this permit which has lapsed due to failure to begin construction with agreed upon, in the agreed upon period of time. Thousands of peoples that use the trail up Kaiwa Ridge every year to enjoy the spectacular view agree there is no finer viewpoint in all Hawaii. Hikers can see the full grandeur of the Koolaus from Makapuu to Chinaman's Hat. In the makai direction, the beautiful reefs of Lanikai are laid out below as well as all of Kailua Bay. It is an easy trail unused by young and old alike. It will be a tragedy to lose this trail and mar this scenic ridge from miles away with a large house on its summit. I urge the acquisition of this property in order to add it to the Na Ala Hele statewide trail system. This property is presently on the market for sale for over 3 million dollars. It is evident that its purchase was for speculative reasons which add to the public outrage. This permit has been kept alive through artificial means since 1976. It's time to end this travesty and protect this unique and scenic viewpoint. Sincerely, Steve Holmes, City Councilmember, District 2."

Mr. Tom Cesstaire, Lanikai resident and member of the Lanikai Association said, "as Mrs. Smith and I think Mr. Evans pointed out, the Lanikai Association has opposed this permit for going on over a decade for a number of varied and legitimate reasons. One thing that I believe that Mr. King and the members of the Lanikai Association can agree on that there has been a checkered history of this permit. And we have enumerated a number of reasons why it should have been terminated long ago.

"However, and I listened carefully to Mr. King's presentation and listened to the engineers, it becomes quite clear to me that while the presentation was very well presented, it still comes down to nothing more than of the station that the basic item which is, that no matter what we say and do, there was a condition that was clear and Mr. King read it, owner must begin construction within one year and complete construction within three years of recording of the document and it was not done under any circumstance. Mr. King noted that he filed a petition with Declaratory Ruling, I believe in December 1989, well there was an issue with respect to whether or not the permit was legitimate, why wasn't an extension requested at that time. Lot of issues he raised with respect to whether or not in fact this security instrument was a condition, clearly if anyone would look over the, as Mrs. Smith said, the voluminous record in this case, Mr. Ono in '84 and '85 clearly intended conditions be put upon this permit when it was transferred.

"If you look back to the history of this case the Lanikai Association consistently took

the position that the one year condition should have been attached to this permit as many of the Board members, I'm sure all the Board members know. The only reason why it was a limited time in the first place, what we believe was a mistake, and that was granted prior to the change in the law in 1978, therefore, like I say, approximately thirteen years has transpired in which this, as Mr. Holmes said this travesty has been able to exist. It's hard for us to believe that you would not be able to see this house from Lanikai and Mrs. Smith correctly points out that virtually coming over the Pali Highway as you come down the windward side you can see the pillbox that is presently there, and certainly from Kailua town and back to Bluestone area.

"Again, we can go over and argue about all the items that Mr. Hurst said occurred and when he actually finally got his easement from Dr. Scott which wasn't till the summer of 1990 and all the things he said. But the truth of the matter is no construction has ever been completed and to permit this permit to remain would really be a travesty, this would do great and direct harm to our community and safety environment and based upon what Mrs. Smith, Mr. Holmes and myself and I believe the staff's recommendation, I believe that the permit should be cancelled and we certainly would hope that the Board would follow the staff recommendation to cancel this subject permit."

**EXECUTIVE  
SESSION**

**3:15 pm - 3:45 pm**

Mr. Arisumi moved for an executive session, seconded by Mr. Apaka, motion carried.

Chairperson Paty called the regular meeting back to order.

Board Member Himeno addressed the Chair to clear the matter that was raised by Mr. King as to any potential conflict interest that she might have in light of her marriage to the Attorney General. During the break she checked with the Ethics Commission to determine if in their view there would be any conflict and their answer was, "no." "In my view there is no conflict, I have never spoken to my husband about this matter and he certainly does not influence me on any of my votes one way or the other. So I want to put that on the record and make that clear, that there is no conflict, in fact or from my perception at all."

Chairperson Paty addressing Mr. King, "With respect to your request on the chair withdrawing, I'm not going to do it on the basis that I can't vote cold on the issues. Some are more involved than others but in any event it wouldn't be a practical matter for me to do so, so I'm declining your request."

The Chair called for any further discussion on Item H-3.

Mr. Yuen said he had a couple of questions. During the break he had a discussion with the applicant about the presentation about the line of sight. He was questioning the architect, as he couldn't understand how it could be true that the ridgeline would cut off the line of sight from the house from the beach area at Lanikai. It was determined that it wasn't true and the architect made an error. The applicant would like to clarify that.

The applicant called on the civil engineer. Mr. Gray said that Mr. Johnson had made some studies and during the break they checked over a set of plans from the department's files. On the set in file it does show a view study which would land, it would have a line of sight about half way from the ridge to the ocean so you would be able to see the top of the roof.

Mr. Hurst said that it was their intention to set the house back far enough where it would not be seen from the Lanikai area and would be set back further to provide additional screen.

Mr. Yuen said that he had an additional question for Mr. King, "Given that there was this condition, other than condition, whatever you want to call it, that construction was to commence within one year, isn't up to the applicant to request that they be excused from performance of this or that the time be extended? For example, this morning we had a major application for Minami on which the board had granted several time extensions."

Mr. King responded, "Under different circumstances it might, but not in this case. I say this for two reasons, first of all when the petition was filed in 1989 we were trying to get the permit back in place. The permit had been cancelled three months before that, not because of any construction time period, so we just wanted the permit back in place, that was our concern. It wasn't a question of the time period to commence construction at that time. Secondly, it was never Mr. Hurst's understanding that the one year time period and the three year completion period were the conditions of the effectiveness of the permit. Perhaps to the security instrument, but not to the permit itself. If the permit had not been cancelled and we came right up to December 29, 1989, then it certainly would have been a proven thing at that time for him to apply for an extension of time. Back to the security instrument, what you have to keep in mind too, no grading actually commenced and the security instrument was to protect the property for grading and he wasn't able to begin the grading because he wasn't able to process his permit with the City because DLNR had cancelled the permit in September. If we had been in Minami's situation, I think definitely, my understanding is that theirs, that they definitely have a one year commencement period and a three year completion period. They've passed their one year commencement period, they're in the three year time period and that's the condition to the permit. We don't have that clarity with regards to this situation."

Mr. Yuen asked, "So your position is that, you could just let the one year go and nobody said anything about it there's nothing to be done?"

Mr. King responded, "Well, no not at all, in fact after Mr. Paty's letter on May 4, 1990 said the permit's back in place, Mr. Hurst was on the mainland at that time. He had planned to come over here in December and do the grading in December. Planned to start. By May we didn't know the letter was coming in May. On May 4th we received that letter on or about that date, I contacted Mr. Hurst at that point to find out when he would come back to be able to get things moving again. On May 17th we write to the department and say that he'll be coming back in July but not sure of his plans. July 11th he comes back and at that time we meet with the department. The department's representative at that time wanted all of the plans to be submitted back to the department. Back in 1981, Mr. Noel had gotten all of the approvals from the department. But now, the department again wants all the plans submitted back to it and Mr. Hurst did that on July 16th there's a letter in the file, I think it's exhibit H or L to the staff report which you've gotten. Mr. Hurst submits everything back to the department and says that I'd like to start construction by September 16th. He gets no response to that letter until September 17th and we're asked to meet them with some of the people at DLNR. By that time the newspaper reports are already in the press, Mr. Paty is quoted as saying we're going to look at the validity of the permit again."

Mr. Yuen questioned, "You're telling us all the things that happened in 1990 which is after the one year had lapsed at the end of 1989."

Mr. King said, "But it hadn't lapsed. He didn't have his twelve months in 1989 to begin construction because the permit was cancelled, nine months into that year. September 29, of '89, the permit gets cancelled, so he doesn't have his full 12 months. On May 4th of '90 he's then told he can go ahead again. Soon as he gets back here to Hawaii, he tries to go forward again. Tells the department that I'd like to start construction on September 16. No response until after September 16th. We're not saying, that this runs indefinitely, that wasn't our goal. He wanted to build in that first twelve months. But I don't think, under the circumstances, it should be encumbered upon him to come in to ask for an extension when he wasn't even given the full twelve months in the first place. I think the issue before the Board right now is, will they void the permit. He might go forward as soon as possible with the construction. Bear in mind the three year time period which will be the completion of construction would go from December 29th of this year, 1991."

Mr. Cesstaire asked to comment, "I think Mr. King in his presentation remarked that Mr. Hurst, it wasn't till December 1989 that Mr. Hurst inquired asked to what was going on with his building permit. This whole case is a 'could have, would have, should have kind of thing.' I think Mr. Yuen is exactly right. A one year run is very clear, black and white and as going back to the line of sight, I believe also, Mr. Yuen you were correct in that respect and one thing that is not being taken into consideration, by this one view from Lanikai, is the view of the ridge from surrounding areas, this is a 360 degree view. You go into Kailua town, you can see the pill box. You come down Pali Highway you can see the pill boxes. In fact, the engineer conceded that. If that was your concern Mr. Yuen, certainly obstrusive to the ridgeline."

Mr. Hurst asked to respond to that, "The reason I came here in December was to start construction and did not know that the permit was cancelled in September. Obviously the engineering department knew about it, because they told me it had been put on hold."

Mr. King said, "His grading plans had been submitted to the City on June 1 of '89. He expected to get those back long before he would have come here but did not because apparently the City wouldn't act on them because the permit had been cancelled on September the 29th. Regardless, the community concern, some of the reasons that I've asked the architect and the engineer to come in here today is because this matter is an old one. Probably none of these Board members were here at the time that it was originally approved. I didn't represent WACOR, had no involvement myself, I haven't studied the plans but I've asked these people to come in to be able to address some of the concerns. Frankly, I think the community concerns were addressed in 1979. They were in conditions to the permit that was approved."

Mr. Cesstaire said, "One more thing, again I think Mr. Yuen's point is exactly right. At no time including up to today, has there ever been a request for an extension. I obviously disagree with Mr. King's analysis of the Minami analogy. At no time has there been an extension request."

Mr. King said, "I might just add that when Mr. Paty wrote this letter of May 4th of 1990, we were already past that one year time period. He said the permit is still in effect at that time. Now if the Board at that time felt or the department felt that the one year had run out, it should have stated that at that time. So that we knew there was a problem and we couldn't go forward at that point. Instead, things don't happen and then we find out the A.G.'s office is reviewing the matter again. Even though Mr. Hurst wanted to go forward, when he got the green light again."

**ACTION**

Mr. Yuen moved to approve the staff's recommendation based on the staff report and materials in the file. Mr. Arisumi seconded the motion and motion carried.

**ITEM H-7**

**CDUA FOR AN AFTER-THE-FACT COMMERCIAL MOORING IN KEALAKEKUA BAY, HAWAII, APPLICANT: FAIR WIND, INC.; AGENT: STANLEY SUYAT**

Mr. Evans made the presentation giving a short background. He said that this application is basically an after-the-fact application. What they propose to do is continue to provide what they have done for the past 19 years or so and that is to get visitors and also people living along the Kona Coast the recreational opportunity to swim, snorkel or scuba dive at Kealakekua Bay.

Staff is recommending fines of \$1,000 for each violation totaling \$2,000.

Staff also feels that it would be difficult for more than one cruise line to moor at the one singular mooring that the Board did approve in subzone 'A'. As a result, staff feels that because the mooring has been deployed and used for over 19 years, that it does seem reasonable to allow the use to continue. Staff is recommending approval subject to conditions on pages 11, 12 and 13.

Mr. Arisumi asked if these people had already paid their fine. Mr. Evans said, "No, they have not been fined yet. Staff does not have the authority, there is no violation until and unless the Board finds it." He also responded that the Hawaiian Cruises paid their fines which were reduced by the Board.

Mr. Arisumi said, "As far as the window period, I think during the public hearing we clarified that there were only so many applicants."

Mr. Evans said that reaffirming that, it's going to be the direction that the Board has given staff on how to operate.

Mr. Stanley Suyat, agent for Fair Wind, said with him this afternoon were Mr. Orville Dant, President of the Fair Wind and also Mr. Eric Guinther who prepared the Environmental Assessment. He said that they had an opportunity to review the staff report and he talked to his client and they feel they have no problems living with the conditions that are being proposed by staff and would be more than happy to comply with them. In the matter of the fines, they would like to ask that they be treated the same like the other applicants before them in Kealakekua Bay.

Mr. Arisumi clarified that the number of violations that they had is what they based on. If you have more violations than Hawaiian Cruises than you will be paying more.

Mr. Evans said that it just happens in both cases the violations and the amount and what they did were the same. Staff's recommendation in both cases were the maximum. In Hawaiian Cruises, they recommended \$1,000 fine for violation of Chapter 171 and \$1,000 for violation of Chapter 183. The Board found that rather than \$500 for each mooring, they combined the moorings for total of \$1,000.

**ACTION**

Mr. Yuen entertained a motion to approve staff's recommendations with several changes in the conditions. First, that the fine be \$500 for violation of Chapter 171 and \$500 for violation of Chapter 183 to be consistent with the other application. Secondly, that the buoy be submerged. He asked for consideration for submerging this buoy and this might also discourage unauthorized use of the buoy. That the Fair Wind discourage unauthorized use of the buoy. That they continue to use the system where they have chains lifted off the bottom by the buoy. Mr. Arisumi seconded the motion as amended. Motion carried.

**ITEM E-3**

**RESUBMITTAL-REQUEST FROM THE HAWAIIAN CRUISES, LTD. TO OCCUPY STATE-OWNED LANDS WITHIN KEALAKEKUA BAY**

Mr. Nagata said this was the follow-up for Hawaiian Cruises, disposition at Kealakekua Bay. This item was deferred at the last meeting to allow staff to clarify several issues. Mr. Nagata went over the various items regarding liability insurance coverage, monthly rental, utilization of existing mooring system, emergency use of mooring system, overnight mooring use, prohibition on drinking and number of trips per day.

Ms. Susan Matsuura representing the applicant, responding to Ms. Himeno's questions said that their boat is certified for 150 people. They actually have two boats and one is certified for 300 people but rarely do they get those numbers. It takes about 8:30 in the morning till about 12:30 noon for one trip during the day.

Mr. Nagata commented that they had not heard any adverse comments regarding the existing levels of operation.

Ms. Matsuura said that their operation was not strictly for the tourists. They do have a program here on Oahu for the public school children. They've donated 3,000 tickets to the Maritime Museum and they monitor the program itself. The tickets are given to the different school children ages 4th to 6th grade. The children can experience the boat ride and a visit to the Maritime Museum. They also try to teach them all the conservation aspects that go along with that activity.

In Kona they could also do something like that where they could donate to the Department of Education, so many tickets per year for the school children for them to decide which grades. Some kind of guideline would have to be worked out to limit the number of children per trip for safety reasons also.

Mr. Yuen said he did want it to be consistent with the people of the Fair Wind also. It was decided to put this aspect on hold so that an alternate means be found to benefit the public and or the park to an equivalent or larger amount.

**ACTION**

Mr. Yuen moved that the Board adopt as recommended by staff, 1/2% of gross revenue which would include any back rental. Back rental would be included and subject to the applicant working out a program for the school children at the discretion of the Chairperson. And the other additional condition requiring the buoys be submerged. That there also be a 300 limit person per day, per trip. Ms. Himeno seconded the motion and motion carried.

Ms. Matsuura also informed the Board that she had with her a copy of her insurance policy should the Board wish to see it.

**ITEM H-8**

**CDUA FOR OFFSITE INFRASTRUCTURE IMPROVEMENTS, KAU AND O'OMA, NORTH KONA, HAWAII, TAX MAP KEY 7-2-05:01 AND 7-3-09:05, APPLICANT: NANSAY HAWAII, INC.**

Mr. Evans did the presentation and informed the Board of staff's recommendation for approval following a public hearing held in Hawaii and staff's analysis of comments from reviews of various agencies. One of the primary conditions is Condition No. 10, which states, "That all electrical and water transmission lines be placed underground within the State Conservation District, with the exception of the main 69 kv electrical transmission line and required utility poles;" as there are technical reasons that the engineers have informed staff that a 69 kv line cannot go underground. He also highlighted Conditions 9 and 12.

**MOTION** Mr. Arisumi moved for approval as submitted. Motion was seconded by Mr. Yuen.

**DISCUSSION** Mr. Yuen added a comment that the applicant will be coming back to the Board for the use of State land. In this project we're allowing some uses that are probably considered undesirable, like having a sub-station and reservoir on State property. The applicant has done a good job of explaining what should be put on State land and he would hope that when the time comes to establish a lease rent, it would be taken into consideration what benefits the applicant to have this put on State lands as an element in what the State should receive in evaluation.

Chairperson Paty invited the applicant to respond to any of the conditions or comments.

Mr. Tom Fee, of the firm of Helber, Hastert and Kimura Planners, representing the applicant addressed the Board. Present also is Mr. Gregg Morris of Nansay Hawaii and Mr. Dan Lum, hydrologist. They have reviewed the conditions and they seem to be acceptable.

**ACTION** Chairperson called for the question and motion carried unanimously.

**SUBLEASE OF GENERAL LEASE NOS. S-4331 AND S-4332 BY AND BETWEEN GEORGE R. MADDEN, JR. AND JEAN S. MADDEN AND PACIFIC CONSOLIDATED INVESTMENTS, SUBLESSORS, AND LOVELAND INDUSTRIES, INC., SUBLESSEE, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-36:144 AND 145**

Item F-1-c

Mr. Mason Young went over the details of Item F-1-c. This involved two leases and the conditions of the lease provide that in the case of a sublease, the Board may review the sublease rent and if necessary, increase the basic lease rent after the review is done. The staff appraiser found an approximate \$900 sandwich profit and therefore staff is recommending the basic lease rent for the General Lease Nos. S-4332 and S-4331 be increased from \$1,950 per annum to \$2,400 per annum retroactive commencement date of the sublease December 1, 1988.

**MOTION** Mr. Yuen moved for approval; seconded by Mr. Apaka.

**DISCUSSION** Mr. Glenn Hara, attorney from Hilo, said he represented the George Maddens. He said that Mr. Madden's position on the staff's submittal is that he would consent to the condition and would go along with the recommendation. However, they would prefer that the Board delete Condition No. 1 which provides for the \$900 sandwich. The reason they take this position is that they have been working with the staff and initially submitted a request for approval of the sublease back in January 1990 over a year ago. They were working with staff in terms of trying to work out what this number on what the sandwich would be.

Right now the Board has already approved an assignment of the sublease from Mr. Madden to Mr. McCully. This sublease consent is part of the contingency that is ongoing. Although they have closed on the assignment of the lease, they've had to make provisions for contingency. He would like the Board to assist in settling that today, if they are going to have a sublease participation, they would like to know what that amount is going to be.

Mr. Hara continued, if the Board were going to defer this item for further study, his client would rather just take the recommendation which favors the \$900 if the Board approves it today.

Mr. Hara gave reasons why his client should not pay the sandwich profits. Quoting percentages on return of investment before taxes, depreciation, etc. They felt the State the could participate if the value of the land increased but not in the improvements that the lessee put in.

The amount is small but his client is a very principled person. Applicant has asked him to plead with the Board to approve the staff recommendation but strike or delete the first condition with respect to the sandwich position.

Mr. Yuen asked Mr. Young if he had a comment to Mr. Hara's request.

Mr. Young said that when they sell a lease it is their intent that the occupant be the lessee, always the case. In this case, the person is not even occupying the premises. In the event that there is a sublease, it is felt that the State should participate, particularly when they compare the sublease rent that is being charged against what the State is charging. They are still making a profit and he felt the State should participate, that is really the essence of the problem. If the tenant occupies the premises, the State does not get any participation, just the base rent. The building is not good without the land.

Mr. Hara commented, "It may be that the Board and the staff anticipate that if they do let a lease, that they anticipate having the original lessee be there and not sublease. But, I think if you look at the lease, all of the leases provide for subleasing with the consent of the Board. That's why we're here today and the statute, there's statutory provisions to the same effect. I think it's hard to get away from the point, that there is an anticipation at least on the part of the legislature and certainly on the part of the people that drafted the lease. There is going to be subleasing and I would say the vast majority of the cases, you are going to find subleasing in large commercial type leases."

Chairperson Paty questioned the development of the 12%.

Mr. Young explained that this is part of their policy where they take the passbook return and figure it out. They use that as a general rule of thumb for return on an investment. Staff had discussed this with the Board in establishing the guidelines of policy as they knew instances where one would want to look at depreciated compounded in order to get some continuity, they established a guideline on how to determine allowances and investment returns.

Mr. Hara said he had one more comment and that is, "Looking at the study, the lease is coming up for renegotiation, so you are going to get a rent increase in about three months. Rent renegotiation on the lease comes up on April 1, 1991."

**ACTION**

There being no further questions, the Chair called for the question and motion carried.\

**CONTINUED**

**REVIEW OF CONSERVATION DISTRICT USE PERMIT FOR MINAMI GOLF COURSE AT KOOLAUPOKO, OAHU; TMK 4-5-42:1 & 6; APPLICANT: MINAMI GROUP (USA), INC.**

**ITEM H-9**

Chairperson Paty called for the continuance of Item H-9.

Mr. Lui-Kwan informed the Board, during the recess of their item, they met at Senator McCartney's office and were able to resolve the misunderstandings with respect to the points that were raised during the earlier discussion. They reduced to writing the conditions that they had, that the community representatives and Minami agreed to and there are essentially 18 in nature. Mr. Lui-Kwan said he had his office type up the

conditions and he faxed copies of the draft to Mr. Uesugi, the executive vice-president for Minami, Senator McCartney and John Reppun. They all approved the copy of the draft so copies have been made for the Board.

Subsequently when Mr. Lui-Kwan came to the hearing room, Mr. Reppun said there was one other thing to be discussed, Condition No. 14 but they will leave that for further discussion during the formation of the foundation.

Mr. Reppun clarified that the item 14 as mentioned is really the rewriting of an existing condition that is already in the CDUA and Minami has agreed to work with the community in trying to set up what the grounds would be for water sampling and they really appreciate that.

Chairman Paty commented that the establishment of a foundation is a very innovative way to address these problems. It may well be that in the next decade the foundation may be a very substantial instrument on the windward side.

Ms. Himeno questioned the monitor value of this unit.

Mr. Lui-Kwan replied, "\$20,173,693.00 and that reflects \$12,100,000.00 of additional contributions made as a result of the discussion involving the permit extension and all calculations of \$8,723,602.00 for contributions that were made prior to the discussions prior to the discussions involved in the extension. Essentially, during the time there were discussions involving the granting the CDUA for the permittee.

Mr. Reppun said he thought this was income to the public trust and you might estimate that at about \$7,400,000.00. That would go up and down depending on the amount of memberships sold. That would be income over a 20 year period of time.

Responding to Ms. Himeno's questions, Mr. Lui-Kwan replied if you had 500 non-foreign memberships at 2,000, that would be \$2,000 a sale and that would be \$1,000,000.00.

Responding to Mr. Yuen's question, Mr. Lui-Kwan said they were counting paid rounds and typically paid rounds. Members don't pay rounds. The way it works out is, guests of members will pay for green fees and the way it's going to be structured the international members will be paying.

Mr. Reppun said that international members will not be paying a fee but local membership will. So this will be paid rounds. Mr. Uesugi clarified that this fee only applies to the guests.

Ms. Himeno clarified that basically \$7,000,000 to a community trust (over a 20 year period). About \$8,000,000 was done previously, like moving the clubhouse, etc.

Mr. Lui-Kwan said that \$2,000,000 that was contributed to Iolani School would cash value of \$5,000,000 relocating the clubhouse and Minami's understanding the reason they were asked to relocate the clubhouse was because the community didn't want the clubhouse where it was originally located because the lights that were shining down into the houses or into that area.

Mr. Evans then passed out the original attachment #5 to the members of the Board.

Mr. Yuen asked if the fees for the rounds that are contributed to the foundation, are they for twenty years.

Mr. Lui Kwan responded that's what after they went through this exercise in drafting and putting together this final form this document to grant a permit of extension to Minami was done, there was another item that they wanted and Minami has agreed that it will have a discussion at the end of 20 years to see if things are appropriate for continuing the program that would have been in existence for the first 20 years.

Ms. Himeno asked who would enforce the priorities hiring folks from the Windward side.

Mr. Lui Kwan said that the way he imagined what is happening is that Minami is the owner and they would probably be in consultation with the people from the foundation.

Ms. Himeno said for instance if there was a person that said they were not given priority and should have been given priority, where does that person turn to.

Mr. Reppun responded that they could turn to the community and they would go to bat for them. He feels that they have agreed in principle that if they were qualified people and again mentioned that there are a lot of qualified people.

**ACTION**

Ms. Himeno moved to approve Item H-9 with the conditions for granting them a permit extension agreed by community representatives and Minami dated January 25th, 1991. Seconded by Mr. Yuen, motion carried.

Mr. Yuen offered a comment: "I think that a very good job has been done by everybody that was involved here." He said that he wouldn't ever want to send a message that if somebody comes up with enough money for the community that they were going to get a permit. There are some projects that this shouldn't happen and so that's not the message here.

Mr. Uesugi of Minami expressed his appreciation to the members of the board. He saluted Mr. Reppun and Senator McCartney who really worked hard to come to this conclusion. They devoted so much time to promote and protect a better environment for the community and Minami will be good part of the community and will show cooperation.

**ITEM H-4**

**REVIEW OF SUBMITTED CONSTRUCTION PLANS FOR CDU PERMIT FOR A SINGLE FAMILY RESIDENCE AT HAWEA POINT, KAPALUA, MAUI, TMK: 4-2-01:03; APPLICANT: MR. T.P. LIEM; AGENT: MR. NORMAN HONG**

Mr. Evans informed the Board that this was a follow-up to the Board's earlier actions. This was subject of a mediated activity on Maui in the General, Limited Subzone. The Board approved this application, there was a contested case hearing that was deemed valid. There was mediation in the community. There was a result of that mediation which allowed a contested case hearing request to be withdrawn. This is a subsequent follow-up to that. He presented the final construction house plans for the Liem single family residence.

Staff's recommendation is consistent with the mediated settlement. There is a letter on file dated January 14, 1990, a Mr. Ed Oldfield, he's an individual who had intervened, has personally reviewed the construction plans being submitted to the board. Bound to be consistent with the settlement agreement between the applicant and past intervenors, signed by Issac Hall who was the attorney for the intervenors.

The Staff's recommendation is two-fold based on 1) That the Board approve the submitted final construction plans; 2) that the Board authorize the Chairman or representative to sign the construction plans and 3) that the applicant be instructed

to notify the Maui Office of the Division of Conservation and Resources Enforcement 30 days prior to any construction activity and 30 days prior to project completion to ensure project compliance to Board conditions.

Mr. Arisumi questioned the construction date or effective date.

Mr. Evans said construction date start up would be the date a mediated settlement was entered into, which would be today's date should the Board approve this submittal.

Chairman Paty invited the applicant to come forward. Mr. Norman Hong, agent for the applicant said that the prior Board meeting was on November 9, 1990 which triggered the time frame. That date is acceptable to the applicant. They have reviewed the condition and find them to be acceptable.

**ACTION**

Unanimously approved as submitted. (Arisumi/Apaka)

**ADDED  
ITEM H-11**

**CONSERVATION DISTRICT USE APPLICATION FOR DAY-USE MOORINGS  
INCLUDING A SUBDIVISION, OFFSHORE THE KOHALA-KONA COAST, HAWAII;  
APPLICANT: DEPARTMENT OF TRANSPORTATION**

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Mr. Evans made the presentation of Item H-11 giving the background. He also informed the Board that earlier this week he had met with representatives from the Department of Transportation, Division of Aquatic Resources, Division of Land Management and Division of State Parks all of whom had different valid concerns regarding the project. After those discussions, those concerns have not been eliminated but mitigated at this point. Staff is recommending that the Board give it a subdivision so that an E.O. can occur on the property for a narrow purpose. The narrow purpose being development, maintenance and management of all offshore moorings subject to conditions on pages 12 and 13.

Mr. Evans said there are many questions that remain unanswered, such as, are we or are we not going to charge fees; how are we going to guarantee that these fees are not to be used exclusive by a commercial person; how do we guarantee that the local guy who comes out on Saturday or Sunday will have a mooring available. The Department of Transportation (DOT) will have those questions addressed in their administrative rules. Our Land Management people will develop this further, come in for a request for a set aside for issuance of an E. O. for these purposes. DOT will continue to work on their draft rules, hold public hearings for public input and eventually forward them to the Governor for approval.

Mr. Yuen asked why was there a need for a subdivision and set aside.

Mr. Evans explained that there were questions of enforcement so there has to be rules. The rules are enforceable only in the area that you legally have. Right now all the submerged lands are under one Tax Map Key. So you have to subdivide it and say, "this area is going to be set aside to DOT for this specific purpose." Then DOT can enforce it.

For clarification Mr. Yuen repeated, "The only purpose of this subdivision is to allow DOT to enforce the rules of the moorings." Mr. Evans added, "and manage it." Currently when there are problems in the water, the public goes to DOT, if it's on the ocean bottom, DOT has to inform them they have to go to DLNR and if it's in the water column we have to tell them to go to DOT, so the public is very confused as to who has jurisdiction. This issue, part of what is being said is we want only one State agency to be the jurisdiction.

Mr. Yuen continued to ask for clarification as he thought this CDUA was to approve the pins and the moorings and now when he reads the staff recommendation he notices it does not mention approving of the moorings.

Mr. Evans said for the narrow purposes of development and maintenance of all offshore moorings, these are the pins. The pins are part of the moorings. The application was for 42 or 46 of which they had 30 in place. If they want to come in with a large additional amount they would probably have to come in and amend this application.

Mr. Yuen questioned the need for DOT to come back to the board if they were given the E.O. and set aside. Mr. Evans was not sure.

Mr. Yuen said after reading the transcripts of the public hearing, it sounded like the Board would be approving these moorings that are put in, everybody seems to want it there, but they need approvals. It was contemplated that the management and control of these existing moorings would be given to the DOT and they would enforce it. His concern was the way it was written up. It seems it was giving future jurisdiction over the area out for 1/2 mile to the DOT for the establishment of future moorings. He didn't think that was in the application or something that was really developed in the material he saw previously. To him it seemed like a change of direction in the application.

Mr. Yuen asked, "We've seen moorings off hotel sites, for example, come to DLNR, so if those were approved, would those go to DOT also?"

Mr. Evans replied, "No, the only mooring that we would envision going to the DOT are the ones under this mooring plan. I'm not aware of any hotel site mooring."

Mr. Yuen asked, "So, the mooring plans, correct me if I'm wrong, the moorings that are shown in here, aren't those all moorings that have actually been put in already?" Mr. Evans responded, "Yes, I thought there were only 30 out of the 40."

Mr. Dave Parsons, Department of Transportation, Harbors Division, said that the pins are in, the floats and mooring lines are only partially completed at this time.

Mr. Yuen, "I don't have a problem with approving the 46 pins and approving going ahead doing the floats and lines and allowing all that, am just a little concerned about what happens now... the implication as it sounds like here, moorings are given over to the DOT."

Mr. Evans said that, "If it does say that, it's written that way to reflect that. I can understand your concern."

Mr. Parsons said that for permanent moorings, such as in front of hotel sites, the DOT is planning to come to the Board with a CDUA to establish permanent mooring sites along the coast in addition to these days moorings. These days moorings are for these specific use and feel it's a separate issue from permanent moorings. The DOT would be going in for an amendment to a CDUA that was issued several years ago to establish permanent offshore areas. He didn't believe that it would create too much of a burden on them to come in to request an amendment to the CDUA for the addition of more days moorings within the area. DOT would be willing to come back to the Board with amendments to the CDUA.

**ACTION**

Mr. Yuen made a motion to approve the CDUA for the moorings as described with the additional condition that they be managed and regulated by the Department of

Transportation and with additional conditions listed on page 12 of Nos. 1, 4, 5, 6, 7, 8, and 9 and to the extent that a subdivision is necessary to allow DOT to manage and enforce these moorings that a subdivision be approved. Seconded by Mr. Apaka, motion carried unanimously.

This concluded the moved up items. Due to the length of the meeting, Chairman Paty invited Mr. Garcia of the Department of Transportation to present his items to the Board at this time.

- ITEM J-1**      CONSENT TO TRUSTEE'S ASSIGNMENT OF LEASE NO. DOT-A-82-16, SOUTH RAMP, HONOLULU INTERNATIONAL AIRPORT, OAHU (PAUL S. SAKUDA, TRUSTEE IN BANKRUPTCY FOR THE ESTATE OF LANI BIRD, INC. DBA SCENIC AIR TOUR HAWAII)
- ACTION**      Unanimously approved as submitted. (Arisumi/Apaka)
- ITEM J-3**      GRANT OF EASEMENT AND CONSTRUCTION RIGHT-OF-ENTRY, HARBORS DIVISION, WAIANAE BOAT HARBOR, OAHU (DEPARTMENT OF DEFENSE, STATE OF HAWAII)
- ACTION**      Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM J-4**      ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 9 SHED, ALOHA TOWER COMPLEX, HONOLULU HARBOR, OAHU (CHARLES PANKOW BUILDERS, LTD. )
- ACTION**      Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM A-1**      REQUEST FOR APPROVAL TO RELEASE THE HAWAIIAN FISH POND STUDY
- ACTION**      Unanimously approved as submitted. (Himeno/Apaka)
- ITEM C-1**      APPLICATION FOR FISCAL YEAR 1991 RURAL COMMUNITY FIRE PROTECTION FUNDS (KAUAI/MAUI/HAWAII COUNTIES AND CITY AND COUNTY OF HONOLULU)
- ACTION**      Unanimously approved as submitted. (Apaka/Arisumi)
- ITEM E-1**      PROPOSED FOOD CONCESSION, WAIMEA CANYON STATE PARK, KAUAI
- WITHDRAWN** Mr. Nagata requested that this item be withdrawn.
- ITEM E-2**      PROPOSED INSTALLATION OF CONTEMPORARY STATUE OF KING KALAKAUA ON THE GROUNDS OF IOLANI PALACE
- WITHDRAWN** Mr. Nagata requested that this item be withdrawn.
- ITEM E-3**      RESUBMITTAL-REQUEST FROM THE HAWAIIAN CRUISES, LTD. TO OCCUPY STATE-OWNED LANDS WITHIN KEALAKEKUA BAY
- ACTION**      See page 33.
- ITEM F-1**      DOCUMENTS FOR CONSIDERATION
- Item F-1-a**      ASSIGNMENT OF GENERAL LEASE NO. S-4642, LOT 225, OLAA NEW TRACT LOTS, OLAA, PUNA, HAWAII, TAX MAP KEY 1-8-06:103

**Item F-1-b** ASSIGNMENT OF GENERAL LEASE NO. S-5089, LOT 69, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-02:66

**Item F-1-c** SUBLEASE OF GENERAL LEASE NOS. S-4331 AND S-4332 BY AND BETWEEN GEORGE R. MADDEN, JR. AND JEAN S. MADDEN AND PACIFIC CONSOLIDATED INVESTMENTS, SUBLESSORS, AND LOVELAND INDUSTRIES, INC., SUBLESSEE, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-37:144 AND 145

See pages 34-35 for Action.

**Item F-1-d** ASSIGNMENT OF GRANT OF EASEMENT (LAND OFFICE DEED NO. S-27613/WATER PIPELINE), PUUWAAWAA AND PUUANAHULU, NO. KONA, HAWAII, TAX MAP KEY 7-1-01:POR. 1

Ms. Himeno was excused from acting on Item F-1-d because of a conflict.

**ACTION** Mr. Apaka moved for approval of Items F-1-a, F-1-b and F-1-d. Seconded by Mr. Arisumi, motion carried.

**RESUBMITTAL--WATER COMMISSION OF THE COUNTY OF HAWAII REQUEST FOR ADDITION TO THE LALAMILO WATER SYSTEM AT LALAMILO, WAIMEA, SO. KOHALA, HAWAII TAX MAP KEY 6-6-01:**

**ITEM F-2** POR. 02 HAWAII

See pages 9-10 for Action.

**STAFF RECOMMENDATION TO ADOPT GUIDELINES FOR DISPOSITION OF STATE LANDS STATEWIDE TO HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR HOUSING DEVELOPMENT PROJECTS**

**ITEM F-3**

See page 11 for Withdrawal and deferment.

**DIRECT AWARD TO CITY AND COUNTY OF HONOLULU OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR RELIEF DRAIN PURPOSES, WAHIAWA, OAHU, TAX MAP KEY 7-4-17:POR. 1**

**ITEM F-4**

**ACTION** Unanimously approved as submitted. (Himeno/Apaka)

**AUTHORIZATION TO ACQUIRE THROUGH EMINENT DOMAIN PROCEEDINGS, ACCESS AND UTILITY EASEMENT ACROSS GENERAL LEASE NO. S-4906, MAUNALAHA, HONOLULU, OAHU, TAX MAP KEY**

**ITEM F-5** 2-5-24:22

See page 12--Item deferred.

**AUTHORIZATION TO LEASE AT PUBLIC AUCTION, CANCEL REVOCABLE PERMIT AND ISSUANCE OF INTERIM REVOCABLE PERMIT, GOVERNMENT LAND AT WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-08:11 AND 4-1-23:65**

**ITEM F-6**

**WITHDRAWN** Mr. Young requested that this item be withdrawn. No objections were voiced by the Board.

**ITEM F-7**      **CONVEYANCE OF ROADWAYS TO THE CITY AND COUNTY OF HONOLULU, PORTIONS OF MAKALOA, SHERIDAN AND KAMAILE STREETS, HONOLULU, OAHU, TAX MAP KEY 2-3-16**

**ACTION**      Unanimously approved as submitted. (Himeno/Arisumi)

**ITEM F-8**      **ADOPTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF HAWAII AND U.S. NAVY ON THE POSSIBLE ACQUISITION OF THE MANANA STORAGE FACILITY AT WAIAWA, EWA, OAHU, TAX MAP KEY 9-7-24:POR. 6**

See page 11 for Action.

**ITEM F-9**      **REQUEST FOR AUTHORIZATION TO ACQUIRE LAND AND IMPROVEMENTS THEREON, FOR MULTI-PURPOSE DROP-IN CENTER FOR THE MENTALLY ILL AND SUBSEQUENT SET ASIDE TO DEPARTMENT OF HEALTH, WAIPAHU, OAHU, TAX MAP KEY 9-4-30:90**

**ACTION**      Unanimously approved as submitted. (Himeno/Arisumi)

**ITEM F-10**      **CITY AND COUNTY OF HONOLULU REQUEST AUTHORIZATION TO SOLICIT BIDS FOR A BEACH SERVICE CONCESSION, ADDITION TO KAPIOLANI PARK (KAPAHULU GROIN), EXECUTIVE ORDER NO. 3082, WAIKIKI, OAHU**

Mr. Young requested to take up Items F-10 and F-11 together as they were related. He also requested an amendment to include a condition that read, "that the City and County of Honolulu shall remit to DLNR for deposit into OHA's Public Trust Fund Account monetary payment equal to twenty percent (20%) of the City's revenues received from the concessionaire."

**ACTION**      Unanimously approved as amended. (Himeno/Yuen)

**ITEM F-11**      **CITY AND COUNTY OF HONOLULU REQUEST FOR AUTHORIZATION TO REISSUE CONTRACT FOR THE EXISTING FOOD CONCESSION AT THE KAPIOLANI PARK BANDSTAND, KAPIOLANI PARK, WAIKIKI, OAHU**

**ACTION**      See Item F-10 above.

**ITEM H-1**      See pages 15-16 for Action.

**ITEM H-2**      See page 17 for Action.

**ITEM H-3**      See page 32 for Action.

**ITEM H-4**      See page 38 for Action.

**ITEM H-5**      See page 4 for Action.

**ITEM H-6**      **CDUA FOR A RELOCATED ACCESS ROAD TO KONA VILLAGE RESORT, KAUPULEHU-KONA, HAWAII, TMK 7-2-3:2; APPLICANT: KAUPULEHU DEVELOPMENTS & KONA VILLAGE ASSOCIATES**

**WITHDRAWN** Mr. Evans requested that this item be withdrawn.

**ITEM H-7**      See page 32 for Action.

**ITEM H-8** See page 34 for Action.

**ITEM H-9** See page 37 for Action.

**ITEM H-10** REQUEST FOR APPROVAL OF OUT-OF-STATE TRAVEL TO ATTEND SEAFOOD CONFERENCE

**ACTION** Unanimously approved as submitted. (Arisumi/Himeno)

**ADDED ITEM H-11** CDUA FOR DAY-USE MOORINGS INCLUDING A SUBDIVISION, OFFSHORE THE KOHALA KONA COAST, HAWAII; APPLICANT: DEPARTMENT OF TRANSPORTATION

See pages 39-40 for Action.

**ITEM J-1** See page 40 for Action.

**ITEM J-2** See page 11 for Action.

**ITEM J-3** See page 40 for action.

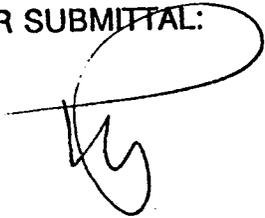
**ITEM J-4** See page 40 for action.

**ADJOURNMENT** There being no further business, the meeting adjourned at 5:28 p.m.

Respectfully submitted,

*Dorothy Chui*  
Dorothy Chui  
Secretary

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, CHAIRPERSON

dc