

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

DATE: MARCH 8, 1991
TIME: 8:30 A.M.
PLACE: KALAIKAMANU HOU CONGREGATIONAL CHURCH HALL
MANALO A HIGHWAY
KALAMAULA, MOLOKAI

**ROLL
CALL**

Chairperson William Paty called the meeting of the Board of Land and Natural Resources to order at 8:30 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Mr. Christopher Yuen
Mr. William Paty

STAFF: Mr. W. Mason Young
Mr. Roger Evans
Mr. Ralston Nagata
Mr. Henry Sakuda
Mr. Walter Scott Adams
Mr. Bill Puleloa
Ms. Dorothy Chun

OTHERS: Mr. Edwin Watson, Deputy Attorney General
Mr. Peter Garcia, Dept of Transportation
Messrs. Harold Sugiyama, Ken Sakai, and Gene Ban
(Item F-2)
Mr. Tom Fee, Mr. Randy Foltz and
Ms. Beverly Ng (Item H-4)
Mr. Bill Kirby (Item F-3 and F-5)
Mr. Buck Rogers (Item J-6)
Mr. Frank Opperman, Ms. Laura Thielen and
Mr. Sid Snyder (Item H-2)
Ms. Bonnie-Lee Echiberi (Item H-1)

MINUTES

The minutes of October 12, 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 B-2 Out-of-State Travel Request for Henry M. Sakuda, Administrator, Division of Aquatic Resources to Attend the Annual Conference of the Western Association of Fish and Wildlife Agencies and the Western Division of the American Fisheries Society

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

ITEM F-2

COUNTY OF HAWAII REQUEST SET ASIDE OF STATE LAND AT KEALAKEHE, NORTH KONA, HAWAII FOR WASTEWATER RECLAMATION FIELD/NORTH KONA GOLF COURSE,
TAX MAP KEY 7-4-08:17 (POR)

Mr. Young went over the details in the submittal. At the conclusion of his presentation he requested to make three amendments with respect to the premium, to the disposition of depositing of the premium and to certain endangered plants in the area:

1. Page 3, Premium to County:

The \$10,000,000 million premium to be paid by the contractor to County of Hawaii (\$4,000,000) and State (\$6,000,000), shall be subject to review by the Office of the Attorney General as whether or not OHA is entitled to 20%.

2. Page 5, under RECOMENDATION, Paragraph B, Sub-Paragraph 7:

Amended to have the \$6,000,000 less the 20% entitlement to OHA, if applicable, deposited in the Division of Land Management trust fund for its program activities i.e. land development, acquisition, equipment, staffing, etc., same subject to review by the

Department of Budget and Finance.

3. Under RECOMMENDATION, Paragraphs B and C, add the following condition:

All endangered uhiuhi (Caesalpinia kavalensis) plants will be centrally protected by a 1/2-acre flagged and fenced enclosure without land or plant modification inside the enclosures, as prescribed in the Kealahou EIS and in compliance with HRS 195-D and U.S. Fish and Wildlife Service Section 7 biological consultation for this project/area.

Mr. Apaka's question related to the 20% to OHA and how it will affect the \$10,000,000 in the breakdown.

Mr. Young said staff did not know and they did want the full \$10,000,000 addressed as to whether it will be 20% of \$6,000,000 or 20% of \$10,000,000. That is the reason it will be subject to the review of the Attorney General with respect to the entitlement.

Responding to Mr. Yuen, Mr. Young said that this land was never set aside originally to the Housing Finance Development Corporation (HFDC).

Mr. Watson asked that in the event the 20% will be on the \$10,000,000, would the \$2,000,000 come under the State's \$6,000,000? Has it been determined? Mr. Young responded that it has not been determined yet.

Chairperson Paty asked if the uhiuhi was part of the EIS?

Mr. Young said, yes, they had missed it as a condition disposition and they wanted to clarify it to insure that the EIS as well as the Division of Forestry and Wildlife (DOFAW) were addressed.

Mr. Harold Sugiyama of the County of Hawaii said that the use of the land is very important for their affluent disposal and the golf course is something that is secondary. As far as the conditions and the three amendments, they can go along with it.

To answer the question by Mr. Apaka, Mr. Bill Gray said to the best of his knowledge there have been no changes in the original proposal. They did a request for proposals for contractors and they did receive five and with the cooperation with the HFDC, two were selected as finalists.

Mr. Apaka asked if they had found any uhiuhi trees in the area of the project that might cause a change of design.

Mr. Gene Ban, representing the developer, said that they had been coordinating with Carolyn Corn, botanist of the DOFAW and presently there are two uhiuhi bushes that are just on the border of the golf course. Some of the metes and bounds have been changed slightly but the major features haven't changed.

Mr. Arisumi questioned why 200 acres.

Mr. Young explained that it is not only for the golf course but for the leaching fields, so they needed that acreage to take care of the sewage treatment plant also.

ACTION

Mr. Yuen moved for approval of Item F-2 with the amendments presented by staff this morning. Seconded by Mr. Apaka, motion carried.

ITEM H-4

AMENDMENT TO CONSERVATION DISTRICT USE PERMIT FOR A ROADWAY AT KOHANA'IKI, NORTH KONA, HAWAII, TMKS 7-3-9:3 AND 7-3-9:16; APPLICANT: NANSAY HAWAII, INC.

Mr. Evans said staff is prepared this morning to recommend approval of this request. He pointed out on page 4 of the submittal, Conditions 1. and 2. are basically Condition 3. of the Board's original approval of this CDUP back in 1987.

Mr. Tom Fee, principal with the firm of Helber, Hastert and Kimura Planners said they have been retained by Nansay Hawaii, Inc. to prepare the necessary environmental assessment and the CDUA. Also present are Mr. Randy Foltz, Construction Manager from Nansay Hawaii and Miss Bev Ng, Civil Engineer with the firm of Gray, Hong, Bills who prepared the construction plans.

Mr. Fee went through the background of the preparations in 1987 requesting an easement in the first CDUA. He used his prepared charts and maps during his presentation. He said the applicant owns the major resort parcel and a 7 acre access parcel, the two are separated by a narrow State-owned right-of-way which includes the Mamalahoa Trail which extends just short of Kailua-Kona and ends near the airport area. The access to the project is separated by a narrow 20 foot State-owned right-of-way. The original CDUA which was approved in 1987 authorized the owner to enter into negotiations with the Division of Land Management for an easement across the trail for construction, ingress and egress and utility corridor. They are back today to ask permission or approval of construction plans to actually build the road across the trail.

They have received the County of Hawaii approvals on management permit which fully contemplated this development as represented today. They have consulted with the Na Ala Hele program and talked about the treatment of the trail. They have made some changes based on consultation with them. In addition the Na Ala Hele is very interested in continuing their involvement, but they also look for any signage or interpretative development that goes on in the trail area. They will be working with the developer for uniformity of signage.

At the request of the Board, Mr. Fee explained their construction plans, measurements and methods of construction. He mentioned that in essence they are creating a small park for the public in one area.

Mr. Fee commented on Condition No. 5 as written, refers to subsequent authorizations of the condition of Land Management on this action and he would like to clarify what they assume it means, "We, based on your approval to initiate the easement, discussions back in '87, we've submitted metes and bounds descriptions of the premises in March 1990 to the Division of Land Management and a draft of the non-exclusive easement document to the Division of Land Management in October 1990. So we assume that we basically provided all the information that need be provided. What we, I guess the steps we assume will have to be made are disposition on the easement, of course, your approval on these construction plans. Division of Land Management's final disposition of the easement fulfilling any County requirements and then with that we assume there will be no reason to come back to the Board upon fulfilling those requirements. The way this is written it seems rather broad. I just want to be sure that we're not missing another permit or approval, perhaps that the Board may.."

Mr. Evans said he would like to clarify it for him. "Should the Board approve this permit, then there is the question of disposition. That question would subsequently be entertained by the Board as a result of a submittal by our Division of Land Management. Relative to them preparing their submittal, you might want to contact them to make sure that you've provided them with all the information they may need."

Mr. Evans informed the Board that his staff has started in the past several months to add or tighten up on the conditions. He referred to Item H-1 on page 6. At this time he would like to add Conditions 11. and 12. to this particular application to be more consistent in what they're doing. He said he would almost expect these to become standard conditions now in all future CDUAs.

Chairperson Paty asked if the applicant had seen the amendments. Mr. Evans said he had shown them to the applicant this morning.

Mr. Fee responded that he understood Condition 5. and regarding the two additional conditions recommended this morning should not be a problem. He only commented that not on this case but in more complex cases the EA is probably submitted some 6 months in advance before actual decision making and a lot of negotiations occur in between and changes.

Mr. Evans said in that case, staff could probably modify the condition.

ACTION

Mr. Yuen moved for approval as amended with the two additional conditions and feels they should be standard on the CDUAs:

11. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the

Issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the department may, in addition, institute appropriate legal proceedings;

12. That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval.

Seconded by Mr. Apaka, motion carried.

WITHDRAWAL OF LANDS FROM GOVERNOR'S EXECUTIVE ORDER NO. 2636 (KEEHI LAGOON HARBOR PURPOSES) FOR DEVELOPMENT AS AN INDUSTRIAL PARK AT KEEHI, KALIHI-KAI, HONOLULU, OAHU

ITEM F-3

AND

ITEM F-5

RESOLUTION OF THE BOARD OF LAND AND NATURAL RESOURCES FOR THE DESIGNATION OF THE KEEHI INDUSTRIAL PARK AT KEEHI LAGOON, KEEHI, KALIHI-KAI, HONOLULU, OAHU

It was requested of the Chairperson that Item F-3 and Item F-5 be taken up together as they are related.

Mr. Young went over the submittal and explained that in order to comply with the concurrent resolutions should the Board wish, the recommendation is that one of the Board authorize and recommend to the Governor to withdraw by Executive Order, 18 acres from the 43 acres that's presently encumbered to the Harbors Division. Once that withdrawal is accomplished, then designate the area as a park, the industrial park as well as to permit the transfer of the permittees from DOT to DLNR. Once that is completed under the agenda Item F-5, adopt a resolution for the designation of the park which will then be sent to the Speaker of the House and the President of the Senate. So there are three actions today, one is to withdraw all the areas from DOT Harbors, put it under our jurisdiction; designate the park; then adopt a resolution which will be sent to the legislature for their adoption of the area, the Keehi Industrial Park.

Staff is recommending as part of the withdrawal and the designation and because there is an existing security of revenue bonds by the Harbors Division, that this be taken care of by way of the designation and the disposition of the leases.

In the submittal it is mentioned that DLNR has come to an agreement with DOT and Budget and Finance with respect to the revenue bonds. It has not been signed as yet but it will be reached shortly. The agreement to insure that the revenue bonds that DOT has is secured because the rental that they're receiving from these 32 tenants secures the revenue bonds, part of the CIP. In addition to that, the development of an industrial park as the direct leases to keep the tenants that are there. The problem is that DOT is looking at the security of the bonds to be in perpetuity forever and we're saying that the preservation of the security should only be for the length of the obligation of the bonds, and that's what is needed to be discussed with them.

The president of the Keehi Industrial Park, Mr. Bill Kirby was present to answer any questions.

Mr. Watson addressed Mr. Young saying that one of the problems in the past was, "when DOT surrenders that parcel of land and the land department now indicates the lessors position. Is DOT also going to submit to the Land Department the security deposits that were deposited by the 32 lessees?"

Mr. Young said that his understanding was everything comes over.

Chairperson Paty asked Mr. Young how would he characterize the difference between this and the Sand Island area?

Mr. Young said that the difference between this and Sand Island is that we have some obligations that come with it and that is the revenue bonds. And we're not sure how we're going to develop it or whether it's going to be developed by the department or by the tenants. Whereas, Sand Island, the rental was established by negotiation and Sand Island Business Association (SIBA) became the developers.

He mentioned that the rental structure and the development of the subdivision has to be structured in such a way that all the different concerns are addressed and taken care of.

Mr. Bill Kirby said that the only thing they have been working with all along is to make sure that the DOT is satisfied that they're going to retain their right to the funds on the bonding. They were of the understanding that that agreement is fairly close so that the property when it's transferred over is done properly.

Responding to questions of the Chair and the Board, Mr. Kirby said the largest lot is 1.4 acres and the smallest, where they're subleasing the property are in the 3,000 square foot range. They realize when the park is developed they will have people with larger pieces that will have to give up something and some people with smaller pieces will end up with more. He mentioned that SIBA structure shows they have 7,500 square foot minimum lots.

Mr. Kirby said that there's another bill recently introduced on industrial revenue bonds and they would propose to sell industrial revenue bonds to do the infrastructure for the park. Once the 55 year lease is secured and if it can be similar to SIBA, then it will be a lot easier for people to go out and borrow money to make major improvement to their property.

ACTION

Mr. Arisumi moved for approval of Items F-3 and F-5. Seconded by Mr. Apaka, motion carried.

ITEM J-6

AMENDMENT TO RIGHT-OF-ENTRY FOR TEST BORINGS-ALOHA TOWER COMPLEX REDEVELOPMENT, HARBORS DIVISION, OAHU

ACTION

Approved as submitted. (Arisumi/Apaka)

ITEM H-2

CDUA FOR FIVE NON-CONFORMING SINGLE FAMILY RESIDENCES AND OTHER PROPERTY IMPROVEMENTS, MOKULEIA, OAHU, TMK 6-8-08:20, 39, 42, 43, 44, 45 AND 46; APPLICANT: MR. F. T. OPPERMAN

Mr. Evans began his presentation at the exhibit he posted on the wall. He said that the drawings were not to scale but were being used to point out the placement of the current structures and the lots of the proposed new structures. He covered the details of the submittal and quoted from the Legislative Auditor's Report regarding "Non-conforming use aspect," which is also explained in the submittal.

Based upon the analysis staff is recommending approval of the five non-conforming single family residences and other property improvements subject to the conditions listed.

He did mention that subsequent to the writing of this submittal staff received a letter on March 4, 1991 from Cynthia Thielen's law clerk and they bring to staff's attention something else which staff had not given real consideration before. The letter stated Mr. Opperman's intention pertaining to TMK 6-8-08:42 and 6-8-08:43, both lots are less than 10 acres each and both were purchased with the intent to build residences upon them. Although his current CDUA does not include development of lots one or two, Mr. Opperman retains his right under Hawaii Revised Statutes 183-41(b) to build single family residences on those lots at any time.

Considering the above Mr. Evans said that they are addressing an aspect of this matter which was brought to their attention by the Legislative Auditor. Should the Board feel that they should defer the matter because of this recent correspondence, that option is available.

MR. YUEN: "I'm a little concerned with the idea of a use considering than continuing matter than the structure. Most of the zoning codes I'm familiar with, when something is allowed as a non-conforming use, for example, a single family and the place gets rezoned to open and they allow it to be of non-conforming. If it burns down, i.e. they don't let you rebuild. It's our position that if you had a house that was non-conforming use, it burned down, you get to build another one?"

MR. EVANS: "I can't say that's our position."

MR. YUEN: "That's part of what we're asking the A.G.'s?"

CHAIRPERSON: "Any further questions?"

MR. ARISUMI: "Roger, you pointed out earlier where you have those circles, there are homes there already or is that the site they're planning to build on?"

MR. EVANS: "What is there at the present time, that's where they're planning to build but relative to what's there at the present time, there's a guest cottage, a main residence, a caretaker's cottage and these are what they'll be used as. The children's bunk house and hobbles and maintenance. That's the proposed use. Now as a part of the public hearing, one lot has two structures on it, one is used by children, one is used by caretakers, one has a building which is presently used for storage and one lot is used as a single family residence at the current time."

MR. ARISUMI: "All different lots?"

MR. EVANS: "All different lots, yes."

MR. ARISUMI: "So what they're proposing now is to take the structures down and put in ..."

MR. EVANS: "As I just represented to you, would be put up."

MR. ARISUMI: "Can you clarify for me, the second and third lots on the top."

MR. EVANS: "They're vacant."

MR. ARISUMI: "They're vacant and you said that they are considered ..."

MR. EVANS: "Although the current CDUA does not include development of those two lots, the applicant retains his right to build a single family residence on these lots at any time. And when staff received that, then we began to have some questions in our minds as well."

CHAIRPERSON asked for any further questions.

MR. WATSON: "Roger, the additional two structures had never been brought to the Deputy A.G.'s attention? --that they're reserving the right to build."

MR. EVANS: "That has never, no, we just received this. This has never been brought to the A.G.'s attention."

MR. WATSON: "So the application covers all eight lots right now and it was made on the premises they're going to be constructing at this stage, five, reconstructing five, is that correct?"

MR. EVANS: "The application does not contain two vacant lots from which this letter refers to. The CDUA application refers to nine lots actually. Two of the lots are former railroad right-of-ways."

MR. WATSON: "So even at the public hearing it was never brought out that the landowner was maybe contemplating down the road, throwing in the additional two structures within the nine lots?"

MR. EVANS: "That was not a part of this application. Notwithstanding this, this makes it a question but notwithstanding this, this is not a part of the application."

MR. WATSON: "Our office had tried to contact your office yesterday with a request. Did the request reach you? (Mr. Evans replied, "No.") Our office is requesting that this matter be deferred until a formal written opinion is issued in this case."

MR. EVANS: "What was related to me was there was a request for deferral but he had no reason why."

MR. F. T. OPPERMAN: "Mr. Paty and Board, I purchased this property in late 1989. Prior to purchasing it, approached the Department of Land and Natural Resources staff including Mr. Roger Evans, I was presented a portfolio of the rules governing the application that I was to proceed with should I purchase the property. I explored the rules and regulations, I purchased the property after being advised by members of the Department of Land and Natural Resources

and as I got into, after the purchase as I got into the project, I developed this file, which is only half. I only brought half of what I developed.

"In crossing the "t's and dotting the i's" on what we proposed to do with this property to clear up what's right presently before us, Mr. Evans' has brought in. There are seven lots in concern. There are five existing houses on four of those seven lots. There are three vacant lots that you asked about across the top left in the front on the beach side. We have gone through a lot of detail here. My proposal, I believe a fair one, I don't want to break any laws or make anybody unhappy. We have had a lot of input, we have had a public hearing on this matter. There has to be some clarification on some dates that we're presently now brought up. The only reason for clarifying the two empty lots was so that it's out in the open that I'm not applying for anything on those lots. I still reserve my rights which I think is perfectly legal and legitimate.

"This property is a perfect situation for my personal situation and where I have a lot of heirs, here is property that is properly subdivided, here is something I can pass on to my children. I've got third generation kamaaina kids here now and like I say it's a perfect thing for me to spend my life in this particular location and then pass on to my heirs. I don't plan to build a magnum office, a Kahala Avenue or anything that would embarrass the Department of Land and Natural Resources or myself. I believe that my past will prove my intent, in that anything I've dealt with in the past has always been in good taste and never controversial. And in fact, award winning. I'm more of an industrial developer, I'm not a home builder or house developer or subdivision developer so to speak. I've been commended seven years in a row at Campbell Park for instance for some property that the city purchased from us here quite recently for their bus depot. This is 3 or 4 years ago. Seven years in a row we're number 1 in the park for landscaping, which is neither here nor there.

"On this particular situation, the clarification that was received on or prior to the public hearing which I believe was held on February 14th to be exact, was hand carried to Mr. Ed Henry and to yourself, Roger Evans, stating just to clear the record that this application did not designate, require your approval on anything on two of those three vacant lots. If anything, it was just to clarify that there's nothing we want to do at this time, and if we ever want to do anything, naturally we're going to come back to you. Whatever the law's at that time we're going to have to live with. Personally I don't want buildings on those properties at this time. Maybe a hundred years from now or fifty years from now or ten years from now they would take a cottage. But, like I say that would have to stand by itself at the time of application, which I fully understand. So I don't like to complicate this application with two things that were clarified, two lots that were clarified to be not in the application.

"I would like to compliment Roger Evans and his staff for being very thorough, very protective of our rules and regulations and of our islands. I respect the rules and regulations, and I for one don't like to see a lot of things that are happening on the island. But I believe this particular project, if you want to use that word, is well within my rights and will be done in a very low-key way to clarify and enlighten the Board on details I've taken the trouble to bring in a representative from Cynthia Thielen's Office and also my architect who has some very nice work in the Hawaiian Islands and in the island chain for years. Ossipoff, Snyder Architectural firm, and that doesn't mean we're going to have a big edifice here, it just means I want good taste, I want something that's laid-back plantation Hawaiian local, easy to maintain and take care of and low-key, so with that I would like to call upon Laura Thielen, representative for Cynthia Thielen."

CHAIRPERSON called for any questions of the Board for Mr. Opperman.

MR. YUEN: "I have another question for Roger. I think we have to ask another question of the A.G. and the issue here is, 'Are our rules inconsistent with the statutes, Legislative Auditor thinks they are, maybe they're not.' But be that as it may, these people came in with an application under our present rule, there doesn't seem to be any dispute that they would qualify as non-conforming laws under our present rules. If our present rules are inconsistent with the statutes, then we oughta go through the process of changing them, but can we do anything but apply the present rules to the present application. That would be the question that would be in my mind."

Mr. Evans: "I'll see that they get that."

MISS THIELEN: "The Board has the application but I would like to make one clarification. (She then walked over to the exhibit on the wall, pointing out where the present homes were.) First,

I want to reiterate that this is an application for five separate individual single family residences and they will be placed on five separate individual single parcels of land. There currently exists two single family residences on what was identified as I believe, lot 7. One residence on lot 4, one on lot 5 and one on lot 6. What this application is for, Mr. Opperman is requesting your permission to replace the three homes on the mauka side of the lot, lots 4, 5 and 6 and then to put one single family resident on lot 7, so to combine the existing residences into one. And that would come under a non-conforming single family use of a house that existed on the property when it was designated in the Conservation District back in 1961.

The application also is to place a new residence on lot 1 which is on the makai side of the property, the Kaena Point side. Under the Hawaii Revised Statutes 183-41 and your current regulations, an applicant who has purchased property with an intent to place a residence on that property, has paid real property taxes, and a lot is less than 10 acres in size has a right to build a non-conforming single family residence on that site.

Lots 2 and 3 on the makai side of the property, were not addressed by this application. On February 14th I received a phone call from a staff planner who drew up this report to you asking me what Mr. Opperman's intentions were regarding lots 2 and 3. I informed him that there were no plans at this time to build any structures on those lots and those lots were not being considered under this application. However, Mr. Opperman purchased lots 2 and 3 at the same intent as he purchased lot 1, with the intent to build a single family residence on it. He has and continues to pay real property taxes on those lots and each of those lots are less than 10 acres in size. So therefore, I clarified to the staff on February 14th prior to the public hearing which was held at 6 o'clock that evening, that Mr. Opperman was retaining his right that someday in the future to put a single family residence on those lots. Now I put this clarification in writing and it was hand-delivered to staff on the 14th. Apparently, it was not received, so what I did is I sent another letter on March 4th enclosing the original clarification and received a signed receipt and I have copies for each of you, so you can see the verbatim clarification for yourselves and the letter. (She then passed out copies to the members of the Board.)

I'd like this to be part of the record if that's possible and all we're saying is that on a future date, Mr. Opperman proposes to build single family residences on that site. He will place an application in front of this Board in conformance with the regulations. At this time there is no plan to do so. There's two sites and I hope you would not defer decision on this application pending, I don't know what, based on this clarification.

Each of these five existing structures have been used as residences since they were constructed. Mr. Opperman has continued to use the structures as residences. He has children who use the makai home on lot 7, some caretaker lives on the mauka home on that lot. He resides in the home on lot 6. I'm sorry I'm getting my lots mixed up. Let me go back over this. It's lot 4 that has the two homes. Mr. Opperman resides in the home on lot 6, a caretaker couple lives in the mauka house on lot 4 and his children and family use the makai home on that lot and also on lot 7. The home on lot 5 had been rented out by the prior owners before Mr. Opperman and the tenants really ruined it as did the termites. So he's been using that structure mainly for storage pending this application, but his intent is, if this application is granted, to replace that structure and continue its residential use.

When he will or if he's allowed to replace these non-conforming structures, Mr. Opperman will also be replacing three existing cesspools with septic tanks and this will be a great benefit to public health since the State has been for years trying to phase out the use of cesspools, particularly in the coastal areas.

The staff analysis has raised the issue that the Board may regulate the size of non-conforming residences which are built in the Conservation District. We agree with the staff conclusion that Mr. Opperman's proposal allows for only a modest increase in the sizes of the residences which are currently upon the property. However, the staff analysis mentions the possibility that when you are looking at the usable square footage for the proposed structures that you include in the figures that we give you, you add on to those figures areas for parking and for storage. When we made up the figures of the usable square footage for the current structures we did not include parking and storage area. So all we would ask if you do take the staff recommendation and revise the proposed structures' usable square footage that you allow us to revise the usable square footage for the current structures so it can be a fair comparison.

"I would also like to address a concern that was raised about use of the property for residential use. As I mentioned Mr. Opperman will be using these homes solely for residential use. He is not requesting a permit for non-residential structures. Now various points in this application at the public hearing, terms such as, children's bunk house, or a hobby shop was raised. This was simply a shorthand way to identify one of the five structures. It was easier to say, that was the bunk house than to say the structure on lot 4 of Tax Map Key. But this is an application for five single family residences, each residence will contain usual rooms, bedrooms, baths, things like that of the single family residence that will be used for residential purposes.

"Initially it wasn't raised here but, was spotted in the analysis is the salt water pool and I wanted to clarify as we did during the public hearing, this is simply a wading pool for the grandchildren. The ocean gets very rough in that area during the winter months so this would allow them to have some water to play in.

"The public hearing was held on February 14th, last month and six members of the public testified at the hearing. Every single person who was there to testify requested that this Board approve Mr. Opperman's application for the five single family non-conforming residences. Nobody appeared at the hearing to testify against this application. Fourteen of Mr. Opperman's neighbors have provided letters to this Board and it should be part of the record and I have copies if you need them, but those neighbors included former president of the Northshore Neighborhood Board, and also the Mokulela Community Association. All of those letters are favorable, they are requesting this Board to approve Mr. Opperman's application. Now these are the people who live in the area and know Mr. Opperman and would be most affected by his plans and they trust him and are requesting you to do the same because there is nothing in his plans that is going to violate the land and the natural beauty of the area. So I would like to ask you today to affirm the staff recommendation to approve the application for the five single family non-conforming residences. If you have any other questions, issues you feel should be discussed, I'd be happy to answer them at this time. We also have the architect here."

Sid Snyder, President of Ossipoff, Snyder, Rowland Architects addressed the Board. "I've been involved with the project since --- to 1990. I've worked with Mr. Opperman and known him for many years, a person of good character. Frank Opperman's shown to me that he'd used reasonable care in checking out the property, zoning prior to purchase and certainly I can report to you that he continues to try to do so, to try to bring this project to conformity with the laws and regulations affected."

Mr. Snyder assured the Board that he has worked in the area, worked in Camp Mokulela where they ran across remains in excavations. He has worked with the State and Bishop Museum archaeologists.

He presented a scale model to the Board and proceeded to point out the lots in relation to the exhibit put up by Mr. Evans on the far wall. He also spoke on project building materials and the buildings in relation to the highway. He also wanted to touch on the subject of density, something like the enclosed square footage somewhere around 6% of the land area. The land area is 81,000. This proposal is around 8.4% and from his professional opinion or view is very, very low density on the property. He offered to answer any questions of the Board.

**RECESS AND
EXECUTIVE SESSION (10 minutes)**

Chairperson Paty called the regular meeting back to order.

MISS THIELEN: "If I may, jump in again, there were some questions raised about what the Board's authority is under its rules and I would like to show one other poster we brought which I think may have some effect on your analysis of this application. Before I show that I would also like to say that I have a copy of an application which was a Conservation District Use Application for a single family residence and the permit was approved by the Board in 1989 here on Molokai. It was a non-conforming residence which was torn down due to age and the Board allowed the applicant to rebuild the home as a non-conforming residence, stating that it fell under the description non-conforming residence when the parcel had been bought with the intent to build a residence, it was less than 10 acres in size and that real property taxes had been paid on the property. So there is some recent precedence to approve a replacement single family residence to be built in the Conservation District as a non-conforming residence.

(She then proceeded to show her poster and pointed out the areas.) "This is the area on Oahu where Mr. Opperman's house is located. This is Kaena Point here. This is the State Land Use Commission official map showing the boundaries of the Conservation District marked in green and the ag district left blank and the urban district marked red. Boundaries finalized in 1964. In 1975 the boundaries were remarked. The area where he is proposing to build is closer to the urban district surrounded by agricultural district and is traditionally being used for residential purposes." She asked the Board to take this into consideration.

**DEFERRAL
ACTION**

Mr. Arisumi moved to defer this matter to the next Oahu meeting as they are awaiting the opinion from the Attorney General's office. Motion was seconded by Mr. Yuen. Mr. Yuen commented that he didn't want the applicant to take this as a negative feeling about the quality of their presentation here, it's just that there is a major question about the rules that's been raised by the Legislative Auditor and the Board would like to have a clarification of those rules. They are expecting an opinion by the next meeting. Motion carried unanimously.

ITEM H-1

CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A SINGLE FAMILY RESIDENCE, MAUNALAHA HOME SITES, MAKIKI, OAHU, TMK 2-5-24:24; APPLICANT: MS. BONNIE LEE ECHIBERI

Mr. Evans made his presentation with staff's recommendation for approval.

Applicant, Ms. Echiberi said that she agreed to all of the conditions listed.

ACTION

Unanimously approved as submitted. (Apaka/Arisumi)

ITEM B-1

REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS RELATING TO THE MANAGEMENT OF CERTAIN BOTTOMFISH RESOURCES

ACTION

Unanimously approved as submitted. (Arisumi/Apaka)

**ADDED
ITEM B-2**

OUT-OF-STATE TRAVEL REQUEST FOR HENRY M. SAKUDA, ADMINISTRATOR, DIVISION OF AQUATIC RESOURCES TO ATTEND THE ANNUAL CONFERENCE OF THE WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES AND THE WESTERN DIVISION OF THE AMERICAN FISHERIES SOCIETY

ACTION

Unanimously approved as submitted. (Arisumi/Apaka)

ITEM E-1

REQUEST BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, TO STAY OVERNIGHT AT HAPUNA BEACH STATE RECREATION AREA, HAWAII

Mr. Yuen asked who would be controlling who gets to stay overnight.

Mr. Nagata responded that they will work it out with the National Park Service. It was supposed to be limited to the participants and some of their family members that were going to stay overnight.

ACTION

Unanimously approved as submitted. (Yuen/Apaka)

ITEM E-2

REQUEST FROM THE HUI OKINAWA ORGANIZATION TO CONDUCT A HAARI BOAT RACE IN WAILOA RIVER STATE RECREATION AREA

Mr. Yuen asked if there were any problems at the last event.

Mr. Nagata responded, "Not to my knowledge, it worked out pretty good. I didn't get any negative reports."

ACTION

Unanimously approved as submitted. (Yuen/Apaka)

ITEM E-3

REQUEST TO INSTALL A MEMORIAL PLAQUE AT HAPUNA BEACH STATE RECREATION AREA, HAWAII

ACTION

Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION

Item F-1a ASSIGNMENT OF GENERAL LEASE NO. S-3960, LOTS 18 AND 21, HANAPEPE RICE AND KULA LOTS, HANAPEPE, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-9-02:1 AND 20

Mr. Young said in the event that the Board does consent to the assignment of this lease, staff is also asking that an addendum be made whereby the lessees be required to post the required liability insurance. Presently under the lease, it says if and when the Board so desires, then we may institute the requiring of the lessee to file the liability insurance, and because it says the Board and being that it is our policy to have all our lessees post liability insurance, we'd like to have as part of the approval of the consent to assignment, that the lessees be required to post the liability insurance policy.

Item F-1b ISSUANCE OF LAND LICENSE TO OLOKELE SUGAR CO., LTD. TO REMOVE CINDER, OLOKELE CINDER PIT, HANAPEPE, KAUAI, TAX MAP KEY 1-8-07:POR. 10

Item F-1c ISSUANCE OF LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD NO. 3589 TO KAKUIHEWA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-6-03:22

Item F-1d ISSUANCE OF REVOCABLE PERMIT TO VICKI CUNNINGHAM FOR CHILD CARE SERVICE AT KULA SANATORIUM SITE, KEOKEA, MAKAWAO (KULA), MAUI, TAX MAP KEY 2-2-04:POR. 34

Item F-1e ISSUANCE OF REVOCABLE PERMIT TO JACK L. AYERS, JR. AND ELSIE M. AYERS AT WAIKEA, SOUTH HILO, HAWAII, TAX MAP KEY 2-1-07:POR. 51

Item F-1f ASSIGNMENT OF GENERAL LEASE NO. S-4201, LOT 5, HILO INDUSTRIAL DEVELOPMENT, POHAKU STREET SECTION, WAIKEA, SOUTH HILO, HAWAII, TAX MAP KEY 2-2-58:33

Item F-1g RESUBMITTAL--ASSIGNMENT OF GENERAL LEASE NO. S-5073, LOT 38, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-02:43

ACTION Mr. Yuen moved for approval of Item F-1a as amended and Items F-1b through F-1g as submitted. Seconded by Mr. Arisumi, motion carried.

ITEM F-2 COUNTY OF HAWAII REQUEST SET ASIDE OF STATE LAND AT KEALAKEHE, NORTH KONA, HAWAII FOR WASTEWATER RECLAMATION FIELD/NORTH KONA GOLF COURSE, TAX MAP KEY 7-4-08:17 (POR.)

See page 2 for action.

ITEM F-3 WITHDRAWAL OF LANDS FROM GOVERNOR'S EXECUTIVE ORDER NO. 2636 (KEEHI LAGOON HARBOR PURPOSES) FOR DEVELOPMENT AS AN INDUSTRIAL PARK AT KEEHI, KALIHI-KAI, HONOLULU, OAHU

See page 5 for action.

ITEM F-4 DIRECT AWARD TO HAWAIIAN ELECTRIC CO., LTD. OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR GUY WIRE AND ANCHOR, MOANALUA, OAHU, TAX MAP KEY 1-1-10:41

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM F-5 RESOLUTION OF THE BOARD OF LAND AND NATURAL RESOURCES FOR THE DESIGNATION OF THE KEEHI INDUSTRIAL PARK AT KEEHI LAGOON, KEEHI, KALIHI-KAI, HONOLULU, OAHU

See page 5 for action.

ITEM F-6 WITHDRAWAL AND SET ASIDE OF LANDS INVOLVING PORTION OF GOVERNOR'S EXECUTIVE ORDER NO. 2931, ADDITION TO CONTAINER YARD AT SAND ISLAND, OAHU

ACTION Unanimously approved as submitted. (Apaka/Yuen)

ITEM F-7

AMENDMENT TO PRIOR BOARD ACTION OF MAY 24, 1990 (AGENDA ITEM F-8) COVERING SALE OF LEASE AT PUBLIC AUCTION, LOT 22, WAIMANALO AGRICULTURE SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU

Mr. Young said staff intended to sell the lease this month, however they found out that the specific use provided therein and the amount of requests they've been receiving for use of the property is different. Staff would like to amend the character use from general agriculture to pasture. This lot is right along the foothills of the Koolaus which makes it pretty much unusable for agriculture but usable for pasturing of horses. After the change of the use of the proposed lease, then they would like to auction it again. There are some amendments which staff would like to have included in the event the Board does decide to go along with staff recommendation. He then passed out copies of the proposed Amendments to the Board members.

Amendment: In the Recommendation delete the words "subject to all other conditions of that Board action remaining the same." Add subject to the following conditions:

1. Lessee must obtain prior approval from the Department of Land and Natural Resources for the boarding of horses.
2. Should the lessee board horses, lessee must submit an annual statement of gross revenues from all sources within the leased premises, duly certified, within (60) days following the previous year.
3. All other conditions of that Board action remaining the same.

Mr. Arisumi asked what was it being used for presently.

Mr. Young said that they were using it for pasture and horses.

ACTION

Unanimously approved as amended. (Arisumi/Apaka)

ITEM F-8

AMENDMENT TO PRIOR BOARD ACTION OF FEBRUARY 23, 1990 (AGENDA ITEM F-10) DRAINAGE DITCH, KANEOHE BAY, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-5-58:48

ACTION

Unanimously approved as submitted. (Arisumi/Apaka)

ITEM G-1

ADOPTION OF ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, NEW CHAPTER 13-16, CONVEYANCES

ACTION

Unanimously approved as submitted. (Apaka/Arisumi)

ITEM H-1

CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR A SINGLE FAMILY RESIDENCE, MAUNALAHA HOME SITES, MAKIKI, OAHU, TMK 2-5-24:24; APPLICANT: MS. BONNIE LEE ECHIBERI

See page 10 for action.

ITEM H-2

CDUA FOR FIVE NON-CONFORMING SINGLE FAMILY RESIDENCES AND OTHER PROPERTY IMPROVEMENTS, MOKULEIA, OAHU, TMK 6-8-08:20, 39, 42, 43, 44, 45, AND 46; APPLICANT: MR. F. T. OPPERMAN

See page 10 for action.

ITEM H-3

CDUA FOR A SINGLE FAMILY RESIDENCE AND FRUIT ORCHARD AT KAIWIKI HOMESTEAD, SOUTH HILO DISTRICT, HAWAII, TMK 2-6-11:3; APPLICANT: KARL BACKUS

ACTION

Mr. Yuen moved for approval as amended by adding two additional conditions, these were two conditions that were added to Item H-4 on this morning's agenda (from Item H-1):

11. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the

Issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the department may, in addition, institute appropriate legal proceedings;

12. That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval;

This would relate specifically that they conform to representations including areas that they are planting, size and general design of the house.

Seconded the motion as amended by Mr. Arisumi, motion carried.

ITEM H-4 AMENDMENT TO CONSERVATION DISTRICT USE PERMIT FOR A ROADWAY AT KOHANAIKI, NORTH KONA, HAWAII, TMKS 7-3-9:3 AND 7-3-9:16; APPLICANT: NANSAY HAWAII, INC.

See page 3 for action.

ITEM I-1 OUT-OF-STATE TRAVEL REQUEST FOR DOCARE CHIEFS TO ATTEND TRAINING SESSION, LAS VEGAS, NEVADA, MARCH 11-16, 1991

Chairperson Paty commented that the DEA asked by name for the following DOCARE chiefs, Maurice Matsuzaki, Keith Keau, Manuel Andrade and Lenny Terlep to attend the training session and it would be paid from the DEA funds.

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM I-2 OUT-OF-STATE TRAVEL REQUEST FOR MESSRS. WENDELL W.S. KAM AND TOD M. LUM TO ATTEND THE INTERNATIONAL HUNTER EDUCATION 1991 ANNUAL CONFERENCE IN SAN ANTONIO, TEXAS, APRIL 6-13, 1991

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM J-1 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4754 AND 4756, AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM J-2 RENEWAL OF REVOCABLE PERMITS 3918, ETC., AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM J-3 ISSUANCE OF A VENDING MACHINE CONCESSION LEASE BY NEGOTIATION, HARBORS DIVISION, PIER 2 TRANSIT SHED, HONOLULU HARBOR, OAHU (HAWAIIAN ISLES VENDING)

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM J-4 ISSUANCE OF A VENDING MACHINE CONCESSION LEASE BY NEGOTIATION, HARBORS DIVISION, KAILUA-KONA BOAT HARBOR, KONA, HAWAII (MR. ROBERT W. GOARD)

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM J-5 ISSUANCE OF A VENDING MACHINE CONCESSION LEASE BY NEGOTIATION, HARBORS DIVISION, ALA WAI BOAT HARBOR, KEEHI BOAT HARBOR, AND HARBORS DIVISION MAINTENANCE YARD, SAND ISLAND, OAHU (SONNIE GAY, LTD.)

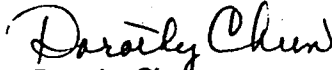
ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM J-6 AMENDMENT TO RIGHT-OF-ENTRY FOR TEST BORINGS-ALOHA TOWER COMPLEX
REDEVELOPMENT, HARBORS DIVISION, OAHU


See page 5 for action.

ADJOURNMENT There being no further business, the meeting adjourned at 10:50 a.m.

Respectfully submitted,


Dorothy Chum
Secretary

APPROVED FOR SUBMITTAL:



William W. Paty, Chairperson