

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

**DATE:** MARCH 22, 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 W. Paty

**STAFF:** Mr. Roger Evans  
Mr. W. Mason Young  
Mr. Gordon Akita  
Mr. Michael Buck  
Dr. Donald Hibbard  
Mr. Dean Nakano  
Mr. Richard Fassler

**OTHERS:** Mr. William Tam, Deputy Attorney General  
Mr. Peter Garcia, Department of Transportation  
Mr. Donald Chung, Mr. Vincent Shigekune (Item H-4)  
Mr. Walter Arakaki (Item F-6)  
Mr. Edgar Hamasu (Item F-6)  
Mr. Mike Aki (Item F-13)  
Mr. Frank Opperman (Item H-2)  
Ms. Laura Thielen (Item H-2)  
Mr. Walter Billingsley (Item H-3)  
Mr. Roger Harris (Item H-3)

**MINUTES:** The minutes of the meeting of November 9, 1990 were approved as circulated. (Apaka/Arisumi)

**ADDED ITEMS:** Upon motion by Mr. Arisumi and a second by Mr. Apaka, the following items were added to the agenda:

**Item A-1** Out-of-State Travel Request for Staff Architectural Historian to attend the Society of Architectural Historians Annual Meeting

**Item F-14** Briefing by Hawaiian Home Lands Trust Land Claims Task Force

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

**APPROVAL OF (1) LEASE OF LAND (BASE FACILITY), (2) CONSENT TO SUBLEASE, (3) CONSENT TO MORTGAGE OF LEASE AND SUBLEASE, (4) CONSENT TO SUB-SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (FEDERAL EXPRESS CORPORATION/ELLERS-POHRER AIRPORT PARTNERS/THE MERCHANTS BANK)**

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**ITEM J-8**

Mr. Garcia made his presentation to the Board and informed them that the documents were reviewed by Deputy Attorney General Jeffrey Kato.

Mr. Apaka asked if there were any comments made by Deputy Attorney General Kato. Mr. Garcia responded that there were no problems with the arrangements although he did make some corrections on the documents as to the wording.

**ACTION**

Unanimously approved as submitted. (Apaka/Arisumi)

**CDUA FOR THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE AT KANEOHE, KOOLAUPOKO, OAHU TAX MAP KEY 4-4-13:34; APPLICANT: DMJM HAWAII**

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**ITEM H-4**

Mr. Evans said that this was a request in the General Subzone for a single family residence currently vacant. Staff and Board members were able to make an on-site visit to see the lay of the land.

He mentioned that there was a Legislative Audit that was recently completed. One of the major criticisms was that our department should be more sensitive to the size and shape of houses that are being proposed in conservation land if the Board continues to allow residential units.

Staff did consult with the Department of Attorney General and asked if the department should seek a remedy on the size and shapes of houses. The response was that under the conditions of use and its standards under its Administrative Rules the Board currently has the clear authority to modify some of these units. This is the first large house that has come in subsequent to that inquiry, staff has gotten together with the applicant and there is now a modified proposal which is significantly scaled down.

Mr. Evans said the reason staff is recommending approval is that the house has been somewhat scaled down and there is a view plane study. Staff feels that a citizen going by is not really going to distinguish between this house and all the other houses in the urban development nearby.

Chairperson Paty mentioned that the Board members had gone out to the site yesterday. He asked if the applicant is comfortable with the tree levels that came about as a result with discussions with staff. Mr. Evans responded, "yes." He also stressed that fact that it's not staff's role to negotiate and this was not anything that could be construed as a negotiation. What they did do was have discussions and brought up these problems that had been facing staff. He wanted to be clear that they did not negotiate this but they did let them know that these are problems that have transpired in the past.

Mr. Donald Chung, Civil Engineer and Landscape Architect for the project said that also present today were planners and the architect. Responding to the Chairperson he said that he had reviewed all the conditions and they were all reasonable except

for the color. His client preferred to have it blend in with the vegetation. They also would like to have a little more flexibility in the final design instead of being so rigid. Not so much increasing the floor area to 400%, but just need a little allowance to make some changes, maybe to building orientation rotating a few degrees based on exacting surveys that they have or something to that effect.

Mr. Evans said that from staff perspective they feel the need for flexibility and if the board would indicate its sense of it, staff would be more than happy to carry it out.

Mr. Chung said they have decided not to put in a swimming pool but a lap pool which is something like an overgrown bath tub and no elevator and by comparison the original house extended much more.

**MOTION** Ms. Himeno moved for approval as submitted; Mr. Arisumi seconded the motion.

**DISCUSSION** Mr. Yuen commented on the good job done by staff in making this application more consistent with the purposes of the Conservation District.

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

**ADDED** **BRIEFING BY HAWAIIAN HOME LANDS TRUST LAND CLAIMS TASK**  
**ITEM F-14** **FORCE**

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Mr. Harold Masumoto, Director of the Office of State Planning addressed the Board saying that they asked for this informal briefing of the Board. The Governor has transmitted some proposed actions to the legislature as part of his package in response to Act 395. One element within the proposed action plan calls for trying to resolve some of the controversies that exist between the land matters between the State of Hawaii and the Department of Hawaiian Home Lands Commission. To assist, the Governor appointed a Task Force composed of William Paty, Chairman of the Department of Land and Natural Resources, Mrs. Drake, Chairman of the Hawaiian Home Lands Commission, the Attorney General and himself. He said the work of the task force needs to clean up some of the old executive orders and leases that have created a lot of problems between the two agencies since statehood. There were some questions whether the task force should be working on statehood issues as well. There is some urgency in solving this and there is a commitment to work on this in good faith within 18 months or so.

Mr. Masumoto turned over the presentation to Ms. Norma Wong. Ms. Wong said that basically they are looking at five different areas of land claims.

The highest priority are Executive Orders (E.O.) and Proclamations (Procs.) that were reversed by Governor Ariyoshi. In most cases, although those E.O.'s and Procs. were reversed, there were no interim agreements that were made. So in those cases they have agencies that are occupying those lands but there are no agreements, no leases, no exchanges, etc. licenses taking place. It constitutes about 27,000 acres of land on some of which involve the DLNR directly and others which don't. In most of those cases, those original E.O.'s or Procs. were taken place with the knowledge of Board, either this Board or previous agencies in the State.

The second area involves State or County held lands basically that are under licenses or permits that need some sort of resolution because of the terms under which those were originally executed may not have recognized the special trust responsibility of the Hawaiian Homes Commission Act. They were essentially a time

period where the Hawaiian Home Lands (HHL) were treated like any other public lands, not recognizing the special trust responsibilities that those lands have for the beneficiaries. There are certain HHL's claims involving private lands and they will have to look at those very carefully in conjunction with the Attorney General to see whether or not those can be resolved and they may need to come back to the Board in terms of those. There are unauthorized, illegal or improper government uses or dispositions regarding HHL's where the Hawaiian Home Land ownership is not in question. This involves about 12,500 acres of HHLs. There are some claims sitting before the Board that were transmitted earlier last year. She continued to explain the different types of claims and mentioned that boundary disputes would be a problem.

The last area involves a number of claims with the Federal Government. On those it's the Task Forces' responsibility to lay out those claims and recommend those claims be taken forward by the Governor, DLNR, the AG or the Hawaiian Homes Commission depending upon which of the entities have more leverage with respect to the Federal Government.

With respect to resolutions of these claims, the Governor has instructed the task force to be creative in its solutions. There are certain particular lands that would not be in the best interest of either the State, the agencies that may be occupying those lands or the HHL's if those lands were returned.

Their timetable calls for resolution before the end of this calendar year. They appreciate the attendance of the DLNR's representatives at the task force meetings.

Mr. Masumoto said that they have asked in the budget before the legislature at this time for several hundred thousand dollars to do the necessary appraisals and staff reports. They also need special deputy attorney generals to do the title searches. The funds are centrally budgeted in the Governor's office.

Ms. Wong then went over the priorities of the project.

Mr. Masumoto said if the Federal Government cooperates they may finish in two years.

Chairperson Paty thanked them for the briefing.

#### **REQUEST FOR RECONSIDERATION OF ANNUAL RENTAL INCREASE FOR REVOCABLE PERMITS, SAND ISLAND, OAHU**

#### **ITEM F-6**

Mr. Young said that this was a request by the Sand Island Business Association (SIBA) for reduction of the rental that was approved back in December of 1990 which is a 5% increase across the board for all revocable permits.

Mr. Young then went over the five-page submittal in much detail. He also read the staff's recommendations listed on pages 4 and 5.

Much discussion followed on who would be doing the actual maintenance, costs of maintenance and security guards for the area.

Mr. Edgar Hamasu of SIBA introduced Mr. Walter Arakaki, President of the association, Mr. Al Castillo and Mr. Hiro Sagatani, small businessmen active in the business association. Mr. Hamasu said that they support the staff recommendation

with the exception of B. 1. They can live with all the rest of the other conditions and support A. which is to rescind its action of December 7, 1990 and not increase the rent to Sand Island Park. He then read their reasons which were listed in their testimony he presented to the Board this morning.

Mr. Hamasu pointed out that their proposal calls for DLNR to reduce the rent by one cent and, in return they will 1) install gates at three entrance roads to the industrial area, 2) provide guard and patrol service during the evenings, weekends and holidays, 3) maintain the roads and common areas including removal of junked cars and debris, and 4) demolish and remove 9 State-owned buildings including frame and 4-foot high concrete foundations. The overall estimated costs total to \$930,000.

Mr. Arakaki then explained the demolition which would involve about 8,000 tons of rubble at a possible estimated cost of \$90.00 per ton. Then there is the cost of clean-up. He said they feel by allowing them the \$0.01 increase strictly to take care of security and cleanup of Sand Island, the State will be saving a lot of money.

Ms. Himeno clarified with Mr. Arakaki that they were not in favor of the 5% rent increase going into SIBA, and they don't want any 5% increase going anywhere and then you want a \$0.01 reduction to take care of all the maintenance proposals.

Mr. Hamasu said that was correct. Mr. Arakaki said that it was two separate issues; they're saying the 5% increase should be rescinded because during the negotiation period it was mutually agreed that SIBA would have no increase in rent. He said he thought that was agreed upon and that it was binding. It was discussed that Sand Island was paying a tremendous cost on the base rent for unimproved land. Issue no. 2, is for security, cleanup of Sand Island and also to take out the State's problem of demolition that needs to be done according to the lease agreement.

Mr. Young said that staff is saying rather than give up the \$0.01, give up the 5% increase (the 5% is less than \$0.01).

Mr. Yuen asked if SIBA was planning to make an additional assessment on their members because of the increased responsibilities.

Mr. Hamasu said that they were already assessing the 112 permittees \$0.03 a square foot per month. They started March 1, 1990 and they've been paying for one year now. This money has been used to hire consultant's doing the subdivision and the engineering plans.

10:05 a.m. Chairperson Paty excused himself from the meeting temporarily.

#### **EXECUTIVE SESSION**

Ms. Himeno had some questions for legal counsel and moved for an Executive Session. Seconded by Mr. Apaka.

10:08-10:35 a.m. Vice-Chairman Arisumi called the meeting back to order. He apologized that after the motion and a second for an executive session, he did not call for the vote. He then called for the question and motion carried.

Ms. Himeno said that after conferring with legal counsel it is very difficult to change the 5% increase that was imposed. Unfortunately it was never brought before the Board and it was never ratified or made part of a formal agreement. Our actions to increase routinely across the State 5% is very difficult for the Board to make to make

an exception, absent a binding legal agreement between SIBA and the Board. However, based upon your testimony today that you are undertaking the cleaning and maintenance which is very costly, I think it's very difficult to be a small business person in this day and age. It's not too easy and you are putting your money out and doing your best to redevelop the whole area. Her personal feeling is to change or alter the course of the staff recommendation, to deduct the full \$0.01 of the current rent which will leave you in a better position financially than the staff recommendation. In other words the 5% stays in place, but the \$0.01 per square foot is deducted to meet the expenses that you will need to clean out the area.

Mr. Arakaki said that as a compromise he felt that they could live with that. He said that the Board should also keep in mind how long it's going to be held at this deduction. They probably will have to come back to the Board to extend the period if needed for this deduction.

Vice-Chair Arisumi concurred with Ms. Himeno that they are all small businessmen trying to improve the State land and make it workable for everyone. He said he was sure that the Board would take everything into consideration.

Mr. Young addressing the Chair regarding the amendments being made is that the reduction of \$0.01, that the \$0.01 be allowed SIBA to increase their assessment by that amount to their members as well as the authorization of the issuance of a permit to SIBA. Ms. Himeno replied, "Yes."

Mr. Yuen asked if there was going to be some kind of a report to Land Management about how the funds are being used in connection with all of this, assuming this is what will be agreed to.

Mr. Hamasu said that staff's recommendation on Item B. 3, SIBA is to submit certified monthly statements on the revenues and expenditures. They also need to get authorization from the chairman before they spend any monies.

For the Board's information, Mr. Young said that pending in the legislature is a bill which may allow the Board if they so wish to issue a master lease. Right now, what you approve under the Development Agreement is issuance of individual leases to each one of the permittees of Sand Island. There is presently being considered by the legislature a master lease where you'd be allowed to give the lease to SIBA and they in turn would be able to sub-lease to each one of the tenants. This came about as a result of the Keehi Industrial Park which was approved at the last meeting, it was designated as an industrial park.

**ACTION**

Ms. Himeno moved that the rent increase at the Sand Island Industrial Park remain at the increase of 5% and that they allow SIBA to increase their assessment charge by \$0.01 per square foot to do all the security, maintenance that they advocated today and to be effective April 1, 1991. Motion was seconded by Mr. Yuen and carried unanimously.

**ITEM F-13**

**LEASE-PUBLIC AUCTION, LOT 28, LAWAI HOMESTEADS, LAWAI, KAUAI, TAX MAP KEY 2-5-05:4, 5 AND 6**

Mr. Young made the presentation of Item F-13 which was a staff request for sale of a lease at public auction, Lot 28, Lawai Homesteads, Lawai, Kauai. Presently there is a lessee on the premises, the lease will be expiring May 10, 1991. As part of staff's normal practice to come before the Board ahead of time to get approval to

process the necessary paper work with the hope of getting the lease sold before it expires. He informed the Board that Mr. Mike Aki, present lessee was here today and had asked if he could address the Board.

(Chairperson Paty returned to meeting at 10:45 a.m.)

Mr. Mike Aki addressed the Board and passed out his testimony to the Board members. (He referred to items in his testimony as submittals.) He said in his submittals there was a plan which he had proposed to the State on the input on the lease property. There was a farm plan if he were able to get a lease extension for purchasing the property. Also included in the submittals was the Organic Act, Hawaii Revised Statutes and correspondence to him. He then referred to his letter of April 20th, 1991 to the Land Board in which he asked the Board if they would allow him an extension of the lease or allow them to purchase the property for farming purpose under the Organic Act in 1973, Commissioner of Public Lands. Since that letter he had received letters from the State Land Department in March of 1991 saying that they are unable to extend his present lease or to directly negotiate a new lease because only the Board can do so. They also stated they were reviewing the matter of the Organic Act.

Mr. Aki said he had a substantial amount of money invested and 5 children to support and that is why they were pursuing this farm. He continued to refer to his submittals in his testimony stating reasons why he felt the State should allow him to purchase his lease. He made references to Hawaii Revised Statutes (HRS), Section 171-13, Disposition of Public Lands Pertaining to Sales, Leases with Option to Purchase, Part 2, Dispositions Generally containing Sections 171-32 which is also the Policy and Sections 171-33 Planning Generally, Sections 171-36 Lease Restrictions, generally dealing with modifying eliminating restrictions, extending or modifying leases, extending leases to qualify for loans, Section 171-37 Lease Restrictions Intensive Agricultural and Pasture Uses Dealing with Length of Lease Terms and Part III, Special Disposition Sales and Leases Permitted without Public Auction.

Mr. Apaka addressed his question to Mr. Young if there were a provision that the Board can allow an extension for what Mr. Aki is asking for. Mr. Young replied, "No, we don't. It's because of the nature of the specific use of this lease, it's for residential pasture. Under the present statute, the Board is not given the privilege of extending the lease." He said that it was unfortunate in this case that his lease is not for intensive ag, it's for residential pasture. The State's district land agent in Kauai did inform Mr. Aki of the penalties.

Deputy Attorney General William Tam said that the Organic Act is no longer in force. It was superseded by the Admission's Act in the Hawaii Constitution when Hawaii became a State.

Discussion continued on possible extension of lease, validity of Organic Act and possible one-year holdover instead of issuance of revocable permit. Mr. Young explained the difference of extension of lease and one year holdover. He also explained that staff will be conferring with the Attorney General's office regarding the Organic Act and the Admission's Act in reference to the sections pertaining to disposition of leases.

**DEFERRED** Mr. Apaka moved that this item be deferred to the next Board meeting on Kauai. Motion was seconded by Ms. Himeno and carried unanimously.

**ITEM H-2**

**CONSERVATION DISTRICT USE APPLICATION FOR FIVE NON-CONFORMING SINGLE FAMILY RESIDENCES AND OTHER PROPERTY IMPROVEMENTS, MOKULEIA, OAHU, TAX MAP KEY 6-8-08:20, 39, 42, 43, 44, 45, AND 46; APPLICANT: MR. F. T. OPPERMAN**

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Mr. Evans informed the Board that this item was deferred from the March 8th meeting on Molokai. The reason for the deferral at that point in time was to obtain a written report from the Department of the Attorney General. Mr. Evans explained what happened from a staff perspective subsequent to that meeting. Following the meeting, staff contacted the Attorney General's Office and indicated that the Board felt very uncomfortable based on primarily the results of a recent Legislative Auditor's Report. It was indicated to the applicant's legal counsel that a written Attorney General's Opinion was requested, a copy of the opinion would be made available to the applicant.

The initial review of the Attorney General's Office was supportive of the staff's analysis and recommendation. Later it came to staff's attention that there was some revisiting of the entire non-conforming issue. This revisiting of the issue by the Attorney General's office has not been completed as of today and that is the reason that although we sit here before you with a recommendation which is basically the same with the addition to compliance with current statute that is relatively basically with what staff had before the Board last week that we're not able to show you or the applicant the A.G.'s opinion because it has not been completely finalized as yet. Just this morning, staff received a copy of a letter that was addressed to the State A.G. from the applicant and they have not had time to analyze that as yet.

Deputy Attorney General William Tam said he wished he had the final opinion on how the application should be processed saying that internal discussions have raised a series of questions regarding the statutes which they are not satisfied as to how to resolve it. The legislative history of this statute is 34 years old. While some tentative conclusions have been reached, those are subject to various interpretations even within their department. There are also major consequences how this opinion comes out that go beyond this application. The Attorney General has directed him to undertake further study of the cause of the issues raised here and how they will treat the non-conforming sections of the statutes for further applications. He said he did not have anything in writing today and would be glad to discuss the matter in an Executive Session and to advise the Board. He suggested an Executive Session because of the sensitivity issues as to other applications that might be coming before the Board and he did not want to prejudice the Board's determination on those by public discussion and legal problems.

Mr. Evans said staff would support an Executive Session. He also mentioned that if the Board did not act today in some fashion then staff would be up against a 180-day time line.

**MOTION**

Mr. Arisumi moved for an executive session.

Chairperson Paty suggested that the Board ask any questions they had of Mr. Evans or Mr. Tam and invite the applicant forward to address their concerns relative to this and then the Board would have further background in going to an executive session.

There being no further questions for Mr. Evans and Mr. Tam, the applicant was called forward.



Mr. Frank Opperman began by saying he did not want to bore some of the Board members with repetition of the application. Basically he's been in business all his life, being born and raised here. This will be his 5th residence in 65 years and this is not a fly by night development, it will be his home. Before he purchased this property, he totally looked into the statutes and into zoning and into what he felt he could do. He did have counsel and had meetings with the staff with the Department of Land Natural Resources. He started with Roger Evans and later with Ed Henry who was very helpful in making sure he had a complete application.

Mr. Opperman gave the background of how he moved to Mokuleia, his family and his desire to have his family in this subdivision which has 7 lots. He said he had 17 months from now to build his new residence. He was requesting that the Board approve his application as presented.

Ms. Laura Thielen addressing the Board said she was representing Mr. Opperman. She said she has provided a preliminary letter giving her analysis of the statutes and the DLNR regulations as they exist and addressing the issues that are raised by the auditor's report. The analysis in the letter concludes that this Board and the staff have been correctly interpreting the law as it exists. The analysis is split into two different portions of the non-conforming statutes. The first is the right to place a non-conforming residence on an unimproved parcel of land that was placed in the Conservation District after 1961. She said she believed this Board has consistently for the past approximately 25 years since the regulations have been in effect, governing conservation district have correctly been applying the legislative intent to allow the landowners to place a non-conforming residence on an unimproved parcel of land, put into the Conservation District, when they have been paying real estate taxes on that land, the land is less than 10 acres and it was purchased with the intent to build a residence. That interpretation has been put forth by this Board for approximately 25 years. If there were a legislative question whether you had correctly interpreted the statutes as they exist, legislators have had 25 years and no comments have been made up until the auditor's report. In her letter she points out that the report was an analysis made not by attorneys or lawyers but by lay people and she believed that they had incorrectly interpreted the statutes.

The second analysis refers to replacement of existing non-conforming residences which were in existence when the property was put into the conservation district. She referred to a question raised by Board member Yuen at the last meeting whether the State had the authority to allow a replacement of an existing non-conforming structure. As you correctly said at the time, the County zoning regulations do not allow a non-conforming structure to be replaced or reconstructed. The legislature was fully aware it had the authority to restrict the counties in what they could do and they were fully aware that they could have restricted this Board, and they did not.

Ms. Thielen continued saying that they understand that this is a unique situation. The Board is waiting to hear from the Attorney General for written guidance on how to interpret these statutes. We understand that this Board may need to spend time reviewing the Attorney General's opinion once they receive it and determining whether the opinion is correct with your interpretation of the laws and regulations. Concurrently Mr. Opperman is also in a very difficult situation as he mentioned that he sold his home in August of 1990. Unless he builds his new home by August of 1992, he's going to suffer horrendous tax penalties.

They understand that the Board does not grant CDUA's based on financial hardship of an applicant, she's only mentioning this as background for a request. They would prefer the Board render an approval on application as it stands now. If the Board would prefer to reserve a decision pending receipt of the Attorney General's report, they would request that they approve Mr. Opperman's permit application to build his main residence which is on lot 4, TMK 6-8-08:44. That would allow him to put the residence up that he will be living in full time and he will be using it for his family. This house is not being built for sale. Under such circumstances they would be willing to wait and give the Board some time to make a decision on the remaining portion of the application.

In making this proposal to the Board she also mentioned that there was a public hearing on this matter, this meeting today was published in the Advertiser, there have been letters going out to the public and with all that publicity it has not been made known of a single private citizen opposing this application. On the contrary they have letters in the record, 15-16 neighbors, neighborhood board associations and businesses in the area that are all supporting Mr. Opperman's application and asking that this Board approve the application. She then told of how Mr. Opperman has been a good neighbor and well respected by everyone in the area.

Ms. Thielen then showed some maps to the Board of the area. It showed the boundaries of the conservation district, stating that it was an official Land Use Commission map showing boundaries that existed in 1964.

Mr. Arisumi asked of Mr. Evans, "Is it possible to do that, to just grant one portion?"

Mr. Evans responded that from a staff perspective the Board has three options, 1) they can sustain staff's recommendation as it exists, 2) you can deny outright, 3) you can modify.

Mr. Arisumi commented that the Board did not have some specific recommendation from the Attorney General's office as yet. As a Board member he suggested that they go along with the modification plan so that the applicant can have the one single-family dwelling.

Chairperson Paty asked to look at the map exhibits again then asked if it would be her contention that given the transition from 1964 or '67 relative to the forest lands, whether subsequent to the conversion to ag that is wasn't a contiguous piece. Was she making it part of her argument that the whole parcel was involving forest lands and whether the nonconforming uses can be interpreted to extend at this point in time to this forest land per se to a situation that would afford the Board the legal opportunity to address the forest lands now, can be looked at in terms of today's time to be afforded progression of what was intended.

Ms. Thielen replied, "No, the statute and the regulations clearly state and the auditor's report recognizes that this Board has the authority to look at each application on a case by case basis and to apply the circumstances to that case to its analysis and determination on that application. So all I'm saying is these are the circumstances of Mr. Opperman's applicaion. It is a very unique circumstance and as you apply it to this case, it may lead you to a, may legitimately and within your statutory rights lead you to a determination which you would not be bound to apply to a parcel of land in a different circumstance."

**EXECUTIVE  
SESSION**

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

**11:40 am-12:20 pm**

Chairperson Paty called the meeting back to order after the Executive Session. He then asked the applicant if they anything further to add.

Ms. Thielen said that at this point they would like to ask to modify the application that they have pending before the Board. They would like to withdraw without prejudice the structure which is proposed to be built on lot 1, that is the lot where there is no existing structure on it (the only makai lot which is proposed to have a home built on it). They will withdraw that portion of the application with prejudice to allow them to resubmit it at a later date, if so chosen. Right now they would like the Board to consider the portion of the application requesting that they are able to reconstruct the existing four nonconforming structures and to continue the legitimate residential use of the property.

Mr. Evans said that the issue on the table before the Board would be the question of whether or not to approve four nonconforming single family residences and other property improvement at TMK 6-8-8: 39, 44, 45, 46 and 47. Lot 1 is parcel 20. That will be removed from consideration on the table.

Chairperson Paty asked legal counsel for any comment to that.

Mr. Tam said that the Attorney General's Office could live with that proposal and to continuously correct practice of allowing reconstruction of existing homes that were in existence in 1957 under Section 183-41-B the first sentence, it talks about those continued uses. They don't have any problems, the questions by the Legislative Auditor raised by the application as you have it now, they would feel comfortable with that.

Mr. Evans asked to make a modification on page 16 of the submittal, B. Legislative Auditor's Review, with this action currently on the table, staff would like to delete section B. in it's entirety.

**ACTION**

Ms. Himeno moved for approval as amended. Seconded by Mr. Arisumi, motion carried.

**CDUA FOR AN ACCESS EASEMENT AT KAUPULEHU, NORTH KONA, HAWAII,  
TAX MAP KEY 7-2-3:01, APPLICANT: KAUPULEHU DEVELOPMENTS AND  
KONA VILLAGE ASSOCIATES; AGENT: GRAY, HONG, BILLS AND  
ASSOCIATES**

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**ITEM H-3**

Mr. Evans said that at the Public Hearing held there was a representation made in the question and answer session. The question basically posed was, "Will the project impede or restrict public access?" The County permit requires a public right-of-way to the shoreline, the proposed roadway will be open to the public, however, everyone using the road will need to register at the guardhouse and public parking will be provided. Given that representation from the applicant, staff would like to propose on page 4, another condition of use, Condition 11, That no member of the public shall be denied access to the shoreline. Notwithstanding the representation from the applicant, it has come to staff's attention, that from time to time there are

13 parking spaces that are available for public use. The current 13 parking spaces are located about 1/2 mile away from the actual shoreline area. Mr. Evans mentioned that the parking lot is not part of this application and it is in the urban district.

Mr. Walter Billingsley of Gray, Hong, Bills and Associates, Civil Engineers for Kona Villages Associates introduced himself. Also present was Roger Harris from Kaupulehu Developments the co-applicant for this project.

Responding to Mr. Yuen, Mr. Harris clarified that there are three parties to this application. One is the urban development operation which is Kaupulehu Developments and Kaupulehu Hotel Venture which he was representing today. The road goes over the land that is held by Kaupulehu Developments is all Bishop Estate land and runs down to and provides relocated access to Kona Villages Associates which is the owner of the 82 acre Kona Village lot, the existing resort hotel.

Mr. Billingsley said that the principals of Kona Village were not present to answer any questions and he would try to answer as best he could and maybe would have to get back to the Board. He said that it's closer to 1/4 mile than 1/2 mile but it is a substantial walk to the beach. The existing parking was constructed at Kona Village Resort about 5-6 years ago in compliance with the SMA and under this application it is proposed to remain as is, where is. They haven't considered moving that. The resort that is being constructed next door, Kaupulehu Resort, which is the urban area, there will be substantial public access provided and opened with the hotel or golf course, whichever opens first. He mentioned that is was separate from the Kona Village public access parking that Roger Harris mentioned.

Mr. Yuen mentioned that it is about a quarter of a mile in a direct line but if you walk by the wall path it works out to closer like 2500 feet. He asked what happens if the lot is filled up, the thirteen spaces.

Mr. Billingsley said that he did not know. Mr. Harris said they couldn't speak for the Kona Village operators but would assume if all the parking stalls were filled then they're told they're full.

Mr. Yuen questioned the access road that the CDUA mentions, is it solely to serve the Kona Village. Mr. Billingsley said, "Yes. But also included in the application is the highway access that will serve Kaupulehu ultimately."

The Board was informed by Mr. Evans that should the board desire to defer this item so that they could get answers to their questions from the principals, there was time on the application.

#### **MOTION**

Mr. Yuen said that he would make a motion to defer, as he has couple concerns about how the access was done at Kona Village. 1) There aren't any very good access to Kahuwai Bay itself where the better sand beach is and 2) what happens if you're going to have public access, he doesn't like the idea that people are going to be turned away after there are a certain number of cars, he feels there should be some kind of provision for parking. Motion was seconded by Ms. Himeno.

#### **DISCUSSION**

Deputy A.G. William Tam informed the Board that the Attorney General's Office spent 13 years in litigation securing access up by Mauna Kea and has just

concluded that in the last year or so. They are particularly concerned about access along the Kona Coast and how that's treated. Without going into any specifics, he related to the Board that they would be very concerned with that variety of public interests be protected through open access. He said that they had problems with Mauna Kea legally in terms of that limited parking spaces and would not like to repeat it in this instance. He encouraged the Board to look at that.

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

**ADDED  
ITEM A-1** OUT-OF-STATE TRAVEL REQUEST FOR STAFF ARCHITECTURAL HISTORIAN TO ATTEND THE SOCIETY OF ARCHITECTURAL HISTORIANS ANNUAL MEETING

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

**ITEM C-1** OUT-OF-STATE TRAVEL REQUEST FOR MICHAEL G. BUCK, ADMINISTRATOR OF THE DIVISION OF FORESTRY AND WILDLIFE, TO ATTEND THE ANNUAL MEETING OF THE COUNCIL OF WESTERN STATE FORESTERS IN ANCHORAGE, ALASKA, MAY 19-22, 1991

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

**ITEM C-2** REQUEST FOR APPROVAL OF CONTRACT WITH MS. JUDY A. PANGELINAN FOR AVICULTURAL ASSISTANT CONSULTANT SERVICES AT THE ENDANGERED SPECIES FACILITY AT OLINDA, MAUI

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

**ITEM C-3** REQUEST FOR BOARD APPROVAL TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE UNIVERSITY OF HAWAII

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

**ITEM D-1** WITHDRAWAL OF BOARD OF LAND AND NATURAL RESOURCES' PROPOSAL TO DESIGNATE THE KILAUEA SOUTHWEST RIFT AS A GEOTHERMAL SUBZONE

Mr. Akita said that the department undertook and completed a Statewide assessment on geothermal resource areas and identified the Kilauea Southwest rift as one of several potential geothermal resource areas.

Based on a review of the current geothermal activity taking place within the context of the total area available for resource development, the Department believes that the proposed designation of 8,090 additional acres at the Kilauea Southwest Rift is not necessary at this time.

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

**ITEM D-2** PERMISSION TO HIRE CONSULTANT FOR JOB NO. 91-HP-M, PEACE ACADEMY AND PARK, HAWAII

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

**CERTIFICATION OF SOIL AND WATER CONSERVATION DISTRICT  
DIRECTORS**

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**ITEM D-3**

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

**PARTICIPATION IN NATIONAL FLOOD INSURANCE PROGRAM STATE  
COORDINATORS MEETING**

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**ITEM D-4**

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

**ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:**

**Item F-1-a ASSIGNMENT OF GENERAL LEASE NO. S-3202, FRANK FERREIRA, ASSIGNOR TO FRANK FERREIRA, TRUSTEE OF THE FRANK FERREIRA REVOCABLE LIVING TRUST, DATED FEBRUARY 22, 1991, ASSIGNEE, LOT 135, LEHIA PARK RESIDENCE LOTS, KEAUKAHA, SOUTH HILO, HAWAII, TAX MAP KEY 2-1-17:65**

Mr. Young said that should the Board approve of this consent to assignment, staff would like to add an amendment whereby the lessee will be required to post the necessary liability insurance policy listing the State as the additional insured.

**Item F-1-b COLLATERAL AGREEMENT BETWEEN STATE OF HAWAII, THOMAS BERNARD SUMMERS AND LINDA KAY SUMMERS, FIRST HAWAIIAN BANK, KAPAA BRANCH AND BOYER CONSTRUCTION COMPANY, SPECIAL SALE AGREEMENT NO. S-5591, LOT 5, BLK. S, KAPAA TOWN LOTS, 1ST SERIES, KAPAA, KAWAIHAU (PUNA), KAUAI, TAX MAP KEY 4-5-08:7**

**Item F-1-c ISSUANCE OF REVOCABLE PERMIT TO ERNEST J. ALFONSO, SR. AND VIOLET ALFONSO, HENEHENEULA, HAMAKUA, HAWAII, TAX MAP KEY 4-4-10:13**

**Item F-1-d ISSUANCE OF REVOCABLE PERMIT TO HAROLD H. MULLIKEN, LOT 5, BLK. L, OLAA SUMMER LOTS, OLAA (PUNA), HAWAII, TAX MAP KEY 1-9-13:2**

**Item F-1-e ISSUANCE OF REVOCABLE PERMIT TO HKK, INC., GOVERNMENT LANDS AT LANIHAU 2ND, NO. KONA, HAWAII, TAX MAP KEY 7-5-06:POR. 22**

**Item F-1-f ASSIGNMENT OF GENERAL LEASE NO. S-3992 BETWEEN WALTER LAPPERT AND MARY LAPPERT, ASSIGNORS, TO MARY LAPPERT, UNMARRIED, ASSIGNEE, ACCESS AND UTILITY EASEMENT AT LAWAI, KOLOA (KONA), KAUAI, TAX MAP KEY 2-5-02:34**

**ACTION** Mr. Yuen moved to approve document F-1-a as amended and documents F-1-b, F-1-c, F-1-d, F-1-e and F-1-f as submitted. Seconded by Ms. Himeno, motion carried unanimously.

**MR. CLAYTON UYEHARA REQUESTS RIGHT-OF-ENTRY OVER AND ACROSS GOVERNMENT LAND OF PIIHONUA, SO. HILO, HAWAII, TAX MAP KEY 2-3-26:POR. 2**

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**ITEM F-2**

Mr. Young requested to take up Items F-2 and F-3 together as they are similar in requesting right-of-entry over and across government land of Piihonua, South Hilo, Hawaii. He said that residents in this area known as Reid's Island have only one roadway into the area and from time to time requested permission to use the driveway.

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

**DR. AND MRS. MARVIN S. MONTVEL-COHEN REQUESTS RIGHT-OF ENTRY OVER AND ACROSS GOVERNMENT LAND AT PIIHONUA, SO. HILO, HAWAII TAX MAP KEY 2-3-26:POR. 4**

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**ITEM F-3**

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

**SET ASIDE OF GOVERNMENT LAND AT KEALAKEHE, NORTH KONA, HAWAII TO THE COUNTY OF HAWAII FOR 1.0 MILLION GALLON CONCRETE RESERVOIR SITE, TAX MAP KEY 7-4-08:POR. 17**

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**ITEM F-4**

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

**AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 10, 1986 (AGENDA ITEM F-12), AUTHORIZING GRANT OF NON-EXCLUSIVE EASEMENT FOR SEAWALL ON STATE RECLAIMED (FILLED) LAND SITUATE AT KAHALUU, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-19:SEAWARD 26**

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**ITEM F-5**

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

**REQUEST FOR RECONSIDERATION OF ANNUAL RENTAL INCREASE FOR REVOCABLE PERMITS, SAND ISLAND, OAHU**

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**ITEM F-6**

See page 6 for Action.

**AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 13, 1989 (AGENDA ITEM F-6), AUTHORIZING GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO CITY AND COUNTY OF HONOLULU FOR ROAD WIDENING PURPOSES, AIEA, OAHU, TAX MAP KEY 9-9-44:POR.70**

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**ITEM F-7**

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

**DIRECT GRANT OF A PERPETUAL, NON-EXCLUSIVE MAINTENANCE ACCESS EASEMENT TO CITY AND COUNTY OF HONOLULU, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-13:01**

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**ITEM F-8**

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

**ITEM F-9** GRANT OF NON-EXCLUSIVE TERM EASEMENT FOR ROADWAY AND UTILITIES PURPOSES KAWAILOA BEACH LOTS, KAILUA, KOOLAUPOKO, OAHU, TAX MAP KEY 4-3-10:POR. 83

Staff recommended approval subject to amendment whereby the applicants will be required to obtain the necessary subdivision approval from the county.

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

**ITEM F-10** DEPARTMENT OF HEALTH REQUESTS APPROVAL TO ISSUANCE OF A DIRECT LEASE FROM DEPARTMENT OF HEALTH TO ALCOHOLIC REHABILITATION SERVICES OF HAWAII DBA HINA MAUKA AT KANEOHE STATE HOSPITAL, KANEOHE, KOOLAUPOKO, OAHU

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

**ITEM F-11** ACQUISITION OF 8.65 ACRES OF FEDERAL SURPLUS FEE LAND SITUATED AT BELLOWS AIR FORCE STATION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-15:POR. 1

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

**ITEM F-12** DIRECT SALE OF LOTS 127 AND 146, KEKAHA GARDENS SUBDIVISION, TOGETHER WITH IMPROVEMENTS, TO THE COUNTY OF KAUAI HOUSING AGENCY, KEKAHA, KAUAI

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

**ITEM F-13** LEASE--PUBLIC AUCTION, LOT 28, LAWAI HOMESTEADS, LAWAI, KAUAI, TAX MAP KEY 2-5-05:4, 5 AND 6

See page 7 for Action.

**ADDED ITEM F-14** BRIEFING BY HAWAIIAN HOME LANDS TRUST LAND CLAIMS TASK FORCE

See page 3 and 4 for briefing notes.

**ITEM H-1** REQUEST FOR APPROVAL TO CONTINUE THE AQUACULTURE EXTENSION SPECIALIST PROGRAM WITH THE UNIVERSITY OF HAWAII

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

**ITEM H-2** CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR FIVE NON-CONFORMING SINGLE FAMILY RESIDENCES AND OTHER PROPERTY IMPROVEMENTS, MOKULEIA, OAHU, TAX MAP KEY 6-8-08: 20, 39, 42, 43, 44, 45, AND 46; APPLICANT: MR. F.T. OPPERMAN

See page 11 for Action.



**CDUA FOR AN ACCESS EASEMENT AT KAUPULEHU, NORTH KONA, HAWAII, TAX MAP KEY 7-2-3:01, APPLICANT: KAUPULEHU DEVELOPMENTS AND KONA VILLAGE ASSOCIATES; AGENT: GRAY, HONG, BILLS AND ASSOCIATES**

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**ITEM H-3**

See page 13 for deferment.

**CDUA FOR THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE AT KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-4-13:34; APPLICANT: DMJM HAWAII**

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**ITEM H-4**

See page 3 for Action.

**REQUEST FOR RECONSIDERATION ON CONDITION TO GRANTING OF PERMIT EXTENSION AGREED TO BY COMMUNITY REPRESENTATIVES AND MINAMI GROUP (USA), INC., TAX MAP KEY 4-5-42:1 AND 6; APPLICANT: MINAMI GROUP (USA), INC.**

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**ITEM H-5**

Mr. Evans said that staff would like to change one word in item 3. in the conditions to granting of permit extension dated January 25, 1991.

Item 3 currently reads: Minami shall subdivide and convey to the foundation approximately 500 acres situate on the face of the Pali and at the Pali base for hiking, nature walks and other such recreational uses.

There's been some concern expressed relative to the word "foundation" basically. Staff would like to be sure that it remains in perpetuity to the people. Staff is requesting the wording be changed from "foundation" to the "State" so that the land comes to the State.

Discussions were made with the applicant's attorneys and other interested parties and there were no objections.

Mr. Evans mentioned one caveat. It was brought to his attention that there could be concerns relative to liability.

Discussion followed as to what would happen and possible problems.

Chairperson asked if this is something they should examine a little further.

Deputy A.G. Tam responded saying that the State has accepted, for example gifted lands by trust or for a certain purpose and said he supposed it wasn't improper since the State is getting it free. He had another question, "Does the foundations in Kaneohe, do they have clear ideas on what they intend to do on them or is it solely for the matter of the State to decide what happens on those lands?"

Mr. Evans responded saying that the foundation wasn't going to use the land at all. The thinking behind all of this was that this land was going to be used for this purpose by the community. The foundation has not been set up yet but they have no particular use for the land. This is something that was for the community. This was under the broad umbrella, give back to the community.

Mr. Yuen addressed the Chair, saying that concerns about the deed could be

worked out when it is actually deeded over.

Mr. Evans said that this was looked at similar to an Executive Order where you have your metes and bounds, setting the land aside for the specific purpose as expressed in the E. O.

**ACTION** Mr. Yuen moved to approve; seconded by Ms. Himeno, motion carried.

**ITEM J-1** CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-84-19, KAHULUI AIRPORT, MAUI (ANDRES TAXI & U DRIVE, INC., DBA ANDRES RENTAL-FLORANTE M. GARCIA AND JOSEPHINE P. GARCIA)

Mr. Garcia withdrew this item because of some problems.

**ITEM J-2** RENEWAL OF REVOCABLE PERMITS 1771, ETC., RESUBMITTALS, AIRPORTS DIVISION

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

**ITEM J-3** ISSUANCE OF LEASE BY PUBLIC AUCTION, HARBORS DIVISION, NAWILIWILI HARBOR, KAUAI

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

**ITEM J-4** ISSUANCE OF NEGOTIATED LEASE, HILO HARBOR, HARBORS DIVISION, PIER 1 TRANSIT SHED, HILO HARBOR, HAWAII (SEA-LAND SERVICE, INC.)

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

**ITEM J-5** APPROVAL OF HOLDOVER OF PREMISES OF LICENSE NO. 150, HILO HARBOR, HAWAII (HAWAIIAN CEMENT)

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

**ITEM J-6** CONSTRUCTION RIGHT-OF-ENTRY AND DIRECT SALE OF LEASE OF EASEMENT, PIER 3, HILO HARBOR, HAWAII (PACIFIC RESOURCES TERMINALS, INC.)

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

**ITEM J-7** ISSUANCE OF NEGOTIATED LEASE, HILO HARBOR, HAWAII (UNITED STATES COAST GUARD)

Mr. Yuen asked how were they handling the Office of Hawaiian Affairs (OHA) monies.

Mr. Garcia said that it was being taken care of at the Governor's office, under the proposal between the Department of Transportation, OHA, Governor's Office and Budget and Finance in determining the amount that will be given to OHA.

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

APPROVAL OF (1) LEASE OF LAND (BASE FACILITY), (2) CONSENT TO  
SUBLEASE, (3) CONSENT TO MORTGAGE OF LEASE AND SUBLEASE, (4)  
CONSENT TO SUB-SUBLEASE, HONOLULU INTERNATIONAL AIRPORT,  
OAHU (FEDERAL EXPRESS CORPORATION/ELLERS-POHRER AIRPORT  
PARTNERS/THE  
MERCHANTS BANK)


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**ITEM J-8**

See page 2 for Action.

**ADJOURNMENT** There being no further business, the meeting adjourned at 1:10 p.m.

Respectfully submitted,

  
Dorothy Chun  
Secretary

SUBMITTED FOR APPROVAL



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William W. Paty, Chairperson

dc