

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

**DATE:** MAY 10, 1991  
**TIME:** 8:30 A.M.  
**PLACE:** COMMUNITY SERVICE CENTER  
MAUI COMMUNITY COLLEGE  
310 KAAHUMANU AVENUE  
KAHULUI, MAUI

**ROLL  
CALL**

Vice-Chair John Arisumi 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. Herbert Apaka  
Ms. Sharon Himeno  
Mr. T.C. Yim  
Mr. John Arisumi

**ABSENT and EXCUSED:**

Mr. William Paty  
Mr. Christopher Yuen

**STAFF:** Mr. W. Mason Young  
Mr. Roger Evans  
Mr. Ralston Nagata  
Mr. Michael Buck  
Mr. Alan Tokunaga  
Mr. Floyd Miyazono  
Ms. Dorothy Chun

**OTHERS:** Mr. Johnson Wong, Deputy Attorney General  
Mr. Peter Garcia, Department of Transportation  
Ms. Melinda Dant, Mr. Puhii Dant (Item E-2)  
Mr. Richard Leith, Ms. Leslie Brown,  
Mr. Albert Cosgrove, Ms. Charmaine Tavares (Item F-2)  
Mr. Richard Ichihashi (Item H-2)  
Mr. James Loomis (Item F-1-a)  
Mr. Al Jeremiah (Item E-3)  
Mr. Renton Nip, Mr. Clayton Mimura (Item H-3)  
Mr. Jim Niess (Item F-3)

**MINUTES** Mr. Apaka moved that the minutes of January 11, 1991, March 8, 1991 and April 26, 1991 be approved as circulated.

Ms. Himeno said there was a correction in the minutes of April 26, 1991, Item H-3, on page 9, 5th paragraph (following Executive Session), line 15. The word "irregulatory" should be "regulatory".

Mr. Mason Young approached the Vice-Chairman and asked if could obtain a clarification of the motion and amendment that was made for Item F-7 at the April 26, 1991 Meeting. After a discussion by the board members, it was agreed that the amendments in the motion referred to the following:

1. Page 5, "CONSIDERATION" add after the word "Gratis," subject to Act 86, SLH '90."
2. Page, "RECOMMENDATION" add after the words "that the Board", "pursuant to Condition C.1. herein".
3. Page 6, before the second "Pursuant" add the alphabet "D".
4. DLNR to develop a conceptual agreement between DLNR and HCDA, and to have DLNR continue to manage the properties except for those properties described in Exhibit 1 which HCDA requested immediate transfer, subject to the condition that the Division of Land Management receive a 20% management fee of the rental revenues. The management fee of the rental revenues. The management fees to be placed in the Division of Land Management Trust Fund at the DLNR Fiscal Office. The conceptual agreement to be worked out between the Office of the Attorney General and DLNR and HCDA subject to approval by the Land Board.

The motion was seconded by Ms. Himeno with the amendments listed above. Motion carried.

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

Item H-4 Request for Approval of Out-of-State Travel to Attend Consortium

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

**ITEM E-2** REQUEST FROM FAIR WIND, INC. TO OCCUPY STATE-OWNED LANDS WITHIN KEALAKEKUA BAY

Mr. Nagata made his presentation of Item E-2. The Board at its meeting of January 25, 1991 approved a Conservation District Use Application (CDUA) to Fair Wind, Inc. to have a mooring within the bay. Their company vessel provides daily tours to the bay and moors near the Captain Cook Monument. One of the conditions of the CDUA is that the applicant obtain a Board authorization through the Division of State Parks which they are now doing.

The Division of State Parks have added 23 additional conditions and there were several Mr. Nagata wished to touch on, such as:

Item No. 4--He said they were keeping it pretty similar to the Captain Cook application. The board had asked that they provide similar conditions to this particular permit. Under item no. 4, when it's mentioned implement a discounted tour program for school children, he wanted a clarification from the Board that the intent was for public school children. He has informally touched bases with the Department of Education and they are very much interested at the staff level. They will be prepared to write to the Superintendent of Education on this matter.

Item No. 22--Subsequent to the Board action, Board Member Yuen suggested that they also be requested to do a litter clean-up type of public service project, this was the

Captain Cook. They were willing to do so and he also incorporated a similar thing for the Fair Wind. There is a correction as it says Ka'awaloa Cove four times a month, it was meant to be four times a year. Basically, someone would be going to clean up once a month in the Ka'awaloa Cove area.

Mr. Apaka said going back to Item No. 4, he feels students are students regardless if they attend public or private schools. The only thing is there is no age category.

Mr. Nagata said they were going to leave it up to the DOE and they have up to the 12th grades. They would be providing a certain amount of tickets and in the case of Captain Cook, they have offered to the Board a 1,000 tickets and the tickets would be discounted to \$5.00 a piece. The \$5.00 would essentially be for food, like a hamburger lunch. Staff is proposing the same thing for the Fair Winds, where they would discount to about \$5.00. Their vessel is much smaller so they would be providing about a third of 1000 as their boat is 1/3 of the Captain Cook. They would have to work with the DOE as to what day and time for the public school children.

**MOTION** Mr. Apaka moved for approval.

Vice-Chair Arisumi had a question on Item No. 8, as to use of the mooring site for emergency purposes. He thought it had been discussed previously.

Mr. Nagata said that Item No. 9 does mention emergency use during the evening. He said that they could amend Item No. 8 to allow emergency use during the day.

Mr. Arisumi questioned Item No. 13 regarding consuming alcoholic beverages in the bay. Mr. Nagata said his understanding is that they jump in the boat and they may have a mai tai or other drink. The concern they have in both cases of the Captain Cook and the Fair Winds, that their clientele is allowed to do some snorkeling within the bay. The concern is from a liability standpoint, they don't want people getting 'high' go snorkeling and drown. When staff says 'within the bay,' you have to look at the next portion of the sentence that says "provided same is consumed on board the vessel." No swimming or snorkeling participant is allowed to consume any alcoholic beverages until that activity is completed. The operator has to make sure that occurs.

Vice-Chair Arisumi felt the words consuming "in the bay" was not necessary because a person drinking after the activity could get high on the way back starting in the bay.

Mr. Nagata said it must be because their purview is essentially in the bay. The trip starts at Kailua Wharf.

Applicants Ms. Melinda Dant and Mr. Orville Dant were present. Regarding the alcohol beverages, Ms. Dant said if you're saying the client cannot consume any alcohol beverages until their swimming or snorkeling are completed, that would mean that the entire cruise down and the 2-1/2 hours that they're down there, they couldn't have a beer or a bloody mary. She said that they have been in business for over 20 years and they've never had an accident or problem resulting from a client having too much to drink. These are mostly family oriented trips and it's not all you can drink. She said that she didn't feel real comfortable with Condition No. 13. She understands that you need to protect the department, the park and the State but they haven't had any problems arising from that.

When their clients sign up for scuba diving or a similar activity they are told that they should not drink alcoholic beverages the night before. If they notice anyone getting out of hand, they do not continue to serve that person. They feel they have control over their guests.

Ms. Himeno said that she recalled it was the Hawaii Land Board Member at a previous meeting that expressed a lot of concern about drinking in the bay and initially felt there should be no drinking at all. She believed it was in a compromise position that he said o.k. but not before going in the water.

Mr. Nagata tried to clarify the discussion that if they're coming from Kailua Bay to Kealakekua Bay and they're drinking and they swim within the bay, it's not allowed.

Ms. Dant said, "Then they can drink and snorkel anywhere else in Hawaii in the water, in the ocean, but not in Kealakekua Bay, that's the only place that's going to be unsafe for them to swim after they've had a drink?"

Vice-Chair Arisumi said, "We're not saying that's the only place that's going to be unsafe. But we have jurisdiction in the bay and that's what we're proposing to do." Mr. Arisumi said that he understood what she was saying, that she could go anywhere else and have them drink and go snorkeling. He said that the Board did not have jurisdiction over that.

Ms. Dant said she was just trying to get a clarification.

Vice-Chair Arisumi said Mr. Nagata had explained, No. 1 covers that, Consume on board and vessel. Anything that is consumed on board and vessel is allowed to and from as long as they don't go into the water.

Ms. Dant brought up the fact that there's a bar on Molokini and people can drink and go into the water.

Vice-Chair Arisumi said that would be another issue. He then instructed Mr. Nagata to give that information to Mr. Sakuda of the Division of Aquatic Resources.

**ACTION** Mr. Apaka moved for approval with the amendments. Seconded by Ms. Himeno, motion carried.

\*Before going on to the next item, Vice-Chair Arisumi said he had to apologize this morning as he forgot to introduce and welcome the newest board member, Mr. T. C. Yim to his first meeting.

**ITEM F-2** RESUBMITTAL--COUNTY OF MAUI REQUESTS SET ASIDE OF STATE LANDS AT WAIAKOA AND WAIOHULI-KEOKEA, WAILUKU, MAUI FOR PARK AND RECREATION PURPOSES, TAX MAP KEY: (2) 3-9-01:1

Mr. Young informed the Board that this was a resubmittal of a request by the County of Maui. Staff is recommending that the 23 acres be set aside to the County of Maui for park purposes. If the Board should choose to approve the set aside, staff is recommending under condition 5 of the Recommendation that the rights of entry agreements also include the private landowners as it was only mentioned between the condominium owners.

Mr. Apaka asked if the area is used by the residents of Keehi in the area.

Mr. Young said he did not know the frequency of use by the residents in the area.

Mr. Richard Leith, Resident Manager of the Maui Sunset read his written testimony to the Board regarding today's meeting to consider the transfer, the care and control of the beach reserve in Keehi to the County of Maui's Park and Recreation. He pointed out that the improved landscaping, tennis courts, restroom facilities and parking lot present on this beach resort area have primarily been installed, funded and maintained through the efforts of these condominium neighbors. To date the private and public sectors associated with this reserve have failed to achieve an equal sharing of the responsibilities for the past, present and future conditions and use of this reserve. They are requesting quit pro quo status in this matter. He feels that this investment at the complex is in jeopardy because nobody knows where it's going, what restrictions and open development will take place in the future. He feels they have earned some rights in terms of their contribution and ongoing efforts.

Mr. Leith said that before any transfer takes place they would like to be assured that they would have some input on the use and maintenance of the area.

Board members felt if they, the condominium owners, worked it out with the County and come to some agreement, there shouldn't be any problem with the Land Board.

Vice-Chair Arisumi voiced a concern, saying that the condo owners requested to develop the park, getting land from the State subject to withdrawal should the State feel it necessary. Now the County is asking the State to turn the park over to the County and the condo owners are here to ask for certain conditions with the help of the Land Board. Once the park is turned over to the County he didn't know whether the State would have any say to that. He reminded the condo owners that this issue was deferred from the Land Board meeting of September 14 to this meeting because it was the next Maui meeting. The Land Board accommodated the request by their representative to allow your people to be here.

Mr. Yim asked Mr. Young what actually took place in the last legislature.

Mr. Young said that there was a transfer bill presently going through the legislature which would swap lands between the State and the County. The rationale behind this, was certain parks should be County parks and certain parks should be State parks jurisdiction.

Vice-Chair Arisumi informed Mr. Yim that staff's recommendation had not changed from the last meeting in Kona.

Ms. Leslie Brown said she was the General Manager of the Luana Kai Resort at 940 South Kihei Road and she also owns her unit there and was representing the 113 units on property. They currently maintain the area out front which could be called a passive park used by kite fliers, that sort of thing. It is very well used in a passive type park scope. They're not trying to delay any turning over to the County. What they would like to hopefully insure is that maintenance of that area is continued in a manner that it doesn't start to devalue all of the land that fronts them. They have public access parking on their property specifically for park use, so that people can park, use the tennis courts area and that sort of thing. They're concerned if turned over to the County occurs, do they all of a sudden stop taking care of it, is it no longer their

responsibility, if so is there money to maintain it. Their concern is lighted tennis courts, basketball and softball out there. It would disrupt the quiet sleepiness that they have in the front area. Currently they've watered, changed lights and even maintained the tennis courts. They do that because it's reflective of their property and they want it to look nice. They're very concerned that it's going to be maintained. They wouldn't mind helping but would like some sort of written agreement.

Mr. Albert Cosgrove said that he was the General Manager of the Maui Schooner and was relatively new to the community. He commended the nice park system that we have here. He said that the way the park is lighted up fronting the condominiums has drawn a lot of people to the area and some travel writers have written about the aesthetics of this area that's maintained. He just wanted to go on record as saying that it is a beautiful area, the islands are gorgeous and this just adds ambiance to local people and to people coming from other states.

Ms. Norma Wilson said that she is a Board member of the Waikulani which is one of the oldest condos in the area. She would like to go on record as saying, "As long as we have a little input with whoever controls the property is the main thing. If the County takes over or as long as they're able to keep a little continuity in the way of lifestyle, that's the main thing."

Miss Charmaine Tavares, Director of Parks and Recreation for the County of Maui said that the Kihei Beach Reserve area is, she agrees, a very nice place. For the record, she has made no plans or public statements about any changes to that park. This parking lot business is something new to her. She is very conscious and mindful of the concerns of the people in the surrounding area. She also has no plans of turning this into an active park. So, no ball fields, no lighted courts, no extended parking lots, and the only kind of lights they would put in would be for security purposes. She would like to maintain the integrity of the passive park because as people pointed out, we do have Kalama Park which is an active park and she's looking at a park mauka of the Piilani Highway as their main regional park for Kihei. She does want to work with the condo owners in a maintenance agreement of some kind and they do have maintenance agreements with other people in other parks. She does not foresee any problem in the transfer of ownership from the State to the County of Maui.

Vice-Chair Arisumi called Mr. Leith forward. Having heard the Maui County Parks Director as to the plans for the area, he asked Mr. Leith if he had any other problems that she did not address.

Mr. Leith responded, "Not at the present time, the head personnel has spoken to what some of her staff people have put out as rumors, so this public record at least quells that fear and if as she has indicated and I have no reason to doubt it that we can work out an agreement and we're well on the way."

Ms. Tavares said that it would be consistent with what they do with other maintenance agreements with people who volunteer, but it is a written agreement that clearly outlines what the person's responsibility are and what the County's responsibilities are.

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

**CDUA FOR AN AFTER-THE-FACT SEAWALL AND OTHER IMPROVEMENTS ON STATE-OWNED LAND, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-16:60, APPLICANT: MR. JAMES F. GREGORY; AGENT: MR. RICHARD ICHIHASHI**

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**ITEM H-2**

Before making his presentation, Mr. Evans asked to modify the submittal for the Board's consideration. On page 9, under B. Application, the first paragraph reads, 'Upon compliance with Part A. Violation, the Board approve the after-the-fact seawall, backfill and landscape improvements at Kaneohe, subject to the following: Staff is requesting to make a modification, cross out "that upon" and insert that unless compliance with Part A. the Board deny the after-the-seawall, backfill and landscaping on TMK 4-7-16:60. Next sentence would read, With compliance, the wall be approved subject to the following conditions.

Mr. Evans then passed out photos of the area to the members of the Board.

He then proceeded to present item H-2 explaining the encroachment on State land. The applicant has acknowledged it and is trying to correct the wrong. The encroachment is about 1/3 of the property. Staff has made a site inspection and they feel it should not be used as a dumping ground. There's debris, old engines from cars lying on the State property, there is a tool shed that was built there.

This matter has been discussed with the Division of Land Management regarding the seawall encroachment. Staff feels that there are some unique circumstances that are not germane to seawalls in general. Makai of the seawall there is no white sand beach. There is very little public access of any significance. Once in awhile there is a fisherman and at low tide you can walk out. Basically it's mud flats at Kaneohe Bay.

After further discussion with the Division of Land Management, they feel the disposition of State land to this applicant not be nominal but rather they be at the fair market price of State land disposition by whatever method they use.

Should the Board approve this application, staff is recommending with a specific condition in the submittal that, these lands be approved at fair market rental based upon fair market appraisals. First there is the question of four violations that have occurred. Three of those violations, the construction of the seawall, the backfilling and landscaping and the construction of a garage which was later converted into a workshop are all violations of Chapter 183-41, Conservation Rule, and for that the maximum fine of \$500 per violation, total \$1500 is being recommended.

Secondly, relative to the violations, Division of Land Management has asked that staff incorporate into this submittal, their concerns. Their concern is that this was an illegal encroachment on their lands subject to Chapter 171 and they are asking for a \$500 fine. In terms of fines, staff is recommending the fine of Land Management be the maximum of \$500 and recommending a total of \$2000.00.

Should the Board approve of this and should the applicant agree, staff would expect those fines to be paid. Relative to the application and because of the unique circumstances (referring to pages 9 and 10 of the submittal), recommending that the Board approve the application subject to the conditions on pages 9 and 10. He referred to Condition 3 and 8 and went into the explanation of each. He also referred to Condition 13 because of unique circumstances.

Mr. Yim asked about Condition No. 3, talking about fair market value.

Mr. Evans responded saying he was talking about whatever disposition mechanism the Division of Land Management, whose responsibility it is, to decide is appropriate.

In answer to Mr. Yim's questions, Mr. Young said in the event the CDUA was approved and their Division of Land Management received an application from the applicant for use of State lands for the seawall, they would have it appraised. The law requires that they do an appraisal for fair market value to determine the consideration of the easement.

They could charge the lease rent annually or the one time payment. Normally it's all processed because it's an easement as provided for direct negotiation. The total options would be a term easement, a perpetual easement, payment by way of an annual fee or one time payment. The State does not give fee simple. With the right of abandonment, in the event they no longer maintain the wall, the easement is then cancelled and reverted back to the State and they would ask the landowner to remove the wall.

Mr. Evans clarified Mr. Young's statements that 1) This acreage will not be sold in fee, 2) This acreage will not be given in terms of a lease; should the Board approve, it would be conveyed via an easement.

Mr. Arisumi questioned the garage being converted into a workshop. Mr. Evans corrected that to be a toolshed and said he was not sure if it were on State land. Along the side of this property there are other seawalls. On the northside there is a drainage canal which could contribute to erosion.

Mr. Richard Ichihashi said he represented the applicant, Mr. James Gregory. He gave an explanation of how his client purchased this property and the previous owner had put the seawall up in 1968. The Department of Health directed the persons occupying the property to backfill from the seawall for health reasons and that was done. He explained how the property line angles and cuts into the garage.

He said that his client is agreeing with the recommendation by the staff. The debris that is on the property and the boat raft, those were things that were left there by tenants that resided there and skipped just recently. Applicant would like to see those things removed also. Client needs to have some right to be able to get in and maintain the status quo of the wall, as it does need to be maintained. He believes that his client's property line extends beyond the wall portion further in to what is the drainage canal area which is outside of the Conservation District.

Mr. Evans addressed the Chair saying that staff would agree with what counsel says on behalf of his client and would correct one thing. The toolshed is within the Conservation District and they are asking removal of that. He mentions that it is pleasing that their counsel would indicate that they really don't have a lot of difficulty other than the fines itself which they would like to have modified.

Ms. Himeno addressed the Chair, saying that in light of the fact that the seawall was already there when the applicant bought the land and they were asked to fill in the land by the Department of Health, she believes a fine should be assessed but feels the fine should be reduced to \$1500.



**ACTION** Ms. Himeno moved for approval of the application subject to staff's modification and that the fine be reduced from \$2000 to \$1500. Seconded by Mr. Apaka, motion carried.

**Item F-1-a Issuance of Revocable Permit to James C. Loomis, Government Land of Hoolawa, Hoolawa, Hamakualoa, Makawao, Maui, Tax Map Key 2-9-03:40**

Responding to Vice-Chair Arisumi, Mr. Young listed the different crops that can be grown and explained the terminology in general agriculture would encompass all of the agricultural activities and there is some flexibility there.

Mr. James Loomis had nothing to add to his request but informed the Board of all the different crops he would like to be growing. He said he has lived there for 21 years and would like to start as soon as he could.

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

**ITEM E-3 REQUEST FOR EXTENSION OF TIME FOR PAYMENT OF BACK RENT, CONTRACT NO. SP-7, HAPUNA, HAWAII**

Mr. Nagata presented item E-3 and read the Recommendations of staff to the Board. He also requested that Condition 2 of the Recommendations be amended by adding after the last word 'rent,' including interest of 12% per year on the outstanding balance.

Mr. Apaka questioned the receipt of any rental by the applicant. Mr. Nagata said they have confirmation of one payment and he understands that there was another payment just received.

Responding to Ms. Himeno's question, Mr. Nagata said that there was a shell of a building and the applicant was required to outfit it and complete building according to the standards of the County. They have been trying to do that and it is his understanding that they don't have an occupancy permit today.

Vice-Chairman Arisumi commented that it has been 13 months since the contract was executed and when do they expect to open the concession.

Mr. Nagata said that they are conducting part of the required activities, but referring to the concession building he thinks it might be another month or month and a half off. The rent was based on minimum monthly or percentage of the gross. He believed the \$2,600 probably represents the minimum.

Mr. Al Jeremiah said that he was representing the corporation. He has started to work with Mr. Kaipo and they are asking if they could have time to payoff their back payment. At that time it was about \$21,000. Since they've been on board they've paid the April payment and a payment this week. They have no objections to the conditions to the recommendations of staff, however, his principals have asked him to ask the Board for the period of 12 months to pay the back rent.

Mr. Jeremiah also conveyed to the Board that he doesn't know the completion date and they are trying very hard to open the concession as they have incurred expenses of putting in private life guard service on the beach. They've been involved for about three months and are trying to open as soon as possible to start generating income on this property.

**MOTION** Mr. Apaka moved for approval of Item E-3 as amended by staff on the interest to be charged.

**DISCUSSION** Vice-Chair Arisumi mentioned concern that the applicant is coming before the Board saying they're going to open their business and not knowing what kind of business they're going to rally and he's asking for 12 month period to pay the back rent and the Board is saying 'No,' 6 months. If the corporation has the money, that's fine, but if they don't have the money they may have to come before the Board again. He would prefer letting them have the 12 months but he would leave it to the pleasure of the Board.

**ACTION** Vice-Chair Arisumi called for the question and motion carried.

**ITEM E-1** 100TH ANNIVERSARY OBSERVANCE OF THE OVERTHROW OF THE HAWAIIAN MONARCHY

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

**ITEM E-4** OUT-OF-STATE TRAVEL REQUEST TO ATTEND THE ANNUAL CONFERENCE OF THE NATIONAL ASSOCIATION OF STATE PARKS DIRECTORS

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

**RECESS** 10:25 a.m. - 10:30 a.m.

**ITEM H-3** PETITION FOR ADMINISTRATIVE RULE AMENDMENT, TITLE 13, CHAPTER 2, SECTION 13-2-9(a), CONSERVATION DISTRICT SUBZONE MAP BOUNDARY CHANGE, MAP "0-13 HONOLULU" TAX MAP KEY 2-2-31:PORTION OF CONSOLIDATED PARCELS 11, 13, AND 32 (LOT B), APPLICANT: RYM NUUANU PARTNERS, INC.

Mr. Evans explained to the Board that Item H-3 was a request which was somewhat unusual as it is not a Conservation District Use Application (CDUA). It is a Petition before the Board to change our Administrative Rule. Currently our Administrative Rule consists of two parts. It consists of the narrative which is passed out to people when they come in and the second part of the rule which consists of maps. The maps which are part of the Administrative Rule were approved by the Board along with the narrative back in 1978. What occurred at that time is four subzones were developed for the Conservation District: Protective, Limited, Resource and General. Those four subzones were developed with specific criteria that was given to us by the Land Use Commission as criteria they used to place land in the Conservation District.

Mr. Evans explained to the Board that the applicant would like to find a flat piece of land in this property and have a change of subzone (so that a house can be built on it) and later return to the Board with a CDUA.

Staff has informed the applicant that it has been the practice of the Land Board not to allow building of a home in the Limited Subzone. Staff is recommending that the petition to change the subzone boundaries at Nuuanu, Oahu be denied because piecemeal rezoning is the antithesis of comprehensive planning and is, therefore, detrimental to the public welfare.

Mr. Evans reviewed past practices of the Board on similar instances.

Discussion followed on reasons why a house would be denied relating to zoning, slope of the property and spot zoning.

Ms. Himeno expressed concerns where she agreed that no one should be allowed to build in the Limited Subzone if the lot were on a steep slope or incline and would be a danger to people or property below. She felt it would be the applicant's responsibility to prove that the area was safe and that there was a house in that area previously. She also felt the Board could make a site inspection of the area.

Vice-Arisumi asked if there were a structure between 1911 and 1933 and is it correct that if there were a home there before, they can still put up a home there in certain locations.

Mr. Evans said he would try to clarify that. The purpose of zoning is to eventually bring all land uses into conformance with the existing regulations. Some uses where fire burns it down, come into conformance by complying with regulations. In the last ten years, there was an applicant that wanted to build a cabin in the Protective Subzone and there was a cabin before that had burned down and staff would normally recommend 'no more cabin,' but because there had been an existing cabin that had burned down, the Board allowed the landowner to rebuild the cabin. Generally they try to bring everyone into conformance.

The applicant was asked if they thought about doing a CDUA in a Limited and keeping it in a Limited Subzone.

Mr. Renton Nip responded that they had thought about it and felt Mr. Evans had indicated very well why they took the approach that they did. They realized with the Limited Subzone it's much more difficult to obtain residential use in those type of subzone. With respect to the subject parcel, they're saying that it is not dangerous and there's a lot of evidence of that, for one thing there's a bridge from the other side of the stream over to it which indicates the only purpose for this bridge is to bring people from one side to the other, the subject parcel.

Responding to the question of any previous residence, Mr. Nip informed the Board that they still don't know at this point if there was a house, they don't have any evidence. They feel the criteria should be, "Is this area, the subject parcel, is it dangerous, does it pose a danger to human activities?" That's why the definition talks about lands necessary for the protection and health of the public by reason of perceptibility of tsunamis, flooding, volcanic activity or landslides which incorporate a general slope of 40% or more. By staff's report it says there's an average slope of 25% and the surrounding hillside is 40% or more. That is not what they're asking to change.

Mr. Nip referred to the Land Board, the Land Use Commission and any County Zoning Board saying that they all have established rules. The statutes and procedures clearly provides for someone to come before the Board requesting an amendment because their case does not fit the definition and how about considering a change. He referred also to land use boundary changes. He presented an aerial map and spoke about spot zoning and other land uses.

Mr. Clayton Mimura of Geo Laboratory said his purpose here today was to clarify the slopes stability assessment at the site. There was mentioned a concern at the site because according to the Soil Conservation Service the areas match with the Keana series clay which has high shrink slow potential and some potential for landslide. He

offered this clarification, the Soil Conservation Surveys are done on surface soil for agricultural purposes; landslide susceptibility is depended on what kind of soil you have at a much greater depth. Another point to make is that most of the landslides that have occurred in Kuliouou, Manoa, Aina Haina and Palolo are really in the Lualualei series material. These are very bad and probably the worst soil you can have in the islands and it's this kind of soil and not the Keana.

Mr. Mimura said that their firm conducted a site investigation in 1989 in this particular area and what they found confirmed both Soil Conservation Service and the Geologic Maps. They found that the soils at the surface are clay material, but they're very thin, they're only one to two feet thick. If you were to construct something they would need to scrape this material off. If you go to that surface layers, the low hill soils are very stable. So their exploration confirms that the maps by the geologic surveyor and the Soil Conservation Service and based on all these things it's their assessment that the site is a stable site and does not have the conditions that is present in the landslide areas on Oahu.

Responding to Mr. Apaka's query, Mr. Mimura explained that the keana soil is classified as a clay material that tends to shrink and swell and is very thin. During construction they normally just scrape off that material.

Mr. Nip asked to summarize the topic of spot zoning relative to concerns of Mr. Evans. He didn't think spot zoning was an issue in this matter. The adjoining property is urban and there is a residence there.

Mr. Nip said the way they perceive it, it's just a narrow issue here today. Is the subject parcel appropriate for Limited Subzone or not? If the Board agrees that it is not appropriate for a subzone, they are here procedurally correctly and legally correctly. He feels that's the issue and feels there's only one answer. Later if the Board feels that it's inappropriate for whatever use, that's also consistent with the regulations. They're not asking that be pre-determined. Irrespective of what the Board has done in the past, he feels there's no rule that says one can build a residence on general subzone, but it does say what the subzones are and this just doesn't meet the criteria. They're asking the Board to look at that narrow issue and that they agree with the applicant that it doesn't meet the criteria within the subzone.

Ms. Himeno addressed the Chair and suggested that this matter be deferred to allow the Board members to schedule a site inspection.

Mr. Nip said the applicant would be only too happy to make the site available for inspection by the Board. The only thing that may be necessary in order to get over the bridge support which he had shown earlier and which are not that stable, there might have to be some provisions made for access and there might have to be some disturbance of the area in order to permit or facilitate the Board's view of the site.

**DEFERRAL** Ms. Himeno moved that Item H-3 be deferred to allow the Board to obtain advice of counsel and a site inspection. Seconded by Mr. Apaka, motion carried.

**DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY COVERING GOVERNMENT LAND AT KEALAHOU 3 AND 4, MAKAWAO (KULA), MAUI, TAX MAP KEY 2-3-37:POR. 11**

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**ITEM F-3**

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

**REQUEST FOR BOARD APPROVAL TO ENTER INTO MASTER COOPERATIVE AGREEMENT WITH BOTANIC GARDENS**

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**ITEM C-1**

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

**REQUEST FOR APPROVAL TO ENTER INTO A COOPERATIVE AGREEMENT FOR THE PROTECTION, DEVELOPMENT AND MANAGEMENT OF FISH AND WILDLIFE RESOURCES AT NAVAL BASE, PEARL HARBOR, OAHU WITH THE DEPARTMENT OF THE NAVY, PACIFIC DIVISION**

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**ITEM C-2**

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

**100TH ANNIVERSARY OBSERVANCE OF THE OVERTHROW OF THE HAWAIIAN MONARCHY**

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**ITEM E-1**

**ACTION** See page 10.

**REQUEST FROM FAIR WIND, INC. TO OCCUPY STATE-OWNED LANDS WITHIN KEALAKEKUA BAY**

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**ITEM E-2**

**ACTION** See page 4.

**REQUEST FOR EXTENSION OF TIME FOR PAYMENT OF BACK RENT, CONTRACT NO. SP-7, HAPUNA, HAWAII**

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**ITEM E-3**

**ACTION** See page 10.

**OUT-OF-STATE TRAVEL REQUEST TO ATTEND THE ANNUAL CONFERENCE OF THE NATIONAL ASSOCIATION OF STATE PARKS DIRECTORS**

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**ITEM E-4**

**ACTION** See page 10.

**DOCUMENTS FOR CONSIDERATION**

**ITEM F-1**

**Item F-1-a** Issuance of Revocable Permit to James C. Loomis, Government Land of Hoolawa, Hoolawa, Hamakualoa, Makawao, Maui, Tax Map Key 2-9-03:40

**ACTION** See page 9.

**Item F-1-b** Issuance of Revocable Permit to Hawaii Stevedores, Inc., GOVERNMENT LAND at Sand Island, Honolulu, Oahu, Tax Map Key 1-5-41:POR. 130

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

**RESUBMITTAL--COUNTY OF MAUI REQUESTS SET ASIDE OF STATE LANDS AT WAIAKOA AND WAIOHULI-KEOKEA, WAILUKU, MAUI FOR PARK AND RECREATION PURPOSES, TAX MAP KEY 3-9-01:1**

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**ITEM F-2**

**ACTION** See page 6.

**DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AND ISSUANCE OF CONSTRUCTION RIGHT-OF-ENTRY COVERING GOVERNMENT LAND AT KEALAHOU 3 AND 4, MAKAWAO (KULA), MAUI, TAX MAP KEY 2-3-37:POR. 11**

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**ITEM F-3**

**ACTION** See page 13.

**AMENDMENTS TO PRIOR BOARD ACTION OF OCTOBER 24, 1986 (AGENDA ITEM F-8) REGARDING AUTHORIZATION TO SELL LEASE AT PUBLIC AUCTION AT KAPALAMA, HONOLULU, OAHU, TAX MAP KEY 1-5-33:2, 9 AND 16**

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**ITEM F-4**

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

**AUTHORIZATION TO AMEND REVOCABLE PERMIT NOS. S-6738, S-6686 AND S-6708, AND AUTHORIZATION TO ISSUE A REVOCABLE PERMIT TO TRANSHAWAIIAN, INC. AT KEEHI LAGOON, MOANALUA, OAHU**

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**ITEM F-5**

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

**AFTER-THE-FACT CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR GRUBBING, GRADING AND GRASSING OF KAWAINUI MODEL AIRPLANE FIELD, KAWAINUI, KAILUA, OAHU; TAX MAP KEY 4-2-16:01, APPLICANT: DEPARTMENT OF PARKS AND RECREATION, CITY AND COUNTY OF HONOLULU**

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**ITEM H-1**

Mr. Evans informed the Board that he had received a request to defer this item by the applicant. They would like to have their attorney present at the meeting.

**DEFERRED** There being no objections, Ms. Himeno moved to defer, seconded by Mr. Apaka, motion carried.

**CDUA FOR AN AFTER-THE-FACT SEAWALL AND OTHER IMPROVEMENTS ON STATE-OWNED LAND, KANEOHE, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-16:60, APPLICANT: MR. JAMES F. GREGORY; AGENT: MR. RICHARD ICHIHASHI**

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**ITEM H-2**

**ACTION** See page 9.

**PETITION FOR ADMINISTRATIVE RULE AMENDMENT, TITLE 13, CHAPTER 2, SECTION 13-2-9(a), CONSERVATION DISTRICT SUBZONE MAP BOUNDARY CHANGE, MAP "O-13 HONOLULU" TAX MAP KEY 2-2-31:PORTION OF CONSOLIDATED PARCELS 11, 12, AND 32 (LOT) APPLICANT: RYM NUUANU PARTNERS, INC.**

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**ITEM H-3**

**DEFERRED** See page 12.

**ADDED  
ITEM H-4** **REQUEST FOR APPROVAL OF OUT-OF-STATE TRAVEL TO ATTEND  
CONSORTIUM**

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

**ITEM J-1** **CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU  
(UNITED AIRLINES, INC. - ALL NIPPON AIRWAYS CO., LTD.)**

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

**ITEM J-2** **CONSENT TO SUBLEASE, BUILDING 360, EWA CONCOURSE, HONOLULU  
INTERNATIONAL AIRPORT, OAHU (PHILIPPINE AIRLINES, INC. - AMR  
SERVICES CORPORATION)**

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

**ITEM J-3** **APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4765, AIRPORTS  
DIVISION**

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

**ITEM J-4** **ISSUANCE OF LEASE BY DIRECT NEGOTIATION, HARBORS DIVISION,  
KAUNAKAKAI HARBOR, MOLOKAI (MOLOKA'I ICE HOUSE, INC.)**

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

**ITEM J-5** **CONSENT TO FIRST AMENDMENT TO SUBLEASE, HARBOR LEASE NO.  
H-89-14, PIER 6, BARBERS POINT HARBOR, OAHU (HAWAII PACIFIC  
INDUSTRIES, INC.)**

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

**ITEM J-6** **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 39, MAUKA,  
HONOLULU HARBOR, OAHU (TOW-BOAT SERVICES &  
MANAGEMENT, INC.)**

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

**ITEM J-7** **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 1 TRANSIT  
SHED, HILO HARBOR, HAWAII (SEA-LAND SERVICE, INC.)**

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

**ITEM J-8** **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NEAR PIER 23,  
HONOLULU HARBOR, OAHU (HAWAIIAN ISLAND TRUCKING, LTD.)**

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

**ITEM J-9** **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, MAUNALUA BAY  
BOAT LAUNCHING RAMP, OAHU (HAWAIIAN DREDGING &  
CONSTRUCTION CO.)**

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

**ITEM J-10** ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HALEIWA  
SMALL BOAT HARBOR, OAHU (THE CHART HOUSE, INC.)

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

**ITEM J-11** CONTINUANCE OF REVOCABLE PERMIT H-86-1383, ETC., HARBORS  
DIVISION

Ms. Himeno requested to be excused from acting on RP H-82-1030 and H-84-1237, both permits for Matson Navigation Company, Inc..

**ACTION** Ms. Himeno moved for approval of Item J-11 with the exceptions of RP H-82-1030 and H-84-1237. Seconded by Mr. Apaka, motion carried.

**ITEM J-12** CONTINUANCE OF REVOCABLE PERMIT H-80-879, ETC., HARBORS DIVISION

Ms. Himeno requested to be excused from acting on RP H-80-890 Brewer Chemical Corporation and H-87-1399 Roberts Ilima Charter Boat, Inc..

**ACTION** Ms. Himeno moved for approval of Item J-12 with the exceptions of RP H-80-890 and H-87-1399. Seconded by Mr. Apaka, motion carried.

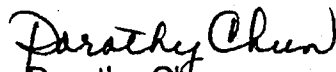
**ITEM J-13** AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF  
ROADWAY REMNANT SITUATE AT AIEA, EWA, OAHU, TAX MAP KEY 9-9-42-30

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

**RESOLUTION** The Board adopted a Resolution to express its appreciation for the services rendered by Mr. Frederick Murashima, Park Caretaker II with the Division of State Parks and extends to him its sincere congratulations and best wishes in his well-earned retirement, and good health and happiness in his future endeavors.

**ADJOURNMENT** There being no further business, the meeting adjourned at 11:40 a.m.

Respectfully submitted,

  
Dorothy Chun  
Secretary

APPROVED:

  
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William W. Paty, Chairperson

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