

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

DATE: MAY 24, 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. T. C. Yim
Mr. William W. Paty

Absent & Excused

Mr. Christopher Yuen

STAFF: Mr. W. Mason Young
Mr. Cecil Santos
Mr. Roger Evans
Mr. John Corbin
Mr. Ralston Nagata
Mr. Al Rogers
Mr. Eric Onizuka
Mr. Ronald Walker
Mrs. LaVerne Tirrell

OTHERS: Mr. Randy Young, Deputy A.G.
Mr. Peter Garcia, Dept. of Transportation
Ms. Pua Dela Cerna (Item E-2)
Mr. Craig Nakamura (Item F-3)
Mr. Kawaipuna Prejean, Mr. Bob Freitas and
Ms. Nina Asing (Item F-7)
Mr. Stephen Mechler (Item H-1)
Dr. Donald Hall (Item H-2)
Mr. John Goody and Mr. Fred Nunes (Item H-4)
Mr. Ken Melrose and Ms. Ann Mapes (Item H-5)
Mr. Alvin Au (Item H-6)
Mr. Renton Nip (Item H-7)
Mr. Don Kitaoka (Item H-8)

**ADDED
ITEMS**

Upon Motion by Mr. Arisumi and a second by Mr. Apaka, the following items were added to the Agenda:

- Item A-1 Request for Approval of Out-of-State Travel to the Field Museum and the Museum of Natural History.
- Item H-9 Request for Approval to Contract with the University of Hawaii.
- Item H-10 Request for Approval of Out-of-State Travel to Attend Conference of the World Aquaculture Society.

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

BOARD RECONSIDERATION OF CDUA FOR TELESCOPE AND OBSERVATORY USE OF MAUNA KEA, INCLUDING A RELOCATED NEW WEATHER TOWER AT THE CANADA-FRANCE-HAWAII TELESCOPE, MAUNA KEA SCIENCE RESERVE; TAX MAP KEY 4-4-25-09; APPLICANT: INSTITUTE FOR ASTRONOMY (IFA) UNIVERSITY OF HAWAII.

ITEM H-1

Mr. Evans explained that, under the auspices of the National Oceanic and Atmospheric Administration (NOAA), there is a set up with the Federal government that provides the general public with changes in weather conditions, and in some aspects, when the need arises, of emergency weather conditions. There has been a need to expedite quick notification to the public and one of the ways that this can be done is to relocate to the Mauna Kea Science Reserve area. Because this is in the conservation district, DLNR was involved; also, because it is within the Mauna Kea Science Reserve, they re-required everyone to sit down with the University of Hawaii, Dept. of Astronomy, and try to see if what they want to do is consistent with what the astronomers are doing at Mauna Kea. Based upon those discussions, there did seem to be consistency, and also it did seem to be consistent with the application that was previously approved by the board in 1974. As a result, staff feels comfortable recommending approval as they do not feel that the relocation of the new weather telescope would interfere with the work being done by Canada-France Hawaii, the astronomers, and the University people.

Dr. Hall stated that the observatories have found an increasing need for weather data and the weather monitoring stations that were originally put in on top of the telescopes themselves have proven to be extremely difficult to maintain. They are subject to ice and other problems. Instead of building a weather tab beside each telescope, they have worked out an arrangement where they propose to build a single tower adjacent to the Canada-France telescope, which will replace the monitoring structure on the top of that telescope. In addition, they will provide NOAA data, and also data for other telescopes. They do not anticipate a need to come back for any other request for weather towers adjacent to other telescopes.

Dr. Hall asked, on behalf of the Canada-France-Hawaii Telescope Corporation, that staff's recommendations 4 and 6 be modified to read as follows:

4. That the applicant ensure that all equipment and structures have non-reflective surface treatments, subject to the approval of the department;
6. That once the new tower is completed, the applicant be permitted to operate both towers simultaneously, for a period not to exceed three months, in order to provide cross-calibration and continuity. At the end of this period, the existing tower shall be dismantled and removed from the telescope dome and property.

ACTION

Ms. Himeno moved to approve as modified. Mr. Apaka seconded; motion carried unanimously.

REQUEST FOR TIME EXTENSION ON CONSERVATION DISTRICT USE PERMIT FOR COMMUNICATION FACILITIES AT THE MAUNA KEA SCIENCE RESERVE, HAWAII; TAX MAP KEY 4-4-15:09; APPLICANT: INSTITUTE FOR ASTRONOMY (IFA) UNIVERSITY OF HAWAII.

ITEM H-3

Ms. Himeno asked Mr. Evans about other CDUA's which have been declared null and void in the past. Mr. Evans said that a most recent one was for a single-family residence. The applicant did not start construction within the one year time frame. Because the board did not have as a condition "failure to start makes this null and void", staff was required to come back to the board saying that this is not "null and void", but it is "voidable" by the board, and the board did so. Sometimes the board grants an exception, sometimes not. Depends on the case.

"So the board has, in the past, granted an extension even though the request has been filed after the expiration date", asked Ms. Himeno? Mr. Evans said that he was not aware of a case where it was granted after an expiration date. But he was aware of "avoid and deny".

In reply to Ms. Himeno's question as to how long it would take to process a new application, Mr. Evans replied, "couple months".

Mr. Paty asked Dr. Hall if he wanted to comment.

Dr. Hall apologized to the board. He was embarrassed by the fact that they failed to meet the deadline. They would certainly like to receive the extension but he understood that a lot of issues were involved. However, realizing this would cause a difficult precedence, they would certainly do as Mr. Evans has asked. He continued that there would be no changes to the terms and conditions. This particular action would improve conditions at Mauna Kea by eliminating clutter, centralizing a micro-wave facility, and allowing them to remove other facilities from the summit.

Ms. Himeno felt it was kinda silly -- that they would have to do the same CDUA over again, especially since overlooking the deadline was an honest mistake. But, because the board has, in the past, established a clear decision that when requests for extensions are not filed before the expiration date, that the CDUA must be reapplied, she would have to go along with this.

MOTION

Ms. Himeno moved to approve staff's recommendation that the request for extension be denied. Mr. Apaka seconded.

Mr. Paty called for discussion.

Mr. Yim stated that he would be voting against Ms. Himeno's motion. He felt that the board should consider these requests on a case-by-case basis. He did not agree with the policy that just because a permittee is not able to start within a year, and he has a good reason, to automatically deny his request, he felt, is a policy that should be revised.

Mr. Paty said that while he agreed with Mr. Yim in principle, he felt also that the board has made some rather dramatic moves relative to extensions of CDUAs and it can put the board in a position of discriminating if they went on a case-by-case basis.

Mr. Apaka agreed with Mr. Paty, and stated that he would find it very difficult to vote against staff's recommendation. He felt that the University had one whole year to come in. He liked the project, but could not say yes to this applicant, and no to others.

**EXECUTIVE
SESSION:**

9:25-9:30 a.m. at Mr. Arisumi's request.

Mr. Paty called the meeting back to order at 9:30 a.m. He then called for the vote.

ACTION:

Majority of the board voted in favor of Ms. Himeno's motion. Motion carried.

Mr. Yim voted no.

ITEM H-5

**AMENDMENT TO CONSERVATION DISTRICT USE PERMIT FOR THE
INSTALLATION OF COMMERCIAL AND PUBLIC USE MOORINGS AND
COMMERCIAL USE OF A SPECIFIC AREA ON A DAILY BASIS,
ANAEHOOMALU BAY, SO. KOHALA, HAWAII; APPLICANT: WAIKALOA
BEACH ASSOCIATION.**

Mr. Evans asked that the following amendments be made:

1. Page 1, paragraph 1 -- change the date from December 1, 1991 to December 7, 1990.
2. Page 9, Condition B.4, line 2 -- "biannual" to be changed to "semi-annual".
3. Page 20, Condition B.5, line 4 -- after the words "in the future", add: "to integrate substantial conflicts as determined by the department between commercial and public use and/or environmental impacts that are identified through operational conditions and land use impacts mandate experience.

Mr. Evans pointed out the subject area on the map and went on to explain to the board what had transpired so far.

Mr. Apaka said that he saw no referral to the Department of Transportation for their approval for use of the beach area to land their boat to pick up passengers. Mr. Evans believed that this was addressed in the original CDUA. Mr. Apaka asked whether it was noted that authorization was required from the Department of Transportation. Mr. Evans said that, as shown on page 3 of the submittal, comments were requested from the Department of Transportation and they stated that they had no objection to the proposed amendment.

Mr. Paty asked the applicant to come forward.

Mr. Ken Melrose, Director of Planning for the Waikalua Development Co., said that he had reviewed staff's recommendations, together with the modifications recommended by Mr. Evans.

In reply to Mr. Apaka's question, Mr. Melrose said that after receiving the issuance of the CDUA on January, 1991, they applied promptly at the Department of Transportation for a mooring permit.

Mr. Apaka said that he was not talking about the mooring. His concern was commercial vessels and shoreline access. Mr. Melrose said that they had not specifically applied for this permit; however, in the Department of Transportation's Ocean Recreation and Management Plan, which was adopted, there was no indication in the plan of an ingress or egress corridor as defined by the Department of Transportation. If there is a need for a separate permit they will certainly comply with that.

Referring to staff's Condition A.1, with respect to the provision of, and affidavit that, the Waikalua Beach Association is a registered Hawaii Corporation, Mr. Melrose said that they were incorporated May 15, 1980 and continues as an active corporation. They also carry a variety of insurance limits up to \$15 million. He said that they will also submit the revised rules, now that all the agency comments have been clarified.

He commented that Mr. Evans had addressed their concerns in Condition B.5.

With respect to Condition B.4, Mr. Melrose asked if the Board would consider an annual reporting requirement as one that gives the full cycle of the year for tourist activities as well as for the public as more appropriate on a calendar year reporting basis, to be consistent with the permits that they have. Mr. Evans said that staff had no problems with changing this to "annual/calendar".

Mr. Paty asked if staff would like to address the "added language" on this.

Mr. Melrose explained that Condition B.5, as currently drafted, is open ended without basis for future rules or for criteria on which to make those rules, and in discussions with staff, it was clear that the concerns that they are trying to address here is what needs to be clarified.

ACTION

Mr. Arisumi moved to approve as modified by Mr. Evans, except that Condition B.4 will be changed from "biannual to "annual". Ms. Himeno seconded; motion carried unanimously.

ITEM H-4

CDUA FOR KEEHI LAGOON CANOE CENTER COMPLEX PHASE 1A, KEEHI LAGOON, OAHU, TAX MAP KEYS OFFSHORE 1-1-03:3, 4, 6 AND 138; 1-2-021:41 AND 45; APPLICANT: DEPT. OF TRANSPORTATION.

DOT Project Engineer Fred Nunes explained status of Phase I of their project, which is the canoe competition center located at Keehi Lagoon Park and presently under construction.

Mr. Apaka asked whether the Honolulu Canoe Racing Association was involved in the planning of the complex.

Mr. John Goody, consultant, explained that the plan involved the various Oahu Racing Associations. The ideal plan was to try and get 14 lanes. Subsequently, shoreline testing indicated that, because of the cut in the dredging etc., they could only get 12 lanes. He said that the Canoe Associations have been involved in the planning from the very beginning.

Mr. Nunes said that DOT had no objection to any of the conditions listed in the submittal.

ACTION

Unanimously approved as submitted. (Apaka/Arisumi)

ITEM H-8

AMENDMENT TO CONSERVATION DISTRICT USE PERMIT FOR INSTALLATION OF ADDITIONAL ANTENNA AND BROADCAST TOWER STRUCTURAL SUPPORT, PALEHUA, OAHU; TAX MAP KEY 9-2-5:13; APPLICANT: INTERCONTINENTAL TELEVISION GROUP.

ACTION

Unanimously approved as submitted. (Arisumi/Himeno)

ITEM H-1

REVOCATION OF CONSERVATION DISTRICT USE PERMIT OA-1631, KANEOHE, OAHU; TAX MAP KEY 4-4-13:45; PERMITTEE: MR. STEPHEN MECHLER.

Mr. Evans stated that staff was in receipt of a request dated May 21st from Mr. Mechler asking that action on this item be deferred.

ACTION

Ms. Himeno moved to defer to the next Oahu meeting. Mr. Arisumi seconded; motion carried.

ITEM H-6

AFTER-THE-FACT CDUA FOR GRUBBING, GRADING AND GRASSING OF KAWAINUI MODEL AIRPLANE FIELD, KAWAINUI, KAILUA, OAHU; TAX MAP KEY 4-2-16-02; APPLICANT: DEPT. OF PARKS & RECREATION, CITY AND COUNTY OF HONOLULU.

Mr. Evans said that action on this item was deferred at an earlier meeting in order that the City's Corporation Counsel could come in and argue their case for them.

To address concerns expressed by the Division of State Parks, Mr. Evans asked also to include Condition 11:

11. That the County shall continue to manage the area until such time that the activity ceases or an alternate location is provided by the County to accommodate the enthusiasts who frequent the area.

Mr. Alvin Au, Deputy Director, City Department of Parks and Recreation, presented the board with photos of the subject area and testified as follows:

"The Department of Parks & Recreation does identify that there was an oversight of the excessive grading. However, we request that the board find that we had no malicious intention when we did this improvement work. The department has been very cooperative, very open, with the Department of Land and Natural Resources in making corrective actions once we identified that we had gone beyond the permitted area.

'The improvement was intended to provide a more level surface on the unsettled landfill for recreational usage. The surface rocks uprooted halekoa brushes and weeds were disposed of and replaced with top soil and the field was leveled evenly and the grass seedlings were planted in the leveled area. The grubbing and grading occurred on a former, dry, sanitary landfill surface and the grading itself was to improve the unsafe and uneven surface. The perimeter improvements to the field has not affected any historical sites as reported; no rare or endangered native plants or animal species were present and there was no adverse or negative impact on the surroundings.

'The field is actively used daily by numerous public individuals and is in the jurisdiction of this department, and the use will continue for model airplane usage. There was also testimony given that 12 government departments and agencies have commented and expressed no objections to these improvements. We also currently have witnessed that the Department of Public Works, City and County of Honolulu, was granted permits to use adjacent areas next to this field for drying and processing the vegetation from the marsh land. Part of this area, which is part of the excess improved area, which we had graded, is also in this area. In the photos it shows that the Public Works Department had extensively grubbed and graded their work area.

'At an earlier public hearing, government agencies had voiced no objections, or submitted any negative comments to our excessive improvements. It has been commented also that the grubbing and grading of soil cover deposits have improved the area.

'The Department of Parks and Recreation have been voluntarily cooperating very openly with the Department of Land and Natural Resources, and this board, in providing any information and data in correcting this improvement and we affirm that any future grubbing and grading will be brought to the Department of Land and Natural Resources for proper authorization and approval.

'I also appeal to the board that we would like to ask for your favorable recommendation not to assess any monetary fines for any unintentional acts which were conducted."

Ms. Himeno asked whether we had fined the Counties in the past when they had been in violation. Mr. Evans replied that they are treated the same as the public applicant.

ACTION

Ms. Himeno moved to approve, with an amendment that the \$1000.00 fine recommended by staff be reduced to \$500.00. Mr. Arisumi seconded; motion carried unanimously.

ITEM E-1

APPROVAL TO ENGAGE THE SERVICES OF HUI O KANANI O KAHANA, A NON-PROFIT ORGANIZATION, TO CONDUCT HAWAIIAN CULTURAL TRAINING PROGRAMS IN KAHANA VALLEY STATE PARK, OAHU.

Ms. Pua Dela Cerna, President of Hui O Kanani O Kahana, said that the residents in Kahana Valley donated their time to show that the project could work. They assisted the Department of Education's Intermediate Schools Outdoor Programs on Hawaiiiana in Kahana Valley. They were then told that \$250,000 was appropriated at the last legislative session for programs such as this.

ACTION

Unanimously approved as submitted. (Arisumi/Himeno)

RECESS:

10:23 a.m. - 10:35 a.m.

ITEM F-7

STAFF REQUEST AUTHORIZATION TO CONVEY GOVERNMENT LAND TO THE HAWAIIAN HOMES COMMISSION AND DIRECT ISSUANCE OF LEASE, KALAWAHINE, MAKIKI, OAHU, TAX MAP KEY 2-4-34:08.

Mr. Paty informed Mr. Young that the Department of Hawaiian Home Lands did voice concerns relative to this submittal. With respect to the three or four lots, the law specifically set forth that it be transferred without cost.

Mr. Young explained that there would be no cost for the conveyance. Staff is simply saying that we would be willing to convey in "love" but we ask in return that any future land exchanges that we have for them will be offset by the value of the land. Mr. Paty said that Hawaiian Homes interpretation is "without cost is "without credit". Mr. Young further explained that this is why they have said that this is to be determined by the Attorney General if there is a concern by the Department of Hawaiian Homes with respect to the language. Mr. Young said that he would be happy to make an amendment that this matter, "without cost" be reviewed by the Attorney General's office for determination.

With respect to the twelve acres, Mr. Paty understood that part to be silent. Mr. Young explained that the 12 acres, under Section 7 of Act 150, merely says that we will convey to Hawaiian Homes, but it doesn't say under what conditions.

Mr. Paty invited the occupants of the Kalawahine property to testify.

Ms. Nina Asing testified, in essence, that she would like to see things done in an honest and legal manner so this problem will not continue to come up. She wants to make sure that Act 150 is fully complied with. Those who were asked to leave are now asking them how come they had to leave and now we have a lease. She felt that no one should have been asked to leave.

Mr. Paty explained that the move to defer is not because of any disagreement with respect to the four lots, the question now is between the DLNR and Hawaiian Homes.

Mr. Kawaipuna Prejean, lifelong tenant of Kalawahine, voiced his objections to the way this land tenancy has been handled by government, both State and Federal. He felt that very little has been offered them by either Hawaiian Homes or the State of Hawaii, DLNR. In his conversations with Mr. Cecil Santos, he has seen the discrepancy in how people have claimed the land. He would hate to see an imaginary type boundary from a school that never did teach them anything about their history continue to encroach lands which belong to the Hawaiian people. He hoped that all the people from Kalawahine are dealt with justly, but that at no time do you go on with business without including him and his family, his son, and maybe future issue, to prevent them from doing what they have done longer than the State of Hawaii has been in existence. He went on to say that his ancestors were there before 1934 and even before the Act was passed in 1920. His grandmother was there since 1917.

Mr. Bob Freitas, President of the Papakolea Community Association, testified in support of the Kalawahine residents fight for their lands.

ACTION Ms. Himeno moved to defer. Mr. Arisumi seconded; motion carried.

DIRECT SALE OF TERM, NON-EXCLUSIVE EASEMENT FOR REPAIR AND MAINTENANCE OF AN EXISTING STAIRCASE FRONTING PARCEL 21 OF TAX MAP KEY 4-3-7, KAHANA SUNSET BEACH LOTS, KAHANA, KAAHAPALI, LAHAINA, MAUI.

ITEM F-3

Mr. Arisumi asked how staff knew that the staircase was built thirty years ago. Mr. Young said that staff on Maui did some review of the prior owners, as well as the County and established that the staircase was in existence approximately 30 years ago.

Mr. Craig Nakamura, attorney for the applicant, in answer to Mr. Arisumi's question, stated that Mr. Ansai was familiar with the area and was one of the people who went out to inspect and determined that it was there for at least thirty years. Mr. Nakamura also called the board's attention to photographs of the staircase, showing how the wall comes down and the few stairs that do protrude on State property. This was discovered when his clients tried to get a shoreline certification before going in for their building permit. They then immediately went to the State to try to obtain an easement for the area. He said that his clients are willing to comply to all of the conditions recommended by staff.

ACTION Unanimously approved. (Arisumi/Apaka)

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:POR. OF CONSOLIDATED PARCELS 11, 12 AND 32 (LOT B); APPLICANT: RYM NUUANU PARTNERS, INC.

ITEM H-7

Mr. Evans said that this item was deferred at the last board meeting to allow the board members, as well as the staff, to inspect the property. Subsequent to that last board action, they did go to the property.

Mr. Evans pointed out on the map the Limited Subzone area. He explained that this property was placed within the Limited Subzone, and a portion of this property was perhaps not in the slope area. When walking a property there are areas where it could meet the criteria for a different subzone. Staff's concern, however, is spot zoning. If spot zoning is to be dismissed, you can expect these areas, all of a sudden, to show up as "General Subzones" within other areas. The end result will be a mix-match, hodge podge for staff. The present petition requests the rezoning of a small area of land for a possible private benefit in the future, and is inconsistent with the zoning of the surrounding area. Spot zoning, said Mr. Evans, is usually held to be invalid by the Courts. It's on this basis that staff, two weeks ago, came before the board with a recommendation for denial. Notwithstanding going on the property, and notwithstanding acknowledging that there is a portion of that property that is relatively flatter than the others, staff does not feel however that that is enough for them to change their recommendation for denial.

Ms. Himeno said that she could see the logic for Mr. Evan's argument for the "Protected" and "Resource" subzones -- we certainly don't want to create an island of "General" subzones in any of those two categories because, arguably, someone could go with experts out to the "Protective" subzone and say, "hey, this little patch here doesn't affect a natural resource so we can build a house." However, when you're talking about "Limited", my understanding, under our rules, is that "Limited" is to limit human habitation in these area where it might not be fit because of natural dangers, or natural hazards. But, if within that Limited subzone, there are areas that the board deems as not posing a hazard to human habitation, then she was not sure, or convinced, that the argument about spot zoning applied to the Limited subzone. She could see it with the other two subzones. Ms. Himeno asked Mr. Evans if he would comment on this.

Two issues were presented, said Mr. Evans. One, the Limited Subzone, rather than the Protective and/or Resource subzone. Should the board grant such an action to consider it not to be spot zoning, Evans said that he would be hardpressed, were he to be representative of a landowner of lands in the Protective or Resource subzone, to sit still with a suggestion that yes, we will allow this and not consider it spot zoning in the Limited subzone, but we would consider it spot zoning in the Resource and Protection subzone. To him the criteria applies across the board. It's a zoning criteria, one that is not limited to Resource, Protective or Limited.

Secondly, relative to the question of "fit for human habitation", Mr. Evans said that we are all in agreement that, at one point in time, there did appear to have been at least some kind of human habitation on this property. There are physical remnants of substantial habitation. He pointed out, however, that in terms of that habitation, in staff's view, there is no evidence to suggest that that habitation occurred after 1978, and DLNR's administrative rule, which came into effect after 1978, and the entire purpose of the rule at that time was, "o.k., where can we effectuate change?" This is one of the areas.

Mr. Evans explained that if there was a mistake in a subzone classification -- let's say you go look at the land and you think that it shouldn't be in Limited, it should be in General because there is no slope, so how would that be remedied? Mr. Evans said that if they went to a piece of property, say it was flat lava land, and had no criteria, staff would be the first one in, as a part of their analysis, to say this was a mistake that was made when we rezoned the land and, therefore, it should be rezoned. However, staff does not feel that a mistake was made in zoning this particular piece.

Mr. Arisumi said that he had concerns when he first read the submittal and felt that there should be a site visitation. At this visitation, although no one was living there, there was evidence that someone was there not too long ago. Secondly, said Mr. Arisumi, when he saw the terrain of land, the land was pretty flat so he could not see how the board could deny the change of subzone on the basis of what he saw. His other concern --"you talk about bringing the boundary into the middle of the stream, along the bank of the stream or whatever", but if this submittal is approved he would sure like to see the boundary set back from the stream. He felt that someone was living there even in the 80's and had no problem with changing the subzone.

Mr. Apaka said that when you look at a place like that you get an impression that it should be left alone. However, he's not sure what is to be developed there. Whether there will be something on the opposite bank to screen what will happen across the stream. If there is such a thing to screen, then it might be alright. Another thing, he felt that the board would need to go back to the public if they were to say yes to this.

Because we are involved in an administrative rule change process, Mr. Evans said that there is no 180-day date.

Mr. Renton Nip, attorney for the applicant, said that if a Limited subzone change is granted, this board will continue to have complete jurisdiction over that land since it is still conservation land. Any proposed use would come before this board. It is at that time that Mr. Apaka and other members will be vigilant to insure that whatever occurs there is consistent with the community, the setting, and it will be a challenge on the part of the applicant to make sure that their plans will be entirely consistent with what is in that area.

With respect to the spot zoning issue that Mr. Evans mentioned, Mr. Nip showed the board, from a drawing, what he felt was spot zoning. The legal definition of spot zoning, he said, is singling out an area for different treatment from that accorded to similar surrounding land, indistinguishable from it in character. So if all of this was cane, agricultural land, and in the middle of this someone decided to put up an amusement park, and zoning was granted for that, that is spot zoning. That is different from this situation. This is not spot zoning. You have an urban district which abounds on a conservation district whose classification is subgrouping, is limited at this time. So the area in question is right next to an urban area, which is consistent with this character. It is more consistent with this character than the character that is further upslope, which is characterized by a slope of more than 40%. Under any legal analysis, the action on the part of this board to change the subzone status on this parcel would not be characterized by any court as being spot zoning but it is similar in character to surrounding urban land which is right next to it. As Ms. Himeno pointed out, what the criteria was within the subzone, basically, is that it has to be dangerous for human activity, and the site visit, the photographs you've seen, and all of the evidence demonstrate that it is clearly not dangerous for human activity.

Ms. Himeno asked Mr. Apaka if, in light of Mr. Nip's presentation, should the board change the subzone, that the applicant would have to come back in and the board would have jurisdiction over what was put there, would he still have a concern about having a public hearing or having input from the public, more than has been

allowed for the purpose of changing of the subzone? Mr. Apaka said that the way he sees it, today's meeting is just to approve, then we would go out to have the rules viewed again by the public. If that is all there is to it then we'll have a public hearing to have the rules changed.

Mr. Evans said that his understanding of the process is that because there is a rule change, there is no 180 day wait. He went on to explain the process for a rule change.

The one question before the board, said Mr. Evans, "if the board decides to amend the administrative rule, currently we have an entire parcel in the Limited Subzone, will the board be amending the administrative rule so that all 24,000 acres are now in the General Subzone, or something less? That is something the board will have to tell staff.

So this has gone out for a public hearing, asked Ms. Himeno? Mr. Evans said, yes. February 21st of this year, if I'm not mistaken. Mr. Nip said there was a public hearing and the Neighborhood Board, as well as two or three other people, testified. Mr. Paty said that it should be clearly understood that if the board approves this application, that does not necessarily mean that we will approve the next application. Approving this today, has nothing to do with whether we approve, or disapprove, the next time around. Mr. Nip said that he understood.

Ms. Himeno asked about the content of the public hearing. Mr. Evans said that the content of the public hearing was reflected on pages 4 and 5 of the submittal. Ms. Himeno asked about the Neighborhood Board's testimony. Mr. Evans said that the Neighborhood Board specifically recommended denial. Mr. Nip said, as he recalled, the Neighborhood Board's position wasn't very strong. They were more concerned with what the use would be.

**EXECUTIVE
SESSION:**

11:30 - 11:40 at Ms. Himeno's request.

Chairman Paty called the meeting back to order at 11:40 a.m.

MOTION

Ms. Himeno moved to approve the applicant's request to change the subzone boundaries of the 24,558 sq. ft. parcel of land identified as TMK 2-2-31:portion of consolidated parcels 11, 23, & 32 (lot B), Nuuanu, Oahu.

Mr. Nip said that they also have the demarcation of the area by metes and bounds, which they would provide to staff. Mr. Evans said that metes and bounds descriptions would also have to be provided and this would be limited to the area which they walked on May 23, 1991, which is the 24,558 sq. ft. In light of that, the applicant would prepare metes and bounds, written out, as well as a topographic map to that affect, within thirty days. Mr. Nip replied yes to Mr. Evans question as to whether this was reasonable.

Mr. Arisumi asked about addressing concerns of the board with respect to going from the middle of the stream. Mr. Evans said that it would be from the middle stream since staff's research has indicated that the conservation district, in effect, starts from the middle of the stream. What that would mean is that when they walk across the bridge, half of the bridge is actually urban, and half is conservation.

Mr. Arisumi said that he would like to amend the motion by saying that we are taking this issue case by case and we don't want to start a precedence for others that they can change just by coming to the board.

Ms. Himeno felt that this should be a part of the "comment" and not in the "motion". Mr. Arisumi said that this was o.k. with him and seconded Ms. Himeno's motion.

Ms. Himeno echoed Mr. Arisumi's comments about this being a specific circumstance, involved in changing the subzone and, as evidenced by the site inspection, the 24,558 sq. ft. that was marked and pegged is flat, and certainly much flatter than 40% slope, which would otherwise characterize a Limited Subzone. In addition, the site inspection revealed a bridge going across Nuuanu Stream into the property as well as remnants, which appeared to be a house or shelter made of concrete. Based upon that Ms. Himeno concluded that there was human habitation there at one point and time and it was apparently safe for them to be there.

Another specific factor involved in this subzone change is that it is right next to urban land. In fact, half the stream is in urban.

Finally, although the neighborhood board has come out against this change, the representation by petitioner's council is that they were more concerned with what would be put on the property as opposed to the subzone change itself. They will have ample opportunity to input what will be put onto the property when the petitioner comes back for another CDUA. Based upon that, said Ms. Himeno, I think this is a specific circumstance and based on this is how I made my motion.

ACTION Mr. Paty called for the vote. Vote was unanimous; motion carried.

ITEM B-1 OUT-OF-STATE TRAVEL REQUEST FOR WILLIAM DEVICK TO PARTICIPATE IN THE ANNUAL MEETING OF THE WESTERN DIVISION, AMERICAN FISHERIES SOCIETY, JULY 15-19, 1991, IN BOZEMAN, MONTANA.

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM C-1 REQUEST APPROVAL FOR OUT-OF-STATE TRAVEL FOR MR. THOMAS TELFER TO ATTEND 1991 WESTERN STATES AND PROVINCES DEER WORKSHOP, ASILOMAR, CALIFORNIA, AUGUST 27-30, 1991.

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

The Chairman indicated that, where we have budgeted requests for travel, he did not feel it necessary to take the board's time to review these. However, where there are special circumstances, then he will bring it before the board. The board concurred.

ITEM A-1 REQUEST FOR APPROVAL OF OUT-OF-STATE TRAVEL FOR EDWARD AYAU TO THE FIELD MUSEUM IN CHICAGO AND MUSEUM OF NATURAL HISTORY IN NEW YORK, JUNE 9-15, 1991.

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

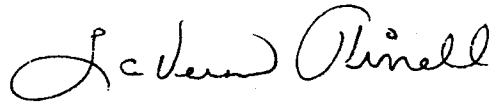
- ITEM D-1** **TRANSFER OF STATE FUNDS FOR THE KAHAKULOA STREAM IMPROVEMENT PROJECT, MAUI.**
- ACTION** Unanimously approved as submitted. (Arisumi/Himeno)
- ITEM E-1** **APPROVAL TO ENGAGE THE SERVICES OF HUI O KANANI O KAHANA, A NON-PROFIT ORGANIZATION, TO CONDUCT HAWAIIAN CULTURAL TRAINING PROGRAMS IN KAHANA VALLEY STATE PARK, OAHU.**
- ACTION** See Page 8.
- ITEM E-2** **OUT-OF-STATE TRAVEL REQUEST FOR KEIJI IKEZAKI, LWCF GRANT PROGRAM MANAGER, DIVISION OF STATE PARKS, TO ATTEND THE REGIONAL GRANTS WORKSHOP IN SACRAMENTO, CALIFORNIA, JUNE 24-26, 1991.**
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM E-3** **APPROVAL OF GRANT-IN-AID FOR THE FRIENDS OF HEEIA STATE PARK, INC., OAHU.**
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM F-1** **DOCUMENTS FOR CONSIDERATION:**
- Item F-1-a ASSIGNMENT OF GENERAL LEASE NO. S-4787, GOVERNMENT LANDS OF KA'U AND NUKAKAIA, KA'U, HAWAII, TMK 9-4-5:16.
- Item F-1-b ISSUANCE OF REVOCABLE PERMIT TO MR. WILLIAM CONNER, GOVERNMENT LAND AT KAWAIPAPA, HANA, MAUI, TMK 1-3-7:25.
- ACTION** Mr. Apaka moved to approve Items F-1-a and F-1-b as submitted.
Mr. Arisumi seconded; motion carried.
- ITEM F-2** **DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AT KAMAOLE, WAILUKU (KULA), MAUI, TAX MAP KEY 3-9-41:140 AND 141**
- ACTION** Unanimously approved as submitted. (Arisumi/Apaka)
- ITEM F-3** **DIRECT SALE OF TERM, NON-EXCLUSIVE EASEMENT FOR REPAIR AND MAINTENANCE OF AN EXISTING STAIRCASE FRONTING PARCEL 21 OF TAX MAP KEY 4-3-7, KAHANA SUNSET BEACH LOTS, KAHANA, KAAHAPALI, LAHAINA, MAUI.**
- ACTION** See Page 9.
- ITEM F-4** **WITHDRAWAL FROM GOVERNOR'S EXECUTIVE ORDER NO. 2274, AIEA BRANCH LIBRARY, AIEA, OAHU, TMK 9-9-40:POR. OF 1.**
- ACTION** Unanimously approved as submitted. (Himeno/Apaka)

- ITEM F-5** AMENDMENT OF REVOCABLE PERMIT NO. S-6543 TO DEPARTMENT OF PUBLIC SAFETY, KAAKAUKUKUI, HONOLULU, OAHU, TMK 2-1-15:22.
- Mr. Young asked that the rental be amended from \$1440.00 to \$1422.
- ACTION** Unanimously approved as amended. (Himeno/Arisumi)
- ITEM F-6** AUTHORIZE THE DIRECT SALE OF A NON-EXCLUSIVE EASEMENT FOR ACCESS, UTILITY AND LANDSCAPING PURPOSES OVER, ON, UNDER AND ACROSS LAND ONCE COVERED BY LAND OFFICE DEED NO. S-12,850, AND RESCIND PRIOR ACTION OF DECEMBER 6, 1985, AGENDA ITEM F-15, AUTHORIZING THE DIRECT AWARD OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS, UTILITY AND LANDSCAPING PURPOSES, WAILUA, KAUAI, TAX MAP KEY 4-1-3:17.
- ACTION** Unanimously approved as submitted. (Apaka/Arisumi)
- ITEM F-7** STAFF REQUEST AUTHORIZATION TO CONVEY GOVERNMENT LAND TO THE HAWAIIAN HOMES COMMISSION AND DIRECT ISSUANCE OF LEASE, KALAWAHINE, MAKIKI, OAHU, TMK 2-4-34:08.
- ACTION** See Page 9.
- ITEM H-9** REQUEST FOR APPROVAL TO CONTRACT WITH THE UNIVERSITY OF HAWAII.
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM H-1** See Page 6 for Action.
- ITEM H-2** See Page 3 for Action.
- ITEM H-3** See Page 4 for Action.
- ITEM H-4** See Page 6 for Action.
- ITEM H-5** See Page 5 for Action.
- ITEM H-6** See page 8 for Action.
- ITEM H-7** See Page 13 for Action
- ITEM H-8** See Page 6 for Action.
- ITEM H-9** See Page 15 for Action.
- ITEM H-10** REQUEST FOR APPROVAL OF OUT-OF-STATE TRAVEL FOR RICHARD FASSLER TO ATTEND CONFERENCE OF THE WORLD AQUACULTURE SOCIETY, SAN JUAN, PUERTO RICO, JUNE 16-20, 1991.
- ACTION** Unanimously approved as submitted. (Arisumi/Himeno)

- ITEM J-1** AMENDMENT NO. 1 TO LEASE NO. DOT-A-78-45, HONOLULU INTERNATIONAL AIRPORT, OAHU (GILBERT W. DELA CRUZ AND ROBERT Y. OTA).
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM J-2** AMENDMENT NO. 2 TO LEASE NO. DOT-A-84-30, HAWAII DISTRICT AIRPORTS, HAWAII (K. PACIFIC, INC. DBA THRIFTY CAR RENTAL - RENT-A-CAR CONCESSION).
- ACTION** Unanimously approved as submitted. (Arisumi/Himeno)
- ITEM J-3** APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4772, ETC., AIRPORTS DIVISION.
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM J-4** RENEWAL OF REVOCABLE PERMITS 3177, ETC., AIRPORTS DIVISION.
- ACTION** Mr. Arisumi moved to approve as submitted. Mr. Apaka seconded; motion carried. Ms. Himeno asked to be excused from acting on Revocable Permit 4003 to Roberts Hawaii RAC
- ITEM J-5** RIGHT-OF-ENTRY AND DIRECT SALE OF LEASE OF EASEMENT, HARBORS DIVISION, KEEHI LAGOON, OAHU (GTE HAWAIIAN TELEPHONE COMPANY, INC. AND HAWAIIAN ELECTRIC COMPANY, INC.).
- ACTION** Unanimously approved as submitted. (Himeno/Arisumi)
- ITEM J-6** ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, OAHU (GTE HAWAIIAN TELEPHONE COMPANY, INC.).
- ACTION** Unanimously approved as submitted. (Apaka/Arisumi)
- ITEM J-7** CONTINUANCE OF REVOCABLE PERMITS H-82-1030, ETC., HARBORS DIVISION.
- ACTION** Mr. Arisumi moved to approve as submitted. Mr. Apaka seconded; motion carried. Ms. Himeno was excused from voting on this item.

ADJOURNMENT: There being no further business, the meeting was adjourned at 12:00 noon.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



WILLIAM W. PATY
Chairperson

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