

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

**DATE:** JUNE 14, 1991, FRIDAY  
**TIME:** 8:30 A.M.  
**PLACE:** CONFERENCE ROOMS A, B, C  
STATE OFFICE BUILDING  
75 AUPUNI STREET  
HILO, HAWAII

**ROLL  
CALL**

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

**MEMBERS:** Mr. John Arisumi  
Mr. Herbert Apaka  
Mr. Christopher Yuen  
Mr. T.C. Yim  
Mr. William Paty

**ABSENT &  
EXCUSED:** Ms. Sharon Himeno

**STAFF:** Mr. W. Mason Young  
Mr. Roger Evans  
Mr. Ralston Nagata  
Mr. Gordon Akita  
Mr. Henry Sakuda  
Mr. Carl Watanabe  
Mr. Glenn Taguchi  
Mr. Larry Okazaki  
Mr. Charles Supe  
Ms. Dorothy Chun

**OTHERS:** Ms. Linnell Nishioka, Deputy Attorney General  
Mr. Peter Garcia, Department of Transportation  
Mr. Randy Vitousek (Item F-3)  
Ms. Meredith Ching (Items F-1-f, F-1-g)  
Mr. Clancy Greff, Mr. Martin Wolfe, Mr. Tom Hegarty  
and Ms. Susan Matsuura (Item E-1)  
Mr. Dennis King (Item F-7)  
Mr. Dennis Yamada, Mr. Bruce Laymon  
and Clyde Kodani (Item H-4)

**MINUTES** The minutes of the meeting of May 24, 1991 were approved as circulated.  
(Apaka/Arisumi)

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

B-2 Request for Approval to Enter Into An Agreement With The University of  
Hawaii During FY 1991-92 to Implement A "Coral Reef Study"

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

**ITEM F-3 DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES, GOVERNMENT LANDS (MAMALAHOA TRAIL) AT KOHANAIKI, NORTH KONA, HAWAII, TAX MAP KEY 7-3-09**

Mr. Young informed the Board that this is a follow-up to two Conservation District Use Applications that were filed in 1987 and 1991 which were approved under CDUA 2055. Part of the conditions of the CDUA required that the applicant come before the Division of Land Management for the request of a utility easement.

Staff is recommending that Nansay Hawaii Inc. be granted the access and utility easement over and across the old Mamalahoa Trail.

Questions raised by the Chairperson and Board members were regarding the access to parties of concern and the landowner; would access be provided only during construction; and cost of improvements.

Mr. Randy Vitousek responded to the question of providing access. He pointed out on a map the area where they are requesting an easement. They have submitted a public access plan to the County Planning Commission for approval and they have also, in resolving litigation with the Friends of Kohanaiki Inc., and the Surfrider Foundation, have agreed to provide unrestricted 24-hour access to and along the shoreline on three separate access points. This will be one main road coming down and split into three separate roads, eventually there will be three access points along the Kohanaiki Shoreline. He said that has been included in their submittals.

Mr. Vitousek had a question to one of the recommendations and that was with respect to Item 12 on page 7 of Staff's submittal where it states, "Prior to the issuance of the Grant of Non-Exclusive Easement document, Nansay shall be responsible for securing subdivision approval from the County of Hawai'i for the subject easement area ..." His concern with that is that he didn't think under the County Ordinances that subdivision would be required for a roadway easement under Section 23-3-29. He would like to ask that either it be deleted or a provision stating, "if required by the County, Nansay will provide a ..." and they will write to the County and ask whether it's required and get a written response to submit to the Board or Land Management, or get the subdivision approval.

**ACTION** Mr. Yuen moved for approval with staff's recommendation and a modification to Condition 12 that subdivision approval is only necessary if required by the County of Hawaii and that a letter from the County saying that subdivision approval is not required. Motion was seconded by Mr. Arisumi and motion carried.

**Item F-1-f Issuance of Revocable Permit to East Maui Irrigation Company, Ltd., Portion of Koolau Forest Reserve, "Honomanu License Area," Honomanu, Hana, Maui, Tax Map Ket 1-1-01:44**

**Item F-1-g Issuance of Revocable Permit to A&B Hawaii, Inc., Portion of Koolau Forest Reserve, "Nahiku License Area," Nahiku, Hana, Maui, Tax Map Key 1-2-04: 5 & 7**

Item F-1-h Issuance of Revocable Permit to East Maui Irrigation Co., Ltd., Portion of Koolau Forest Reserve Area, "Keanae License Area," Keanae-Wailua Iki, Hana, Maui, Tax Map Key 1-1-02:Por. 2

Item F-1-i Issuance of Revocable Permit to East Maui Irrigation Co., Ltd., Portion of Koolau Forest Reserve, "Huelo License Area," East Makaiwa, Hana, Huelo-Kailua, Makawao, Maui, Tax Map Keys 1-1-01:2 & 5 and 2-9-14:5, 11, 12 & 17

Mr. Young informed the Board that he would like to take up Items F-1-f through F-1-i together as they are all related to the same matter. They presently have a water license permit and the statutes are only good for one year. They have been allowed to continue the occupation of the area until the matter of the McBryde Water Case is resolved, presently it's in the 9th Circuit Court. Therefore staff is recommending that the Revocable Permits for water license to divert and develop use from the different license areas as described in the Board's agenda items be granted to the respective permittees as described in the submittals.

Mr. Yim asked how long has the McBryde case been going on and is there any indication when it will be concluded. Mr. Young responded that it has been going on for about 15 to 30 years.

Deputy Attorney General Nishioka informed the Board that a decision just came out of the 9th Circuit Court about a month ago but there's still some issues that are unresolved. She thought that part of the case has been remanded and hopefully within the next year the issue may be resolved.

Mr. Yim's question was, "If it's resolved, will this be going to a public auction?"

Mr. Young responded, "That is correct."

Ms. Meredith Ching representing the applicant had nothing to add, saying that they go along with staff's recommendation. She did mention that they have been on four revocable permits since 1986. They have been talking with the department about the possibility into entering into another long term license but will have to wait for the resolution of the McBryde case.

**ACTION** Mr. Arisumi moved for approval of items F-1-f, F-1-g, F-1-h and F-1-i; seconded by Mr. Apaka, motion carried.

**ITEM F-2** **RESUBMITTAL--DEPARTMENT OF PUBLIC SAFETY REQUESTS SET ASIDE OF STATE LAND AT WAIAKEA, SOUTH HILO, HAWAII FOR THE HALE NANI WORK RELEASE CENTER, TAX MAP KEY 7-3-09**

Mr. Young presented the resubmittal of the request of the Department of Public Safety. He went over the details of the request and the intended use of the State land.

Mr. Yuen's question was, "What goes on at the Hale Nani Work Release Center?"

Mr. Young explained that it's an extension of the Kulani Prison. It is intended to house participants in the furlough program and for the inmates serving intermittent sentences who are allowed to go out into the community unescorted and come back to the facility on the weekend.

The set aside has been heard by the County and it doesn't appear to be any objections. The community has not voiced any objections also. Therefore staff is recommending that the Board approve this request.

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

**ITEM A-1 APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE ARCHITECTURAL CONDITION ASSESSMENTS OF SIX STATE-OWNED BUILDINGS IN HANAPEPE, ISLAND OF KAUAI**

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

**ITEM B-1 REQUEST FOR APPROVAL TO PROVIDE FREE FRESHWATER PRAWN SEED TO WINDWARD OAHU FARMERS AFFECTED BY FLOOD DAMAGE DURING THE MARCH 1991 STORM, AND TO DEFER PAYMENTS AND INTEREST OWED BY THE FARMERS TO THE DEPARTMENT FOR PURCHASES OF FRESHWATER PRAWN SEED UNTIL JUNE, 1992**

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

**ADDED ITEM B-2 REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH THE UNIVERSITY OF HAWAII DURING FY 1991-92 TO IMPLEMENT A "CORAL REEF STUDY"**

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

**ITEM C-1 PERMISSION TO HIRE CONSULTANT FOR HONUULA TRACT 3 ACCESS ROAD ALIGNMENT**

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

**ITEM D-1 APPROVAL FOR AWARD OF CONTRACT FOR JOB NO. 5-OW-A1, WAIMANALO WATERSHED, WAIMANALO RESERVOIR, OAHU**

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

**ITEM E-1 REQUEST FOR A ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI**

Mr. Nagata presented this item in detail from his board submittal. He said that he needed to make one correction. The Lady Ann also launches and retrieves at Hanalei Bay and embarks and disembarks their clients there as well as Mr. Hegarty.

Mr. Nagata said per the Chairman's direction he had indicated to the two tour boat operators as well as an attorney representing the groups that are in opposition to these tours boats operation that the Chairman would recommend to the Board that the matter either be continued or deferred till the Kauai meeting

which he understood would be on July 19th in order to allow Kauai residents an opportunity to be heard.

Chairman Paty said that was correct but was it addressing the permit situation relative to the expiration. Mr. Nagata said that it did not and if the Board does decide to defer action, then the Board should also realize that there will be a gap from the time the permit expires, June 30 to July 19. Last year the Board gave a temporary type of extension for the interim period. Should the Board decide to defer he would like to recommend that they also temporarily extend the permits beyond June 30th until the Board is able to take action on July 19th.

Chair Paty said that it is the the Board's feeling that this matter being a sensitive one on Kauai, was one that should not be debated in Hilo. It would be the Chair's recommendation that, that aspect would be deferred till the Board's meeting on July 19th. He said that questions of Mr. Nagata will be asked then all parties that were present would be allowed to make any statements or raise any questions. The Board doesn't want to get into essentially a Hilo debate when the Chair's recommendation will be that those larger broader issues be taken up at the appropriate location.

Mr. Apaka asked, "In the submittal there is a CDUA being processed right now. When was it dated for the process?"

Mr. Nagata said he did not have the exact date, it might be in the information that is provided by Mr. Wolfe. He thinks it might be in late 1990 or in January 1991. He said according to Mr. Wolfe it was submitted in October of 1990, so it is in the department's hands.

There being no further questions of Mr. Nagata, the Chair called Mr. Greff forward.

Mr. Martin Wolfe, on behalf of Captain Zodiac, said that he would like to clarify that he has provided each member of the Board this morning with a memorandum and attached exhibits. The exhibits H, I and J would answer member Apaka's question. The application for Hanalei was submitted in October of 1990 and not in March of 1990 as his exhibit I indicates, but as of this date there has been no letter accepting the application for processing and they are not in the process until they receive that letter. He said that it's been a good many months and he has sent correspondence to DLNR asking about the process and to date the application of October 1990 has not been accepted for processing.

Mr. Wolfe said, "I won't read my report to you, suffice it to say that it's a three page report that responds directly to Mr. Nagata's report and hopefully clarifies what the applicant believes to be some errors, good faith honest errors, in Mr. Nagata's report. We have submitted all of the documentation as exhibits, not because we feel this is an adversary proceeding before your Board, but in recognition of the fact that Waiola represented Mr. Harold Bronstein, who is here today, has filed litigation against the Northshore tour boat operators every time any administrative agency, be it DLNR, DOT or the County of Kauai makes any determination which in effect allows the boaters to continue to operate in form at all. They go to court and challenge it, just as we are currently in court, both DLNR and Captain Zodiac are in court wrangling over your decision last year to extend Captain Zodiac's permit. Now because of this plethora of litigation, and what appears to be a definite commitment on the part of Waiola to terminate all commercial tour boat activities, one way or another, through court litigation,

although the application before you is for a one year extension, that one year extension is not the request of the applicant. The applicant asks for a five year extension. Five years was the term originally applied for. Five years was an original lease or land disposition recommendation from Land Management before it was transferred over to State Parks. And the reason that I would at this time ask you to consider five years, as I would like you to think about the fact that the administrative appeal filed from your decision of last year has not been heard by the court yet. The permit will expire and the court case will become moot before we ever have a chance to litigate it and have a court essentially decide whether this Board is right or wrong. So with these one year extensions, what we have is Waiola going in, filing an appeal, we wrangle over the administrative appeal and by the time we're ready to actually start filing official briefs in the case and submit it to the judge for decision, it's all pau. So we've gone to all this time and all this expense and we can't get a court decision. Now at the end of this month, that case will become moot and we've gone to all this trouble and all this expense for nothing. And if you grant another one year extension, we're going through the same process, we're going to spend a lot of time and money at court to find out that one year down the road, before the court has had a chance to rule, we're moot again and I think that's a very good reason for you to consider a longer period of time besides the fact that there was a five year recommendation way back in 1985 or '86. It's very important at this time to finally decide, let the court say, the Land Board acted properly or the Land Board didn't act properly. Of course, we're in there arguing that you have acted properly. We're basically on the same side in court and we're just telling you we simply need more time to let the court do its job.

"Additionally it's my understanding and if I'm wrong, I'm sure Mr. Bronstein will correct me, but it's my understanding right now that the only real controversy on this extension is the landings "at Tunnels." At least I haven't seen any written or heard any oral or seen any newspaper articles indicating that the other landings of the other three boat companies are in question of being challenged. In fact, this last administrative appeal that was filed with the court, was originally filed against the Land Board, Captain Zodiac and the other two boating companies, but the other two boating companies were dismissed from the appeal and the appeal only went forward as to Captain Zodiac. The only reason that I can perceive for that is that Captain Zodiac is the only one involved at Tunnels and Tunnels is apparently the 'hotbed' or the place of controversy in contention.

"So, my rebuttal memo primarily deals with the issue of Tunnels. I don't address the other sites because I didn't believe and still don't believe that they're really in controversy. The bottom line to digest all of this in one sentence or less, a CDUA is not required at Tunnels. That's the bottom line. A CDUA is not required for two boats, it isn't required for ten boats. And I based that all on the history of your prior decisions, now I know that Mr. Evans' report has always been to the Land Board that Mr. Greff's activities require a CDUA and in court, Mr. Evans under a verified affidavit, affidavit signed under a notary seal, stated that all of the prior Land Board decisions upon which that decision is predicated, and that's in exhibit F, Mr. Evans' affidavit is in exhibit F, and the most striking thing about Mr. Evans' affidavit is that all of your prior decisions that he relies upon deal with activities either not on Kauai, on some other island, or deal with activities that have absolutely nothing to do with ocean recreation or beaches, absolutely nothing. And in the process of relying upon the prior decisions dealing with hiking in the mountains and other such activities, he overlooked 14 prior decisions of this Board that deal with ocean recreation and beach use of which all but two were prior

decisions on Kauai. I was amazed and state that in my affidavit which is also in exhibit F. On page 19 of exhibit F, paragraph 8 of my affidavit submitted to the court, I list all of your prior decisions that establish the fact that to transit the beach, no CDUA is required. I also in my exhibits, give you two recent decisions of this Land Board right here on this Big Island where two major resorts transit the beach to load and unload passengers out of various types of water crafts, boats and you did not require a CDUA of them. All of their staging operations are done some place other than the beach. All they do is take people across the beach to get in and out of boats, that's all Mr. Greff does at Tunnels. His boats are prepped and staged at the Sheehan Boat Harbor on the Hanalei River. They're launched and retrieved there, they're washed, they're cleaned up there, they're loaded with gear, they're equipped, they're fueled. The only thing he does is to load and unload passengers at Tunnels, he doesn't even land the vessels on the beach at Tunnels, they're held offshore in calm waters. People merely transit the beach."

The Chair interrupted, "Mr. Wolfe, I appreciate what you're saying and I know what you're trying to push here, but keep in mind that, the same issue really is coming before the Board as I think it would be on Kauai, so I don't know that you want to put it all before us because we're going to have to review with you again. Can you keep that in mind."

Mr. Wolfe said, "Thank you Mr. Chairman, I was trying to keep that in mind and what I'm trying to do very honestly is give you just enough to interest you and excite you enough to go through the laboriously task of reading all of this. It was a lot for me to put together. ... Now, the reason for us putting all this in here, of course we'd like you to read it, but we know a judge is going to have to read the record of this proceeding sooner or later and we want all of this to be there for the judge, that's the real reason for attaching all the exhibit. But I do hope that you, after reading my three pages, you'll go through our exhibit and see that I have substantiated everything in my three pages, it's all here, okay. The only thing that isn't here is the decision handed down in the 5th Circuit Court last Friday, dismissing Mr. Greff, Captain Zodiac with prejudice, which means it can't be refiled, dismissing him from the County's lawsuit to enjoin all the boaters from operating out of Hanalei. He's now dismissed, he and another defendant. Now, Mr. Nagata could not have known that when he put his report together, that's why I say that I've had to refute some things in his report that I think he said in good faith. There was simply no way for him to know certain things had happened. The other thing I'd like to point out is in the exhibits, I have attached staff reports from DLNR that agree that Mr. Greff is only transiting the beach at Tunnels. These are staff reports that come directly from various people in DLNR, Mr. Sam Lee being one of them, Mr. Detor and a gentleman that testified earlier here this morning, Mason Young. Those are all contained in exhibits C, D, E, F, and G. And they deal specifically with Mr. Greff in indicating that his activities are merely transiting the beach.

"Because of some staff comments early on in the late '70s that Mr. Greff was landing at Tunnels, and no one has ever analyzed specifically, the difference between landing and transiting in Mr. Greff's situation. This is the first opportunity we've really had to sharpen this issue and come back before you and make this specific distinction.

"I think that when the Board looks at its transiting decisions on this island, it will see the activities of the two resorts to be identical to Mr. Greff's activities at

Tunnels and at this point in time I'm going to wave a red flag to you. Something that is Mr. Greff's concern. If transiting as you have determined does not require a CDUA, then anyone, anywhere in this State can transit the beach, any beach. That should be a red flag to you folks, maybe that's a wrong policy, maybe transiting should be a land use requiring a CDUA, but right now it's not and that was made an official Board policy in December of 1985. In December of 1985 this Board voted that transiting did not require a CDUA, those minutes are one of the exhibits to my memo that has been the official policy since 1985. If that is in fact the law of the Board so to speak, then not only is a CDUA required of Mr. Greff at Tunnels, but no CDUA is required of anyone at Tunnels and all the Northshore boaters can use Tunnels. And I don't think that's in anyone's best interest.

"So Mr. Greff's position is, either a CDUA is not required for anyone, anywhere in Hawaii for uniform application of the law or a CDUA is required for everyone transiting the beach in the State of Hawaii. Unfortunately under the current state of affairs, we believe no CDUA is required of anyone anywhere to transit the beach. And so our only objection or concern with Mr. Nagata's recommendations in addition to the one year time period would be his recommendation that this Board make a finding a CDUA is required and only two boats be permitted, because that would be inconsistent with the history of this Board. I would answer any questions you may have."

Mr. Apaka asked, "Mr. Wolfe, I understand there's a Department of Transportation Recreation rules for Hanalei and Haena. Do you know if those rules are in effect?"

Mr. Wolfe said, "I addressed that in my memo and I attached a copy of the letter from DOT. What happened after the Ocean Recreation Management Plan was adopted, was Waiola filed a lawsuit, challenging those rules. Challenging the adoption of them. At the same time, challenging a right-of-entry that DLNR gave to DOT to manage boating between the Hanalei Pier and a little bit mauka of the Weke Boat launch ramp. So DOT and DLNR both got brought into that legal action. Since the filing of that lawsuit, DOT has taken the position that since it's under litigation, they will not issue any permits under ORMA nor will that they take any enforcement action under ORMA. Now the law very clearly says that administrative rules and decisions remain in effect and are not stayed just because a lawsuit has been filed and yet DOT has defacto implemented a stay on those rules until the WAIOLA lawsuit is finally resolved in court. And I have the letter from DOT annexed here as one of my exhibits. It's in the group of letters included in exhibit T. Without meaning to make my comments sound like I'm chastising DOT for their action unduly, let me also say that DLNR is taking the same position. I have written DLNR many letters asking them who owns the Weke Boat Launch Ramp, because it's on DLNR property. It was built with State money but it was built by the County. Who owns it? Does DLNR own it or does the County own it? I've sent DLNR letters and DOT letters asking various issues and they're all attached here as exhibits and the stock answer I get from DLNR as well as DOT is, 'The matter is in litigation and we cannot comment.' So I'm being stonewalled. We really don't feel we can present our position fully today, we can't offer alternatives because we're being denied access to what should be public information and I cover that with my memo and support it with the letters that have gone back and forth. So I really can't answer your question anymore specific than that except to say, in return sir, with all due respect, I'm sorry I can't comment the matters in litigation."

Mr. Apaka said, "I just wanted to show that there really is such a plan that's on



the books that will be followed later by DLNR."

Mr. Wolfe responded, "Not necessarily because if Waiola is correct, those rules will be thrown out and they'll have to go back to the hearing process. They'll have to start the whole process again."

Mr. Apaka, "That's right and that will be through the hands of DLNR. Coming July 1992. So what we're looking at is, not to look at what you're saying, five years permit if we're going to be tasked with looking at the entire boating industry at Hanalei. So we have a problem."

Mr. Wolfe responded, "There's no doubt, there's a problem and the problem is a lot bigger than this application, it's a lot bigger than Waiola's lawsuit over the ORMP it's a lot bigger over the County's injunctive action. If I might kind of editorialize, it's an industry that grew, with the encouragement of everyone and it grew to a point where Waiola did the community a favor and 'Said look there's a problem that's been unregulated, it's been uncontrolled and we need some controls and regulations. And then no one wanted to control it, no one wanted to regulate it and all of a sudden everybody was pointing a finger at everyone else, DLNR included. DLNR tried to pass it off to DOT. DOT has tried to pass it off to the County. The County has now tried to pass it to DOT or DLNR. It's a 'hot potato' that no one wants, and frankly I don't understand it for this basic reason, the industry generates or use to generate close to 1/2 million dollars a year in fees to the State Treasury. To hire a harbor master or a boating agent or whatever you want to call the person, to go down there and police things, to adopt rules for the industry under Title 91, is going to cost the State maybe \$35,000 or \$40,000 a year. So the industry can more than pay its way and put extra money in the State coffers and yet everybody is pointing fingers at everyone else. As long as that goes on we're not going to have a solution."

Mr. Yuen said that he just wants to understand where he's coming from. "In your letter on the third page, you have four objections to the staff recommendation and having one year instead of five years is not one of those objections. That's an additional objection that you have."

Mr. Wolfe replied, "Yes. Actually it's not an objection as much as it is an explanation of a time problem with the court system and you people can address and if not we'll settle for the one year."

Mr. Yuen questioned, "And you're saying that we should not limit you to two boats at Haena Point because no CDUA is required to transit the beach, if you have to have a CDUA to land at Napali?" Mr. Wolfe injected, "Yes, no question."

Mr. Yuen continued, "There maybe, you know we have these situations that come up where people want a CDUA to use Conservation land. They're impacts that may be outside of Conservation land that may not themselves require a CDUA, but I think we've taken a position that we can regulate those that are a part of the operation to give an example would be, Paradise Park on Oahu. They needed a CDUA because they're operating a commercial activity in a Conservation District. The community's concern is primarily that they have buses going up and down the road. Now nobody needs a permit to operate from the DLNR, at least to operate a bus up and down the road. But if we're going to allow use of the Conservation land we can't stick our head in the sand and ignore the buses going up and down the road even though you may not need a permit for that. I think in

that case, we looked at that and we made a regulation on the number of buses they can use. I don't know whether it's valid to say, even if we agree with you that you didn't need a CDUA to transit a particular beach, that we couldn't, that the regulation on that couldn't be part of your CDUA."

Mr. Wolfe responded, "As a matter of fact, all the boating activity itself is outside the CDUA. It's not within the CDUA area at all. It's noted in one of your staff reports. Second, all of Captain Zodiac, well, Captain Zodiac has an agreement with the Board to use the parking lot at Haena State Park and does in fact operate a bus out of there and no CDUA was required to do that even it's using the State parking lot."

Mr. Tom Hegarty one of the other permittees addressed the Board. "I don't really have any comments other than to reiterate what Martin has already stated. One point I wanted to reiterate is something that he pointed out. My permit, for example, has nothing to do with the Tunnels Beach area and the litigation for the Hanalei beach area is already in court now and that will determine our fate down at the river where I load and unload. And also to reiterate the point that he made that the decision of the Board and the controversy surrounding this decision really doesn't, we haven't heard any real negative impact on Clancy and I landing our tour boats down at Nualolo and in fact, Clancy doing the majority if not all of the camper pick ups at Kalalau. I just want to make that point because my permit has nothing to do with the Tunnels thing and if we were to be granted a five year extension, this rigamarole that we all go through every year and basically there, the exact same testimony from the exact same people again on July 19th, we might not have to do it for 5 more years. Thank you."

Ms. Susan Matsuura of the Lady Ann Cruises addressed the Board. "We've been trying to look at several alternatives that as a company we can continue to operate that hopefully would have some win, win situation for all sides. One thing we've looked at and I don't need a definite answer, but I'd like to present to the board today if there is any adverse reaction to this is, we have our permit also tied up in the Hanalei as far as whether or not to land passengers there. One alternative we were looking at maybe is a short term interim solution, is that maybe we piggy back or be towed from one of the operators at Port Allen, the zodiac. Use our permits to land at Nualolo from one of the operators that come out of Port Allen. In the short term, while the Hanalei decision is being decided, without jeopardizing a long term ability in the interim later on to continue to go into Hanalei. And we were wondering if there's any problem with the Board, until July 19th. We haven't started operating this year in deciding how we're going to go about operations this year with the least amount of confusion and disreactions to our operations and this is one way that we thought might not pose a problem to either side is to have our boats towed from Port Allen and then too, the Lady Ann operation to go ashore from the bigger vessel that comes from Port Allen and doesn't actually hit anchors off the Napali Coast. This is another company but we would do the Lady Ann operation off that boat in the short term, but like I said, we don't want to give up the right when it is finally decided at Hanalei as to whether or not we could continue later to do the operations out of Hanalei."

Mr. Apaka asked, "How big is that boat of yours, the carrying capacity of that boat?"

Ms. Matsuura responded, "There's two that are permitted under Lady Ann and off hand I don't have the exact, but it's like 18 to 20 people. They're small zodiac

boats and it's only like one landing a day. It's just a short ride, they take only a few amount of people, the time constraints, because they come all the way from Port Allen, they only are time permitted to swim there for about an hour or so. The people swim off the boat. So you'd only have, time wise, you'd be restricted to only one rowing ashore so it would be like one zodiac full of people. It would be an optional tour that they offer to the people. So it wouldn't be like they could use the big boat to shuttle people all day long. They have to get back to Port Allen."

Mr. Apaka said, "You mentioned about towing the zodiacs to Hanalei with another boat. How big is that boat?"

Ms. Matsuura responded, "It's certified, I believe for a 149 people, it's actually not our boat but I can find out that information. It's operated by another company but we haven't made any final decision but we've been talking to them whether or not they would allow us to do that off their boat.?"

Mr. Harold Bronstein said he was here representing Waiola. "I'm in deference to the Board and assuming that the Board is really deferring this and I'm not going to waste my time or your time. But to make sure the issues are clear, definitely Waiola is involved in the process and wants to see the process work as we always have when we come before this Board. We believe the process is a CDUA not a temporary permit year after year. I've heard a request for five years. You don't need that if you go through a CDUA process, you have a CDUA and we will know what is required and what's not required of the companies if it's granted or if it's not granted.

"As to the issue of the CDUA, absolutely required. It's commercial activity on public lands, there's no getting around it. You've gotten around it for several years, you've gotten around it for a long time. I believe that at one time I heard about transiting, but as I understood the Board back in 1984 and 1985, they did find that CDUA's were necessary for loading and unloading people on the beaches at Hanalei. Subsequently it was temporarily discontinued or variance was granted and we've fallen into this where we're not requiring CDUAs.

"The issue is from Hanalei River down to the Napali Coast. I understand that there's a split of jurisdiction, there's problems with that. With the Napali Coast, I believe in July you'll hear a lot of people that will tell you about the impacts on the Napali Coast. As to the landings down there, I will say what I said before this Board, I believe Napali Coast Management Plan regulates or at least a governing document that you should look at. With respect to Nualolo Kai, you continue to give more permits than allowed by the plan. I believe the plan allows for five landings a day, I believe you consistently give ten.

"With respect to Milolii, I don't think there's any regulation that you say how many boats can or cannot come in. Whether campers need permits or not. I have to check the files, I'm really not sure but I think there should be better controls down there at the very least. I think the truth is there are none. Other than that at this point other than, you're going to obviously give some type of interim permits and I'm certainly not going to start right now with that except that I did sit here the past couple of years and discuss the issues with you and I know quite clearly last year. What you said last year with respect to Captain Zodiac at Tunnels, is you wouldn't listen to anything above 5 boats, so I believe whatever temporary permit you give is only 5 boats.

"With respect to the need for CDUA, I only say the obvious. Mr. Greff says or his attorney says, we put in October and you haven't acted on it. I think the record will accurately reflect that in July of 1989, at a 1989 Board meeting, Mr. Greff was told that he would need a CDUA. He told this Board last year that he chose not to file one and that was his decision. I urged you people then to require a CDUA which you didn't, so we're still at the same point. But the point being is, I don't think it's the part of your staff's fault that Mr. Greff doesn't have a CDUA, he's known since July of 1989 at the very least that staff was recommending that he have one, whether the Board went along with that or not. He chose not to file till October or whenever. I'll leave it to July, thank you for your time."

**MOTION** Mr. Apaka moved that this item be deferred to Kauai, the July meeting.  
Seconded by Mr. Arisumi.

**DISCUSSION** Mr. Nagata asked for clarification of the motion that the three permittees will be would be extended during that period of time till the next meeting.

**ACTION** Mr. Apaka restated and amended his motion, that the item be deferred to the next Kauai meeting in July and to include the extension of the existing policy that's been in effect until the next meeting of July 19th. Amended motion was seconded by Mr. Arisumi and carried unanimously.

**ITEM H-2 RECONSIDERATION OF AN AFTER-THE-FACT CDUA FOR COMMERCIAL MOORINGS AT KEALAKEKUA BAY, SOUTH KONA, APPLICANT: WILLIAM BLOK, III; AGENT: STEVEN A. KORNBERG**

Mr. Evans recalled for the Board that at the August 24, 1990 meeting, the Board denied the applicant's request for an after-the-fact commercial mooring at Kealakekua Bay and at that time there was a request for a contested case hearing that evolved as a result of that decision.

Staff has looked at this matter from two perspectives. Firstly, the perspective of the contested case, secondly in terms of a review of staff's work as well as the questions that were raised, numerous questions that were raised by the Board. Staff looked at the reasons for denial and they were supplied additional information by the applicant outside of the contested case hearing process.

Today staff is asking the Board to reconsider that decision for the reasons listed on pages 13 and 14 of the submittal relative to the real need. The existing moorings are dangerous, virtually impossible in Kailua Bay. It's unsafe during storms in Honokohau Harbor as a waiting list between 5 and 8 years, that from the applicant's perspective the request for a mooring in the bay is necessary until he receives a berth in Honokohau Harbor, he has applied for a permanent mooring there. Relative to the applicant using the mooring on and off, we're informed that he is away from the mooring for about 100-150 days a year. However, he does leave his skiff on the mooring during his absence. He continued to elaborate on the reasons on pages 13 and 14.

Should the Board decide to reconsider, staff would like to point out three things to the Board. 1) On the question of violation. They feel that this applicant should not be treated any differently than any other applicant and relative to the violation, the previous penalties imposed by this Board at the August 1990 meeting remain in effect, that should the applicant satisfactorily resolve that violation question, then the Board approve two existing moorings subject to the 25 conditions listed on

pages 15, 16 and 17 of today's submittal. 2) The recommendation here relative to approval is that these not be permanent moorings, but rather temporary to last only as long as and until he gets his berth at Honokohau Harbor. He's on the waiting list and once he gets his berth, he moves to Honokohau Harbor, these moorings come out. 3) With those actions, the contested case hearing which was determined to be proper and approved by this Board in December of 1990, is moot.

Mr. Arisumi pointed out for the record that on page 2 of the submittal, the date should read August 24, 1990 instead of August 24, 1991 and on page 4, paragraph 3 again the same error and Mr. Yuen pointed out also on page 13.

Mr. Arisumi asked if he had a boat, a fishing vessel in 1975 and was he the sole owner of the boat? He asked if it were correct that he sold the boat, he didn't have a fishing license and he went to renew the fishing license in February 1991.

Mr. Evans responded, "Those questions could probably be better answered by the applicant himself."

Mr. Arisumi mentioned that he was having a difficult time going through this submittal, "Here is a boat, a person that owns a boat, sold the boat and went out of Kealakekua Bay, I take it because there was no boat. He went out and purchased another boat and comes back to Kealakekua Bay where it's a natural reserve area. I'm very concerned. What happens if someone else comes in and says the same thing, I want to continue my mooring because I used to be there?"

Mr. Evans said, "I think we can answer that question perhaps to put you a little bit at ease. When this problem developed, the Board was very concerned about the illegal moorings in Kealakekua Bay as well as within the marine life conservation district. The Board had a hearing on the Big Island and the Board made a decision, the basic decision was, We want the moorings out, they should be out of there. But because of the concerns of a number of people who had boats, the Board said we'll establish this window of opportunity. We'll give 8 months, you guys need CDUAs, you guys come in, you've got 8 months to do it and after 8 months we'll close the opportunity. Well that window of opportunity is now closed so that means to staff that anybody now that comes in for a mooring in Kealakekua Bay, we're to go to the Chairman and ask the Chairman to reject the application. We're not going to process it because the Board made a basic decision, 'no more moorings'. That said, this individual is one of four individuals in total that came in and asked for the CDUA to be processed during that window of opportunity. The Board approved the other three, they denied this one. This might alleviate a little bit of your concern. Somebody comes in now, we're going to be guided by the Board's decision, which was don't even accept anymore. This one did come in during that period when, if you will, when the window was open.

Mr. Yim asked, "The denial you're talking about was in August 1990? What was the reason for denial at that time and what has occurred since then for which we are here?"

Mr. Evans responded, "That's correct, the denial was in August 1990. There were four reasons for denial at that time. 1) The applicant has no real need for the mooring. According to the applicant, alternatives to the existing moorings in Kealakekua Bay are dangerous and virtually impossible. Kailua Bay is unsafe

during storms and Honokohau Harbor has a waiting list for a slip between 5 to 8 years. The applicant states that this request for a mooring in the bay is absolutely necessary until he receives a safe berth in Honokohau Harbor. 2) The applicant uses the mooring off and on. The applicant is away from the mooring approximately 100-150 days per year. However, the applicant claims that he leaves his 14-foot skiff on the vessel mooring during his absence. The applicant is also willing to sink the mooring during the absence of the main vessel should the Board require. However, the applicant expresses two concerns with sinking the mooring as follows: (a) locating the mooring during "night arrivals" would be difficult, and (b) "...the risk that while absent, another vessel may inadvertently anchor over the mooring and foul lines, etc." 3) No permission was granted for the mooring. The applicant has moored in the Bay for the past 15 years without authorization from the Board. However, staff notes the Board approved CDUA HA-2320 for the Leslies, HA-2351 for Hawaiian Cruises and HA-2374 for Fair Wind. They also were found in violation. 4) The applicant has not had a boat for almost a year. According to the applicant, he was in possession of a boat when the CDUA was submitted to our Department for processing. The applicant, however, sold the boat during the processing of the application and was not in possession of a boat at the August 24, 1990 Board meeting.

Mr. Yuen asked, "What verification do we have of the use since 1975 the mooring, what testimony was there?" Mr. Evans responded, "The applicant's."

Mr. Yuen asked, "Fish catch reports were all zero? Is there an explanation for that?" Mr. Evans answered, "No, I don't want to presume anything, I would prefer the applicant answer that."

Mr. Arisumi asked if the applicant had paid his fines. Mr. Evans said, "Not to my knowledge. Because the request for a contested case was asked for. A request for a contested case was granted by the Board. When someone makes a request for a contested case, everything goes into abeyance if you will, until a final outcome of that contested case."

Discussion followed Mr. Yim's questions. There was no date set for the contested case yet and that is the reason this item is before the Board for reconsideration. Staff's recommendation is for the temporary use of the mooring until he gets a permanent mooring at Honokohau. Soon as his number comes up on that list, he moves out of the Bay. It may be 5 to 10 years before he gets on the list.

Mr. Yim continued, "So your recommendation for temporary use is an open end. Is that proper?" Mr. Evans said he did not think that would be proper. If we said temporary use without the caveat, you have to go to Honokohau Harbor, that would be open ended, but this is not.

Mr. Yim said that it would still be open ended because no one knows when he'll ever get on the list at Honokohau. It could be fifty years and at this moment no one knows how long it's going to take for him to get on the list.

Mr. Arisumi asked if he could moor in Kailua Bay and if there were other boats there. Mr. Evans said that they indicated that they cannot moor there because it's too hazardous. There are other moorings in Kailua Bay but if any boats moor overnight, he did not know.

Mr. Yim asked, "As of now, the Board decision of August 1990 stands, which he

cannot moor at the bay, as of now he has no right to moor at the bay."

Mr. Evans responded that the decision stands and he does not have the right to moor at the bay because he did not get any permission from this Board from the beginning. He did not know where he is mooring right now.

Mr. Yim asked, if the Board were to deny staff's recommendation, where would the applicant be going to moor his boat.

Mr. Evans said that when the Board made this decision back in August 1991, 1) he didn't have a boat; 2) he now has a boat; the boat got here from San Diego yesterday, he didn't know where the boat's going to moor. As of this morning, he has no legal right to moor in Kealahou Bay because you didn't give him that right yet.

Mr. Yim asked if there's any kind of penalty if he's now mooring at the Bay? Mr. Evans said that there would be a penalty of \$500. If he failed to Cease and Desist we would then institute or continue enforcement proceedings and were we able to prove that to the Board, then the Board will be free to impose a penalty of up to \$500 plus \$500 per day for all those days he was there.

Mr. Yim said, "Now did I hear correctly, that he did not own a boat at all from August to very recently?"

Mr. Evans said that he did not own a boat in August, today he owns a boat. The exact date he bought that boat, he did not know.

The Chairperson invited the applicant, Mr. William Blok to come forward.

Mr. Blok addressed the Board and introduced his wife Kathy. He said that he would be happy to answer questions of the Board.

Mr. Blok related to the Board that when they started having hearings in Kona he was fishing as a minor partner. The other person owned the majority of the boat. He fished about a year and a half and the hearings came up during that time. In 1989 he applied for a CDUA permit. He kept on fishing and then his partner wanted to sell the boat. All of a sudden in the fall of 1990, the boat got sold. He went back to the mainland to look for a boat. He traveled the whole west coast looking for the right boat which he could afford after he got paid off this other boat. He bought the boat, went back to San Diego, the first boat that he saw actually is the boat that he bought. He bought that boat as the documents show on November 20, 1990. Actually his negotiations started October in that year very shortly after he sold the other boat, so it wasn't like he didn't have a boat for a year. He's been working on the boat now for the last three-four months over on the mainland. He just came in last night from San Diego to answer your questions as far as mooring in the Bay. He dropped his anchor in the bay last night and the crew went off. The Bay has been a refuge for boats who are circum-navigating the globe or who are just going from place to place, they may have the right he thought to be there for like three days. He didn't want to abuse any feelings about his being there.

Mr. Blok continued, "The point is that I've used all my finances, all my money I've put into this boat and I want to go back, fish with my crew who lives in the area, it's been a continuing thing for me and my wife just told me that I've also applied,

I've applied a lot of places, I've applied for Honokohau Harbor, I've applied at Kewalo Basin, just to have a place to put the boat. It's just so expensive to fly to Honolulu everytime because my home is in the Big Island and I overlook the Bay from the pictures there. My fishing gear is all at my house there.

"An objection the last time, I didn't have a fishing permit for that period of time that I, again concerning my application. Well, I wasn't fishing and yes, I didn't renew my application. I've since then got my fishing permit and the reason, also the question about '0' zero on the fish reports, I haven't been going out. The fish reports that are in here shows my fish catches you know, they're all in here that, here's one that show the year '88-'89 for 99,441 or \$100,000.00 for the fish, o.k.? Then here's a fish catch going all the way back to 1977. I was catching opelu on my first boat. I was an opelu fisherman, I used to go out into the Bay and fish with my kids there for...I've put them through high school fishing opelu in the Bay with my first boat called the Little Toot.

"As far as staying at Kailua Bay, when I was on the mainland last January, newspaper articles that shows 'High Winds Reak Havoc in Kailua Bay--Seven boats went on the rocks.' Kailua Bay is dangerous and its open ocean, no protection...A businessman will not put his investment into that bay and leave it and like I say I have applied for a permit or slip in Honokohau and all I'm asking for is a temporary situation in the bay, observing all the rules that the 25 recommendations include, all the rules that I've strictly adhered to. I'm a citizen of that community, my crew lives in that community and I will do nothing to destroy anything in that Bay, so if I.. soon as I get the slip in Honokohau Harbor and to answer your question about open ended timeframe, I called the harbor master and he said between 5 and 8 years. I'm on the list, he said there's a plan that they're supposed to build an addition to that marina by the year 2000, they'd have that in. He said that he could guarantee me, the people that are still on the list with a continuing application would get the permanent slip there.

"As far as open ended I would not want a temporary open ended situation in Kealakekua Bay and I understand what you're saying and I'll be glad to limit my time until that's built. If I'm no longer fishing, if I sell my fishing boat, I'll eliminate the mooring, I don't want this for a resale, I just need this mooring really badly to start this fishing enterprise that I've put all my money into. Last October when I didn't know I was going to have a negative result, I was still being considered, I thought like the other applicants, in good faith, I'd apply, in good faith I got fined. I'm willing to pay my fine as you pointed out. Nobody's asked me to pay the fine and I'll be glad to pay the fine. I understand that it's an obligation that I'm willing to fulfill."

Mr. Yuen asked, "If somebody just wants to start fishing in Kailua-Kona and buys a boat similar to yours, what do they do?"

Mr. Blok responded, "A lot of the boats in Kailua-Kona, there's very few boats there, there're like 24', 26' that go, they're usually large. They have a very large small fleet there, the only other boat fishing commercially out of there is the Leslie's boat the Hana Like and they moor in the Bay. Then there's a couple that have slips in, two or three more commercial boats that have slips in Honokohau Harbor. Most the other boats are charters. That's about the only other alternative you have to go into Honokohau Harbor."

Responding to Mr. Yuen's question, Mr. Blok said his boat was 47 feet.



Responding to Mr. Arisumi's question, Mr. Blok said he applied at Honokohau Harbor on December 5, 1990 on his return after he bought the boat.

Mr. Arisumi asked, "So you knew that you couldn't moor in Kealakekua Bay and you knew that you couldn't get a slip at Honokohau, you still took a chance and purchased the boat?"

Mr. Blok responded, "Not when I first started, when I was looking for the boat in October, I didn't know when my permission was denied. Yea, some part my intention was to go to Kewalo Basin or somewhere else but after looking at my finances at this point, I just can't afford to go back and forth."

Mr. Arisumi said what bothered him was that, "You knew that we wanted to take all the boats out from Kealakekua Bay and yet you still went ahead and purchased a boat and spent all that money and now come back to the Board and asking for leniency." He mentioned that if he had come back right away and showed evidence of catching some fish, but you come before the Board with a '0' zero result.

Mr. Blok claimed that he was actively working on his boat for the last 2-3 months to account for the zero report.

The question of how many moorings were in the Bay prior to removal of the moorings. Mr. Arisumi said he counted 28 boats during his field trip. Mr. Evans remarked that many were temporarily anchored for the day. Mr. Nagata confirmed that there were 28 boats moored and the moorings are still there. These boats were all supposed to apply for CDUAs. Once the dispositions are completed, the boats that have no CDUAs or disposition, the department will take action to have them removed. So far four have applied, three have received permits and this is the only unresolved CDUA.

Discussion continued on how many boats were presently in the Bay.

Mr. Blok said when he got into the Bay last night there was a total of 6 boats anchored and three were sail boats (transient type).

Mr. Apaka asked Mr. Evans for clarification on this reconsideration request. When the CDUA was submitted in November 1989 the applicant was in possession of a fishing vessel. According to the Division of Aquatic Resources in the submittal, Mr. Blok did not have a fishing license from July 1989 to June 1990. (Mr. Blok confirmed this.) Mr. Blok's boat was in drydock in July and the same year in October the boat was sold. Mr. Apaka wanted to determine when he owned the boat and when he didn't and when he was refused a permit, he didn't have a boat.

Mr. Blok said he purchased the present boat the Kathy B in November of 1990.

Mrs. Blok added that it was correct he didn't have a boat when he was denied a permit. The reason they bought another boat is because her husband likes to fish and they had applied for a contested case hearing. She said that he was very serious about fishing and they had a substantial financial investment.

Mr. Apaka again clarified with the applicant, "You say you bought a boat in November 1990. We made a decision on a CDUA, approval to disapprove a

CDUA on August 24, 1990. So you didn't have a boat all the way up to November. During the time of processing the CDUA, you didn't have a boat."

Mrs. Blok said that he did when he applied for it. Mr. Blok said that when he applied for the CDUA he had a boat, he was fishing.

**EXECUTIVE  
SESSION**

Because this involves a contested case, Mr. Yuen moved that the Board go into Executive Session to consult with their attorney. Seconded by Mr. Arisumi, motion carried.

10:35am-10:50am

Chairperson Paty called the regular meeting back to order.

Mr. Yuen asked, "When you moor, besides tying the boat up and besides taking yourself, your crew and your gear back and forth from the beach, what else do you do with the mooring."

Mr. Blok answered, "Nothing else."

Mr. Yuen continued, "You don't wash the boat? Flush the bilges? Flush out your fish tanks?" Mr. Blok answered 'no' to all questions.

Mr. Yim asked, "Where do you do that?"

Mr. Blok replied, "We unload in Kailua. In Honolulu we tie in Kewalo Basin and ice water is usually pumped overboard at the time of unloading the fish. We don't unload fish in Kealakekua Bay for that reason."

**MOTION** Mr. Yuen moved to adopt staff's recommendation with the following changes.

1. That he be required to keep his name on the waiting list for Honokohau Harbor and that the mooring would only be allowed till he is able to get space at Honokohau for a maximum of 5 years. (That will give applicant a timeframe. At the end of 5 years he will have to figure out something to do if he can't get into Honokohau.)
2. That the use of it only be for mooring the boat and getting himself, his crew and his gear from the beach to the boat. That no washing of the boat, no pumping or cleaning of fish tanks, no cleaning of fish or any activity that would put something in the water be allowed at the mooring.

Motion was seconded by Mr. Arisumi who also stressed the fact that he only has a maximum of five years and should there be a vacancy at Kewalo Basin he should proceed to vacate by five years.

**ACTION** The Chair called for further discussion on the motion. There being none, a vote was taken and motion carried. For the record, Mr. Apaka voted 'No'.

**FURTHER**

**DISCUSSION** Mr. Yuen said that there will be a need to enforce the regulations as far as the other moorings. He asked if all the buoys were still there.

Ms. Susan Matsuura commented that she was one of the permittees that got approved and that's one of the issues, the problem of the illegal moorings. Also there's another problem of other commercial boats using their legal moorings every single day without their permission.

Mr. Yuen said that it might not be necessary in all cases to pull the anchors out. You pull the chain and the buoy no one will be able to moor there and in some cases it might be more damaging to the coral to pull the mooring out.

Mr. Evans said that Kealakekua Bay has a number of departmental functions there and entities involved like Land Management, Conservation Districts, State Parks Division, Division of Aquatic Resources and Marine Life Conservation District and with the Board's guidance to him, the department could move towards removal of all the rest of the moorings that are illegal. He said that he could refer this back to the division chiefs who do have responsibilities in the Bay.

Mr. Arisumi said to answer Ms. Matsuura's question, the only time any other individual can use the mooring is for emergency purposes only.

10:55am Chairperson Paty was excused and Vice-chair Arisumi presided.

**ITEM F-7** **RESCIND PRIOR BOARD ACTION OF SEPTEMBER 14, 1990 (AGENDA ITEM F-17) AND REINSTATE PRIOR BOARD ACTION OF DECEMBER 18, 1987 (AGENDA ITEM F-11), AUTHORIZING DIRECT SALE OF RECLAIMED (FILLED) LAND TO GERALD M. WILLIAMS TRUST, SITUATE AT PUULOA, EWA BEACH, OAHU, TAX MAP KEY 9-1-23:SEAWARD OF 18**

**AND**

**ITEM F-8** **RESCIND PRIOR BOARD ACTION OF SEPTEMBER 14, 1990 (AGENDA ITEM F-16) AND REINSTATE PRIOR BOARD ACTION OF AUGUST 26, 1988 (AGENDA ITEM F-22) AUTHORIZING DIRECT SALE OF RECLAIMED (FILLED) LAND AND CONVEYANCE OF PERPETUAL EASEMENT TO GLEN I. PAYTON, JR., SITUATE AT LANIKAI, KAILUA, OAHU, TAX MAP KEY 4-3-01:SEAWARD OF 1**

Mr. Young requested to address both Items F-7 and F-8 at the same time as they were identical. Back in 1987 and 1988 the Board authorized the sale of some reclaimed lands both in Ewa as well as Kailua, Oahu.

As a result of a second review by the Attorney General's Office, it was determined that this was reclaimed land and therefore the State has the authority to sell. Today staff is correcting the Attorney General's position and asking the Board to rescind the action which granted the easement, reinstate an action for the authorization of the sale of the reclaimed land to the individuals.

Mr. Young mentioned that Mr. Dennis King, Attorney for Item F-7 was present.

Mr. King said he was representing Mr. Gerald Williams as trustee of his trust and he does support the recommendation of the staff. He thinks the only reason that the Board changed its position in 1990 three years later was based on the Attorney General's letter to the Board and now the Attorney General has reversed their position. In the interim, his client had fully performed his obligations under

the sale as was approved by the Board in 1987, paid his full purchase price, had his lot consolidated with the parcel he was purchasing, demolished the old home on the property, built a new home and fully expected that he was going to receive the deed.

**ACTION** Unanimously approved Items F-7 and F-8 as submitted. (Apaka/Yim)

**ITEM H-4** **AFTER-THE-FACT CDUA FOR PORTIONS OF A CONSTRUCTED ROADWAY, AND APPLICATION FOR A FENCE AND OTHER PROPERTY IMPROVEMENTS, KILAUEA, KAUAI; TAX MAP KEYS 5-2-05:35, 36 AND 37; APPLICANT: BRUCE A. LAYMON**

Mr. Evans made the presentation and gave the background of the application and explained that there was a perennial problem at Secret Beach with people camping there. People would use the area and leave their trash behind and the State Department of Health (DOH) went after the landowner.

Mr. Evans said the applicant informed staff that the reason they started this project was to get rid of the trash, move the trespassers out of their property. They started with a small tractor building a small path but the tractor went over the cliff. So they brought in a larger tractor to pull the smaller tractor out. When the community first got wind of this they expressed a tremendous amount of concern to the Office of Conservation and Environmental Affairs. They felt this was all illegal work in the conservation district.

The analysis shows that a 400 foot path was made and of that 400 foot path, about 30 feet extends into the conservation district.

Staff is recommending that a fine of \$500 for each 1) illegal grading and 2) illegal grubbing for a total of \$1,000. Should the Board approve this application or sustain staff's recommendation, that upon completion with the violation, the Board approve this after-the-fact grading and grubbing and approve the proposed work of finishing the roadway. There are conditions regarding future grading and grubbing activities on the project be authorized by the Chairperson and/or the Board. One concern was there was an existing pedestrian easement that was fenced off and staff is saying that the fence be taken down. In condition no. 8 the public should be allowed to use the easement. That relative to any signs being posted on the property, the department to review and approve the placement as well as the design of the signs. That no commercial use of cattle be on the Conservation District of the property.

The applicant represented to staff that they did this because of the Department of Health's instructions. The Department of Health did confirm this.

Mr. Dennis Yamada said he was representing the landowner, Kane Enterprises and also Bruce Laymon, the lessee. Also present is Clyde Kodani, engineer and surveyor for this parcel of land.

Mr. Yamada said that this all came about in response to two government agencies, DOH and DLNR. It was not their intention to do anything. In response to these government agencies, they have their obligation as landowner to assist in clearing these illegal campers out.

Mr. Yamada continued that back in January of 1990 the owner has expended to

date, approximately \$7,500 in hiring security people in attempting to remove illegal campers or squatters. They ran into problems. First it was hard to find them because of the underbrush. They would then go down to the beach, below the high water mark so they're off private land. Then they go back on private land.

Mr. Yamada said they started to bulldoze a road on ag land but the bulldozer slipped down onto Conservation land. Mr. Laymon tried to get it out and the only way was to use a larger bulldozer to pull the smaller one out. They admit that some work was done in the Conservation land as Mr. Laymon was unaware of that fact. As far as the fine for the violation they would like to ask for leniency as the landowner and lessee were trying to assist the government agencies. They were not trying to bulldoze to clear land to build a house. Regarding the fence of the public right-of-way (r-o-w). He feels there must be some misunderstanding about that. Going to the map he pointed out the area of the r-o-w. They feel they did not block off any legal access to Secret Beach. What they did block off was not the legal r-o-w.

Mr. Yamada made some comments on the recommendations. Condition No. 6 talks about an archaeologist to monitor the clearing activity. He said that they don't intend to grub in the Conservation area. The type of clearing they intend to do is for Mr. Laymon to get his people down there using hand saws, Mr. Laymon added that there was a lot of under brush that almost makes it impossible to do any kind of work which makes it dangerous. There is a lot of buffalo grass and this is where they burrow and hide. It's not necessary for them to grade or grub any part of the Conservation area. They would want to prune the trees that are overgrowing. They have no intention of disturbing any of the grounds and beach areas with machines. He also talked about his machine slipping down.

Mr. Yamada feels that they will not need any archaeological monitoring as they have no intention of breaking the ground. They are very much aware of the need to come back to the Board if they intend to do any grading or grubbing.

Mr. Laymon said that they have been working with the County of Kauai as far as putting in the preliminary application, they've gotten to the final stage and should be submitted on Monday. He has been in contact with the Kauai Public Works division. They have covered the entire 400' with the County which is not in the Conservation area.

Mr. Yuen asked if the permit is granted, do they intend to keep the road there.

Mr. Laymon replied that it would be the only access they would have to get down to the area to work on the fence and clearing in response to government agencies. It was pointed out that other government agencies are interested in the access of the area relative to fires, health and police. The upper area is used to raise cattle and it is fenced off. There are several gates on the property.

He has been in contact with Mr. Sam Lee, Land Agent for the State also.

Mr. Clyde Kodani responded to the Chair that 23 acres are in Conservation and 40 acres in agriculture. They want to come in with a new roadway and not go into the Conservation area. It's going to be almost impossible to get the area back to its original state, revegetate, resoil, etc. because of the steepness of the land. But they want to try to do the minimum amount of work.

Mr. Kodani said that he's working with the County for this grading violation and he's very sure he would have approval in the next couple of weeks. Part of the process for him is saying that they're going to regrass that 30 foot section. Now can they go in and regrass that 30 foot section within the Conservation District. He did not want to go in and regrass part of it and then come back later on and wait 90 days or whatever.

Mr. Yuen said that the Board could grant, if no one has any opposition to regrassing, the Board could grant them a permit right here and leave the rest as on the motion on the table.

Deputy A.G. Nishioka said that normally the Board has stayed the whole decision process once the request is in.

Mr. Evans said that one thing that might be very beneficial here is when we in terms of staff's analysis before coming to the Board with recommendations, what we showed the Board in terms of their analysis was a very different picture than what came in from the community group. One thing if he could encourage the Board, perhaps to encourage the applicant to sit down with the community group and indicate to them it's difficult for us to see from staff perspective how this letter could emanate as it had with talking about 30 feet that is now going to be regrassed in the Conservation District. And perhaps if the community group was aware that was the issue primarily, maybe the Contested Case would be removed.

Mr. Yuen asked Mr. Evans if they would need a permit to plant grass in the conservation district? He replied their position would be to restore the area to its natural condition if we find the violation, there's no other way to do it.

Mr. Yuen asked, supposed you just caught them with a violation and they didn't have a permit and you talked to them and they said, o.k. we want to plant grass. You wouldn't have to come to the board for a permit to plant grass. Can you administratively plant the grass. Mr. Evans said yes. Then they can deal with the rest through the contested case.

Mr. Yamada requested a letter that would allow them to proceed in regrassing the area.

**ACTION** Vice-Chair called for the question. Motion carried to defer this item.

**ITEM E-1** See page 12 for Action.

**ITEM E-2** **SPECIAL USE PERMIT REQUEST TO USE AINA MOANA STATE RECREATION AREA PARKING LOT FOR PARADE STAGING**

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

**ITEM E-3** **REQUEST TO USE THE WAILOA CENTER TO HOST A RECEPTION AND SALE OF A BOOK, WAILOA RIVER STATE RECREATION AREA, HAWAII**

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

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

- Item F-1-a Issuance of Land License to Jas. W. Glover LTD., Government Land at WAIAKEA, South Hilo, Hawaii, Tax Map Key 2-1-13:Por. 11
- Item F-1-b Issuance of Revocable Permit to United States Department of the Interior, National Park Service, Pacific Area Office, Government Land at Kealakehe, North Kona, Hawaii, Tax Map Key 7-4-08:Por. 3
- Item F-1-c Assignment of General Lease No. S-5157, High Technology Development Corporation (HTDC), A Body Corporate and a Public Instrumentality of the State of Hawaii, Assignor, To Natural Energy Laboratory of Hawaii Authority (NELHA), A Body Corporate and a Public Instrumentality of the State of Hawaii, Assignee, Parts 1 and 2, Ooma 1ST, North Kona, Hawaii, Tax Map Key 7-3-43:Por. 3
- Item F-1-d Assignment of General Lease No. S-5027 Between Jean S. Hom, Assignor, and Emiko Kuraoka and David R. Kuraoka, as Joint Tenants, Assignees, Lot 55, Kokee Camp Site Lots, Waimea (KONA), Kauai, Tax Map Key 1-4-4:11
- Item F-1-e Assignment of General Lease No. S-5083 Between Ann Howard, Assignor, and Michael Thomas Hill and Diane Elizabeth Hill, Husband and Wife, s Tenants by the Entirety, Assignees, Lot 54, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, Tax Map Key 1-4-02:54

**ACTION** Mr. Apaka moved to approve items F-1-a, F-1-b, F-1-c, F-1-d, and F-1-e; seconded by Mr. Yim, motion carried.

- Item F-1-f
- Item F-1-g
- Item F-1-h
- Item F-1-i

See pages 2 and 3 for Action on F-1-f, F-1-g, F-1-h and F-1-i.

**ITEM F-2** See page 4 for Action.

**ITEM F-3** See page 2 for Action.

**DEPARTMENT OF THE ARMY, PACIFIC OCEAN DIVISION, CORPS OF ENGINEERS REQUESTS RIGHT-OF-ENTRY TO UPOLU AIRPORT AND PORTION OF OPIHIPAU, NORTH KOHALA, HAWAII, TAX MAP KEY 5-5-06:7, 15 AND 31**

**ITEM F-4**

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

**AMENDMENT OF GENERAL LEASE NO. S-5157 TO NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY (NELHA) COVERING LANDS AT OOMA 2ND, NORTH KONA, HAWAII, TAX MAP KEY 7-3-09:23**

**ITEM F-5**

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

**DIRECT SALE TO HOUSING FINANCE AND DEVELOPMENT OF STATE LAND AT WAIAKEA, SOUTH HILO, HAWAII, TAX MAP KEY 2-4-26:1**

**ITEM F-6**

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

- ITEM F-7 See page 20 for Action.
- ITEM F-8 See page 20 for Action.
- ITEM F-9 **DIRECT SALE OF REMNANT SITUATE AT LAWAI, KOLOA, KAUAI, TAX MAP KEY 2-5-08:14**  
**ACTION** Unanimously approved as submitted. (Apaka/Yim)
- ITEM F-10 **PUBLIC AUCTION SALE, TWO (2) HOUSELOTS, HANAPEPE TOWN LOTS, FIRST SERIES, HANAPEPE, WAIMEA, KAUAI, TAX MAP KEY 1-9-10:1, 2 AND 3**  
**ACTION** Unanimously approved as submitted. (Apaka/Yim)
- ITEM F-11 **DELEGATION OF AUTHORITY TO THE DISTRICT LAND AGENTS, LAND MANAGEMENT DIVISION FOR THE ISSUANCE OF RIGHTS OF ENTRY TO UNENCUMBERED STATE LANDS**  
**ACTION** Unanimously approved as submitted. (Apaka/Yim)
- ITEM G-1 **PERMISSION TO ENTER INTO MICROFILM CONTRACTS**  
**ACTION** Unanimously approved as submitted. (Apaka/Yuen)
- ITEM H-1 **APPROVAL TO PROCEED WITH THE SINGLE AUDIT OF THE DEPARTMENT'S FEDERAL AID PROGRAMS**  
**ACTION** Unanimously approved as submitted. (Apaka/Yim)
- ITEM H-2 **RECONSIDERATION OF AN AFTER-THE-FACT CDUA FOR COMMERCIAL MOORINGS AT KEALAKEKUA BAY, SOUTH KONA, HAWAII, APPLICANT: WILLILAM BLOK, III; AGENT: STEVEN A. KORNBERG**  
**ACTION** See page 18 for Action.
- ITEM H-3 **EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA-1958, SINGLE FAMILY RESIDENCE AT NORTH KOHALA, HAWAII, TAX MAP KEY 5-7-1:5; APPLICANT: MICHAEL REARDEN**  
**ACTION** Unanimously approved as submitted. (Apaka/Yim)
- ITEM H-4 **AFTER-THE-FACT CDUA FOR PORTIONS OF A CONSTRUCTED ROADWAY, AND APPLICATION FOR A FENCE AND OTHER PROPERTY IMPROVEMENTS, KILAUEA, KAUAI; TAX MAP KEYS 5-2-05:35, 36 AND 37; APPLICANT: BRUCE A. LAYMON**  
**ACTION** See pages 23 and 24 for motion and action.
- ITEM J-1 **LEASE - HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (PACIFIC AVIATION SERVICES, INC.)**  
**ACTION** Unanimously approved as submitted. (Apaka/Yuen)



ITEM J-2 **METERED TAXICAB SERVICES CONCESSION CONTRACT, KEAHOLE AIRPORT, HAWAII**

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

ITEM J-3 **AMENDMENT NO. 3 TO LEASE NO. DOT-A-84-26, HILO INTERNATIONAL AIRPORT, HAWAII (ALAMO RENT-A-CAR, INC.)**

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

ITEM J-4 **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 35, HONOLULU HARBOR, OAHU (M/V CLEAN ISLANDS, CLEAN ISLANDS COUNCIL)**

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

ITEM J-5 **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HONOKOHAU SMALL BOAT HARBOR, HAWAII (KONA ATHLETIC CLUB)**

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

ITEM J-6 **ISSUANCE OF REVOCABLE PERMIT, HARBORS, DIVISION, MAKAI END OF PIER 36, HONOLULU HARBOR, OAHU (P & R WATER TAXI, LTD.)**

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

ITEM J-7 **CONTINUANCE OF REVOCABLE PERMITS H-78-687, ETC., HARBORS DIVISION**

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

ITEM J-8 **ISSUANCE OF REVOCABLE PERMIT NO. HY-91-058, HIGHWAYS DIVISION, KALANIANAOLE HIGHWAY, OAHU (HAWAIIAN DREDGING AND CONSTRUCTION COMPANY)**

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

**ADJOURNMENT** Vice-Chair Arisumi adjourned the meeting at 12:20 p.m.

Respectfully submitted,

  
Dorothy Chu  
Secretary

APPROVED:



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WILLIAM W. PATY, CHAIRPERSON, BLNR

dc