

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

DATE: JUNE 28, 1991, FRIDAY
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 9:05 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Ms. Sharon Himeno
Mr. Christopher Yuen
Mr. T.C. Yim
Mr. William Paty

STAFF: Mr. W. Mason Young
Mr. Roger Evans
Mr. Ralston Nagata
Mr. Michael Buck
Mr. K. Gordon Akita
Ms. Dorothy Chun

OTHERS: Ms. Linnell Nishioka, Deputy Attorney General
Mr. Peter Garcia, Department of Transportation
Ms. Alice Guild (Item E-3)
Mrs. Michelle Platter (Item F-3)
Ms. Linda Chinn, Mr. Walter Tomita,
Mrs. Patrick Asing (Item F-5)
Mr. Kelvin Kai (Item H-1)
Ms. Frances Yamada, Mr. Charlie Schuster (Item H-2)
Mr. Roy Vitousek, Mr. Don Kitaoka (Item H-5)
Mr. Francis Blanco (Item H-3)
Mrs. Ana Schumaker (Item F-1-a)
Ms. Deborah Chang, Ms. Chris Meller (Item C-2)

MINUTES The minutes of January 25, 1991 were approved as circulated.
(Apaka/Arisumi)

**ADDED
ITEMS**

Upon motion by Mr. Arisumi and second by Mr. Apaka, motion carried to add the following items to the agenda:

- Item C-2 Acceptance of the Na Ala Hele (Hawaii Trails and Access System) Program Plan
- Item D-2 Approval for Award of Contract for Job No. 1-0L-B3, DLNR Personnel & Land Management Office Renovations, Honolulu, Oahu
- Item D-3 Approval for Award of Contract for Job No. 61-OQ-5C, Construction of a Portion of the Center for Applied Aquaculture, Phase II, Makapuu Point, Oahu

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

ITEM E-3 PERMISSION TO NEGOTIATE WITH THE FRIENDS OF IOLANI PALACE, INC., AND EXECUTE DOCUMENT FOR A MANAGEMENT CONTRACT FOR IOLANI PALACE, BARRACKS, CORONATION PAVILION AND OLD ARCHIVES (KANAINA) BUILDING, HONOLULU, OAHU

Mr. Nagata recommended that the Board grant permission to negotiate a Management Contract with the Friends of Iolani Palace, Inc. and authorize execution of the document, subject to appropriation of funds, funding restrictions, and necessary approvals by the Governor.

Ms. Alice Guild said they would greatly appreciate the opportunity to serve the community again in the capacity as the managers of the Iolani Palace. The funding provided this year is adequate and they have made their budget.

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM F-3 DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AT AHUALOA HOMESTEADS, HAMAKUA, HAWAII, TAX MAP KEY 4-6-08:HOMESTEAD ROAD (PAPER ROAD)

Mr. Young presented the request of Mr. and Mrs. Steven Platter for an easement at Ahualoa. They own the piece of property in Ahualoa which is land locked but technically provide by way of government paper road. They have financing to construct the house but unable to do so until they provide the necessary ingress and egress to their property.

Presently staff is going through the judicial system with the Counties to clarify ownership of roadways. As such they've held up the application. Staff is suggesting to the Board today that an easement be granted to the Platters with certain conditions. 1) That upon the final order of clarification of the ownership, that jurisdictional ownership will go to that entity whether it be the State or the County, in this case the County of Hawaii. 2) All the monies received from the disposition of the easement will be put in escrow and until such time the ownership is determined they will go ahead and voucher the monies to the respective agencies.

Staff is suggesting today that Mr. and Mrs. Platter, without prejudice, be given the easement subject to the finding of the ownership by the courts and the monies for the purchase of the easement be held in escrow.

Per Mr. Apaka's query, Mr. Young explained in detail ownership and jurisdiction of the different roads here in Hawaii. The Counties are saying, "We don't own the road because previously in the past all the paper title of these roads were to the Territory." So they're in a quandry, saying paper title has been passed but by operation of law the road has gone to the respective county. The counties do not accept this so a 'friendly' suit has been filed with the Supreme Court which will resolve this matter of ownership between the Counties and the State.

Mr. Yuen clarified with Mr. Young the exact areas and locations of subject easement on the map.

Mr. Young said that the County and Department of Transportation are in agreement that rather than hold up the Platters with the easement they are willing to go along with these conditions to allow the conveyance of the easement and that the money be placed in escrow until such time the ownership is finally decided upon.

Mrs. Michelle Platter was present and answering Mr. Yuen's query, she said that just to get the house built they wanted to start with a gravel road, just to grade it, level it and make sure the drainage was working properly. Then after construction of the home they wanted to make it into an asphalt road. They have been working with Murray Smith, one of the surveyors and they haven't engaged an engineer at this time.

Mrs. Platter said that they will be needing permits but they were not sure whether it would be the County or the State.

Mr. Yuen said he had concerns allowing construction of this road if no one has any kind of standard of what is acceptable. If this road is going to be on public property somebody's got to make sure it's safe.

Mr. Young said that under Recommendation, the Condition that requires the applicant to submit to DLNR the construction plans for approval it does not mention the County. Staff could send it over to the County to be sure that the minimum standard requirements are adhered to before giving approval. Under Condition 5 it also requires all the grantees to comply with all applicable statutes, ordinances, rules and regulations of federal, state and county governments.

ACTION Mr. Yuen moved for approval with added conditions:

- 1) Construction of the roadway shall be at the minimum standards of the County of Hawaii for an agricultural lot.
- 2) The grantee in the construction of the roadway and installation of utility lines shall not disturb eucalyptus trees boarding the Homestead Road.

Seconded by Ms. Himeno, motion carried.

ITEM F-5 STAFF REQUEST AUTHORIZATION TO CONVEY GOVERNMENT LAND TO THE HAWAIIAN HOMES COMMISSION AND THE DIRECT ISSUANCE OF LEASE, KALAWAHINE, MAKIKI, OAHU, TAX MAP KEY 2-4-34:08

Mr. Young gave the history relating to the Kalawahine lands and to the five families who were seeking leases to the homesite they currently occupy.

There were four families that have decided to obtain leases from the Department of Hawaiian Homes and one has decided to obtain a lease from the Department of Land and Natural Resources. He went over the details of staff's recommendation as listed in the submittal.

Ms. Linda Chinn of the Hawaiian Homes Lands said that they are in agreement with the submittal presented by staff.

Mrs. Patrick Asing said that she lives on Kalawahine and she just wanted to make sure that the proper documents be issued. She understands what's happening today but says within the last few weeks from the last meeting, she has been approached by

several families and there was discussion regarding the five families that were getting the leases. Some of them felt that according to the Act, not all were complying. There are many descendents out there that do not live on Kalawahine now, they were forced to move. She said that one of the families involved does not live there and has not lived there for over 20 years, so there may be some complaints if the lease is granted and this is the Reaneo family. They live in Hawaii Kai right now.

ACTION Mr. Arisumi moved for approval.

Mr. Young asked if he could make an amendment under Paragraph A of the Recommendation he would like to delete the name of Mrs. Nalayne Asing and just keep the name of Mr. Patrick H. K. Asing on as a qualified applicant.

Mr. Arisumi restated his motion for approval as amended. Seconded by Mr. Apaka, motion carried.

EXTENSION OF TIME REQUEST FOR THE DECISION AND ORDER ON CONSERVATION DISTRICT USE APPLICATION KA-7/31/89-2303 FOR A 69/57 KV TRANSMISSION LINE AT KALIHAIWAI, KILAUEA, KAUAI, TAX MAP KEY 5-3-1:3 & 7 AND 5-2-10; APPLICANT: KAUAI ELECTRIC DIVISION, CITIZENS UTILITIES COMPANY

ITEM H-1

Mr. Evans explained that this is a request for extension of time relative to a Board action that had been taken sometime in the past in May of 1990. For those that were not on the Board at the time he proceeded to explain the process and procedures that are taken.

In the case of this application, a contested case hearing was requested and held by the Board. As a result of the contested case hearing which incorporated numerous experts on both sides of the issue the Board heard from Phd's on both sides of specific issues. Following the hearing and upon consultation with legal advisers, staff formulated a document which was based upon the record that was set. That document, the Findings of Facts, Conclusions of Law and Decision and Order was then handed down by the Board. That completed the process. Subsequent to that, if there is someone, an entity anywhere that is not satisfied with that document or parts therein, they do have recourse. The recourse is through the court.

Before the Board this morning is a request for a time extension and that request is based upon the permittees inability to comply with one of staff's conditions as a result of the County of Kauai's interest in the matter. Staff analysis has resulted in a recommendation that the Board extend by one year the period to initiate work. Should the Board sustain the staff recommendation, the revised deadline would then be May 25, 1992.

Mr. Evans said that they have received 4 to 5 letters from community members relative to this extension, namely Gary Blaich, Beryl Blaich, Katherine Orr, Carl Berg and Kiyo Carlson within the past week. Community members are asking the Board not to approve this request. Also he brought their attention to a letter dated June 25, 1991 from the Sierra Club Legal Defense Fund (SCLDF) that expresses themselves as deeply concerned that the Board would entertain such a request. In staff's view, the SCLDF are aware of the procedural requirements. They are aware of their recourse and in our view what they are attempting to do is get two bites out of the apple. They have had every opportunity to bring forth to this Board their concerns. They could have brought

their concerns to this Board, 1) When staff filed a negative declaration, as part of the process, 2) when the Board had a public hearing on Kauai, they could have brought their concerns 3) as an intervening party during the contested case hearing. They did nothing. As a result if they have a concern at this stage, the recourse for them is in the courts. They bring to our attention the question of birds as an endangered species and potential violations of an endangered species act. They bring to our attention the fact that there have been sighting of these species in May and June of 1991. In our view this case should not be reopened, simply because we get this type of letter. With that, Mr. Evans was ready to answer any questions of the Board.

Mr. Yuen asked who were the clients referred to in the SCLDF letter, if any were referred in the letter. Mr. Evans said the clients if any in the letter are referred to attachment or exhibits: Katherine S. Orr, B.M.S. Zoology, Carl Berg, B.A., M.S., Ph.D. Zoology and William Phillipsen.

Mr. Yuen asked if these people participated in the contested case hearing or testified.

Mr. Evans said there is a representative of the letter that could answer that more accurately than he could, he did not want to mislead him.

The Chair said that in their submission, the letter relative to this comes from the Audubon Society, Thousand Friends as well as the Sierra Club.

Mr. Evans said there were a number of participants that were individuals. Exactly who was representing whom at this point he said he did not recall.

The Chair invited the representative from Kauai Electric to come forward.

Mr. Walton Hong said he was representing the applicant, Citizens Utilities, Kauai Electric Division and with him was Mr. Alan Oshima who also represents the applicant. "As Mr. Evans so eloquently stated, we totally agree with his statements and position. The hearing today is only for the extension of time, it is not a hearing to reopen the factual aspect of this case. The issues facing this Board today is really legal issues on procedure, not factual issues. If there is any violation as is claimed by the SCLDF, then we submit it's not for this Board to decide, but it's for the courts to decide whether such a violation occurred. Procedurally, we see no grounds for reopening the hearing. Mr. Evans I can swear was reading my script when he mentioned taking a bites of the apple because I have the same notes. He left out a few bites of the apple that I think this body should be aware of.

"Let me start off by saying the Sierra Club, the Thousand Friends of Kauai and the Hawaii Audubon Society all were in existence at the time of the first hearing, the contested case hearing. All in existence at the time of the public hearing. They had the opportunity to come in the had the same notice like everyone else. We submit that because of their particular concerns, they, if anyone would be more knowledgeable about the effects or potential effects of the proposed actions. Yet, they did not appear. We didn't even get a letter from them raising a concern. We feel that they shouldn't be treated any differently from other members of the public that did appear. In response to a question, 'Did anyone of these people participate in the hearings?', there are some names mentioned in the exhibits to the letter and the answer is yes. If my recollection is correct, Kathy Orr, Gary Blaich and Barbara Sloan participated. I'm not sure about Danny McReynolds, I'm not clear if she did or did not participate. Gary Blaich I believe is one of the founders of the Thousand Friends of Kauai, so it's very difficult for me to

accept that they weren't in existence or didn't know what was happening. I think as Mr. Evans said, they are trying to get more bites out of the apple.

"Besides the public hearing, the negative declaration, there was an appeal taken by Richard Texeira to the Circuit Court from the decision of this Board. The Circuit Court ruled in our favor. Mr. Texeira did not even show up at a hearing on a motion for a judgment. This organization had their opportunity if they wanted to to come in and intervene or file an amicus brief if they were so concerned about the birds. They did not show up.

"The County of Kauai filed an action for a Declaratory Ruling asking the court to rule. The 5th Circuit Court to rule that were the Public Utilities Commission mandate a certain height for a utility poles that the standards of the Public Utilities Commission overrides the Counties ability to govern the heights of poles.

"Again the same organizations, the same people could have intervened, they could have come into the action, they did not. That case was ruled in favor of the applicant on August 31, 1990. The County took an appeal to the Supreme Court. Arguments were heard, I believe on the 17th of this month. We're expecting a decision forthcoming from the Supreme Court, hopefully very shortly. That's another bite of the apple they had. They also had a fourth or fifth bite of the apple. In the 13 residents, including Mr. Blaich, 13 residents of Kalihiwai filed a complaint with the PUC asking the PUC to disallow the proposed transmission line. That matter is still pending with the PUC. Again, where were the Sierra Club, the Audubon Society and the Thousand Friends. They never showed.

"Pursuant to Chapter 269, Section 269.27.5 of the Hawaii Revised Statutes (HRS), a public hearing is mandated and was held after notice by the PUC on the same line. Again where were these people. They didn't show. Now they're asking that this matter be reopened. They're saying on the basis of two points, new evidence and potential violation of the endangered species act. We submit, what new evidence. Birds were put on the endangered and threatened species list before this hearing even began.

"These groups knew if they had a concern, that concern was still there. It's not new evidence, they've just brought it up to come now a year later and say we have new evidence is totally erroneous and certainly not in conformance of what the general law and statutes says. We feel there has to be some finality to decision-making and that's why we have rules. That's why we have certain rules that say 30 days to appeal, there are rules for intervention, contested case hearings. They state that while the delay is not for good cause, because the applicant, Kauai Electric brought the suit in the Circuit Court and therefore they can't be blamed for the litigation. That's true, Kauai Electric did file the suit for Declaratory Action in the circuit court, however, as I mentioned the decision of the circuit court favorable to the applicant was rendered on August 31, 1990. At the time we could have gone forward and built but the County appealed. It's not out fault the County appealed and we should not be held responsible because we couldn't get a decision based on the County's appeal to the Supreme Court. They cite that there was no stay and we could have gone forward. The Circuit Court did deny the County's motion for a stay. However, in discussions with the County, subsequent to that time, the County wanted to file a motion for a stay with the Supreme Court. We agreed with the County, we would hold up building a line until the results, decision came out from the Supreme Court. This was done in good faith to try to resolve the matter and help minimize the differences between the County and applicant.

"Violation of the Endangered Species Act. The test is best as we can determine is that 'Is there a substantial livelihood that the species involved would be driven into extinction.' That's a standard. The record is very clear that there is sufficient evidence to sustain this Board's decision in saying 'no.' There is no violation of Section 9 of the Act as they argue as we feel there is no taking. It's up to the courts to decide whether there's a taking under the Endangered Species Act, not for this Board to decide and certainly not from this Board under a threat of a lawsuit.

"They alleged that the taking, so called taking under the Endangered Species Act is because of the language and the language is very, very general. Taking is defined as harrassment, harm, wounding, mortality, trapping or capture of any individual member of a protected species. If you look in the Department of the Interior regulations, it defines what harrassment and harm is. Harrass and I quote "is the definition of take in the act means an intentional negligent act or ommission which creates the likelihood of injury to wildlife by annoying it to a certain extent as to significantly disrupt normal behavior patterns which include but are not limited to breeding, feeding or shelter." Harm in the definition of take, again quoting, "In the act means an act which actually kills or injures wildlife. Such act may include significant habitat mortification or degradation would actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding and sheltering." We think that the SCLDF is stretching the definition of 'taking'. But as I said, it's not for us to decide, it's for the courts to decide.

"But we leave you with this thought, 'The uncontroverse testimony before this Board was that shearwaters are attracted to and confused by lights. These may be street lights, house lights or may be lights of vehicles driving on the road. The testimonies also uncontroverted because of these lights, the shearwaters fly into electrical utility lines, they fly into trees and they fly into buildings and other structures. The houses of Kathy Orr, Carl Berg, Barbara Sloan are on the high point of the land, in fact if I recall the testimony was, the high point of our lines would be their eye level from their house. So their houses extend above the line. They're on the highest part of this subject area and we submit that the lights of these houses act like a magnet to confuse the shearwaters as they're flying down from the mountains to the ocean. Tom Telfer testified that the birds fly in a straight line from the mountain to the ocean.

"The letter of Mr. Berg and Ms. Orr state that they see the birds flying overhead, directly overhead over their houses and the neighboring houses. Because of their light, we submit the birds are getting confused. We also submit that if our lines crossing the river mouth constitute a taking, then perhaps the lights of these houses constitute an even greater taking. They are the ones that are confusing the birds. Mr. Telfer testified that during the bright moonlight, as long as there are no lights, the birds can see the lines, they can get around it. It's the lights that confuse them. So we should not be held responsible for the cause of the birds getting confused I'd like to close by just reminding the Board that Mr. Telfer did indicate in his testimony that he strongly believes that Kauai Electric has always been very sensitive to wildlife. They've assisted the Fish and Wildlife Service in trying different measures to minimize the injuries to the birds. They continue to manifest this posture but we also have a duty to the general public and that is to provide electrical service and to continue electrical service to the northshore of Kauai and this line will accomplish that. For those reasons, Mr. Chairman and members of the Board I ask that the extension be granted and the hearing not be reopened. Thank you."

Miss Denise Antolini addressed the Board and introduced the other attorney from the Sierra Club Legal Defense Fund as Mr. Arnold Lum, members of the 1000 Friends of Kauai, Dr. Carl Berg, Dr. Gary Blaich, Katherine Orr and Bill Crystal.

Miss Antolini proceeded to provide some commentary on the letter they had provided to the Board. "I am amazed at the comments that I heard from the attorney for Kauai Electric. It seems to me if the utility company is really concerned about what's going on with the birds that they would allow the record to be reopened and for this Board to reconsider the new information that has come out since the contested case hearing was closed.. Let me emphasize from the outset that we are dealing with the really protected two federally protected species of birds. The first, the Newell Shearwater is only found on the island of Kauai, no where else in the world. There are special responsibilities that we as residents of this state and my client as residents of the state, island of Kauai have towards those birds. We believe also that this Board has a special responsibilities to protect those critters. This Board is charged with the responsibilities with making land use decisions, zoning decisions that protect natural resources and this is a classic example where those protections should be extended, the federally protected species.

"I was a little amazed by the utility company arguments because they seem to be a technical smoke screen. The reason that we're asking for reopening of the contested case hearing, that the extension be denied, that there is significant new information about these two species of birds. The Dark-Rumped Petrel for example, the numbers of these birds first came apparent in the salvage information just last year. That is information that could not have been discovered during the contested case hearing. It's also true that the observations of these birds in the Kalihiwai Valley are also recent. For a long time, and I'll have Dr. Gary Blaich address this issue, for a long time residents didn't know what these birds were. One of the things this Board should keep in mind is that these birds are very elusive. They fly at night and in early morning and other than finding them fallen along the highway stunned or killed, the residents don't really have an opportunity to observe them so it's completely understandable that this information would not be readily apparent, except after some education.

"The other point that I'd like to make that is extremely important is at the time the contested case hearing, nobody understood or nobody realized and the Board did not consider the fact that these are federal protected species.

"Mr. Hong, I'm afraid, is incorrect in saying that action has to jeopardize the species before they are protected under Section 9 of the Act which inhibits taking of any species. If an individual bird is taken, that bird is entitled to protection under the Act.

"The Sierra Club Legal Defense Fund has extensive experience with the Endangered Species Act nationwide and the Board will recall the Palili Case from several years ago. That case involved the degradation, the habitat of the endangered bird, the Palili. In that case, that was the taking case where that kind of impact on that bird's habitat, no matter if it didn't doom the species as a whole, was prohibited by the federal law. I'm not going into anymore details about the act but I think those are precisely the kinds of issues the parties should brief and present to the Board, either in a reopening of the contested case hearing or they should be fully explored in an environment impact statement. They were not explored previously and they should be.

"The bottom line is that this Board should air on the side of caution and proceed cautiously and we believe the utility company should do so as well. If additional studies need to be made, they should be made and we should be provided the opportunity to present that information."

Miss Antolini then introduced Dr. Carl Berg. Dr. Berg said that he had a Doctorate in Zoology from the University of Hawaii. He just recently moved back to Hawaii. "The comment was made by two individuals here that this is the same old apple. It's a brand new apple we feel based on the evidence that was presented by the DLNR expert on the shearwaters, Tom Telfer on Kauai. This new evidence which was gained after these hearings that you've heard about, is this.

"First, whereas in previous years during the salvage operation, I should say salvage operation where you pick birds that have hidden objects, power line poles. You pick them off the road and try to release them again. They've been doing the salvage operation since 1978 and there's wide public support throughout the islands, not only in Kalihiwai Valley but the whole northshore, southshore throughout the entire island, people pick these birds and they're released if they're still alive. They don't bring in all the dead birds however and Tom Telfer from DLNR has been keeping records on how many birds fall each year and are recovered.

"Up until 1990, there was an average of one or two of the Dark-Rumped Petrel which is listed on the Endangered Species Act as endangered. There are only a few hundred of these birds left of this sub-species here in Hawaii. But in 1990, 29 of these birds were salvaged, so from 2 to 29. And most importantly, 2 of these birds were salvaged out of Kalihiwai Valley and this was not done by me or our neighborhood association, this is data collected by the federal wildlife refuge people in the state. So, we did not know that there were this number of birds in the valley and we didn't know that they were already being struck out of the sky.

"Second, it deals with the shearwaters and in his testimony, Tom Telfer said that he had no memory of records of birds in the valley. And it was this that we thought was strange, because there were a couple reported salvages in Kalihiwai. So, we felt that there must be birds there and being a zoologist when I moved there I started looking for birds and question came up in the contested case hearing of Telfer, 'Did you go out and look for these birds?' and the answer was 'No.' So we started looking for the birds and as Denise Antolini mentioned, they're very elusive. We're finding they occur right at dusk, they're flying and right at dawn when it's basically dark. You can still see enough to identify them and you can count the silhouettes. Right now that's about 7:45 to about 8:00 o'clock in Kalihiwai Valley.

"So we spoke to Telfer to confirm our observations that what we were seeing were the shearwaters. We spoke to Kathleen Firth from the Fish and Wildlife Service at Kilauea and she came out to say that these were the shearwaters. Then we started telling all of our neighbors to keep looking for these birds and told them what the 'caw' sounds like. It's a very distinctive sound, only this bird makes this strange call and told them to start keeping notes when you hear or see these. And when we did that now, for the first time, because remember Telfer said he had no memory of these being recorded in the valley.

"We found that there were many birds in the valley and in the past month, Katherine Orr who is my wife, and myself have recorded a 184 bird sightings in the valley in just 21 days. We don't look everyday. They're definitely on our side of the valley and Bill

Phillipsin sent a letter in recording that they're in the opposite side of the valley and I have gone right down to the river mouth and they're going right up the middle of the valley. So there's no question now in contention to what Tom Telfer said before that these birds are in the valley and they're not just by my house. They're running right up the river valley and they're running up the other side.

"So we feel there are two new sets of evidence here that must be taken into account. 1) That there's appreciable number of birds using that valley, the shearwaters and 2) there's this endangered Dark-Rumped Petrel that is also, based upon the State salvage data, present in the valley and it's because of that we support the Audobun Society, the Sierra Club and the 1000 Friends of Kauai in their request to reconsider the putting up of these power lines because we feel that stringing all of these power lines all across the valley and around the other areas in the valley will cause a major damage to these population of birds. Thank you."

Ms. Himeno asked, "Was it Mr. Telfer's testimony that there were no shearwaters in the valley and there were no Dark-Rump Petrels in the valley?"

Dr. Berg said, "I believe that there's no mention of Dark-Rump Petrels in the valley because none had been salvaged from the valley at the time of the contested case hearing."

Ms. Himeno questioned, "That was up to 1990?"

Dr. Berg said, "As far as I know, I don't have access to, I may have access but I have not gone through all of the DLNR records. There have been salvages in previous years, like I said 1 or 2, but I don't believe any of those came from Kalihwai. Part of the problem that we have with salvage data it requires people to be there, pick up the birds and turn them in. And when you get into areas where they're very sparsely populated and far from return places, so you don't have the recovery or salvage that you do in other places. As far as the shearwater data, his comment was, 'I believe that he could not remember, that there being records,' I'd have to check the wording of his testimony."

Ms. Himeno asked, "Why are you concerned about the power lines being up there, is it just the power lines, that the birds may just fly into it as they may fly into any space. Is there something about the power lines that would attract the birds and from a behavior point of view?"

Dr. Berg responded, "What happens is these power lines serve as a net across a fly way and the report for the recovery plan for these birds document this intermediate habitat between their nesting area and the ocean. The immediate area is of critical concern and the birds must fly through there and it's like putting up a net. What the power company is asking to do is to put more lines in that net and to raise it from 40 feet up to 65 feet or more which would catch more of these. Now these birds hit these with or without lights. Many birds are downed in areas where there are no lights, they may get confused when there are lights available, if there are no lights and they still run into these, in fact, Telfer has reported himself that he got a bird that was down and released it and it ran right into a power line and it fell right down to the ground and that was in broad daylight."

Ms. Himeno asked, "How big are these birds? Can they go through the power lines?"

Dr. Berg responded, "The birds are approximately wing span..." He then presented some photos of the birds in question. He said that probably some birds do go between the power lines, but some don't. He said the Dark-Rump Petrel is about the same size of the Newell shearwater. "Now, we have each year recorded in Telfer's data approximately 1,500 birds that are salvaged off the ground. But those are the ones that are found on the road and brought in and recorded. It does not count all of those that land in the cane fields or are hidden or are simply so mashed, nobody records them. And so, the estimate of how many birds are killed in talking with Telfer about this, as one zoologist to another, we don't really know how many birds are downed and killed. It's more than that's recovered however. Maybe twice as much as recovered because all those others land in the field and once they're on the ground they can't take off again unless somebody picks them up and throws them. They're sea birds so they can't take off again, once a bird hits the ground, unless someone comes in they're dead. Cats, rats, dogs and cars will kill these birds."

Mr. Yuen questioned, "There's an existing line and this is to replace an existing line right? And what is the incidence of salvaged from the present line?"

Dr. Berg said, "Last year, we don't have data for this year, so right now the adult birds are flying into nest. We don't have that data compiled, it's not compiled from all the observers. Last year there were five birds in the Kalihiwai Valley that hit these power lines or objects, Newell Shearwaters. Plus there were two Dark-Rump Petrels in Kalihiwai according to Telfer's data. So we know in previous years there were birds in 1986. So there is a record, there's always been a record of these birds being down in Kalihiwai, but this is not an area like Kapaa or Lihue where there's lots of light. It's an agricultural area where there's few lights and we should note that when we make our observations of these birds it's in the dark we don't have any lights on in the house, you just sit there and see the birds flying all over. This is an agriculture area with very few lights, very few street lights."

Mr. Yuen asked, "What was the number of shearwaters from Kalihiwai in the last few statements?"

Dr. Berg said, "Denise said 5 is what was recorded last year in Kalihiwai."

Miss Antolini said, "Let me just add during the contested case hearing contrary to what we've heard previously from Kauai Electric. Tom Telfer the biologist did say that the power line posed a hazard for the birds and that factor in the disorientation of the downing of the birds is also well documented in the literature on these birds. There's not a whole lot known about them and in fact, lights are considered to be one of the causes for disorientation but power lines are also a recognized cause and that's in the records and we'd be happy to provide further documentation on that issue. I don't think that's going to be disputed."

Dr. Berg said, "It's in the public scientific records also through articles published by Telfer for example."

Mr. Yuen asked, "These five birds, were they found under power lines, next to houses or by telephone poles?"

Dr. Berg responded, "Usually the people who turn them in don't record more than the general area. To say for example, at the bridge, say Kalihiwai Bridge, Kalihiwai lookout, that may be all the information or it simply may be Kalihiwai. ... We do know that one

was out at the lookout area on the highway, one was down on Kalihiwai Road and one was up higher on Kalihiwai Road on the way to the airport where there are power lines. Those are the three I happened to know about, people told me where they actually found them."

Miss Antolini asked Dr. Gary Blaich to comment on the issue why these groups weren't before the contested case hearing.

"Good morning Board members, Chairperson Paty, my name is Gary Blaich and I'm a physician and practice in Kapaa. Born and raised on Oahu and have lived on Kauai now for 12 years. I was not one of the founders of the Thousand Friends of Kauai, but it was founded by people such as Joanne Yukimura, Barnes Resnick, Kaipō Asing, Linda Moriarty and others. I was an early member though and I've been on the board for a number of years.

"Thousand Friends of Kauai is a public interest citizens lobbying group that tries to promote sound, slow growth policies, good planning on the island, also preservation of cultural and historic resources and natural resources. They've been a sponsoring group of neighboring folks who've raised the issues. The issues were initially raised in the contested case because we felt there was legitimate concerns about degradation if these lines proposed, lines posed to the conservation district and degradation from a number of other factors or reasons.

"And it's only since the contested case that this concern about the birds has really come up. I'd like to share with my own experience as I recall, maybe I should describe this is not a replacement of an existing line. This is an addition to the present line and the present line comes over the mountains and doesn't appear to impact any bird flyaways or habitat. The proposed line comes along the coastal highway in a different separate route. It just isn't constructed yet in the area that we're concerned about right now. It has been built in other areas though not energized yet.

"The new line was built in the Kealia area closer to Kapaa in the summer of '89. I drive daily to work from Kilauea to Kapaa and I noticed in the fall of '89 there seemed to be more birds than I've noticed previously along the highway, dead birds in the morning and I mentioned this to some of my friends, couple of naturalists friends I have, and they felt similar. They've seen more kills in the area and the presumption was they were from the lines because these birds would be on the mauka side of the road underneath the newly constructed line. We didn't raise it at that point. Didn't really know what to do with it. But I became struck with the same impression the following autumn, fall of 1990 after the contested case hearing. By that time Carl and Kathy had moved to the neighborhood. They were trained biologists. It seemed to them that they were also driving into town and noticed these types of increased kills to be a large number of dead birds by the side of the road, looking to the data, numbers had increased and they had the expertise and some training to formally to just fare out the figures and data and look at things more systematically.

"That's why it's come up now and didn't come up previously. As was mentioned, the birds in nocturnal you don't notice them that much unless they are killed on the road. The only thing I wanted to mention, that just the downsides again, there so seem to be kills of the birds in the Kealia area where there aren't lights. It's unlit wide open area and you find downed birds in the middle section where there aren't lights. We feel this new rather impressive batch of information that warrants another look at the proposal to string electric lines through Kalihiwai Valley."

Mr. Yuen said, "I wasn't on the Board and partly when this was done, so pardon me for asking a few questions to get some of a few basics down in my mind. Our submittal says, our Findings of Fact, it says here, they propose to install 36 utility poles in the existing alignment in the Conservation District in Kalihiwai. Installation will place the existing poles within the alignment in order to accommodate the conditional transmission circuit and it goes on to say that they'll be ...etc. Are they putting power lines in a new area? These people are nodding 'no' and you're telling me 'yes'.

Dr. Blaich said, "Well, yes, if you're considering area, the additional air space that's being occupied.

Mr. Yuen said that is not what he was asking, they're putting it on the same alignment.

Dr. Blaich said that was a distribution line and this was a transmission line that's coming through.

Miss Antolini said, "Just to point out that the design is completely different. The existing line, which is your typical neighborhood line is T-bar, the new lines go straight up with 10 wires and if you see, I believe there are pictures in the record and exhibit that make it clear what the distinction is between the two."

Mr. Evans added, "On the question of design of the line. As a result of the testimony on the public record, Mr. Yuen, the Board, all things considered, considering all the expert testimony specified themselves what the design would be."

The Chair called for further questions.

Mr. Yuen asked, "The shearwater, is that federally endangered status or federally threatened status?"

Miss Antolini said, "The shearwater is listed as threatened but keeping to remember as we stated in the letter, there's no difference in the amount of protection that bird deserves and that's in the Federal Regulations of the Fish and Wildlife Service. What the difference, what it really means is that the Dark-Rump Petrel is on the brink of extinction. That is the colloquial way of describing the legal definition. The shearwater is next in line and threatened means it's likely to become endangered in the foreseeable future. But they're both equally entitled to protection under the federal law."

Mr. Alan Oshima added, " I don't want to take up too much of the Board's time on this matter....I understand most of the commissioner are new to this matter. Just like to clarify because I think there's been a lot of liberties taken with what the testimony and what the evidence was in the original hearing, needs to be clarified.

"Your expert, our expert, Mr. Tom Telfer never testified that there are no birds in this Kalihiwai Valley. On page 208 of the transcript of the proceedings state very clearly, 'there's very few birds that pass through the corridor between the undeveloped part of Princeville and Kilauea. Although there are nesting colonies in the mauka areas and the birds probably make a direct line straight out to sea. The number of salvages in this area, he testifies and other parts of his testimony, there were like 1% of the total salvages, less than 1% occur in this general area and that's the basis of his testimony.

"Mr. Telfer, on the issue of Dark-Rump Petrels, is an expert on both Dark-Rump Petrels and shearwaters. He authored a paper on behalf of the U. S. Fish and Wildlife Survey.

He prepared the technical draft of the document, the Hawaiian Dark-Rump Petrel and Newell's Man Shearwater Recovery Plan. That's again on page 222 of the transcript of the proceedings and he did this in conjunction with the U. S. Fish and Wildlife Survey in Portland, Oregon. We're talking about a number of birds that are salvaged from the streets of Kauai or not necessarily on the streets next to the houses in all areas, in fact, there are shearwaters that hit trees in Kokee as a result of lights up in Kokee where there are no transmission lines. This is not a transmission line issue and I would, there is more than adequate evidence before the Board that has been somewhat distorted in the presentation today asking the Board to reopen this.

"Mr. Telfer's pre-filed testimony which was available to all the intervenors and the County of Kauai, on page 2 of his pre-filed testimony says, 'We have been keeping records of where fallen shearwaters have been found on Kauai which number between 1500 to 2000 each year. From our records, we find that Kealia, Wailua and Princeville have heavy mortality rates. The area between Kilauea and Princeville has a low number of falls. When you're talking about 29 falls compared to 1500 to 2000 each year, that is a low number. He is not stating something that is untrue. Kalihiwai has almost no records of falling. He does not say that there is no record.

"The other important part about his testimony is that in the Kalihiwai Valley, unlike some of the other areas where there is a heavy fall of shearwaters, the Kalihiwai Valley, he believes their nests are in the mountains like they always nest. They fly straight out of the valley at a higher elevation, straight out to sea. They don't have to follow a circuitous winding route down the valley floor. And that's one of the reasons why there are fewer falls in the Kalihiwai Valley area. This is corroborated by the letter submitted by the Sierra Club today. These people are sighting these birds 5 to 10 feet above their houses.

"The transmission line that is being proposed in this area which you have approved or which this Board has approved, has a history, Mr. Yuen you are correct, the distribution line that exist there on overhead poles, have existed down Kalihiwai road for over 50 years. What is being proposed to be constructed is to replace those existing poles with higher poles and to add a transmission circuit above the existing distribution lines. The distribution lines are there to serve the residents of Kalihiwai. The transmission line circuit is to serve the northshore.

"At the river mouth, and these are all from the record, these are photographs that are part of your record which gives you an indication of the relatively low-impact of the lines. At the river crossing itself, lines are low but they have to be at a certain height to provide for safe bolting and clearance. You have competing interest to provide for in the Conservation District.

"One of the reasons why the line is designed as it is, with the conductors spaced one on top of the other, is as a result of the SMA hearings that were held before the County of Kauai at the which hearing, Joanne Yukimura appeared and asked Kauai Electric to reconsider the then proposed design of the line which was the traditional cross-arm construction. She asked that they reconsider doing it to streamline it to make it look nicer as it had been done in other new areas of Kauai. Kauai Electric then changed the design, showed it to Joanne Yukimura, she liked the new design and the SMA was granted with the new design.

"The proposal before this Board therefore is the result of public input on the design of the line at publicly noticed hearings. The reason for the stacking of the lines, is

therefore a result of public input. It is also the result of another competing interest that was presented to this Board at the hearing. This same group of people raised the issue of electromagnetic fields. Mainland experts were brought in then to testify before this Board at great length about the effects or lack of effects of electromagnetic fields on the residents and the environments. One of the provisions that is included by the Board is that the lines be constructed in a certain way to balance out or negate as much as possible the electromagnetics fields, opposite phasing, etc.

"On a cross-arm construction that is not possible. So you have balanced certain competing interests proposed by the same group of people. Kauai Electric is not against birds. No one on Kauai I believe would say that they are against birds, keeping birds alive. It's important to realize it's not a transmission line issue, it's a housing issue, it's an automobile issue, bridges, everything contributes to the problem. All of the rapiers on Kauai should not be made to pay for individual concerns. The public interest must be served."

The Chairperson asked if anyone else wished to testify on this issue.

EXECUTIVE SESSION Mr. Apaka requested that the Board go into executive session to discuss some legal matter with counsel. Seconded by Mr. Arisumi, motion carried.

10:35am--10:55am Chairperson Paty called the regular meeting back to order.

Addressing the Chair, Mr. Apaka said that in view of all the testimony that was brought before the Board this morning on both sides of the issue, he believes the litigation part of it could be handled in a future date. Before the Board today is a certified letter for a request of a Notice With Intent to Sue, Section 9, of the Endangered Species Act, submitted by the Sierra Club. With that in mind, whatever the differences are, he believed could be trashed out then. Presently what is facing this Board is one item, that item is to decide whether the Administration Rules can be justified for the extension and what was presented to the Board meets the criteria of the Administration Rule.

MOTION Mr. Apaka moved for approval that the request be granted. Motion was seconded by Mr. Arisumi.

DISCUSSION Ms. Himeno wished to make a comment. Personally she is very sympathetic to the efforts of the Sierra Club. She thinks that it is a very worthy cause and we should do as much as we can to help protect these endangered and threatened species. But we're in a process here and the motion before the Board is whether there are circumstances which justify an extension for the CDUA. There's been hearing, after hearing and a lot of public testimony. Had the evidence at these hearings been by Mr. Telfer or others that there were no birds anywhere near the valley and you folks came forward this morning, that in fact, there were birds, that may be enough to justify reopening the hearing in her opinion. She was speaking for herself. But Mr. Telfer did not so testify. He said there were birds in the area, a question as to how many, to what extent the power lines may be affected, etc., to her it does not amount to new evidence that might be able to justify reopening everything all over. The Board is looking at a very narrow issue report today and she didn't think it would be proper to step outside the parameters of that. She also takes comfort in the fact that hoping this issue will be discussed and brought forth in the Federal action that you plan to file.

Mr. Yuen said that he felt the same way. He's looking at the testimony of the hearing

where he was not present. But the question of impacts on birds was extensively discussed at the previous hearing. It looks like there's been investigation done subsequent to that. He didn't think the Board could reopen the matter at this time even if the issue was treated as a contested case.

ACTION Chairperson called for the question and motion carried unanimously.

11:00 a.m. Chairperson Paty excused himself. Vice-Chair Arisumi presided.

ITEM H-2 TEMPORARY VARIANCE FOR SOIL TEST PITS AT KILAUEA, HANAIEI, KAUAI; TAX MAP KEY 5-2-01:POR. 3; APPLICANT: JOHN WEHRHEIM, NAMAHAHA FARMS, INC.

Mr. Evans presented the request for a temporary variance for soil test pits at Kilauea, Hanalei, Kauai. The sites are on private land and currently undeveloped. Most of the parcel is in agriculture and part is in conservation district. There are no structures on the conservation district. He related the proposed use of the applicant as noted in the submittal.

Ms. Frances Yamada, with the firm of Wilson Okamoto and Associates, said her firm was the agent for Namahana Farms, the applicant. Also with her today was Charlie Schuster of the same firm. They were present to answer any questions of the Board.

Mr. Yuen asked if the reservoir, if it's built, would it be in the same area as the test bore? Mr. Schuster answered, 'yes.'

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM H-5 REQUEST FOR A CONTESTED CASE HEARING, A HEARING OFFICER, AND TO ESTABLISH A DEADLINE DATE TO FILE A WRITTEN APPLICATION TO BE A PARTY IN THE CONTESTED CASE HEARING ON CDUA FOR PROPERTY CONSOLIDATION, RESUBDIVISION, AND SINGLE FAMILY RESIDENCE AT TANTALUS, OAHU; TAX MAY KEY 2-5-55:04; APPLICANT: DR. & MRS. J. GROBE

Mr. Evans presented Item H-5 going over the background as detailed in the submittal. After staff received the request for a contested case by a member of the public and by the applicant, a review by the Attorney General's office was requested and they indicated to staff orally that the petitioners have standing to request a contested case hearing.

He then read the Recommendation of staff:

1. That the Board approve the request for a contested case hearing on Conservation District Use Application OA-11/7/90-2441 for property consolidation, resubdivision, and single family residence at Tantalus, Oahu;
2. That the Board authorize the Chairperson to designate a hearings officer to conduct the contested case hearing;
3. That the Board approve the petitioners, Roy A. Vitousek, Jr. and the applicant, Dr. and Mrs. J. Grobe, to be parties in the contested case hearing; and
4. That the Board establish a new deadline of July 31, 1991 to file a written application

to be a party in the contested case hearing.

With regard to the new deadline, Ms. Himeno wanted to know if that were going to be publicized adequately so that people will not come after-the-fact and say we thought we had more time.

Mr. Evans responded that if anyone comes in August 1st, staff's recommendation to the Board would be they missed the clock by one day.

Mr. Roy Vitousek, one of the applicants in the contested case hearing said the schedule seems fine with him. He asked if there were any specific form to apply to be a party.

Mr. Evans informed him that should the Board sustain their recommendation, staff will be notifying everyone of the procedures. There will be a pre-hearing conference with your staff plus the Department of the Attorney General to narrow down the issues and all dates will be presented to both applicants. Staff will be entering into the ex parte aspect of the case. The issue will not be discussed with either applicant without the presence of both of them.

Mr. Vitousek said his request was, "What form do you want the parties who are going to be parties to the contested case hearing to apply, just a letter or do they have to specify their position?" Mr. Evans said that a letter would suffice and staff could follow up.

Mr. Don Kitaoka said that he was an attorney for the applicant in place of Jan Sullivan who was ill. They have no objections to the staff recommendations and they would like to inform the Board at this time that there is a request for another 90 days extension and they believed 90 days expired August 4, 1991 and wouldn't be sufficient time for the contested case hearing. There is another application for an additional 90 days being submitted. They also believe a contested case hearing is the appropriate form to air all views on this matter.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

AMENDMENT REQUEST FOR CONSERVATION DISTRICT USE PERMIT WATER DESALINATION PLANT AND DISTRIBUTION SYSTEM AT MILOLII, HAWAII; TAX MAP KEYS 8-9-4:7, 11, 13-16, 22 & 8-9-13:20; APPLICANT: HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL; AGENT: HOUSING AND FINANCE AND DEVELOPMENT CORPORATION

ITEM H-3

The approach taken at Milolii was to do a CDUA for a special subzone. The special subzone was approved by the Board on behalf of Hawaii Economic Opportunity Council and the Housing and Finance and Development Corporation who were trying to assist people in the area. Now the HEOC and HFDC asking for a water desalination plant in the area. Staff feels it is a reasonable request and recommends approval subject to conditions listed.

Chairperson Paty asked what would be the capacity of the plant. Mr. Evans said that it would service 50 homes, household toilets, extraneous uses such as lawn watering and capacity of the system, he is not aware of.

Ms. Himeno asked if there was a condition that addresses the concern of visual impact

of the structure.

Mr. Evans said that there wasn't anything in the condition relative to the painting of the structure. They don't recommend landscaping but again they recognize their concern of the visual impact. It is a 50,000 gallon reservoir and they could add a condition 14 to address the concern of being constructed or painted in such a way that it blends in with the environment.

Mr. Joe Clarkson said that he works for HEOC and they are the contract administrators of the self-help housing project and various other projects in the Milolii Redevelopment Project including the desalinization facility and a brackish water distribution facility.

Ms. Himeno asked Mr. Clarkson if he had any problems with the new condition suggested.

Mr. Clarkson said that the predominant color of the landscape in the area is black. They have always intended to conform to that color with all facilities, charcoal grey like lava.

Responding to questions of the Board, Mr. Clarkson said that the desalinization facility is an experimental proposed facility. It would provide a maximum of a 1,000 gallons per day which is estimated to be about 20% of the total potable water supply for the village. There's also a brackish water distribution facility which will provide waste water supply for the village. The present supply is by catchment. They're going to supplement catchment with the potable, there will be no direct distribution to the houses themselves. There will be batch supplement to the catchment systems. The brackish water will be distributed to the toilet and one outside faucet in each home for exterior purposes. It will not be potable water. It's intended that there will be a manager who will distribute fairly in batches the potable water to the catchment tanks.

The power source will all be by solar power. The desal plant will be low temperature distillation. It's basically to mimic rain inside a small building and the distribution equipment will be powered by affordable take equipment.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM E-1 APPROVAL OF A GRANT-IN-AID FOR HO'OKAHE WAI HO'OULU 'AINA, OAHU

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM E-2 APPROVAL OF A GRANT-IN-AID FOR MO'OKINI LUAKINI, INC., OAHU

Mr. Nagata said that staff's recommendation is that the Board authorize the Chairperson and another Member of the Board to enter into a grant-in-aid contract of \$100,000 for Fiscal Year 1991-92 and \$100,000 for Fiscal Year 1992-93 with Mo'okini Luakini, Inc., subject to meeting applicable State grant-in-aid procedural requirements and subject to the Governor's approval of the Budget bill.

Mr. Arisumi commented that he had an opportunity to visit the site. He wanted to know what type of student traffic do they have there. He wondered if the students were coming in on different days and times to view the area.

Mr. Nagata said, "Yes." They usually have Children's Day activities which is normally during November of each year and this past year they didn't have that. Instead they tried to invite people who were involved in getting their activities off the ground. Throughout the year, public as well as private schools are invited to visit the site.

ACTION Unanimously approved as submitted. (Arisumi/Yuen)

ITEM B-1 REQUEST FOR APPROVAL TO AMEND/EXTEND AN AGREEMENT BETWEEN THE OCEANIC INSTITUTE AND BOARD OF LAND AND NATURAL RESOURCES FOR SEMFISH-HILO THROUGH DECEMBER 31, 1991

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM C-1 AWARD OF CONTRACT FOR FURNISHING AND DELIVERY OF FENCING MATERIALS FOR THE KAHIKINUI FOREST RESERVE FENCELINE, MAUI, HAWAII

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ADDED ITEM C-2 ACCEPTANCE OF THE NA ALA HELE (HAWAII TRAILS AND ACCESS SYSTEM PROGRAM PLAN

Mr. Buck said that the purpose of the Na Ala Hele Program is to establish and implement a comprehensive system consisting of all trails and accesses in the State. This plan is meant to be a guide and information source for Na Ala Hele staff. It is also intended to help other governmental agencies, boards, legislators, and members of the public to understand what Na Ala Hele is trying to accomplish and how.

The Na Ala Hele Program won an award yesterday in the public/private partnerships in the Take Pride in America. It is one of the three national finalists for the award that will be presented in Washington later on in July. Ms. Deborah Chang, who was instrumental in developing the program as well as preparing this plan was present today. He also introduced Ms. Chris Meller who is the new program manager to help and implement the program.

ACTION Unanimously approved as submitted. (Himeno/Yuen)

ITEM D-1 APPOINTMENT AND ELECTION CERTIFICATION OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS

Before his presentation, Mr. Akita requested to amend the Recommendation to appoint by including the name of Milicent Kim and under the Recommendation to certify, add the names of Charles Young and Randy Cabral.

ACTION Unanimously approved as amended. (Arisumi/Himeno)

ADDED ITEM D-2 APPROVAL FOR AWARD OF CONTRACT FOR JOB NO. 1-0L-B3, DLNR PERSONNEL AND LAND MANAGEMENT OFFICE RENOVATIONS, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

**APPROVAL FOR AWARD OF CONTRACT FOR JOB NO. 61-OQ-5C,
CONSTRUCTION OF A PORTION OF THE CENTER FOR APPLIED
AQUACULTURE, PHASE II, MAKAPUU POINT, OAHU**

ITEM D-3

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM E-1 See page 18 for Action.

ITEM E-2 See page 19 for Action.

ITEM E-3 See page 2 for Action.

ITEM F-1 **DOCUMENTS FOR CONSIDERATION**

Item F-1-a **Issuance of Revocable Permit to Zelda Kapuni, Portion of Halemahana Fishpond, Ualapue-Kapualei, Molokai, Tax Map Key 5-6-03:Por. 35**

After Mr. Young's presentation, Ms. Ana Schumaker the abutting owner addressed the Chairperson saying that she was unable to attend the meeting on Molokai.. She presented a map of the area of the fishpond in question. She said that her property and Mr. Carlsmith's property which also abuts the fishpond will be the only two properties that will be impacted by this project.

She said that she was not against it but wants to know what will be entailed visually. By reading the proposal, she understands that PVC pipelines and things like that will be put in the fishpond. Her concern is that, what will it look like. She had no objection to any acquaculture as limu and eli eli does grow there now.

The Chairperson pointed out to the conditions set forth, "Condition No. 5 Before constructing, erecting, placing and installing any improvement of any kind or description on or within ...the permittee shall submit to the Chairperon, or his authorized representative, all pertinent plans,"

Ms. Schumaker said that she read that condition but felt that it did not really specify which section of the pond would be used. She herself does not pick limu herself. She takes her canoe out and over the walls of the fishpond and her concern is her use and enjoyment of the property.

Mr. Arisumi asked Mr. Young upon receipt of plans, drawings and specifications could he communicate with Ms. Schumker for review and comment.

Item F-1-b **Issuance of Revocable Permit to Daisy L. Aguiar Government Land at Kapaa (Puna), Kauai, Tax Map Key 4-5-05:6**

ACTION Mr. Arisumi moved for the approval of items F-1-a and F-1-b

**COUNTY OF HAWAII REQUEST FOR RIGHT-OF-ENTRY ONTO STATE LANDS
SITUATE AT MANINIOWALI (PUU O'O), NORTH KONA, HAWAII, TAX MAP KEY
7-2-04:POR. 4**

ITEM F-2

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM F-3 See page 3 for Action.

**COUNTY OF HAWAII REQUEST FOR RIGHT-OF-ENTRY TO A PORTION OF THE STATE LAND AT THE HILO INTERNATIONAL AIRPORT (OLD AIRPORT SITE),
ITEM F-4 WAIAKEA, SOUTH HILO, HAWAII, TAX MAP KEY 2-1-12**

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM F-5 See page 4 for Action.

**AMENDMENT TO PRIOR BOARD ACTION OF DECEMBER 7, 1990 (AGENDA ITEM F-1-b) COVERING THE ISSUANCE OF A REVOCABLE PERMIT TO DWIGHT OTANI PRODUCE, INC., IWILEI, HONOLULU, OAHU, TAX MAP KEY 1-5-07:14
ITEM F-6 PRODUCE, INC., IWILEI, HONOLULU, OAHU, TAX MAP KEY 1-5-07:14**

ACTION Unanimously approved as submitted.

ITEM F-7 DIRECT LEASE TO QUALIFIED PERMITTEES OF RESIDENTIAL AND HOME GARDENING REVOCABLE PERMITS--STATEWIDE, ACT 237, SLH '88

With the permission of Board, Mr. Young requested to take up Item F-7 and F-8 together inasmuch as it ties in. Under Act 237 of the Session Laws Hawaii passed by the legislature in 1988, the Department was authorized to convert a month to month revocable agriculture permit as long term leases. As part of that Act it also required that in order to qualify for the conversion of the direct negotiated lease, you must not own any agriculture land and you must be within the zone of agriculture and they must be tenants of the State.

Staff has attached to the submittal a list of the qualified applicants. They have given out the survey contracts to commence doing the appraisals. They have informed these people that they qualify for a lease on State land. As part of the Act it also said because of the negotiated lease they will be charged a premium, 25% of the market rent for the period which they held the permit previously. He then gave an example.

Staff is asking the Board today, pursuant to this Act, recognize the applicants that have been qualified on the attached list and authorize the issuance of the 35 year lease under the terms and conditions listed in the submittals.

Ms. Himeno asked to be excused from acting upon one Permit No. 5321 for Green Thumb, Inc. because of a conflict.

ACTION Mr. Arisumi moved for approval of Items F-7 and F-8 as submitted. Seconded by Mr. Apaka, motion carried.

ITEM F-8 DIRECT LEASE TO QUALIFIED PERMITTEES OF AGRICULTURAL REVOCABLE PERMITS--STATEWIDE, ACT 237, SLH '88

ACTION See above Item F-7.

ITEM F-9 DIRECT SALE OF LIHILIH ROAD REMNANT NO. 1 (ROAD REMNANT NO. 1), KALAHEO, KOLOA, KAUAI, TAX MAP KEY 2-3-02

ACTION Unanimously approved as submitted. (Apaka/Himeno)

MR. DAVID BOYNTON REQUESTS 4-MONTH EXTENSION OF DEFAULT DEADLINE APPLICABLE TO GENERAL LEASE NO. S-5034, LOT 71, KOKEE CAMP SITE LOTS, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-4-04:62

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

AMENDMENT TO PRIOR BOARD ACTION OF FEBRUARY 8, 1991 (AGENDA ITEM F-1-g), PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES, KAPAA HOMESTEADS, KAPAA, KAUAI, TAX MAP KEY 4-6-06:POR. ROAD

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM H-1 See page 15-16 for Motion and Action.

ITEM H-2 See page 16 for Action.

ITEM H-3 See page 18 for Action.

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

Mr. Evans reminded the Board that this item was deferred at the previous meeting to allow the applicant to consult with their attorney.

During the interim, staff has not seen anything that would cause them to change the recommendaton to the Board. Mr. Evans said the Board had approved a CDUA with standard conditions, one of them was to complete the project within a certain amount of time and the applicant has not done so.

Responding to questions of the Board, Mr. Evans said the applicant did request an extension so that they could get their approvals by the end of May of '91 with the City and County.

Mr. Yim questioned whether the previous lapse was in 1987 and if there were any action taken by the Board between 1987 and now.

Mr. Evans replied that the previous lapse was in 1987 and there was no action taken by the Board or the staff. This was brought to staff's attention when the building plans came in.

Mr. Yim asked if this were normal procedure for staff to come in and say "revoke" after after the three years are up.

Mr. Evans said that they really haven't had that problem. There are more problems with people getting started within the one year but there really hasn't been a problem where people will start within one year and not be done over a three year period time. He said that the condition read, 'start within one year and complete in three.' If the applicant does not comply, that means the permit is 'voidable,' but in order to have it voidable, staff needs to bring it back to the Board and have them void it. The applicant will be able to reapply if he so desires.

Mr. Evans did point out that presently the clause, "That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void;" is part of the standard conditions.

Mr. Yuen asked if the County would grant him a building permit. It says he submitted his plans.

Mr. Evans responded that the County would not issue him a building permit because the County will not issue a building permit until they see the Department of Land and Natural Resources' stamp of approval on the plans.

ACTION Unanimously approved as submitted. (Himeno/Yuen)

ITEM H-5 See page 17 for Action.

ITEM J-1 RIGHT-OF-ENTRY, LIHUE AIRPORT, KAUAI (COUNTY OF KAUAI, DEPARTMENT OF WATER)

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM J-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4773, ETC., AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-3 RENEWAL OF REVOCABLE PERMITS 0932, ETC., AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-4 CONSENT TO SUBLEASE NO. GKM-030, HARBOR LEASE NO. 82-4, HONOKOHAU BOAT HARBOR, NORTH KONA, HAWAII (GENTRY PROPERTIES, A HAWAII LIMITED PARTNERSHIP/MARGIT SAHNOW, DBA MAKAI MARINE)

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-5 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU (MARY I, INC.)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-6 CONTINUANCE OF REVOCABLE PERMITS H-87-1459, ETC., HARBORS DIVISION

Ms. Himeno asked to be excused from acting on R.P. 1341, H-82-983 because of a conflict.

ACTION Approved as submitted. (Yuen/Apaka)

ITEM J-7 ISSUANCE OF GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT, HIGHWAYS DIVISION, EWA, OAHU (CHEVRON U.S.A. INC.)

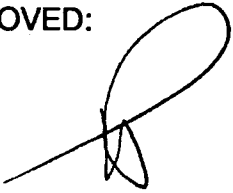
ACTION Unanimously approved as submitted. (Himeno/Apaka)

ADJOURNMENT Chairperson Paty adjourned the meeting at 11:40 a.m.

Respectfully submitted,

Dorothy Chun
Dorothy Chun
Secretary

APPROVED:



WILLIAM W. PATY, Chairperson

dc