

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

DATE: July 19, 1991
TIME: 8:30 A.M.
PLACE: CONFERENCE ROOMS A,B,C
STATE OFFICE BUILDING
3060 EIWA STREET
LIHUE, KAUAI

ROLL
CALL

Chairperson William W. Paty called the meeting of the Board of Land Natural Resources to order at 8:29 A.M. The following were in attendance:

MEMBERS: Mr. John Y. Arisumi
Mr. Herbert K. Apaka, Jr.
Mr. Christopher Yuen
Mr. T.C. Yim
Mr. William W. Paty

ABSENT AND
EXCUSED: Ms. Sharon Himeno

STAFF: Mr. Daniel Quinn
Mr. Dean Uchida
Mr. Roger Evans
Mr. Samuel Lee
Ms. Geraldine M. Besse

OTHERS: The Honorable JoAnn Yukimura (Items E-1 and F-3)
Peter Morimoto, Esq. (Item E-1)
Martin Wolff, Esq. (Item E-1)
Mr. Clancy Greff (Item E-1)
Mr. Tom Hegarty (Item E-1)
Ms. Susan Matsuura (Item E-1)
Ms. Judy Waite (Item E-1)
Mr. Dan Bennett (Item E-1)
Ms. Diane Faye (Item E-1)
Ms. Melinda Sandler (Item E-1)
Mr. Richard Price and John Steelquest (Item E-1)
Mr. Charles Cobb-Adams (Item E-1)
Ms. Bobbie Hickson (Item E-1)
Dr. Gary Blaich (Item E-1)
Mr. Joe Leconent (Item E-1)
Mr. Gregory Goodwin (Item E-1)
Mr. Andrew Evans (Item E-1)
Ms. Maliki Lani (Item E-1)
Mr. Titus Kinimaka (Item E-1)
Ms. Jennifer Mersburgh Punua (Item E-1)
Ms. Ilima Morrison (Item E-1)
Mr. Rick Falts (Item E-1)

Mr. Dave Steward (Item E-1)
 Mr. Tadao Suyemori (Item E-1)
 Ms. Barbara Baker (Item E-1)
 Mr. Shigeru Miyamoto (Item E-1)
 Ms. Helena Santos (Item E-1)
 Harold Bronstein, Esq. (Item E-1)
 Mr. Stefan Puhli (Item E-1)
 Ms. Carol Wilcox (Item E-1)
 Mr. Mike Sheehan (Item E-1)
 Mr. Jerry Allen (Item F-1(a))
 Mr. Hartwell Blake (Item F-3)
 Ms. Mary Lou Barela (Item F-3)
 Mr. Tom Godby (Item F-3)
 Ms. Wilma Holi (Item F-3)
 Mr. Raymond Ho (Item F-3)
 Mr. David Bills (Item H-2)
 Mr. Clinton Shiraishi (Item H-3)
 Ms. Beryl Blaich (Item H-3)
 Mr. Peter Garcia (Dept. of Transportation)
 Johnson H. Wong, Esq. (Dept. of Attorney General)

MINUTES

The minutes of the meeting of February 22, 1991, were unanimously approved as circulated (Arisumi/Apaka).

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

ITEM F-1(a)

DOCUMENT FOR BOARD CONSIDERATION: RESCIND PRIOR BOARD ACTION OF FEBRUARY 9, 1990 (AGENDA ITEM F-1-e) AND CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-3775, LOT 36, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-27:9

Mr. Uchida stated that the action today was solely to obtain consent to the assignment of the general lease. Mr. Jerry Allen, one of the lessees, explained the background, planned use, and proposed lease modifications. Mr. Allen asked for (a) sublease of improvements, and (2) extension of the lease from 13 years to 30 years, which would be in line with banking practices. Mr. Allen explained that coconut trees would not bring in any income for 6-7 years. Mr. Allen also explained that without the sublease and extensions, they would more than likely have to withdraw their offer.

Discussion focused on the fact that the item on the agenda was solely to rescind the prior board action and consent to the assignment of the general lease, and Mr. Allen's requests, being disposition matters, required public notice.

ACTION

Deferred to next board meeting (Yim/Apaka).

ITEM H-2

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

Mr. Evans asked that the Board consider additional conditions to the permit. Upon discussion, the parties agreed as follows:

(1) continuous public access to the beach provided by the applicant during construction as well as after;

(2) a clearly visible sign indicating right of public access at the guard shack;

(3) 13 additional unmarked parking stalls to be made available to accommodate the public;

(4) carts to be provided at the public parking area to assist in the transport of beach accessories to the shoreline;

(5) all conditions are acceptable to applicant; and

(6) conditions as deemed appropriate by the Attorney General.

ACTION

Unanimously approved as amended, with the understanding that two alignments shall be permitted, the first on an interim basis, and the second on a permanent basis, as applied for (Yuen/Apaka).

ITEM E-1:

RESUBMITTAL--REQUEST FOR A ONE-YEAR EXTENSION FOR THREE (3) SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT THE NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI

Mr. Quinn presented the recommendation of the Division of State Parks.

Mayor Yukimura asked Peter Morimoto, Deputy County Attorney, to address the legal issues--the application of the Coastal Zone Management Act to the Board of Land and Natural Resources. Under Chapter 205A, he said, agencies are defined as departments and boards and commissions of the counties of the State of Hawaii and that includes this board and the Department of Land and Natural Resources. Section 205A-4(b) of the Hawaii Revised Statutes states that the objectives and policies of that chapter and the guidelines enacted by the Legislature shall be binding upon actions within the Coastal Zone Management area by all agencies within the scope of their authority. One of the objectives of the Coastal Zone Management Act stated in section 205A-2(b)(4)(A) is to protect valuable coastal ecosystems from disruption and to minimize adverse impacts on all coastal ecosystems. Mr. Morimoto called to the Board's attention the fact that in 1978 one of the applicants made an after-the-fact application. At that time only four boats were proposed for commercial tour boating. On page three of the staff report it stated that the Na Pali Coast was one of the most spectacular and impressive areas of the Hawaiian Chain and that its remoteness and inaccessibility have preserved and enhanced its qualities. Increasing the accessibility to these isolated areas may have a significant and perhaps detrimental impact on the environment, i.e., long-term camping, temporary residences, polluted streams, and litter. Mr. Morimoto stated

that the Na Pali Coast is not only a sensitive environment but that its beauty and uniqueness must be preserved. Mr. Morimoto stated that the record for this application is devoid of any evidence establishing that the commercial tour boat excursions are not disruptive of the ecosystem or that they are conducted in such a manner as to minimize adverse impacts on the ecosystems.

He further stated that another objective of the Coastal Zone Management Act found in section 205A-2(b)(5)(A) is to provide public or private facilities and improvements important to the State's economy in suitable locations. Whether or not commercial tour boating is important to the State's economy is an open question; however, he stated that the more important question is whether this activity is suitable in the proposed staging area. He explained that Kauai has several harbors to accommodate such activity and no evidence has been given to establish that the Haena or Hanalei area is more suitable than Port Allen or any of the other harbors.

Mr. Morimoto explained that the Board is bound by the policies of the Coastal Zone Management Act under section 205A-2(c)(4)(B), and one of the policies is to protect valuable ecosystems that are of significant biological and economic importance. Again, he said, there is no evidence that the proposed activity is in harmony with this policy. In section 205A-2(c)(5)(A) one of the other policies is to concentrate in an appropriate area the location of coastal dependent development necessary to the State's economy. No evidence has been presented that tour boating is necessary to the State's economy but again it is devoid of any evidence that Haena is the appropriate area to stage this activity. Another policy stated in section 205A-2(c)(5)(C) is that the agency shall direct the location and expansion of coastal dependent developments to areas presently designated and used for such development and permit reasonable long-term growth at such areas. No evidence, he said, has been presented to establish that the utilization of presently-designated areas, such as Port Allen or other harbors, are less suitable than the Haena area, and there has been no evidence to establish that adverse environmental impacts are being minimized.

Under section 205A-2(c)(7)(A) boards and departments are to manage development by effectively utilizing and implementing existing law to the maximum extent possible in managing present and future coastal zone development. One of the laws is the SMA law and Mr. Morimoto stated he believed that the boaters are not in compliance with that law and the Board should not allow the permits until the boaters prove they are in compliance with that law.

Finally, he said, one other policy is to communicate the potential short- and long-term impacts of the proposed significant coastal developments early in their life cycle and in terms understandable to the general public to facilitate public participation in the planning and review process. He said the record is devoid of any evidence to indicate that the potential long- and short-term impacts of the proposed project has been considered. It is the responsibility of the State and County agencies to implement the Coastal Zone Management Act and to follow the policies

and priorities of that Act. At this time, he said, no one knows what the impacts are and how they are related to the policies and goals and objectives of the Coastal Zone Management Act. He went on to say, "We should require the applicants for this permit to tell us what the potential short- and long-term impacts are upon the environment and the Haena and Na Pali coastal ecosystems. In light of the failure of the applicants to establish the proposed activity is consistent with Chapter 205A of the Hawaii Revised Statutes and, in light of recent developments, including the County's stepped up enforcement of the SMA laws and the Department of Transportation's stepping up of their enforcement of the Ocean Recreation Management Plan, the Board should deny these permits until the applicants can establish that they are in compliance with the Coastal Zone Management Law and the Department of Transportation's rules and regulations."

The Mayor stated, "The County of Kauai stands in strong opposition to the use of Makua or Haena Point for commercial tour boating purposes and to the extensions of the permits requested by Mr. Greff. The Hanalei Bay, Haena and Na Pali coastline is some of the most beautiful and scenic shoreline in the world. In its beauty and peacefulness, this north shore of Kauai is of inestimable economic and environmental value. Visitors come to our islands to partake of that beauty and tranquility. This is what makes Kauai - Kauai. It is this awesome beauty that directly and indirectly fills our hotel rooms, our restaurants, our shops and shopping centers. It is this spectacular beauty and ambience that must be protected if Kauai's economy is to be strong in the future. Mayors before me have directed that the Hanalei, Haena, Na Pali be preserved. The North Shore Plan first adopted in 1974 during Mayor Kona Vidinha's time and updated in 1985 under Mayor Kunimura recognized the unique specialness of the North Shore. Thus, no resort zoning was given past Princeville, and the historic Hanalei Bridge has been preserved, an appropriate entryway to an unspoiled and rural area. Certainly, there could be a lot of economic or short-term economic value in creating a brand new highway instead of the Hanalei Bridge that would allow a lot of tour buses over and larger transit vehicles but we have made a decision that the long-range view is important and our historical and cultural and natural resources are really the basis of our economy and need to be preserved. It is this commitment to keep the North Shore beautiful and uncommercialized that have served us well, and it has given us an incredible legacy, and it is this legacy that you today have a chance to continue. The area surrounding Makua Bay is a low-density rural residential area adjacent to a pristine beach and reef. Each day over a hundred visitors park in and traverse the area to be loaded onto zodiacs that anchor in the nearshore waters. These vessels are refueled on the waters. This is a major commercial activity in a rural and residential area. It is not appropriate. Mr. Greff also launches his boats from the Hanalei River Estuary. The Hanalei Rivermouth is within the Special Management Area. It is a beautiful place, as is the rest of the North Shore and the island of Kauai. Many people, locals as well as visitors, use the area around the rivermouth for recreation. During the summer young children swim in the river and in front of Black Pot Beach Park, which abuts the rivermouth. Canoe paddlers use the rivermouth to practice paddling. The Hanalei Rivermouth is part of the larger Hanalei Bay ecosystem, which is itself an abundant source of fish and marine life. Aside of the impacts to the river and the recreational users of the river, consideration must be given to the surrounding

Beach Park is Weke Road. Residents of the area must share the road with recreational users of the park and rivermouth as well, at this point, with tour boat companies who transport their boats to and from the rivermouth, and with the customers of the company who park at the Sheehan Boatyard. Commercial boat companies do not have SMA permits to operate out of the river. The last three years have been an ongoing saga of the County's attempt to enforce the SMA permit. More recently, the County has begun to impose administrative fines for each day of operation. As you know, the State of Hawaii enacted the Coastal Zone Management Program in 1976 authorizing the counties to regulate development within the designated SMA areas. With this authorization came a duty to ensure that the activities that occur in this area were appropriate and based on the State's policy to preserve, protect and where possible restore the natural resources of the coastal zone. Therefore, the activities that take place within the SMA and cause a change in the intensity of the use of water and ecology related thereto or access thereto require an SMA permit. Our goal in filing the lawsuit and levying administrative fines has been to compel the tour boat operators who wish to begin their operations from Hanalei mouth to abide by the Coastal Zone Management Act and the County's Special Management Area rules and regulations. The Department of Transportation has begun to enforce the Ocean Recreation Management Plan. That Plan requires all commercial tour boat operators to obtain permits from the DOT. I understand that yesterday that citations were issued without bail to the companies operating out of the river. The County requests this Board's kokua. Commercial tour boating is inappropriate for the Haena area and the extension of the permits should be denied. We ask that the applicants be made to prove to the Board that they are in compliance with the SMA laws and the Department of Transportation's Ocean Recreation Management Plan before the Board grants any permits. This will support the County's efforts to enforce the Coastal Zone Management Act and the Special Management Act, which as the Deputy County Attorney Peter Morimoto mentioned, is binding on all State boards and commissions. Most importantly, your help will allow all of us to uphold the public trust in implementing the State's policy to preserve and protect the incredible natural resources of Kauai's North Shore."

The Mayor stated that given the impacts of the tour industry, there needs to be limitations on the boating industry which will be determined through the SMA process and is a decision of the Planning Commission. She further stated, "I have long urged that together the State and the County do a kind of carrying capacity or natural resource management plan so that there can be a comprehensive approach to the impacts of the industry on a very fragile and very precious area. The impacts range from the impact along the rivermouth and also extend to the sea caves, the reefs along the Na Pali, and the overall coastal area. It is very clear that there has been an impact on the ecosystem of the reefs, that the feeding of the fish, the same kind of imbalances that are being created at Hanauma Bay, need to be examined, the oil slicks that are on the surface of the water, and the fumes in the sea caves, as well as the overall danger at times of high waves are all just among the impacts that need to be addressed and approached in a comprehensive manner. The County is doing its best out of its authority to do that kind of

planning and management and we have been appreciative of the State's cooperation in also administering the kinds of fines and enforcement that are necessary, and I believe this kind of coordinated effort and cooperative effort will ensure the integrity of the coast for years to come."

In answer to a question from Mr. Apaka, the Mayor stated that the County initiated fining the boaters in early July and the DOT has followed suit in their jurisdiction, and this was the County's follow-up effort in the courts. The Mayor stated that the density problem will be addressed by the Planning Commission through the SMA process, which includes an environmental impact statement, public hearing, a weighing of the issues, and the values of the community. She also stated that a draft EIS is out.

Mr. Morimoto clarified that, "Both companies withdrew their SMA applications and so currently there are no SMA permit applications for commercial tour boating pending before the County's Planning Commission. Some of the boat companies who were originally represented by Martin Wolff who sent a letter to the County stating that he wanted to withdraw on behalf of all of his clients has told us that he was not authorized to do that and that they want to continue with the application process."

In reply to a question from Mr. Yim, the Mayor stated that there are approximately 15 companies and 40 boats operating out of Hanalei and approximately 13 of the companies have been cited.

The Mayor stated that some of the companies are now reapplying for the SMA permit. She said that the issuance of the permits will depend on how soon all the applications are completed; that there are several prerequisites for a complete application, one being the filing of an EIS. The County also needed to know who the boaters actually were who were applying because the application was originally done under the ambit of the North Shore Charter Boat Association. She said they have been attempting to obtain this information for over two years. She stated that once the application is in it would probably take two or three months. She said the filing fee was \$150.

Mr. Yuen queried whether the draft EIS would apply to all applicants. Mr. Morimoto stated that the draft EIS was done by the North Shore Charter Boat Association and presumably members who helped fund the EIS would be covered. Mr. Morimoto stated that the EIS set a maximum number of boats and presumably it could be processed up to that number of boats. Mr. Yuen noted that there were examples where individuals doing essentially the same activities have been allowed to use an EIS prepared for something else if it's "really right on the money as far as what they're doing." The Mayor said that seemed logical, and Mr. Morimoto explained that it is public record and presumably the agency could rely on it in processing other applications.

Mr. Morimoto stated that the EIS needs to go through Chapter 343 review and the comment period ends on August 13.

The Mayor stated that the limits will be set by the Planning Commission in the Hanalei River because it is an SMA area. The application today involves one company who launches from the Hanalei River and then

loads and unloads in an area under DLNR jurisdiction. She stated again that Makua Beach was not an appropriate area for the kind of commercial activity being proposed.

Answering a question from Mr. Arisumi, the Mayor stated that special areas must be protected, and "It is a matter of finding where the appropriate place is for this kind of commercial activity, and the County says 'not in Makua Beach'."

Mr. Martin Wolff stated, "It is important for this Board to know that the boaters did in fact file an SMA permit application for the Hanalei River in April of 1989. They also submitted an EA in April of 1989. They submitted a draft EIS in October of 1990 and for over two years the County of Kauai has simply refused to process the permit application, the draft EA or the EIS. As a result of that there have been five administrative appeals filed with Fifth Circuit Court. A letter that I sent to the Planning Department after it became extremely clear that they were never going to process the permit applications and are never going to issue an SMA permit to anyone, I sent a letter withdrawing from the administrative processing so that the appeals could go forward in the court. The court has decided that that withdrawal made the appeals moot. That issue is now going up to the Hawaii Supreme Court. All five administrative appeals will be going to the Hawaii Supreme Court very shortly. There has been absolutely no good faith effort on the part of the County of Kauai to process the environmental assessment, the EIS or the SMA permit applications--absolutely none. Why are the boaters reluctant to come in for further SMA permits? Two reasons. Number one, they know the County of Kauai's commitment is to put them completely out of business and applying for a permit further is a complete waste of time. Second, they don't need any further SMA permit. They are currently operating and have been operating under the Sheehan SMA permit with all of the conditions of that permit being complied with. As to the preliminary injunction that the County has currently against some of the boaters and not all of the boaters, there has been a vigorous defense of the County's attempt to obtain a permanent injunction. This case was originally filed November 3, 1988, and to this date the County has been unsuccessful in obtaining a permanent injunction. Along the way, in November of 1990, the County brought a contempt citation against the boaters, and the boaters stipulated that they were operating in violation of the preliminary injunction and the court held that sanctions were inappropriate based upon extenuating circumstances. I would explain all of those extenuating circumstances to you but it would probably take four hours to do so."

Mr. Wolff then addressed the civil fines. He said, "Those civil fines are being issued without any legal authority at all," and stated he has prepared a lawsuit to file against the County to have a court so determine that they have no legal authority with those administrative fines.

Mr. Wolff in answer to a question from Mr. Paty stated that the court records in the continuing controversy between the County and boaters are rather complete with the "incompetence of County attorneys." He said, "Very recently, when Mr. Greff was dismissed from the permanent injunction case, there was an argument put forth by one County attorney that the other County attorney who had allowed the matter to be

dismissed was basically acting incompetently so they were calling each other 'incompetent' and I certainly didn't disagree, and the Judge denied the motion to bring Mr. Greff back into the case. The fact that you would find it hard to believe possibly that they would be issuing these fines without any legal authority is not inconsistent with everyone's desire to believe that government is acting lawfully.

"DOT does in fact have some rules and regulations in place which they have not enforced since their adoption." Mr. Wolff stated that written inquiries were made of DOT asking when, under what circumstances, and what permits will be issued. No guidance or advice was forthcoming because they stated the matter was in litigation. DOT also informed him that no permits would be issued under their rules and regs. The citations are for operating in the shore waters without DOT permits--"the very permits DOT has arbitrarily refused to consider issuing." Mr. Wolff stated that the bottom line is that the fines issued by the County and the citations issued by DOT will not deter any lawful boating activity that is currently in progress. "These are unlawful acts of government which will be redressed in the courts where it belongs, not before this Board."

Mr. Greff asked to address two statements made by the Mayor. He said that his boats have not fueled on the water for three years and that his operation has parked in the State park and bussed people for the last 2-1/2 years. Mr. Greff went on, "Captain Zodiac applied for the first permit to run tours down the Na Pali Coast in 1977. At that time in order to secure our Na Pali Coast permits, our first CDUA, we had to go to the County at which time the County wrote a letter pursuant to Captain Zodiac saying that our operations at the Hanalei River and in regards to this application were not in the SMA area. So, for the next 13 years, I've gone before the Board and asked to renew this permit, thinking that I was within the parameters of the law. I began exploring in '76, one day I reported a story about it and the public since then has made the Na Pali tours one of the most popular things on this island. The County of Kauai for ten years fostered this activity even by including us in all their County brochures on boating. After I applied for my permit in 1978 and received it, three other companies applied. At that time, the County also in 1978 and these other three CDUA applications also wrote letters saying that they were not in the SMA area at the Hanalei River. In other words, the activities that they were asking to do were not in the SMA area. I went to public hearings and in 1978 was issued a permit to land, physically land, two boats on the Na Pali Coast, that means to pull the boat up on the beach and disembark passengers. These first boating expeditions laid the foundation for an industry today which employs several hundred people and is known all over the world. Today, Captain Zodiac employs over 100 people on three islands and has an annual payroll of \$1 million. From 1977 to now, Captain Zodiac has operated in an environmentally sensitive visitor industry while at the same time serving the island's community needs for rescue service, hauling rubbish and equipment used to maintain the Na Pali Coast. During the years 1981 to '85 many companies began operating from the Hanalei Rivermouth and Tunnels Beach. The boat companies operated from Hanalei, the scuba and snorkle companies operated from Tunnels. When these unpermitted operations were challenged before the department and the Board the Chairman and the department maintained that transitting did not require a CDUA. Local DLNR State Parks allowed me to add additional boats. In other words, the two boats outside of my

CDUA were only added after Mr. Sam Lee and George Niitani represented to me what the Board and the Chairman had said--that as long as those boats did not land in Tunnels, they did not require a CDUA.

"In 1986, '87, and '88, Kauai Senator Stallings introduced legislation, special legislation, I may add, to relocate or put Captain Zodiac out of business. The DOT and DLNR reported to the legislative committees that our operation was needed by the State and they did not oppose my relocation to Hanalei. The House of Representatives killed all these bills all these years. The proper Chairmen and Board Members visited the sites at Tunnels, at Makua Beach in 1985 and in later years. During those years, the DLNR licensed 10 boats on my permit. In 1985 in response to Chairman Ono's and the Board's visit out to Hanalei, Chairman Ono asked for an investigation to see if the allegations made against me by the landowners were true. At that time they did monitoring, undercover, of my operations for over a year and the questions then were asked: Is Mr. Greff violating any laws at Tunnels? The answer to that is also in the memorandums that Mr. Wolff gave you and DLNR reported 'no, Mr. Greff is not violating any County, State or federal laws.' The next question the Chairman asked was 'if he's not violating any laws is his operation in the best interest of the public and if so, why?' The answer to that was also included in that memorandum that you have that basically said, and this was signed by Mr. Nagata, from State Parks, that Mr. Greff's operation is in the best interest of the public for various reasons, being rescue essentially and availability to service the park. In 1987, DLNR began charging the Hanalei boaters to disembark from the river. The same year, the State Parks added--all of a sudden told me--Mr. Greff now we are going to start charging you for these additional 8 boats at Tunnels that don't land on the beach. I, speaking to the local DLNR agents here, did not agree with that but was told by Mr. Lee that I should not 'rock the boat' and it was fair because of the other boaters. I did not understand why I was being charged to transit the beach when the DLNR policy statewide and in similar operations all over the State to this day do not charge anyone to transit the beach and since the boats were on the water under DOT jurisdiction I did not understand what jurisdiction DLNR at that time had over the boats at all. The DLNR told me, 'Well, we have to charge you for those 8 boats to be fair to the other boaters.' Since 1988, the funny thing is, is that none of the other boaters have paid a cent to the State DOT or DLNR, not one cent, and I am still being required to pay this extra charge in the amount of \$160,000 over the last three years, and this was supposed to be fair to the Hanalei boaters but I do not see the fairness that in the last three years I've been charged \$160,000 to transit the beach. And then, all of a sudden, three years later, in 1990, out of the blue I get a letter from the Department, from OCEA, saying that I need a CDUA permit for 8 boats that are already been, when my permit was amended to include those 8 boats and charged money for them, they now put the request that I am running an illegal operation and if I want to continue, this is not the Board but OCEA and the department, that I must apply for another CDUA. As you well know, last year at your Board meeting you asked me and could have indicated that it would have been good for me in going along with the community to move my additional 8 boats down to Hanalei and at that time, at that Board meeting, I had made a proposal trying to go along with the community in the spirit of the DOT and DLNR to move those boats to Hanalei, I immediately filed

a CDUA to move 5 of those boats to Hanalei. Now, the funny thing is that I put that CDUA request last October within a couple of months after the Board meeting. I was not notified til last week that my permit was even accepted for processing. So I have done everything I can to go along with the Board's wishes in order to comply with the Board in order to try and appease the community. The problem I had last year again was that to move my boats to Hanalei arbitrarily last year puts me in jeopardy because at this time right now the DOT rules . . . they have made rules for my 10 boats at Tunnels and for an egress/ingress zone. In other words, I am operating within the law within those 10 boats. As far as the SMA situation goes, I applied, like I said in '77 and then I got a letter in 1988 from the Planning Director that said all these activities at the Hanalei River were illegal without an SMA permit except for launching and retrieving a boat.... As you know that 's all I've ever done at the Hanalei River is launch and retrieve a boat. I then had to go to the Supreme Court in order to get the court to stop this government injustice. After 14 years tried to put me out of business based on launching and retrieving my boat when commercial fishermen and other people are down there launching and retrieving their own boats right now--commercial fishermen, people who take people out on fishing charters and charge money. And then I also submitted another SMA application in 1988 at the same time to try and comply with the County. I applied individually on my own because my case was different from everyone else. The Supreme Court mandated that Captain Zodiac not be treated with everyone else, that we be treated separately. Then the County said 'We're not going to accept your individual SMA application. We want you to apply with an association, with all these other boaters.' I didn't want to do that. I had no choice but to join the other boaters and apply with all of them for this application. At that time, our Mayor went up on her stairs and told us that if we did an EA, depending on the EA, that she would expedite our permits. We did the EA and, of course you know, the permits were not expedited but instead we were told to do an EIS and asked to shut down our businesses for a year while this was being done. Last October we submitted an EIS and at that time we figured within a few months it would be acted on. Well, that EIS sat there for 8 months while the County asked for all kinds of names and wanted to know who's partner was which. It was obvious it was not being processed and they were looking at every little thing to keep it from being processed. So then, they went to the court this last year and said, 'Now we want the boaters to come back in there. Instead of processing a group application, we're going to again ask them to process individual application.' So here they're going around in circles and this was at the point where our attorney said . . . first they wanted I apply individually, then they want a group, then they want to come in individually--that we're not going to get our day in court. Subsequent to that, the County has lost with prejudice their case against me at the Hanalei River. The judge dismissed it a month ago with prejudice. . . . In other words, the Supreme Court told them that any action that they did not bring up in their second complaint against me would be deemed waived forever. It's just been in the last two weeks that they came out, after I had my day in court, played the system like you had to, tried my best to comply with all the laws, then they pull out this new thing last week that they're fining me \$18,000 for not having an SMA permit. . . . Lastly, I would like to say that we've always set an example environmentally, we've gone through the permit process, not once, but tried to twice and tried to serve the community and attract publicity for the State. We've paid our taxes and never gotten a black mark. We

trusted government and based decisions and our livelihoods on that trust."

Replying to a question from Mr. Apaka, Mr. Greff said that his intent was always to comply with the Board and to start to move all of his boats, except for the couple he needs to maintain there to for the communications system and rescue capabilities. He said he is running a legal operation. He said that if the Board denies his application today, he would (1) go out of business, or (2) or if the Board sends him down to Hanalei or not add the 10 boats, then he would be placed in the situation where he might possibly be operating illegally. Mr. Greff asked to be allowed to operate there until all the litigation has been completed and at Hanalei when the climate there permits.

Mr. Greff further stated that under the DOT rules enforced at Hanalei there is no provision for him to operate out of Hanalei because the rules made the provision for him to operate out of Tunnels. He claimed that he was purposely left out of Hanalei. To answer Mr. Yuen's question regarding Hanalei, Mr. Wolff replied that DOT would not give him any answers to his query. He stated he also asked DLNR questions regarding the ownership of the Weke boat launching ramp and the right-of-entry given to DOT. The responses from DLNR were the same as DOT.

Mr. Wolff mentioned that since DLNR will take over the boating operations that to continue the status quo for one more year until such time as the rules can be adopted and implemented would mean whether his client could stay in business while the department is going through the rule-making process.

He further stated that a DOT ad hoc committee held many hearings and a formal report was made to DOT. The final result was an agreement, he said, a consensus of diverse interests. Unfortunately, when DOT adopted its rules it did not take into account the work done by the ad hoc committee. He stated that in the report is a recommendation that a portion of Mr. Greff's activities be moved to Hanalei, and Mr. Wolff indicated that Mr. Greff has always been willing to do that.

Mr. Greff stated that even as his CDUA was sent out for comments, Land Management, which has jurisdiction of the beach at Tunnels, sent a report to Mr. Paty and Mr. Evans stating that transitting of the beach is not something DLNR or Land Management intends to require a permit for because transitting of the beach is not required for a permit anywhere in the State for the same activities.

Mr. Wolff stated that this was pointed out at the Hilo meeting. "The only thing Mr. Greff's passengers do at Tunnels is to walk across the beach, walk across the CDUA area. They load and unload the boats out in the water in DOT jurisdiction, which is the same thing that's done on the Big Island at two resorts where no CDUA was required and no environmental impact statement was required. The letter we got last week indicating that Mr. Greff's CDUA application for Hanalei has now been accepted for processing indicates that an EIS is required and it indicates that the EIS is required for loading and unloading passengers on the beach and that clearly not what the application stated so I have sent a letter to Mr. Paty asking for clarification of this letter accepting the

application. We have a November deadline to process the Hanalei CDUA and . . . although we did in good faith file that CDUA for Hanalei, I don't feel and I don't think Mr. Greff really believes that approval of that CDUA would be something we would really want to see happen. We did it in good faith because this Board wanted boats moved out of Tunnels, and Hanalei is the only other location where this can be done but the CDUA that was applied for was the beach fronting Black Pot Park, adjacent to the old pier, which has historically been the ingress/egress area for commercial tour boats. Mr. Greff and I are painfully aware that the community is totally opposed to that activity in that location. We would much rather not have to deal with a CDUA at Hanalei at all. We'd like to get all of the litigation with the County resolved and operate out of the Sheehan Boat Yard where the other boaters are operating. That would take an amendment of the DOT rules, which you people are going to assume jurisdiction for, and it will require resolution of all the litigation with the County of Kauai so as an interim measure the CDUA was applied for at Hanalei, fronting Black Pot Park. I don't believe that is in anyone's best interest, either as an activity or an approved CDUA but it was the only thing left to us when we couldn't get our questions from DLNR or DOT with respect to the Hanalei River."

Mr. Greff noted that another company has a CDUA permit to transit people with no EIS required and that he is now required to do an EIS.

Mr. Wolff stated in response to a question from Mr. Yuen that he is asking for a one-year extension for 10 boats at Makua if a permit is required. Mr. Wolff stated that he did not believe a CDUA is required for any of the boats because the only activity is transitting the beach, except for the two that land. Mr. Wolff stated that in the packet given to the Board in Hilo he submitted information on 13 prior Board decisions where transitting the beach did not require a CDUA.

RECESS

Recess was called by the Chairperson from 10:55 a.m. to 11:10 a.m.

Mr. Morimoto asked to clarify statements made by Mr. Wolff. Mr. Morimoto stated that Mr. Wolff commented that the SMA laws do not apply in this case because the Tunnels area or Makua Beach is not in the SMA. The point is that the Coastal Zone Management Law applies to this activity and to all decisions made by the Board with respect to activities within the coastal zone and for that reason the Board was bound by Chapter 205A.

Mr. Hegarty, one of the applicants, addressed the Board stating that the boating industry made some great strides in remedying the problems in not using Black Pot Park and citing the safety record of the industry, and the rescues. He stated that his landings are being cut in half basically because he was using only two of them to begin with. He also stated there is no oil in the water nor trash left behind at Nualolo and asked that his permit be extended for the two boats. Mr. Hegarty stated that he launches from Hanalei and has been cited by the County.

Mr. Paty stated he assumed Mr. Hegarty would finish his summer commitments. Mr. Hegarty stated he couldn't afford to pay the fines and couldn't afford to stop working. He stated that the season is from May through September and is a losing operation during the winter months. In regard to the SMA permit, he did apply and did an EIS for the Land

Board in 1978 but did not receive a permit until the State Master Plan was finished three years later.

Ms. Susan Matsuura of Lady Ann Cruises appeared before the Board and acknowledged confusion as to what to do, what legal process to take next, and what applications were required. She stated they are a small company and very seasonal and have not been cited.

Ms. Judy Waite representing Wai'Ola made the following statement. "Wai'Ola opposes any further extension of the temporary special use permit for Captain Zodiac/Na Pali Zodiac. Annually, the Board failed to address issues such as the lack of public facilities and proper beach access, the traffic problems and the continued degradation of Makua beach and its nearshore waters. It allows Na Pali Zodiac to thumb their noses at all procedures, rules and regulations designed to protect private and public ownership of land. Despite continued violations of conditions of the Special Use Permit, the BLNR has never imposed any penalties or sanctions against Na Pali Zodiac. No Conservation District Use Application has ever been required of Na Pali Zodiac, and the BLNR has avoided all public scrutiny by granting 'temporary' permits again and again since 1983.

"Prior to 1978, Makua beach was virtually unspoiled and deserted except for a few residents and reef fishermen. With the introduction of commercial tour boats by Na Pali Zodiac, overcrowding and disruption of fishing and recreation have increased exponentially. Today, several tour, sailing, and dive companies have joined Na Pali Zodiac's 10 boats in turning this once serene spot into a mini Waikiki. The bountiful reef area used by generations of Hawaiians as a source of food has been torn up and degraded, and local beachgoers now avoid this over-commercialized and crowded area. Residents find it difficult to gain access into their own private property.

"In the original 1978 State Parks permit, certain conditions were imposed that have been blatantly ignored by Na Pali Zodiac." She pointed out Condition 1 required that the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State, and County governments. "Since 1988, Na Pali Zodiac has continued to operate without a County SMA permit. Condition 4 calls for the company to 'comply with all applicable Public Health Regulations,' but no public restrooms are provided at Makua despite its permitted use by a maximum of 354 Na Pali Zodiac passengers a day. Condition 8 states 'that a maximum of two Zodiac boats be permitted to operate', but somehow that number increased in the 1988 extension to 10 boats, increasing the carrying capacity for Na Pali Zodiac from less than 40 to

"In the 1988 extension of this 'temporary' permit, more special terms and conditions were imposed which are being violated by Na Pali Zodiac. Condition 3 stated that landings are allowed at Haena Point for loading and unloading of passengers, but that the beach not be used 'as a waiting station for passengers.' Passengers do wait at Makua, while zodiacs maneuver for position on the beach. Condition 4 permits 'landings at Kalalau from May through September only,' but Na Pali

Zodiac operates year round. Finally, condition 18 states that the 'rights of permittee shall at all times be subordinate to rights of public in use of landing site,' but I have been paddling with our civic canoe club and have been ordered by Na Pali Zodiac captains to make way for the Zodiacs in the narrow channel - in violation of this condition and in violation of maritime law which gives right of way to less maneuverable, non-motorized vessels.

"For 13 years, residents have been opposed to commercial tour boats landing at Makua. In the minutes of the December 1983 BLNR meeting, Board members cited letters of complaint from residents and heard comments from members of the public in opposition to the continued use of Haena point. A Board Member reminded the audience that the meeting was not a public hearing, and a call was made for a public hearing by concerned citizens at that meeting.

"Visitors come to enjoy the 'unspoiled beauty' of our North Shore, but residents mourn the loss of Makua. Past Boards have allowed these business pirates to run rampant over public resources without insuring environmental integrity. Past Boards have allowed over-commercialization, ignoring such vital documents as the Na Pali Coast Management Plan, the BLNR's rules and regulations, and State law.

"I urge you to deny an extension for Na Pali Zodiac, as well as landing permits for Lady Ann and Tom Hegarty. At the very least, Conservation District Use Applications and an Environmental Impact Statement should be submitted. Any decision should accommodate the desire to conserve, protect and preserve our natural resources, not the promotion of public resources to line the pockets of individuals."

Ms. Waite also read a statement from Petrina Satori-Britt and Robert J. Britt: "As residents of the North Shore of Kauai for almost 12 years we have been watching the deterioration of Tunnels Beach. It was one of the most beautiful beaches on the island when we first moved here, a quiet cove that only locals knew about. Then along came Clancy Greff operating his zodiac tours tramping tourists in and out and the dive companies followed. The result of this kind of activity is evident - the beach now resembles Poipu (packed with tourists) who park dangerously out on a highway not suited for the situation, and most sadly of all we noted on a trip out there this summer that the reef is dead, it was not last summer at this time, this has probably occurred as a result of gas and oil mixtures from the tour boats (most of the other boat companies stop in this area to snorkle even though Clancy's is the only company departing from there) and all the junk that the tourists feed the fish (peas, bread) has killed off the tropical fish that originated in that area. And then, of course, there are the local fisherman who depended on that area for thier catch. I am told it will take 50 to 60 years for the reef to recover from this abuse. I believe that Tunnels should be closed to all commercial business, if Clancy is to operate he should leave from Hanalei like everyone else. As an endangered area I believe it should also be closed to the dive companies and the other boat companies for snorkeling.

"I know that Kauai needs tourism to survive but if the entrepreneurs and the tourists cannot look and enjoy without destyroying we will have nothing left, nothing left for the tourists yet to come and worst of all nothing for our children."

Ms. Waite read another statement prepared by Diane Daniells: "I am writing to voice my opposition to granting the permits to launch zodiacs from Tunnels Beach at Haena Point. I have watched firsthand as the situation has grown out of control.

"The boats have been operating directly in front of a beach home I lived at for many years. My husband and I were also married there. I feel very strongly that there should be no commercial boat activity in what is called a 'conservation' area. It is dangerous for swimmers, children and it is an eyesore.

"I avoid even going to that particular beach or taking any visitors there as I am ashamed to show anyone what has happened and I just have too hard a time seeing it myself. Please consider my opinion as many people in Haena and Hanalei feel the same."

Ms. Waite also presented to the Board a letter opposing the extension signed by 21 residents of the North Shore.

Mr. Yuen asked whether any marine biologists have documented the quality of the reef. She said she did not know.

Mr. Dan Bennett, a non-commercial zodiac boat operator, stated he was in favor of the extensions, in particular Na Pali Zodiac, because of the size and scope of operation to maintain communications, safety facilities and garbage removal facilities. He stated he was not safe in the waters at Na Pali in his single engine boat. He spoke of rescues by Na Pali.

A speaker who did not identify himself stated that he has lived on the island for 10 years and has not been on a zodiac but knows that they have saved a lot of lives. He also claimed that Round-Up has been sprayed in the river by the County.

Ms. Diane Faye stated that the operations are conducted directly in front and adjacent to her property. She stated she is again asking that the permits not be extended to operate out of Makua Beach, damaging the reef. She cited a number of other commercial activities in the area.

Ms. Faye pointed out that the roadway designated "D2" coming off Kuhio Highway is a private road, owned by seven adjacent property owners with an easement in favor of the County. As an owner of two-sevenths of this road she said she didn't understand how the State can adversely impact the original intent of public right-of-way to the beach. With the use of Na Pali Zodiac and other companies, it has caused the road to be congested and dangerous and responsibility for the liability of this road is very questionable.

If the permits are extended she asked that certain stipulations be added: a public telephone, a certified life guard, garbage or dump service, clearly designated bathrooms, removal of the no parking sign in front of their rented house and have their employees park on their property and not on the road.

Melinda Sandler said she has never witnessed any environmental impact caused by the boats by gasoline, oil, or exhaust to the endangerment of any fish or wildlife. She said she has worked on a number of environmental projects at Na Pali, one being a non-profit organization under the umbrella of the American Wilderness Alliance called the Na Pali Rehabilitation Fund. The purpose of the organization is to restore and maintain the Hanakapiai region of the trail. She explained the work of the organization. She explained it was a volunteer organization and Captain Zodiac assisted them in transporting the volunteers and equipment to Na Pali. She said Captain Zodiac has also hauled out trash, rescued hikers, and was a positive impact at Kalalau.

Mr. Richard Rice and John Steelquest, landowners at Haena, were against the extension and asked for the return of passive enjoyment at Haena.

Mr. Charles Cobb Adams with park service explained the work he has done at Na Pali and has been helped by Captain Zodiac in transportation and the hauling of garbage and equipment.

Ms. Bobbie Hickson, a visitor from Queensland, Australia, stated that she had gone to Na Pali the day before and urged the Board to grant the extension of the permits.

Dr. Gary Blaich spoke on behalf of 1000 Friends of Kauai stating that a commercial tour boat operation is no longer compatible with the increased recreation use of Makua Beach. He suggested that to minimize the economic loss to Na Pali Zodiac the company be allowed to continue operating there through September or October 1991, after which time it be considered with the other tour boat companies as management plans evolve. They also recommended that landings at the Na Pali State Park be reduced and limited to Kalalau and Milolii and that Nualolo Kai's archaeological resources be protected from excessive visitation.

Joe Leconent stated he was an independent contractor working for a majority of the boaters doing repair and maintenance, including Captain Zodiac. He stated that he installed a telephone at Tunnels contrary to what was said earlier. He also stated that Captain Zodiac had approached him months ago to make environmental bags that are water tight and reusable. He said that Captain Zodiac also talked about trash cans or a dumpster at Tunnels and said Mr. Greff would be talking to the State or County. He also stated that he has been asked to remove barbed wire and steel washed out and embedded in the sand.

Mr. Gregory Goodwin, caretaker for Ms. Faye and Ms. Guslander at Makua, pointed out that D1 is a County road but D2 is a private road with an easement to the County. He stated that the businesses use the D2 road, which puts the landowners in jeopardy as far as liability. He noted there was a lot of trash and that others have cut the wires to get to the beach but has since installed cable. He said, however, that Captain Zodiac was one of the more responsible companies.

Mr. Andrew Evans from Poipu says he spends a lot of time at Makua and never experienced a problem out there and felt there was very little impact at Tunnels.

Ms. Maliki Lani spoke and said she supported the permit extensions.

Mr. Titus Kinimaka said he was employed by Captain Zodiac from 1986 to 1989. He said in 1963 his brother started the first water safety organization on Kauai and says he was an avid waterman. He said that in order to be a crewman or a captain a water safety certificate was required, including first aid, CPR and advanced water safety. Mr. Kinimaka cited his experience in water safety and stated that the watermen of Captain Zodiac are intense watermen and are ready to face any situation at any time and are very capable.

Ms. Jennifer Mersburgh Punua said she is presently employed by Captain Zodiac selling the tours. She said she receives calls from all over the world. The first important thing she was trained to do when she first was employed by Captain Zodiac was to man and answer the radio.

Ms. Ilima Morrison stated she was by the beach yesterday and voiced her concern about the parking situation at Tunnels. She had not been to Tunnels for three years because of the parking situation.

Mr. Rick Falts, an employee of Captain Zodiac, spoke in support of the extensions. Another employee, Dave Stewart, said he is a boat captain and supported the application for extension.

Mr. Tadao Suyemori of Lihue suggested that the State study the problem and suggested the boats go out to Port Allen.

Ms. Barbara Baker said she was asked to represent other landowners along Kuhio Highway and opposed the extensions.

Mr. Ted Myers, director of operations for Captain Zodiac, said he is a board member of the HVB and is active in promoting tourism. He said their operation is known as "one of the reasons to come to Kauai." Elimination of their business would "handicap" the island. He also spoke of their safety and rescue capability. He reiterated that the parking at Tunnels is by visitors and scuba dive people.

Mr. Shigeru Miyamoto stated his support for the tour boats and the community service they perform.

Ms. Helena Santos voiced her opposition to the extensions.

Mr. Harold Bronstein, representing Wai'ola, said:

"These permits are called 'special use permits.' I don't know of any authority to give a special use permit the way these permits are being used. The only State park authority for special use permits is found in 14-146-54, and I think if you look at that it talks about a regatta, talks about day use, charitable organizations, and things like that. This may be considered a temporary variance, and I heard someone testify about the blackest day was back in 1985. As I remember that black day at that point in time, the Board was requiring CDUAs for landing on the beach in Hanalei or for transitting the beach in Hanalei to load and unload people who are going up the coast. That point in time the Board suspended their CDUA practice and went to a 'temporary variance' and/or 'temporary permit system.' 'Temporary variance,' as I'm sure you

all know, is only good for one year, and I would suggest a renewal of a temporary variance year after year is being used to circumvent the CDUA process, and I don't really think the Board wants to do that because I think a CDUA is required. Mr. Apaka and I have gone back and forth for the last several years on transitting the beach, and Mr. Arisumi--we've discussed it, and last year Mr. Apaka said he wasn't sure about transitting, he couldn't get a handle on it--it affects the whole State and that he would hope by this year there'd be an issue resolved on that. Again, going back into what I can find about the Board's past practices, and I don't say they have to be followed today, there was some discussion about what the Attorney General has or has not said in the past. I will tell you that every Attorney General Opinion I've read from 1982 through about 1985, when the suspension occurred concerning transitting the beach was that an integral part of a commercial activity, CDUA should be required to regulate. The dichotomy between DOT and DLNR has been mentioned will be history hopefully July 1, 1992. This issue on 'standing in the water' and my quote is not on the 'beach' is a red herring. It's always been a red herring and will be a red herring as a matter of law next July 1st, but irrespective of that transitting, integral part of a commercial activity requires a CDUA, and I think it's in your own definitions. The commercial purpose or use is defined by this Board with the Administrative Rules, which I assume are promulgated by this Board includes the providing of services of or relating to or connected with trade traffic or commerce in general. The activity on the beach, public lands owned by the State, conservationally-zoned, including submerged lands, constitutes a legal need for CDUA. And I think the Board or if not the Board the Department has certainly recognized that, and I know the issue of Waikoloa has been mentioned vaguely and I'm not real sure of the history of that but think the statement that no CDUA was required here was incorrect. I think the statement that no EIS was required here is incorrect and if I'm wrong I apologize to the Board but I think that's a true statement. I think the transitting of the beach, the moorings there, and the whole use of the beach was considered under CDUA. More importantly, Waikoloa is far different than Makua Beach. Mr. Apaka and I talked about that. A hotel has already received all types of zoning process has been approved. Accessory uses in front of the hotel though regulated by you are certainly different than the commercial activities that are happening and what the woman described when the person testified, I believe Ms. Baker, in a residential area. That's a prime difference, even though they still need 'CDUA.' The CDUA that exists for Mr. Greff allows him to land at Kalalau, and I don't think that's a real problem. Kalalau, 80 campers, I believe between Mr. Hegarty and Mr. Greff they can bring in 30% campers, they should have a valid camping permit--that's 24 people. Milolii, I believe, maximum is 30, and I believe each one can bring in four or five. Certainly, the Management Plan for Na Pali Coast which needs to be updated at this point provides for those landings. The real issue, although I digress a lot today, is Makua Beach. Do we need a CDUA? Before we allow the use, don't we go through the process? That's what we've been saying for quite a few years. Not putting people out of business. Go through the process. You have the absolute authority. If you decide it's appropriate on that beach under the process that's your decision. Never gone through the process, which is the same issue in Hanalei River. Wai'ola, some of the people I represent, have been accused of wanting to put the boating industry out of business. Two of the goals, and the main goals of Wai'ola, have been--make government responsive to the law and see that

the law works the way it's supposed to work. We know we cannot control the political decisions. We do not attempt to control the political decisions, but we do intend to see that the laws are enforced and obeyed. There is a greater good in that. At least I as a lawyer believe that is true. There was a lot of discussion about the entire boating industry, and I can understand that. I do not believe that was the proper forum today. Maybe next year or maybe it is as a precursor of what you guys are going to have deal with. But as I understand the permits that you have issued, one of the conditions that Mr. Greff, Mr. Hegarty, and Lady Ann agreed to simply states that they are subject to any State Department of Transportation rules and/or requirements implemented as part of their Ocean Recreation Management Plan and any requirements established by the County of Kauai in the Hanalei area. Seems pretty clear. I don't think Mr. Wolff or Mr. Morimoto have to argue. That's what the permittee and the Board agreed to. Mr. Greff's permit that he does have, excuse me, CDUP says that he will comply with all the rules and regulations, whether they be State, County or federal. We have been over this ground for about three years--at least I have. Last year I believe Mr. Arisumi told, made the motion, Mr. Apaka accepted that--'the very least, Mr. Greff, we're not going to consider more than five boats this year'--because there was this whole discussion about numbers last year and there have been that discussion the year before. So the very least, I don't think we're talking about the renewal of a 10-boat permit. I think we're talking about if you give a permit without requiring a CDUA, which I think is incorrect as a matter of law. We're talking five boats, and I really think if you're really going to adhere to the law we're talking two boats under the CDUP. And I think you have to decide where Makua Beach fits into this. I don't know the reason why, Kee--was turned down in 1978--is a State Park, Makua Beach is not. At one time, Mr. Greff said Kee Beach was not acceptable because there is insufficient parking. As I understand now that's where he wants to do his parking or has been doing his parking. The Board's accommodated him, but the beach is popular and there's good sunbathing, and a small lagoon. I think those words are the same for Makua Beach as they are for Kee Beach. What is happening is because he hasn't gone through the process before this Board or with the County is there's this--we're trying to say that Hanalei is the only place. People want to stay on the North Shore. The business is right there. It's convenient and it's the personal preference. I can understand that but I don't accept it. Other sites have to be explored, and the real bottom-line problem on the North Shore is there are very few sites and these businessmen want to stay on the North Shore. But the truth is that commercial business should go out of commercial harbor. This is not the 'mom and pop' that Mr. Greff started in 1978 or Mr. Hegarty started. This is big business. I heard Mr. Greff say he has an overhead of \$125,000 a month. Let me see, that's \$1.5 million is his overhead. That's a hell of a cash flow. If we go through the process decisions will be made intelligently but what has happened for the last three years or so that I've been involved is that we've argued and tried to avoid the process. Hopefully, we're going to get back on track and do the process. There may be some short-term harm to some people or maybe long-term harm to some people but the issue is the greater good--is the tourist industry paramount? Should it be paramount in front of the Board of Land and Natural Resources? I have been chastized by you before and understand that tourism is important. I understand that you want to make the access to Na Pali available to tourists but what we're really talking about is where do the boats go from? That is the main issue--at least from my perspective, and

I may be oversimplifying it or some of my clients may not agree with me. Where do they go from is the real issue. Do they go from Makua Beach? Do they go from Hanalei River? You take two of the nicest areas and make them a commercial harbor? I say 'no' or I say 'at least go through the process' and prove to me that these are the areas that should be used because I've heard this . . . you're innocent until proven guilty. My understanding of the permitting process is that he who wants to use the natural resource, he who wants to use the State facility, he who wants to use the County facility comes in and shows why he should, how he will do it and that he will not harm the natural resource or the community or that he can mitigate and then he is permitted or he is permitted with conditions or is told 'no.'

There was discussion on the position of Wai'ola, and Mr. Bronstein stated that he believes most of the membership has taken the position of no commercial activity at Makua. Mr. Bronstein in answer to a question from Mr. Yim stated they are talking about Makua Beach and the transaction of commercial business or part of the commercial business on public beach. Mr. Bronstein said the bottom line is a matter of law. "If you had the same level of activity in a non-commercial, and I don't understand, I've never seen a private boat come up and land at that beach and put 15 people, do it all day and six or seven days a week, but assuming that happened even though they weren't being paid, I'm sure the residents and the people would be quite disturbed." He said the commercial activities are the impact. The numbers are part of the impact.

Mr. Bronstein stated the rights of the public vis-a-vis commercial are much greater and should be. At some point, he said, the public may have to be regulated if their impacts are the same as the commercial.

He further stated that Makua Beach is not a commercial area, it's residential, and there shouldn't be anything like that happening on the beach. Waikoloa, on the other hand, is resort-zoned and that's the difference between Makua and Waikoloa.

Mr. Stefan Puhi of Captain Zodiac testified that he is the operations manager for Na Pali Zodiac. He said that some of the negative comments are "exaggerated."

Ms. Carol Wilcox claimed that Clancy Greff has been given "favorite son" status by the Division. Since the initial permit, she stated she did not believe there was discussion on how a commercial activity ended up in a residential area. She said that based on the staff reports, it appears that the State is in an advocacy position and it resulted in special use permits that appear to be above and beyond the original CDUA permit and the intent of that permit. She also said the staff has failed to apprise the Board of the problems that have occurred outside of the immediate area--referencing fueling, where he maintains his boats, etc. She said now the operation is against DLNR's permit regulations, County regulations, and DOT regulations.

Mike Sheehan testified that since 1987 he has a permit to provide an area for boating to lessen impact and to make it easier for the public to use the park. He stated that staff recommendations were and the Planning Commission accepted management alternative 4, which was a private developer, that would obviate the need for individual boaters

to come in for permits and enter into the SMA process. He believes his boatyard covers them.

**EXECUTIVE
SESSION**

The Chairperson called for an executive session from 1:55 to 2:17 p.m.

ACTION

Mr. Apaka made the following statement: "The Board is placed in a very difficult position. Last year when we considered Captain Zodiac's position, we had no knowledge that--from then til now, we would have the whole ball of wax placed in our laps, which means that come July 1, 1992, all the recreation boating industry, which is governed by the Department of Transportation today will come under the jurisdiction of the Department of Land and Natural Resources. Therefore, all permits will have to come from DLNR. Last year we made a determination already that we were going to scale back Mr. Greff's operation at Tunnels. Now, with what's coming up next, the Board right now feels that what is decided today we'll have to live with it one year from now. . . . I think the DLNR wants to be very honest with everybody, tell it like it is, whether you like it or not, we'll live with it; however, in the long term there is always a time and place for a new decision but for today I think the decision that will be rendered will be very uncomfortable but for me as a Board Member from Kauai is placed in that situation to make a decision that might not be very popular with me. And for you. Anyway, Mr. Chairman, I move that the staff recommendation for continuation at Tunnels be as decided where Mr. Greff will have two boats operating out of Tunnels and the rest of his operation to be moved to a different site after September 30, which means that all operations remain intact today until September 30 of 1991. Thereafter, two boats that were covered under CDUP in Tunnels will continue in force; however, with that motion I believe Mr. Yuen has some comments." Motion was seconded by Mr. Arisumi.

Mr. Yuen commented that within a year the DLNR will have to be looking at the overall boating question. He stated that hopefully there will only be two government bodies instead of three which will lead to more consistency in this area. Mr. Yuen further stated, "I feel that permits should be required for ongoing commercial use of public beaches, even when that use consists only of going back and forth across the beaches. I think that from the testimony we've seen that it does create a problem. Now I don't know who else or how else this is going to be regulated except as part of the conservation district and by the BLNR. I would hope that the department will look into establishing a consistent policy on this and requiring the problem areas, such as Makua, that there be enforcement, that the people be required to get permits for doing commercial activities in these sensitive areas. As far as the issue we have here today, I heard some very impressive testimony that some level of boating activity along Na Pali State Park is a very positive thing for the park. People who had seemed to really have spent the most time in the park said that some level of boating activity, some landing is necessary and the park would, in fact, be degraded if that did not take place. As far as Makua, I could be wrong about this, but it seems to me that the problems that were discussed are a matter of degree and that Na Pali Zodiac operation is only one part of the activities there. We, if this motion goes through, will be reducing that level of activity by 80%. In a year's time, no doubt, we'll have testimony about what that looks like. If we also adopt a policy about requiring permits for other kinds of commercial activities, it is possible that we might be able to get all of

those under some degree of control. For that reason, I favor this particular motion, and I also think that if Mr. Greff currently all his activities are taking place out of Makua and I believe he is paying 2% of his gross to the State because of that if there is a change in those activities that might have to be reexamined.

Mr. Arisumi commented that he "had a real concern as to the number of people employed by Captain Zodiac and if anything should happen that we have to shrink the operation there's going to be quite a number of unemployment so I hope that in time to come that things can be worked out. The other thing I want to address here is that I took the liberty of visiting the site yesterday and we had testimony this morning about the parking situation. That parking situation will never be eliminated where Captain Zodiac would operate from Tunnels or not because I witnessed the bus bring in the people that's going out to Na Pali with Captain Zodiac. The bus came in and picked up the people and also bring in the people so as far as the parking situation, something has to be done and I take it that that's the State highway, it's not a County highway, I don't know, and the lady that testified that there should be put in some 'no parking' signs and if they do that then the whole beach will naturally go to waste because people cannot go and enjoy that so my basic concern is if anything happens, I hope Mr. Greff can find a way to continue his business so that all these people can be employed."

Mr. Paty added that, "It's been a long, winding, often-confusing road and I would be the first to admit that the department has not been totally consistent in its approach as we face one legal concern raised and face another down the road. I think what you're seeing is the Board making a move to try to establish a control procedure here that'll provide a perspective for development of a balanced boating community. Obviously, there are going to be some legal issues that are going to be settled down the road in the transition period as Mr. Yuen said there's going to be opportunities that are going to be in our lap to try to bring together some of the issues that were expressed today and we're going, I won't say--look forward to that opportunity, but we will recognize that they will have to be addressed, and we're looking to work with the County and bring this about. We do feel that the boating industry is a resource for tourists, for local people, that has to be recognized. We do agree, however, that at it's present level, it probably exceeds the desirable impact on our natural resources and that all has to be--we'll try to take all of that into focus as we go down the road. But again, let me express the Board's appreciation for the sincere testimony that was put forth today because a lot of people here came to the meeting and expressed their real concerns. Obviously, there isn't total agreement on this thing but a decision has to be made. We're making this decision--at least a motion is before us to make a decision and on this basis that we had hoped to build a boating opportunity that would be better balanced and not as fragmented, not as divisive as it has been for the last half dozen years."

The motion passed by unanimous vote.

Mr. Apaka moved that staff recommendation allowing Mr. Hegarty and Lady Ann Cruises be authorized the existing functions along Kalalau with no changes. Seconded by Mr. Arisumi and unanimously carried.

ITEM E-2 **REQUEST TO USE THE OLD KONA AIRPORT STATE PARK IN KAILUA-KONA, HAWAII, FOR A FUND RAISING CARNIVAL**

ACTION *Unanimously approved (Arisumi/Yuen).*

ITEM E-3 **REQUEST TO USE THE OLD KONA AIRPORT STATE PARK IN KAILUA-KONA, HAWAII, FOR A TRUCK SHOW**

ACTION *Unanimously approved (Yuen/Apaka).*

ITEM H-3 **AFTER-THE-FACT CONSERVATION DISTRICT USE APPLICATION 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 stated that this item was deferred from the last meeting. At that meeting, he said, staff was prepared and based its assessment of the facts of the case and the applicable statutes. Following the presentation, the staff brought to the attention of the Board a letter received from a member of the North Shore community in Kilauea. Mr. Evans explained that the letter did not have the "King's English" language relative to the the specific request that was made, but there was specific reference that requested intervenor status. Mr. Evans stated that it was not a term generically used but staff felt that the expression by the author was that of a request for a contested case. In the interim, staff did contact the author of the letter. As part of the discussion, staff was informed that when the concerns were first "developed" by the author and other individuals in the community, there was concern that 100% of this action had occurred within the State Conservation District. Going through the case, it was discovered that this was an erroneous assumption but that the action had occurred within about 30 feet of conservation land. A Department of Health concern expressed to the applicant regarding squatters on the beach, squatters behind the beach which is the applicant's property, and based upon the Department of Health concern felt they had no alternative but to be responsive to the DOH concerns. A vehicle was used to assist in rectifying the situation in an emergency situation, and another vehicle had to be brought in to pull it up and certain actions occurred in the conservation area without Board approval.

Staff then explained to the letter-writer that the Board did not really have the authority to look at the project in its entirety because the majority of the land was zoned "agriculture" which is outside the Board's responsibility. Staff also explained that the recommendation was (1) that applicant did commit a violation, and (2) staff is asking for two separate things: (a) the maximum fine allowed by law and (b) restoration. The writer did agree to the recommendations and because of the deferral, the request for the contested case hearing was withdrawn. The author was also advised that in the letter withdrawing their request another paragraph should be added that notwithstanding the request they still want to retain their rights.

The State Department of Health notified the applicant of the alleged violations. The Department of Health indicated to applicant, as landowner, he would be ultimately held responsible. If he failed to correct the situation, he could be fined. The applicant proceeded to do the work based on the Department of Health notification, and asked that

he not be fined because he was notified by a State agency. Mr. Evans pointed out that the Department of Health did send applicant a letter. Mr. Evans pointed out that in the past the Board has authorized the Chairperson to act in an emergency situation. In this case, if the applicant had notified the department, staff would have been able to respond on an emergency basis.

Mr. Clinton Shiraishi represented the applicant. Mr. Shiraishi requested an amendment be made on page 10, condition no. 6, that the first sentence be deleted and in the following sentence the word "significant" be deleted and the word "a" inserted. In the following sentence, he asked to delete the word "significant" and the word "any" be inserted. He stated that the reason for that was that the only work needed to be done in the conservation area was to restore the grading and clearing the underbrush using hand-operated equipment.

Mr. Evans stated he had no problem with deletion of the word "significant." He said the concern is the monitoring of the clearing. He stated that the condition was inserted because an archaeologist has the discipline to make the determination of a historic site and without the requirement it would open the door to someone other than a person qualified in the discipline to make those determinations.

In answer to a question from Mr. Yim, Mr. Evans stated that the representation has been made that there will be clearing activity. Mr. Arisumi asked whether this was the property which was excavated and a ditch was dug and the bulldozer slid down the hill. He said there is a bulldozer on site. Mr. Shiraishi explained the bulldozer was used to cut into the hillside within the agriculture district in an effort to remove the smaller bulldozer which had slid down into the valley. He stated that the cuts as shown in the exhibit attached to the application is within the agriculture district. He pointed out the conservation district in the photographs. He said the applicant will take corrective measures to prevent erosion and in doing so no heavy equipment will be brought into the area.

Mr. Evans stated if there is no other work to be done in the conservation area, there was no problem with the condition. Mr. Yuen asked Mr. Shiraishi whether he would be doing further clearing in the area, and he answered in the affirmative and that it would be done by hand, using weedwackers.

Mr. Evans stated that the Board is significantly more sensitive to questions of archaeology, and historic sites was an issue on Oahu where the Board gave the City and County Board of Water Supply permission to do a small road as a part of well development. It turned out that the people doing the clearing did not share that same sensitivity and as a result there were significant violations of existing historic sites in the conservation district and resulted in bringing the Board of Water Supply to the Land Board on a violation status in which they admitted the wrongdoing.

Mr. Shiraishi asked that in condition no. 8 the words "be maintained" be deleted and "remain open" be substituted. The reason, he said, for the amendment is due to liability concerns. In the photographs, he pointed

out the County access. Heretofore, he said the landowner has not done any maintenance. He said that with the condition "shall be maintained" if anyone walked through the easement area and was injured, there was a question of liability and is of concern to the landowner. Mr. Evans stated that there is a County access. He said he does not know what requirements were placed upon the landowner as a part of that County access agreement. Because as part of that agreement the terminology may appear that the access "shall be maintained" the staff recommends continuation of that language and provide an opportunity for applicant's counsel to research the question and if there is no maintenance agreement placed by the County the CDUA could then be amended. Mr. Shiraishi asked that the words "remain open" be inserted until he does a title report and if the report says the words "be maintained" is part of the grant then it be amended to what is worded in the present condition.

Mr. Shiraishi also asked that condition nos. 9 and 10 be deleted entirely. He pointed out Exhibits G and H and that only a small area within the conservation district was disturbed and since that area is to be restored to prevent erosion it seems that those conditions would be unnecessary. Mr. Evans stated that there was no problem with those amendments.

Mr. Shiraishi pointed out that what applicant did in the conservation area was to meet the concerns and the threat by the Department of Health as well as meet the concerns of the Land Management Division and other public agencies and because of the small area which was disturbed, asked that the fine be waived.

Mr. Arisumi asked whether applicant was aware of the procedures for use of the conservation area. Mr. Shiraishi stated his client was not aware; he is a rancher/landscaper and in order to meet the Department of Health concern, he began to clear up the mauka areas, which are in the conservation district. While the small tractor was moving makai towards the conservation district, the vehicle slipped down the valley. There was no intent in the beginning to do any work in the conservation district. He thought it was unsafe to leave the equipment out because of vagrants and moved it immediately.

Mr. Evans pointed out that there is a difference between an applicant and a landowner, that staff position is that the landowner is responsible. The landowner in this case is a mainland landowner and that in the '70's or '80's there were discussions between Mr. Shiraishi and himself regarding previous concerns on this property, campers on the beach, campers moving from the beach, off State land, then back to private land, which is his client's; immediately mauka of the beach. Mr. Shiraishi confirmed Mr. Evans' statements. At that time, he said, they were under the impression that the conservation district encompassed the wooded area and up on the hillside there were unauthorized campers. Since that discussion, they have learned that the conservation district falls in a different area and the discussion centered on the area, which is actually in the agriculture district.

Ms. Beryl Blaich of the Kilauea Neighborhood Board said that "The Neighborhood Association does not believe that this violation only occurred because of a bulldozer on the top inadvertently slid to the bottom of the cliff and had to be pulled out. I think you've seen photographs of the cut is an extremely, exactly engineered cut on the

exact part of the cliff where it would be most advantageous to proceed to try and create a road down into the valley which is a part of this property and which is buffered from the beach by a kind of a dune area. Yes, we thought that the entire property was in the conservation district, yes, we understand that only 30 feet are in the conservation district. Nevertheless, I saw, in fact I was the person who reported the activity to the offices of the Land and Natural Resources and I know that weedwackers were already being used the same day the bulldozers were operating. Weedwackers were being utilized at the bottom area, ostensibly to begin clearing for some kind of fencing."

She urged the Board to be "skeptical" about the story of the small bulldozer falling and the big bulldozer rescuing it. She said since the cut has been made tremendous erosion has occurred and actually saw the bulldozers operating on the beach area. She said there is tremendous erosion through a hala grove but didn't know what district that was under. She said the applicant did not apply for County grading permits for the work done in the agriculture area, that the whole project was done without any permits.

She said there is a definite need for a qualified archaeologist to monitor any clearing as it is a dune area and that the objective of the applicant is to place a fence to demark his property and to put signage on the fence so that there will be no trespassing.

Ms. Blaiich noted that the County in its after-the-fact SMA permit requiring engineering studies, drainage studies and indicating that possibly the area may ultimately have to be restored used the language that the "easement shall be maintained." She thought it appropriate not to alter the language of the condition until there is clarification of the original intent of the landowner's responsibilities regarding the easement.

She further stated that the \$1,000 fine was appropriate and that the condition nos. 9 and 10 remain because the area will drain into conservation and the County study should be reviewed by DLNR because whatever is determined to be necessary to mitigate the impacts of the cut above will have an impact on the stream bed.

Mr. Apaka asked whether an emergency permit was issued. Mr. Evans said he was unaware of one. Mr. Shiraishi stated that an emergency permit was issued. Mr. Evans stated that there is a provision for emergency permits in writing and that Mr. Henry's submittal does not indicate an emergency authorization was issued.

ACTION

Mr. Apaka moved to reduce the fine to \$500 and that all proposed amendments be denied, with the understanding that County resolution of grading issues will satisfy conditions 9 and 10. Seconded by Mr. Yuen and unanimously approved as amended.

RESUBMITTAL--AUTHORIZATION TO ISSUE DIRECT LEASE TO HALE OPIO KAUAI, INC., PORTION OF TAX MAP KEY 1-8-08:17, HANAPEPE, KAUAI

Mr. Uchida made the presentation to the Board. Mr. Hartwell Blake, president of the Board of Directors of Hale Opio addressed the Board stating that in October 1989 a congressional allocation was received of \$1.5 million to relocate to State land and to build three residences and one administration building. Since they received the appropriation, informational meetings have been held throughout the island, a citizens advisory committee was convened to assist Hale Opio in selecting sites, and they worked with the department.

Mr. Blake stated that on July 5, 1991, Hale Opio held groundbreaking ceremonies in Kapahi for the first of their residences and that at the present time 15 children are in one facility, and the Kapahi residence would be for a maximum of five children supervised by two professional counselors on a 24-hour basis. He stated that the Hanapepe site is next to the Humane Society and approximately a mile or more out of town.

Mr. Blake stated he felt that they have done everything possible to meet the concerns of the community. Much of the opposition encountered has been emotional.

He stated their present facility has been deteriorating and they wish to relocate as quickly as possible.

Mr. Apaka said that the submittal mentions there were over two hours of dialogue with the Hanapepe community and it seems that the community is opposed to the project. Mr. Apaka stated the Board made it clear that the community had to agree with Hale Opio to allow them at that site. Mr. Blake stated his understanding was that they would discuss the situation with the community and, hopefully, the community would accept the program. He stated that the attitude is "not in my backyard" and are not asking that the State "shove anything down their throat." He said he believes the State is obligated to give them the land as part of the deal made with the State, federal government, and Hale Opio prior to 1989.

Mr. Blake went on to say that the procedure that was set up was that DLNR would provide Hale Opio a list of available parcels, they would hold informational meetings, submit the parcels to the advisory committee, take their recommendation and they would make the final decision. This was one of the parcels. One of the conditions was that it be located in a neighborhood so that the children learn to live with other people. He claimed that the department moved it "way out of town, about as far out of Hanapepe you can get before you get to Kaumakahi." He said he believed this was in response to the community's opposition. He said he did not believe they would get community acceptance wherever they went and it was opposed everywhere they went.

Mr. Blake informed the Board that the residence would be approximately 2,400 square feet, architecturally designed, and a landscape plan implemented. "If anything, it is intended to improve the neighborhood." He said the nearest residence was probably about a mile away, unless one was referring to the individual who lived at the facility next door.

Mr. Apaka asked whether they would be satisfied with one large parcel. Mr. Blake answered that the Center for Juvenile Policy, which is presently advising the State on how best to serve troubled youth, agreed to be consultants for this project and the current conventional wisdom is that youth should not be placed in an institution--it is identifiable as a jail and the children feel like inmates. It was recommended that in appropriate situations residences within neighborhoods be used where there would be a few children and much greater supervision. This has been proven successful.

Mr. Blake stated that the \$1.5 million was for relocation and construction, that it was a three-way trade and the funds were not to be used for land acquisition because the State agreed to provide the land.

Mayor JoAnn Yukimura addressed the Board as follows:

"As a followup to my conversation of April 11, 1991, with Chair Paty just prior to the Land Board meeting of April 12, 1991, I am here to confirm Kauai County's considerations and concerns regarding the lease of the subject lands for a Hale Opio residence. I appreciated the Board's deferral of the matter of the lease at your April 12 meeting.

"Let me first say that I am most sympathetic to the plight of Hale Opio. Both my parents were social workers, my father was a probation officer with the Family Court, and I know well the need for alternatives such as Hale Opio. And I believe that a community must own and embrace its young people, all of them because ultimately, they make up the future of the community.

"It is the County's position, however, that the proposed residential use is not appropriate to the intended uses to that area -- which are primarily and predominately recreational in nature and in fact the executive board went to the County for expansion of the Salt Pond area until it was withdrawn at the last meeting. The Burns Field Peninsula with Hanapepe Bay and the adjoining Salt Pond Park are popular regional recreational resources for the west side of Kauai. The public use of the area can be expected to expand and intensify in the future as the west side grows. In fact, the Salt Pond Park is already needing expansion. The State's HFDC Cliffside Project with their 316 housing units (based on a conservative projection of four people per household) will increase the population of Hanapepe by 1,200 people, approximately. The current population is 1,395, which means there's almost to be a doubling of the population. In addition, A & B's Eleele Nani Project of 144 housing units will add another projected 575 people to the area. And this is just in Hanapepe-Eleele itself not to mention the rest of the west side.

"The Burns Field, Hanapepe Bay, and Salt Pond complex is the only publicly-owned shoreline recreational area outside of the Poipu resort area between Lihue and Waimea. The area must be planned for to keep up with a growing community.

"Also of concern is the proximity of the proposed residential use to the County's dog pound site, the home of the Kauai Humane Society, which is on Executive Order to County. First, there are the problems of noise, odors and other impacts that are incompatible with residential living. Second, in recognizing the growing animal control demands that

accompany a rapidly growing human population, the County has asked the Humane Society to develop a master plan that will guide the development of the animal pound and related facilities at the site in Hanapepe. The problems that the County and Humane Society are faced with are the result of the rapid growth that Kauai has been experiencing over the last three or four years.

"The statistics are both telling and astounding. In 1988, the Humane Society handled about 1,000 animals. In 1990, that number reached 4,000 -- a four-fold problematic growth in two years. This is symptomatic of Kauai's rapid growth rate, which has been three percent per year compounded over the last five years--I think it's actually four years. Many letters from Kauai's tourists have been written to my office, the newspapers and the Humane Society regarding the starving, seemingly ill-treated and uncared for animals along our roadways, beaches, recreational areas. It is an unpleasant visitor's experience -- and some have said they will not return.

"The Kauai Humane Society is doing an admirable job, but as the only animal control center on the island, the facilities are straining to meet the impacts of this growth problem. Most of these animals are required to be euthanized for lack of homes. As you can imagine, this is extremely stressful and difficult work. The ultimate and long range solution is a spay and neuter program that would bring us to a zero population growth of stray animals over time. While the County is presently funding a small spay neuter program, what is needed are on-site clinical facilities in order for the program to accomplish its zero population growth goal. The Humane Society, on our advice, has engaged in long-range planning that will prepare them to meet present and future needs, and we expect very soon, on behalf of the Humane Society, to request an amendment to the existing Executive Order that will expand the area allocated to the Humane Society by 6.5 acres in order to accommodate their master plan. There is a need for for the additional 6.5 acres.

"In summary, the proposed area for a Hale Opio residence next to the Humane Society is not appropriate. The site being considered is on open zoned lands, surrounded by other open and agricultural zoned lands. There are no residences in the immediate area, and this does not meet the intent of integrating Hale Opio into the community so that troubled youth can transition into the community. The County is opposed to the placement of such residence in this area; the placement of Hale Opio next to the a dog pound is not sociologically healthy. We must find a more appropriate place.

"My Administration is committed to a solution of this matter and is committed to finding a suitable place for Hale Opio. It is true that we have not been active participants in the process. I have an extremely limited staff for a County of 9,000 workers and an operating budget of \$55 million and we were hoping the process would find some solutions but in this case it is not, and we are not opposing this matter without taking responsibility for it. We pledge that we will work with Hale Opio to find an alternative site. We request that this matter be deferred until March 1992."

The Mayor stated the County "will do whatever we have to do." She said that they will do their best.

Mr. Uchida, in response to a question from Mr. Yim, stated that the original list of sites was quite extensive. In January it was pared down to eight parcels.

The Mayor suggested that land exchange might be explored, or there might need to be an expansion of the purpose of the congressional funding--"there might have to be stretching on all areas"

Mr. Blake said he appreciated the Mayor's offer but a concern is the length of time it takes to get something accomplished. He said Hale Opio is attempting to spread themselves across the island so that no one community and no one high school gets the total impact of the program. He said that perhaps they could wait until March for the second and third site. He stated that one house for five children was not economic for purposes of achieving economy of skill or satisfying the purchase of service contract with the State.

Mr. Blake stated that he was just informed by his executive director that economically two residences must be opened by June of 1992 in order to be in any way able to address the needs contracted with the ~~State~~ of Hawaii.

Mr. Blake informed the Board that Hale Opio has had many successes even under the conditions they now operate.

Mr. Tom Godby, resident of Hanapepe, and vice president of Hanapepe Bay Community Association, said the reason he asked to speak was because of a meeting in May; at that meeting, the expressed main concern was that in site selection, they should stick to the results selected by the Hale Opio Task Force. In the final decision, they narrowed the selections to 35 sites, then down to four recommended sites, and he said the final site should be selected from those four. Mr. Godby said that Hanapepe-Salt Pond was not on the list and much to their surprise, Hale Opio asked to add it on afterwards. If it is added, he felt it invalidated a whole year of negotiation with the communities. It's a matter of integrity and reliability, he said.

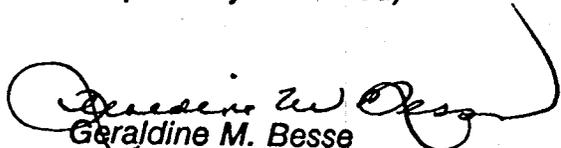
Ms. Wilma Holi said she is a resident of the Hanapepe area and member of the Hale Opio Citizens Advisory Task Force. She said the list was narrowed down to eight, then Hale Opio Board was directed to select their site from the top four. She said it came as a surprise when they saw the no. 7 choice as one of the three sites they wanted to build their facilities on. She said this particular site, of all the final eight, is probably the least desirable site. She said many of the points were covered by the Mayor. The sites were Kapaa, where the Hale Opio administration building will be, Kapahi, Wailua and Omao. There were also another Wailua, Hanapepe, and Kekaha.

Mr. Raymond Ho from the Kauai Humane Society said he is chairman of the master plan committee and their main concern is that they are really "not a good neighbor" and not a good facility to live next to. Outside of the noise factor, they do have a staff member who lives on the site. He said they plan to have residential facilities in their master plan. He also cited the animal growth population which requires expansion in dealing with almost 5,000 animals a year. He said there are also some wild, uncontrollable animals and liability is of concern.

- ACTION** *Mr. Apaka moved that Item A under "Recommendation" be approved and that the Hale Opio group work closely with the Mayor to resolve the problem by March 1992, and the site selected be denied. Seconded by Mr. Yuen and unanimously carried.*
- ITEM H-1** **CONSERVATION DISTRICT USE APPLICATION FOR A SINGLE FAMILY RESIDENCE AT WAIALUA, OAHU, TAX MAP KEY 6-8-8:5; APPLICANT: HERMAN SOARES**
- Mr. Evans informed the Board that he received a request from the applicant to defer this item to the Oahu meeting. Unanimously approved (Apaka/Arisumi).*
- ITEM F-2** **WALTER S. AND NARDEEN K. PALMEIRA REQUEST EXTENSION OF LEASE TERM AND CONSENT TO MORGAGE ON GENERAL LEASE NO. S-4585, WAILUA, KAUAI**
- ACTION** *Unanimously approved (Apaka/Arisumi).*
- ITEM J-1** **LEASE--THREE VENDING MACHINE AGREEMENTS, MAIN TERMINAL LOBBY, HONOLULU INTERNATIONAL AIRPORT, OAHU (BANK OF HAWAII, FIRST INTERSTATE, BANK OF HAWAII, AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.)**
- ACTION** *Unanimously approved (Arisumi/Apaka).*
- ITEM J-2** **AMENDMENT NO. 17 TO LEASE NO. DOT-A-78-2, HONOLULU INTERNATIONAL AIRPORT, OAHU (MARRIOTT CORPORATION)**
- ACTION** *Unanimously approved (Yuen/Arisumi)*
- ITEM J-3** **AMENDMENT NO. 18 TO LEASE NO. DOT-A-78-2, HONOLULU INTERNATIONAL AIRPORT, OAHU (MARRIOTT CORPORATION)**
- ACTION** *Unanimously approved (Yuen/Apaka).*
- ITEM J-4** **AMENDED GRANT OF EASEMENT AND BILL OF SALE, KEAHOLE AIRPORT, HAWAII (WATER COMMISSION OF THE COUNTY OF HAWAII)**
- ACTION** *Unanimously approved (Yuen/Arisumi).*
- ITEM J-5** **APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4775, 4786, AND 4789, AIRPORTS DIVISION**
- ACTION** *Unanimously approved (Yuen/Arisumi).*
- ITEM J-6** **CONSENT TO SUBLEASE NO. GKM-032, HARBOR LEASE NO. 82-4, HONOKOHAU BOAT HARBOR, NORTH KONA, HAWAII (GENTRY PROPERTIES, A HAWAII LIMITED PARTNERSHIP/NELSON'S YACHT BROKERAGE, INC.)**
- ACTION** *Unanimously approved (Yuen/Arisumi).*
- ITEM J-7** **APPROVAL OF CONSENT TO SHORT FORM LEASE, BARBERS POINT HARBOR, OAHU (MARISCO, LTD.)**
- ACTION** *Unanimously approved (Arisumi/Yuen).*

- ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 31 SHED, HONOLULU HARBOR, OAHU (MARINE LOGISTICS, INC.)
- ACTION Unanimously approved (Arisumi/Yuen).
- ITEM J-9 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAHULUI HARBOR, MAUI (HAWAIIAN CEMENT, A HAWAII PARTNERSHIP)
- ACTION Unanimously approved (Arisumi/Yuen).
- ITEM J-10 ISSUANCE OF REVOCABLE PERMIT NO. HY-91-059, HIGHWAYS DIVISION, PARCEL 1-B, FAP NO. I-H3(4) AND I-H3-1(12), KAILUA, KOOLAUPOKO, OAHU (HAWAIIAN MEMORIAL PARK CEMETERY ASSOCIATION AND HERBERT H. KIKUKAWA (FORESTER))
- ACTION Unanimously approved (Arisumi/Yuen).
- ACTION J-11 SECOND AMENDMENT TO LEASE NO. 73-HWY-1, HIGHWAYS DIVISION, INTERSTATE HIGHWAY, FAP NO. I-H1-1(2) PARCEL A, UNDER KAPIOLANI-KAPAHULU OVERPASS, HONOLULU, OAHU (CITY AND COUNTY OF HONOLULU)
- ACTION Unanimously approved (Yuen/Arisumi).
- ADJOURNMENT There being no further business, the Chairperson adjourned the meeting at 4:25 p.m.

Respectfully submitted,


 Geraldine M. Besse
 Secretary
 8/2/91

APPROVED:



 WILLIAM W. PATY, Chairperson, BLNR