

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

DATE: FRIDAY, AUGUST 9, 1991
TIME: 8:30 A.M.
PLACE: KONA SURF RESORT
MAUNA KEA CONFERENCE ROOM
KAILUA-KONA, HAWAII

**ROLL
CALL**

Chairperson William Paty called the meeting of the Board of Land and Natural Resources to order at 8:35 a.m. The following were in attendance:

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

ABSENT & EXCUSED:

Ms. Sharon Himeno

STAFF: Mr. Roger Evans
Mr. W. Mason Young
Mr. Ralston Nagata
Mr. Henry Sakuda
Mr. Charles Supe
Mr. Peter Hendricks
Mr. Glenn Taguchi
Ms. Dorothy Chun

OTHER: Deputy Attorney General Johnson Wong
Mr. Peter Garcia, Department of Transportation
Mr. Dick Riegels (Item H-4)
Mr. Gordon Harkins (Item H-4)
Mr. Ken Melrose (Item F-7)
Mr. Charles Schuster (Item H-1)
Ms. Frances Yamada (Item H-1)
Ms. Sandra Schutte (Item F-8)
Mrs. Rita Cowell (Item H-2)
Mr. Stanley Shin (Item F-15)
Mr. Ken Fridley (Item F-15)
Mr. Steve Nagata (Item H-3)
Mr. Kerry Smoots (Item H-3)
Mr. Roy Damron (Item B-1)
Mr. Kerry Leistner (Item B-1)
Ms. Lisa Choquette (Item B-1)
Mr. Mike Hill (Item B-1)
Mr. John Grace (Item H-7)
Mr. William Blok (Item E-2)

MINUTES Mr. Apaka moved for the approval of the minutes of March 22, 1991. Seconded by Mr. Arisumi, the minutes were approved as circulated.

**ADDED
ITEMS**

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

- Item E-3 Request to Use Aina Moana (Magic Island) State Park, State Recreational Area for a Bon Dance Fireworks Display
- Item E-4 Special Use Permit Approval for Aloha Week Nondenominational Devotional Service on Iolani Palace Grounds
- Item E-5 Request by the Big Island Woodworkers' Guild to Host A Reception and to Collect Entry Fees at the Wailoa Center, Wailoa River State Recreation Area

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

ITEM H-4 CDUA FOR "THE PENINSULA" FLOATING DOCKS AND BOAT RAMP, HAWAII KAI, OAHU, TAX MAP KEY 3-9-08:35; APPLICANT: ROBERT Y. ROCHELEAU, PRESIDENT, SEA ENGINEERING, INC.

After his presentation of Item H-4, Mr. Evans said that staff was recommending the board approve this item subject to the conditions listed on pages 10 through 13. Due to several discussions, staff has come up with the following additional conditions on the projects:

Condition 16. That the applicant will enter into a cooperative agreement with the City and County of Honolulu, Department of Public Works, to ensure that all necessary navigational lights on Wailua Street bridge are funded by private sources and are established on the bridge, as required; and

Condition 17. That the deeded landowner of the submerged land within the marina be held responsible for the overall management of the marina facility, including all necessary contingency operations should they be determined necessary by the Department or the Board of Land and Natural Resources.

Condition 16 is being recommended as a direct result of the City and County of Honolulu, Department of Public Works' concerns that there should be navigational lights underneath at the bridge entering the project due to the increased total numbers of traffic involved. That these navigational lights should be put in place by the applicant rather than using public funds insofar as the entire project is for the benefit entirely of the private sector.

Mr. Apaka clarified with Mr. Evans that the board is responsible for the submerged land where the pilings are going in. Thus, Mr. Apaka said that he felt the installation of the lights should not come under this board.

Mr. Evans said because the result of the Board's regulatory authority at the onset, there is a call for relationship between what you're approving and the increased flow of traffic that results in potentially increased hazard.

Mr. Apaka asked if the board would be setting some kind of precedence when they get involved with submerged lands, if they add conditions which they feel

are necessary towards the benefit of the public?

Mr. Evans said that they would not really be setting a precedence. The board has in the past set conditions to alleviate those impacts that could be hazardous.

Chairperson Paty said with respect to the suggestion that the board step up the monitoring of program to safeguard the lagoon water quality, he asked what is the reaction there.

Mr. Evans responded that should the board approve this application, the first condition on page 10 should indicate to the board that the applicant is responsible to be in compliance with all State regulatory mechanisms. In terms of water quality, the Land Department defers to the Department of Health which does have that functional responsibility. The applicant will have to be in compliance with the Department of Health's rules.

Mr. Dick Riegels said he was present to represent Nansay Hawaii and Mr. Gordon Harkins was representing Sea Engineering. Mr. Riegels said that their project as stated is a medium to low-rise residential community peninsula in Hawaii Kai consisting of eventual 630 units. It will be a multi-phase project and will incorporate floating docks.

Mr. Harkins said that they will be building the floating docks in two phases. That navigation lights would be placed after phase two. These floating docks would be limited to ownership by the residents of the peninsula. He described the construction of and material of the floating docks.

The Chair questioned the time frame. Mr. Evans said that the applicant has indicated to staff that they will be able to complete the project within the standard time frame of one year and three years.

Mr. Riegel said they had reviewed the conditions and they are acceptable with one modification that staff will introduce.

Mr. Evans said that he would like to modify Condition no. 16, the last line reads, "sources and are established on the bridge as required." He would like to add after the word "bridge" in phase two, as required; and this would mean when the project is complete, the lights are on.

The Chairperson asked if the City and County is the agency that approves navigational lights. Mr. Riegel said that the Coast Guard suggested these lights. The Coast Guard asked the City and the City asked them to put it on.

ACTION Mr. Apaka moved that this application be approved with the added conditions and Condition 16 as modified. Seconded by Mr. Arisumi, motion carried.

ITEM F-7 **REQUEST BY WAIKOLOA BEACH ASSOCIATION FOR NON-EXCLUSIVE MOORING EASEMENTS AT ANAEHOOMALU, SO. KOHALA, HAWAII**

Mr. Young presented Item F-7 to the board. As a follow up to an approved CDUA back in December 1990, applicant has requested nonexclusive easements for five commercial moorings and five day-use public moorings at

Anaehoomalu Bay, South Kohala.

Mr. Apaka asked, "When the applicant came to us with the CDUA, they came with the request under the DOT mooring plan?"

Mr. Young said that it was his understanding that they have complied with the DOT's request.

Mr. Apaka said he understood the corridor for loading and unloading fronting the concession.

Mr. Ken Melrose said he had given a letter of the approval from the Department of Transportation to staff. The DOT has granted them mooring permits and this whole issue is sort of in transition between the DOT and the DLNR. The ingress and egress corridor as shown in their plans is the one designated within the DOT Ocean Recreation Management Plan for the area. The terms of this agreement are acceptable to them.

Mr. Yuen questioned Mr. Melrose on mooring site "D" which was near the public beach park area. Mr. Melrose said that was being relocated.

ACTION Unanimously approved as submitted. (Apaka/Yuen)

ITEM H-1 CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR WATER SYSTEM IMPROVEMENTS AT KILAUEA, KAUAI, TAX MAP KEY 5-2-01:03; APPLICANT: NAMAHA FARM, INC.

After his presentation of Item H-1, Mr. Evans said staff was recommending that the board approve the application subject to the conditions on pages 5 and 6.

There is one concern. While the Kauai County Board of Water Supply is ultimately going to have this water tank dedicated to them for the county water purposes, the Kauai County Planning Department informs them that the land has to be formally subdivided. The applicant is willing to subdivide the land out for those purposes which would require a modification of this CDUA to include subdivision.

Mr. Evans pointed out that there was a public hearing held regarding the commercial use but there was no mention or discussion of a subdivision at that time. Should the Board approve this application they are recommending that the applicant come back and amend their application to include subdivision, have a public hearing on that aspect and come before the board to make a judgement on that subdivision. Staff would feel uncomfortable in recommending a subdivision at this time absent a public hearing notification and requirement.

Mr. Yim asked if he were saying that according to the law, there's no way for the Board to approve the subdivision without a public hearing.

Deputy Attorney General Wong said that a public hearing is required only for public commercial uses, it does not refer to subdivision. Since there is no commercial use, there is no requirement under that statute.

The Chair clarified that staff's recommendation at this time does not include any position for subdivision. So should the Board act on this item today they would subsequently could address the subdivision question.

Mr. Evans said that guided by the Deputy A.G.'s advice, they would not be coming to the Board in the future for any request for public hearing for subdivisions.

Mr. Yim addressed the Chair that this issue is rather vital because what the board sets today may set a precedence. He would like to have this board take a position as to whether they should follow the advice of legal counsel, and that is in certain situations, subdivision need not be required to hold a public hearing and that should be done administratively. If that is the case, then his question is whether the board can amend staff recommendation to allow subdivision to occur administratively.

Chairman Paty said that the issue relative to that can be handled need be, administratively but if you address this application per se at this point in time with the thought relative to the subdivision can be reviewed again with the A.G. If it indeed appears that we have to have a public hearing, so be it. If it appears that it can be handled administratively, we proceed. If you want us to add an amendment to this, that the board authorize the Chair to determine whether the subject can be handled administratively, then proceed in that direction and if not we can proceed as required in a public hearing.

Mr. Yim said he wasn't too sure how they were going to resolve a question that he's using.

Chairman Paty said he thought the question could be resolved subject to the Attorney General's review. Subsequent to that review, they would determine then whether it could be handled administratively and/or whether it should come back before the Board to request a public hearing. If you want to add that to the conditions that the board approval be made with the condition that determination be made by the A.G. relative to the necessity for a public hearing, subdivision in this regard.

MOTION Mr. Yim moved for approval as amended.

DISCUSSION Mr. Apaka asked Mr. Evans to restate the new condition.

Mr. Evans said Condition 11. would read, that the legal requirement for a public hearing be reviewed by the Department of the Attorney General, and if a subdivision may be approved administratively, the board be so informed.

ACTION Mr. Apaka seconded the motion and motion carried.

The Chair recognized the agents for the applicants and asked them if they had any comments to add.

Mr. Charles Schuster and Frances Yamada were from the firm of Wilson Okamoto and Associates representing the applicant. Mr. Schuster said he would only add that the original application on page 2-4 indicated the tanks would be dedicated to the Department of Water Supply. They've contacted

both the Department of Planning and Department of Water Supply and they've responded in writing that dedication does in fact require subdivision and fee simple title. Both their original and their amendment, they noted on the figures describing the tank site, specifically that these were tank site property lines that were clearly shown on both figures in the original and amendment and thereby the public did have the opportunity or could have been made know that there was subdivision implied and they hope that is acceptable to the board.

**REQUEST BY PANIAU PARTNERS FOR RIGHT-OF-ENTRY TO
CONSTRUCT THE PUAKO BEACH DRIVE EXTENSION AT THE PUAKO
BEACH LOTS, LALAMILO, SO. KOHALA, HAWAII, TAX MAP KEYS
6-9-01:12 AND 6-9-06:1, 2, 49, 50, 51 AND 52**

ITEM F-8

Mr. Young made the presentation of Item F-8 and informed the Board that the Ruddle family was represented by Paniau simply saying that they would like to create a subdivision of their lots. In order to do so, they must come in with an alignment of access. He then pointed out to the area on the maps.

Questions were then asked of staff by the Board regarding the archaeological sites, petroglyph fields and access to the public.

Mr. Glenn Taguchi, Hawaii Land Agent said he had worked with the applicants and they have agreed to build a fence for the State of Hawaii, that would probably be like a rock wall and be relatively permanent and quite attractive. There probably be some strategically located gates just in case the State would want to do something with the parcels on the mauka side.

Mr. Taguchi said there was a need to keep people out so that they would not destroy or mar the petroglyphs with crank case oil or plaster of paris.

Mr. Yim referred to page 10 of the submittal under F-1 where staff is recommending subdivision can occur without a public hearing. Mr. Young responded that this was not in the conservation district and in order to get the subdivision, they need to go to the County Planning Commission and get it approved. Staff was asking the board to be the agent to get the subdivision approved.

Ms. Sandy Schutte said she was representing the applicant, Paniau Partners and with her was Ed Harada from M & E Engineering and members of the Ruddle family, Francis Ruddle and Joe Spielman.

She said her only comment to the 15 page recommendation (submittal), is this has taken so many years to get a right-of-way to the property if appropriate. Briefly she asked to answer some of the questions raised. As to why this corridor was chosen, they originally had discussions with the State and they suggested to do a 100 foot wide corridor for archaeological purposes extending into the existing Puako Beach extension. That is why the corridor stays pretty much with the extension. The other reason is the county of Hawaii has construction standards on curb radius and you cannot make the curbs too sharp and the road has to continue off the existing Puako Beach Drive. There were other alternatives for alignments but the alignments just didn't work and meet the County standards.

Ms. Schutte then spoke on the findings and recommendations of their archaeologist, Paul Rosendahl.

Mr. Yuen asked if there were an orientation for all construction personnel on a project like this on things to avoid. He was concerned in this area because the petroglyph fields were so close by.

Ms. Schutte commented that contractors do make mistakes so they actually asked that it be added into the conditions that the significant features be either fenced or barricaded prior to construction so that it's clearly understood where to avoid. Also there's a condition that construction stay only within the particular right-of-entry and the proviso says, if not, this permit shall be null and void.

Mr. Edward Harada, consultant, of M & E Pacific said working with the County Department of Public Works, there were certain designs and standards that they needed to adhere to. He then talked of their design standards for roadway improvement and used a drawing to point out the areas. He mentioned that the cuts and fills would occur outside of the 50 foot right-of-way, that's the result of the county's requirement.

Mr. Yuen again mentioned his concerns that the digging and grading would be right up to the petroglyphs.

Mr. Harada said that if it comes to be too close, they could make changes that there will be no cut and fill close to the area.

The Chairperson asked if they wished to include as part of Condition 11, relative to Mr. Yuen's comments, a provision that all construction crews should be fully briefed regarding the sensitivity of the archaeological sites and not just simply put a fence around. He also felt there should be some kind of monitoring regularly during the construction period by private or State archaeologist.

Mr. Yuen asked if there was a condition that states an archaeologist be present during construction or when an archaeologist has to be on site during construction.

Ms. Schutte said that there was nothing in the conditions on that.

Mr. Yuen said that he recalled such conditions in the Conservation District Use Permits. Mr. Young said they could suggest that the archaeologist do monitoring during construction.

Ms. Schutte responded, "Yes" to the question by Mr. Yuen if an archaeological mitigating plan still has to be prepared.

Mr. Young said that what staff will do on page 9 as well as the last page of the submittal, Condition 11 will include on third to the last paragraph a sentence after the word 'right-of-way', "No cuts and fill next to site of historical or archaeological significance and they construct a wall within the 50 foot right-of-way as a buffer.

Chairman Paty mentioned again that he would like to see the provision relative

to briefing for construction crews.

ACTION Motion was made by Mr. Yuen for approval with the additional conditions as discussed. Seconded by Mr. Arisumi, motion carried unanimously.

Amendments obtained from the Administrator of the Division of Land Management are as follows:

1. Cuts and fill proposed by applicant next to archaeological sites 14524, 14513 and 14529 or any other sites bordering the proposed road realignment are prohibited. Furthermore, the applicant, prior to road construction, shall a) construct a rock wall on the road boundary line next to said sites to ensure that no road material spills over and onto the sites, plus b) fence the sites completely. Plans and specifications for the rock wall and fence shall be submitted to and approved by the department prior to construction.
2. The construction of the roadway shall be monitored by the applicants' consulting archaeologist, Paul H. Rosendahl, Phd., Inc. in consultation with the Department's Division of Historic Preservation.
3. The applicants' consulting archaeologist, Paul H. Rosendahl, Phd., Inc., shall brief the construction crew prior to commencement of construction of the significance of each archaeological site and its location.

ITEM H-2

CDUA FOR A SINGLE FAMILY RESIDENCE AT KEEKEE, HAWAII, TAX MAP KEY 8-1-4:13; APPLICANT: WILLIAM & RITA COWELL

Mr. Evans made the presentation of Item H-2. Staff is recommending that the Board deny the application. With regard to the violation, fine and assess the applicant \$500.00 and that the unauthorized dwelling be removed from the property and the area be restored to its natural condition. The applicant is asking for a non-conforming use to allow for a single family dwelling in the Limited Subzone. Staff feels that this does not meet the criteria for non-conforming use.

Mr. Arisumi clarified with Mr. Evans that the applicant did not have a building permit.

Responding to Mr. Yuen, Mr. Evans said that relatively the Limited Subzone in that area runs parallel with the ocean several hundred feet inland. They believe it was placed in that subzone because of the potential tsunami threat.

Responding to Mr. Arisumi, Mr. Evans said that the applicant built the house before applying for a CDUA.

Mr. Apaka clarified with Mr. Evans that to continue processing the CDUA, the applicant would need to obtain an SMA.

Mr. Evans said their office had received an Attorney General's opinion yesterday, specifically relative to this issue. The applicant applied for a CDUA on March 15, 1991.

Discussion followed on the applicant's knowledge of a need for a CUD. Mr.

Glenn Taguchi, Hawaii Land Agent, said that he received a telephone call from the applicants and they already knew they needed a CDUA. He had talked to them about the general process on what needed to be done and that was before the application was filed.

Mr. Evans said that the application came in March 15, 1991 and soon after the Division of Conservation and Resources Enforcement (DOCARE) officer as part of the process was asked to do a site inspection. It was then discovered that the house was constructed.

Mr. Apaka's question was in relation to an earlier question by the Chairman regarding the taxes on the property. He said he believed the Board would have to establish a non-conforming use first before they could continue to consider a home. Mr. Evans said, "That would be correct."

Mr. Apaka wanted to know if staff had all the information that they had paid their taxes and they're clear from all so called obligations for taxes.

Mr. Evans said that they did not have any knowledge of that.

Mr. Apaka said, "With that in mind therefore, it is impossible for the Board to make an approval for this application and in fact, the house must be removed."

Mr. Yim asked, "If the applicant can prove and has the documentation on the real property tax, would that qualify this property for a non-conforming use?"

Mr. Evans responded that according to the written opinion by the Department of Attorney General, preliminary at least, that is a necessary but not sufficient condition. He said that it must be demonstrated that this property as of 1957 lies within the Forest Reserve.

Mr. Yim asked, "If the applicant can prove those two points, the real property tax and that it was within the Forest Reserve prior to 1957, would your recommendation change?"

Mr. Evans replied, "No, because there are still further requirements to meet the non-conforming use restriction criteria, and that it be held, intended for residential use. That's the additional burden that's placed upon an applicant.

Mrs. Rita Cowell addressed the Board saying that she and her husband were the applicants. She said that they wished to withdraw and resubmit their application because they have not been able to get the SMA. The hold upon that is the requirement for a shoreline survey. They received a letter regarding that just before her accident and she hasn't been able to comply with that as the surveyor who was supposed to do it has been very busy and is not able to get down there.

Mrs. Cowell said that when they reapply it will be under the conditional use that she just found out with conversations with the planner of OCEA, that this parcel had been a kuleana. She does have the title search and a reference from the Historical Society here of the testimony at the time. They purchased the subject property in 1987 and since then they've been spending weekends and days on weekends ever since. They first started rebuilding where there were remains of

an old house. There were tents, beams, wine bottles and things like that. They didn't realize that they had to have a CDUA and they started working on it, knowing at that time they could put in \$300.00 per year without a permit. They first put in the platforms on which they were going to pitch a tent. They handled this with used material that they had torn down from other buildings so there was no expense, except for a little concrete. They also got some roofing from these buildings that were torn down and they decided to put a roof up. They decided to put five up so that they could lock it up. Then they found out that they had to have a CDUA and an SMA and they couldn't get a building permit until those were acquired. So, she started doing all the research and the writing of the CDUA and in the meantime they did have some friends from the mainland that said, "Well we're here, we can help you at least put the sides on so that you can lock it up." That's what they did. They've now stopped. She said she was going to reapply with the fact that it's a kuleana and begs the Board not to make them tear it down. They are going to go through all the processes to try to comply.

She said they've been down there on the weekends, it's in an area that's been grazed by cattle for the last 100 years. They have actually repaired walls that had been knocked down. They haven't touched any of the ones that were referred to by the archaeologist at this time, but the other walls that are on there, they repaired, planted grass to prevent any erosion and to improve the place. The structure is 35 to 40 feet in elevation and 75 feet from, not actually crossing lines but there is a 15 foot drop. They have taken great care in not disturbing any archaeological sites. Any clearing that's been done have been of koa, they've actually pruned keawe so that the ones lying down will not fall further but will settle back up. They've planted a few native plants.

Mr. Arisumi asked Mrs. Cowell how long did she think it was going to take her to get all this information.

Mrs. Cowell said the main hang-up right now is the shoreline survey. She said she spoke to Bobby Weeks yesterday and he said that he may not be able to get down there till October but will try sooner. Actually he and his father did the original survey in 1987 of which she did submit a copy of with her report. She personally feels the shoreline hasn't changed since 1987 but it's the State's requirement that you need a new survey.

She said that as soon as the shoreline survey is completed, she will resubmit to the State an SMA.

Mr. Arisumi questioned that in the meantime she wanted to leave the structure up.

Mrs. Cowell answered, "Yes."

Mr. Yuen's question was, "You said that you thought you could do \$300 a year construction without getting a county building permit? Why didn't you get a county building permit?"

Mrs. Cowell answered, "Well, frankly a lot of county people said, 'why are you bothering', way down there. Not a lot, but one in particular but she won't say who. The person was not from the building department. She said that they

understood that you could do \$300 a year, so they were doing that without going through the paper work. She said she agrees now that they should have done that.

Asked if they were building for four years, she replied, "No." She said that they put the platform up at Christmas time last year.

Mr. Yuen commented that they had done a lot more work than \$300 in there.

She said it was all done by family and friends and they were using used lumber.

Mr. Yuen asked what led her to come in for a CDUA. Also when they applied for a CDUA, why did they apply as if there was no house down there?

Mrs. Cowell said because they wanted to do further work and when she checked into getting a building permit, they said she had to have a CDUA.

Mr. Yuen asked if they did any construction after they applied for the CDUA.

Mrs. Cowell said that they just did some finishing touches, one a railing so it wouldn't fall off.

Mr. Yuen asked, "When you applied for the SMA clearance with the county, did you tell them that you already had a house there?" Mrs. Cowell replied, "No."

Mr. Yuen asked, "When did you apply for an SMA with the County." Mrs. Cowell said, "At the same time that she applied for the CDUA."

Mr. Yuen asked if she ever told the County that she had a house down there. Mrs. Cowell said, "No." Mr. Yuen said then that the County still thinks that they don't have a house down there.

Mrs. Cowell said that she was going to redo the applications.

Mr. Yuen asked if the house platform was already up when the archaeologist came by and has he checked if any sites were disturbed.

Mr. Yuen asked of Mr. Evans, "Does the archaeologist's report reflect that there's already a house there?"

Mr. Evans responded saying that the answer is, "No." They believe that construction to occur in the future would have no adverse affect.

Mrs. Cowell said that when the archaeologist went down, they had it constructed but not into place. It was not cemented or anything like that. The platform was built and they had laid out frames but it had not been put together.

Mr. Yuen asked, "You brought the archaeologist down because you were going to get a CDUA, apply for a CDUA? You put the house in place after you knew you needed a CDUA permit?"

Mrs. Cowell answered yes to both questions of Mr. Yuen.

Mr. Yuen addressed the Chair to move to go into an Executive Session to discuss the recent Attorney General opinion to the Board on the criteria for non-conforming use. Seconded by Mr. Yim, motion carried.

Executive Session 10:30 a.m.--10:43 a.m.

Chairperson Paty called the regular meeting back to order and asked if there were further questions of the staff or the applicant.

Mr. Yuen asked the applicant if she had a shoreline certification done in 1987 when they purchased the property?

Mrs. Cowell said that they had the property surveyed and Mr. Weeks did put the boundary back from where it had been formerly. They understood they needed to have it done again.

Mrs. Cowell said that she does know that the structure is further back then where it was originally.

Mr. Yuen addressing the Chair said that this is a situation where the applicant has been consistently deceptive in their dealing with various governmental agencies. They filed a false application with the DLNR and a false application with the County of Hawaii. The work which has been done clearly requires a County building permit. They built a 600 square foot structure without a County building permit. Applicant finalized the work on this dwelling after applying for a CDUA at a time when the applicant knew they needed a CDUA permit to do the work.

The applicant is now asking the Board, please don't make them remove what they did after they had already been told that they needed the various permits. He said that he could not see any justice in the argument that the applicant is making for them. One thing that concerned him very much is being told that the Board or department will treat them more leniently if they withhold information on their application. He said a message has to be sent out that it is not true. They also need to send a message that you will not be treated more leniently if you come to the Board after the work has been done and try to get a permit to do the work because we're going to feel sorry for someone that's already done the work.

There are times when people do not know and do not understand that they need to get a CDUA. This is not one of those situations.

MOTION Mr. Yuen said his motion is as follows:

- 1) Applicant is required to remove and dismantle the structure;
- 2) Applicant be fined \$500 for the violation;
- 3) That the application be denied without prejudice to them reapplying as a conditional use, they may reapply; and
- 4) He would like to see at the time of reapplying, a verification by an archaeologist that the construction and dismantling of the structure has

not caused harm to any of the archaeological features.

Motion was seconded by Mr. Apaka.

DISCUSSION:

The Chairperson addressed the applicant saying that she should recognize that she has placed the Board in an untenable position relative to this. They are not unsympathetic to people who have problems but given the facts on which they proceeded, it doesn't leave them a great deal of basis for doing other than what the motion details.

Mrs. Cowell asked if she could make a request that they be allowed a certain length of time to proceed with the reapplying without having to take it down and have it further denied to then take it down?

Mr. Yuen said that he did not agree with that and his motion stated that applicant remove the structure. Relative to the Chairperson's suggestion of setting a time frame with which to remove the structure, Mr. Yuen suggested a 180 days. Mr. Yuen then asked staff if this has administratively been a practice.

Mr. Evans said that when the Board goes into a violation, generally staff would expect a reasonable period of time must occur when the Board imposes a fine before it is turned over to the Attorney General. Generally speaking, the time frame allowed is 30 days for payment of a fine for a violation. Staff's only concern is that whatever time frame the Board imposes would be considered reasonable.

ACTION Mr. Yuen added to his motion that the time frame for removal of the structure would be 180 days. There was no objection by Mr. Apaka who had seconded the motion. Motion carried unanimously.

ITEM F-6 REQUEST BY COUNTY OF HAWAII FOR A PERPETUAL NON-EXCLUSIVE EASEMENT FOR OVERHEAD POWER AND COMMUNICATION LINES AT WAIKEA, SO. HILO, HAWAII, TAX MAP KEY 2-1-12:3 (PORTION)

Mr. Young said today staff is asking the Board to grant to the County of Hawaii the perpetual non-exclusive easement over and across the Army National Guard site at the airport subject to the terms and conditions cited in the submittal.

Mr. Young informed the Board that the Project Engineer Consultant for the County, as well as the Engineer himself, from the County Public Works office were present to answer any questions.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-15 REQUEST AUTHORIZATION TO ACQUIRE BUILDING AND LEASEHOLD INTEREST, CAPITOL CENTER BUILDING PROJECT AT HONOLULU, OAHU, HAWAII, TAX MAP KEY 2-1-17:5

Mr. Young said that the Department of Accounting and General Services, as part of their removal of asbestos from the Kamamalu and the Kinau Buildings occupied by different agencies of the State, Department of Health, Department

of Consumer Affairs and the Office of State Planning is contemplating leasehold interest in a building at the corner of Alakea and Beretania Streets.

Mr. Young had one amendment and that was the lessee's name. They were notified on Wednesday that the name of the lessee that actually holds the master lease of the property is, "1177 Alakea Investment Company, a Hawaii Limited Partnership and Kakaako Investment Company, a Hawaii General Partnership."

They were also informed that this master lease would be expiring in 2047 instead of December 31, 2017. The lease they would be buying out from the lessee will expire in 2047.

The purpose of the acquisition is to buy out the leasehold as well as the building at an approximate cost of \$10.5 million and this is for the purpose of relocation of the people out of the Kinau and Kamamalu Buildings and to allow for the asbestos removal. A staff member from DAGS is present and representatives from the lessee were also present today.

Mr. Stanley Shin of the Department of Accounting and General Services said they looked at the acquisition because the property was put up for sale. They already had a lease that would carry them through 1999. They have a 5 year lease that will end on May 31, 1994 and they have a 5 year option to extend that lease. They are presently paying \$1.85 per square foot per month. At the ending of this year the amount will go up to \$2.05 a square foot and that equates out to approximately to almost \$1.12 million dollars per year. Looking at a 10 year period they are talking about roughly \$11 million dollars.

Mr. Yim confirmed with Mr. Shin that the \$10.5 million dollars had been appropriated by the legislature at this past session.

Much discussion followed on the alternatives of acquiring the whole thing, the real property and the ground lease, possible condemnation of land in the future, owner of the building, method of payment for the property and is it better to wait or purchase the building now.

Mr. Apaka and Mr. Arisumi both expressed concerns that the Board should be briefed on the many issues before making a decision as this involves such a large sum of money.

Responding to Mr. Yim, Mr. Shin said that he sat in on the legislature sessions and the legislators did not ask a whole lot of questions.

Mr. Yim raised the question of the constitutional powers given to the legislators versus the authority given to this Board.

Mr. Shin added that the Comptroller is trying to expedite the project because the property, leasehold interest is on the market for sale right now.

Mr. Shin said if the State were going into condemning there wouldn't be type of rush because the State would be one of the few agencies that could go in and condemn property.

Mr. Yuen addressed the Chair saying that he follows what Mr. Yim was commenting. This is an application that's been through the legislature and was originally a DAGS proposal and it comes to us for review and final approval. As a Board member he would need to be assured that everything's been analyzed. He then asked Mr. Shin what kind of process went through in DAGS in making the decision.

Mr. Shin said that this decision was made mostly between the Comptroller and the Department of Budget and Finance. The B & F asked DAGS to include an item in their budget to acquire the property.

Mr. Ken Fridley of Alakea Investment said that DAGS has been going through an extensive process for the last six months to determine what is the best value for the property and what is the structural and environmental condition. In his experience in commercial real estate, he has never seen a building gone over structurally and physically as this building has, to the point where they had to go in and reinforce structures, remove asbestos, etc. Since then, DAGS has had an appraisal done and while he didn't know the actual appraisal figure, his understanding is that it is in excess of \$11.5 million.

He said that two independent appraisals says that the \$10.5 million figure is a pretty fair price for the property. Another item of discussion was what is the benefit of buying the building now versus continuing to lease.

Mr. Fridley then answered questions of the Board. Some of his answers were: The lease runs for another 57 years to 2047. The land value was estimated as part of the appraisal process and worth about \$2.5 to \$3 million. The lease was renegotiated 2 years ago. The price of the ground lease or annual rental is \$116,000 per year and reopens in January 1998 and at that point the rental of the land is 8% of the land value.

Deputy Attorney General Wong asked of Mr. Fridley, the \$10.5 doesn't represent the lease of the land because you pay a separate lease rent for the land. Doesn't the \$10.5 represent the building and the lessee's interest?

Mr. Fridley responded that was correct.

Deputy A.G. Wong continued, "Now that \$10.5 million, how much of it is for the building itself without the lessee's interest, just looking at that building?"

Mr. Fridley said if you were to build that building today?

Deputy A.G. Wong said, "The depreciated value now, not the replacement value, the existing value."

Mr. Fridley said that he did not know, but he knows what the replacement value is, which is \$6 to \$7 million. The building was built in 1959 and was extensively renovated last year which cost about \$2 million.

Deputy A.G. Wong said by the figures given today, the building is 30 years old, and life of 60 years or 50% depreciation of the \$6 million which is the replacement value, the building is only worth \$3 million plus \$2 million renovation which is \$5 million and the asking price of \$10.5 million which would

mean the extra would go to the lessee's interest.

Mr. Fridley pointed out as well as the income from renting the ground floor. There is a ground floor space that is leased to the Hawaiian Tel Federal Union which generates income for whoever owns the building, the lessee's interest.

Deputy A.G. Wong said the problem the Board has is that if you have ten appraisers, you come up ten answers.

EXECUTIVE Mr. Arisumi moved for an executive session to consult with legal counsel.
SESSION Motion was seconded by Mr. Yim and carried.

11:30 a.m. --11:40 a.m.

Chairperson Paty called the regular meeting back to order.

MOTION Mr. Arisumi moved for approval of Item F-15 as amended to reflect the change of the lessee's name. Motion was seconded by Mr. Yuen.

Mr. Yuen said that he was concerned about the analysis that Mr. Wong made, whether the State would have been better off by condemning this. He said that really should have been done prior to going to the legislature. There isn't anything we could do about it now if we want to have this building in time for the next legislative session. That's his comment and when the Board is asked to approve something that involves this much money, they need to be presented with a full analysis.

Mr. Young asked if it would be beneficial to the Board that when something like this comes up, before bringing it to the Board, a briefing be provided and the necessary analysis be provided at the time of the briefing.

Chairperson Paty agreed with the Board members, yes, in the sense that they are scrambling for a feel for the situation.

There being no further questions, the Chairperson called for the question.

ACTION Motion carried unanimously.

ITEM H-3 **AFTER-THE-FACT Cдуа FOR TWO SECTIONS OF A SEAWALL
ENCROACHING ON STATE LAND AT LANIKAI, KOOLAUPOKO, OAHU, TAX
MAP KEYS FRONTING 4-3-3:75, 4-3-4:83 AND 87; APPLICANT: CYRIL
THOMSON MITCHELL TRUST; AGENT: MR. STANLEY D. SUYAT,
CARLSMITH, WICHMAN, CASE, MUKAI & ICHIKI**

Mr. Evans informed the Board that the applicant has cooperated with the Division of Land Management in the removal and reconstruction at the Waimanalo end of the wall but staff feels they have ignored the encroachment in the middle section which is 9 square feet in the Kailua section, total of 133 square feet.

Relative to the Violation, staff is recommending that the applicant be assessed a fine of \$500.00 for construction, \$500.00 for encroachment for a total fine of \$1000.00. That the applicant be required to remove all the remaining

encroachment portions of the seawall in a manner satisfactory to the department. That the applicant be required to restore the area to its natural condition and that failure to do so, the matter be turned over within 60 days to the Department of Attorney General for disposition to include all administrative cost which would include all administrative costs. Also that the Board deny this after-the-fact CDUA because it is inconsistent with the objectives of the subzone, wherein lands in the resource subzone which are beaches to be managed in a way that ensures sustained use of those beaches; and the proposed use is inconsistent with the use of publicly-owned beach lands, and the Board's requirements to be in conformance with Chapter 226 which relates to the Board's requirement to protect and enhance Hawaii's shoreline, open spaces, and scenic resources.

Mr. Evans informed the Board that a faxed letter dated August 8, was received from the Lanikai Association. It was submit a two-page written opposition of this application. They point out in their view as a matter of public policy, private landowners should not be allowed to take public land for private use. This is especially true where the public's access to the shoreline is threatened. They feel that construction by individual property owners beyond the shoreline on the public beach cannot be sanctioned under any circumstances and in conclusion they strongly urge that you reject this application.

Questions were then asked of Mr. Evans by members of the Board.

Mr. Steve Nagata, agent for the applicant, said he was here today with Mr. Kerry Smoot, the architect for the estate and the house.

Mr. Nagata said that the estate and Paul Mitchell when he was living, has tried to work with the DLNR, Division of Land Management and appropriate City and State agencies to comply with the public policies set by the State, the Coastal Zone Management Policy, public policies to preserve recreational open spaces on Hawaii's beaches. He then gave a chronology of how the wall was apparently built. Another point he wanted to make, what they're talking about is 144 square feet, that's correct. But that is the total square footage along a linear area. It is not 144 feet into State land. The photograph shows that there's actually two portions, two slivers. One portion is along the Kailua side which is about 80-81 feet in length and that's a total of 133 square feet. If you average that out you're talking about anywhere a foot to a foot and a half encroaching into State land for about 80 to 81 feet. The other smaller sliver is approximately 17 linear feet he believes, a total of 9 square feet and if you average that out it would be about half the size of his legal pad or half a foot along that sliver. That's basically what they're here today about, those two slivers.

Mr. Evans requested a clarification, Mr. Nagata indicated that they've been working closely with the City and County of Honolulu and he's a little confused because the Department of General Planning and Department of Land Utilization recommend denial for restoration. Relative to the 142 square feet being the size of a pad or a small issue, Mr. Evans said that his thinking would be if this was infact such a small issue they wouldn't be here today with an after-the-fact application, the applicant would have already taken it out.

Mr. Nagata said that they by no means want to characterize this proceeding as a small issue. They realize that it is an issue that's foremost in the minds of the community in that area and they're here today to try to discuss this issue in the most straight forward terms if they can. Mr. Evans brings out the point about the City, DLU, he said that he thought Mr. Don Clegg's letter stated that in response to the processing by the OCEA staff, whether this area was in the SMA and he said that it was not. It was a negative declaration and not in the SMA process.

Discussion continued on the recommendation of DLU.

Mr. Nagata responding to Mr. Arisumi's inquiry said that the wall is not a straight wall. It does have several curves. The two slivers that they admit are encroaching, are about 80 feet along the flare base of the seawall that extends about a foot or foot and a half into the property. If you walk along the top of the wall, that portion is on private property to clarify the problem.

Mr. Evans said that was a pretty good clarification.

Mr. Nagata addressed the Chair, if the Board in its discretion does decide that all the boulders need to be removed, it will not only impact on the slivers encroaching onto State property, but it will impact the entire wall. By removing those boulders they probably will have to tear down the whole wall and build a new one. It will also impact further than the violation itself.

Mr. Smoot said he was the one that pulled the permit on the original restoration after consulting with the State and the survey people about where they were establishing the new certified shoreline and that was based on the line of these old boulders. These boulders that they're talking about are really icebergs because they came out of the Pali tunnel and Mr. Dowsett who owned the property at that time had those boulders sent from that excavation to his property. The new wall was restored on the old walls foundation otherwise they would have had a difficult time in keeping the wall in tack against the ocean. If the boulders are removed, they are the foundation for 320 linear feet of this particular seawall.

Mr. Yuen questioned, if the Board asked the applicant today to remove the encroachment but not remove the large boulders, you would simply remove rocks from the face of the wall and make sure that it was structually sound.

Mr. Smoot yes, that's what they would do.

**DEFER
ACTION**

Mr. Yuen moved to defer this item to the next Board meeting because of his concern whether the boulders of the original wall were a violation. A deferment would also allow time for additional research. Seconded by Mr. Arisumi, motion carried.

RECONSIDERATION OF:

REQUEST AUTHORIZATION TO ACQUIRE BUILDING AND LEASEHOLD INTEREST, CAPITOL CENTER BUILDING PROJECT AT HONOLULU, OAHU HAWAII, TAX MAP KEY 2-1-17:5

Mr. Arisumi asked for reconsideration of Item F-15. He requested to ask Mr. Stanley Shin to repeat the statement regarding the legislature.

Mr. Shin said that the appropriation is for acquisition, it doesn't say it's only for acquisition of leasehold interest in the property.

Chairperson Paty said they could presume the acquisition of the entire fee structure could be interpreted in that manner. He presumed that would give the Board a little more flexibility in their approach to it.

ACTION Mr. Arisumi entertained a motion that the Board reconsider Item F-15; seconded by Mr. Apaka, motion carried.

Chairperson Paty said that the Board could now address the revised motion and questions relative to disclosure.

Chair Paty said, "You want to restate it, in other words as I understand it, the legislature did not specifically say that it had to be for a leasehold interest, they said for the acquisition only. Given that then we could utilize the same motion where the opportunity presented itself with respect to the property."

Mr. Young addressed the Board and suggested that they look at the recommendation of the staff under A. They are recommending that they approve of and authorize acquisition of the lessee leasehold interest. With respect to Mr. Shin's information to the Board today, you actually are saying you want to give us the flexibility to acquire either the leasehold interest or the underlying fee or both and give the Board the flexibility and let staff do diligence on that work with the Attorney General's office to get the best of the \$10.5 million.

ACTION Mr. Arisumi moved that the Board approve of and authorize the acquisition of the lessee's leasehold interest and improvements thereon and/or the underlying real property in fee simple either by negotiation or if necessary by condemnation subject to the prior approval of the Attorney General's Office as to form, exception and reservations pursuant to Section 107-10, HRS.

Paragraphs B and C under Recommendation remain unchanged.

The "Lessee" name amended to "1177 Alakea Investment Company, a Hawaii Limited Partnership and Kakaako Investment Company, a Hawaii General Partnership.

Motion was seconded by Mr. Apaka and motion carried.

ITEM B-1

ADOPTION OF HAWAII ADMINISTRATIVE RULES--NEW CHAPTER 13-58,
KONA COAST, HAWAII

Mr. Sakuda said the department and the division is in the process of making into formal regulations, a voluntary agreement between commercial dive tour and aquarium fish collectors that four fishery management areas be established along the Kona Coast to be closed to aquarium fish collecting. Agreement has been in effect since 1988 and has generally been followed except for a few who refuse to honor the agreement. Mr. Sakuda continued in his presentation of his submittal. He read the provisions that they were proposing and the Attorney General's Office has reviewed the proposals.

Chairperson Paty had a question regarding the area near the Old Kona Airport.

Mr. Sakuda said that they were considering the area in front of the Old Kona Airport as a Marine Life Conservation District.

Mr. Roy Damron said he was present mostly to represent the general public because he felt they were overlooked when these agreements were made. He then gave his background which included teaching scuba diving, teaching in the Department of Education and organizing a dive club. He stressed the point that the Old Kona Airport is the only beach park on the whole Kona Coast that's divisible, that has the important things that divers need and the public. It has parking, restrooms, showers and picnic areas. The telephones are very important for public safety for emergency reasons. He said that they were asking for a one-half mile to be preserved.

Mr. Yuen mentioned that he was supportive of what was being suggested but to establish a no fishing or no collecting zone, staff would have to go to a public hearing rule-making process. The public hearings that were held identified only four areas and did not identify the area in front of the Old Kona Airport. He informed Mr. Damron that the Board would not be able to make a motion today and just add that fifth area as a prohibitive fish collecting area as it will have to go through the regular process of informing the public at public hearings.

Ms. Terry Leistner said she was a member of TORCH and also an owner of Jack's Diving Locker. She said she was part of the gentlemen's agreement so that people could live together out in the ocean and not fight. Among the group of people that got together were commercial divers, dive operators, tropical fish collectors and people that didn't have any business interest. She mentioned that Mr. Damron was not a part of that at that time because his dive club was not in existence, but there were people from the dive club that were there. Their main concerns were to protect these areas and she supports what staff is trying to do here today.

Ms. Lisa Choquette said she was the treasurer of TORCH and she and her husband have owned Dive Makai Charters. She said that she heartily supports the Board in approving this item. She spoke about the different fish in the area and would support broader areas along the coastline. She also mentioned that she would support research in raising tropical reef fish commercially aquaculture settings.

Mr. Francis Kuailani, Superintendent at Kaloko-Honokohau National Historical

Park, said the park service would support the proposal to designate fisheries management zone areas but would also like to support to extending the boundaries to include the water boundaries of Kaloko-Honokohau National Historical Park area. They jointly would like to come up with a memorandum of agreement to work with the enforcement people, Division of Conservation and Resource Enforcement (DOCARE), regarding State and Federal regulations in the affected areas. They would provide support in marine research. Their park service supports TORCH in supporting this proposal.

Mr. Michael Hill, enforcement officer with the DOCARE said he would like to address several issues regarding the management rules from an enforcement perspective. He mentioned Section 13-58-2 Boundaries and Section 13-58-3 Prohibited Activities. Regarding the boundaries, he said that it seems that the coastline meanders and to define a boundary as noted from a right angle from shore would be some latitude of interpretation which may not be acceptable from an enforcement point of view.

Regarding prohibited activities like not feeding the fishes, he said it did not have anything to do with the possession of aquarium harvesting equipment. He claimed there would be nothing to prevent an unscrupulous aquarium operator to moor or anchor their boats outside the boundary, utilizing their scuba equipment and infiltrating into the prohibited zone to do their harvesting and exist the same way. He also mentioned that if the collector were a novice and quite unfamiliar with a certain area, he could submerge with scuba equipment and inadvertently harvest in a prohibited area. In either case it would be unfair to the public or the novice harvester.

Chairperson Paty asked how would he get around that should that person anchor just outside and goes underneath. You might have to have an understanding with the collectors, technically it would be hard to stop.

Mr. Hill responded that was correct, that it would be difficult to stop if not impossible and on that note what they would have to rely on is the commitment on the part of the diving public and operator's like Lisa and Terry who are familiar with the problems that exist and familiar with the boundaries that are in effect to cooperate with enforcement in the prosecution of culpable parties.

Mr. Yuen addressed Mr. Sakuda saying that the rule could probably be supplemented with a compass azimuth from a point on shore that is meant to be the same as shown on the map.

Mr. Sakuda responded that they did have a compass reading, and this was told to them that is was too confusing by enforcement. Boundaries will be posted at each end of each boundary. If possible or necessary they will put a buoy into the water to line up that posting on land. It's also been proposed to them to put one on land to line up. These are things that can be done to implement this.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM E-2 **REQUEST FROM WILLIAM BLOK TO OCCUPY STATE-OWNED LANDS
WITHIN KEALAKEKUA BAY**

Mr. Nagata made his presentation of Item E-2 giving the background and reasons for staff's recommendation in two parts one of which is that the Board deny the request by Mr. William Blok to occupy State-owned lands within Kealakekua Bay for a mooring site.

Mr. Blok addressed the Board commenting on Mr. Nagata's presentation. He felt it was a matter of safety and not a matter of convenience. The importance of mooring his boat in Kealakekua Bay near to his residence could be described in terms of safety and not convenience. Mr. Blok then read a letter written by Mr. Charles 'Chuck' Leslie which basically said Mr. Blok was a good citizen of the community.

Chairperson Paty asked Mr. Blok what was his fishing activity in the last few months.

Mr. Blok said that his boat is in Honolulu and his crew is waiting for him now in Honolulu. He said that he had just brought the boat back and just had the blessing.

Mr. Arisumi asked him when did he sell the first boat.

Mr. Blok answered in 1979 around the latter part of the year. He then went back to the mainland for a little bit of time and when he came back he bought a boat called the Yankee Peddler on which he fished up and down the south point, doing Ono runs, opelu fishing, etc. and fished for about 4 years. Then he had another boat, a 75 foot boat here at one time that he fished. He went to Alaska and packed salmon and brought the boat and had a contract with Golden Gate Seafoods in Honolulu and he was going to do lobster fishing in the leeward islands in that boat, he had that boat for a year, that 75 foot boat, he was up in the leeward islands fishing in Hawaii and they hit a reef and was towed back to Honolulu, 90 miles north of Kauai they started to sink and they had to jump overboard in 30 foot seas and were rescued by the Easy Rider and brought back to Honolulu and then he got involved in a friend's boat, the Hana Like which is boat that was owned by the Leslie's that a friend of his bought. They shrimped on the coast and did a lot of fishing outside.

Mr. Yuen asked, "The 70 foot boat, did you have that moored at Kealakekua Bay?"

Mr. Blok said that was in the bay, he didn't have a mooring big enough at the time. He said that he anchored in there briefly, he kept it in Kewalo Basin more than in Kealakekua Bay. The 75 foot boat in Kealakekua Bay is just not right, it's too big a boat for that bay and said he felt kinda pressured and made no attempt to put a mooring there for that boat. There are no facilities for a boat that size and after a couple runs up and down the coast he went to Honolulu and fished out of Kewalo Basin. He went bottom fishing up at French Frigate Shoals and fished up there.

Mr. Arisumi asked, "At that time you lost your boat, what year was that?"

Mr. Blok said that his boat sank in March of 1981. He said that he got that boat right after he sold the 26 foot boat and he wanted a bigger boat and started fishing. After he lost his boat he had a lot of business to take care of on the mainland. When he returned to Hawaii he bought the boat called the Yankee Peddler and fished out of Kealakekua Bay for four years and used the same mooring when he had the 26 foot boat. When he returned from the mainland he sold real estate for a while then returned to fishing around '81 to '83 and from '84 to '88 he fished from his friend's boat the Holokahana.

After more questioning Mr. and Mrs. Blok said they had a boat named the Eva when they found out that the mooring was illegal. They said they wrote to the DOT and the DLNR to find out how they could get it to be legal. They received a letter in 1988 from DLNR explaining the jurisdiction over the bay may be changed. When he filed a CDUA for a mooring he said he was part-owner of the Eva.

He went ahead and bought that boat in October 1990 in California and he had wanted to use the mooring that he had put in for the Eva which he put in originally in 1987, same spot since 1975.

Mr. Yim asked, "It's not correct when you say that you've been in the same spot since 1975?" Mr. Blok said, "In the bay, that's correct. The same general area."

Mr. Yim continued, "It's a little confusing, what I just heard you a few minutes ago, you had a 75 foot boat, but you weren't operating out of Kealakekua Bay. You were operating out of Kewalo Basin for quite a number of years. In addition to that in 1980's you weren't fishing, you were selling real estate. You weren't operating out of that bay. In addition to that you did not own a boat, you worked for a captain for a number of years in 1980's. So in the 1980's you hardly operated out of Kealakekua Bay, you did not have a boat. You did not fish off a boat that you owned out of Kealakekua Bay in most of 1980's. Is that correct?"

Mr. Blok responded, "No, that's not correct. In 1980 I fished, I was gone for two years. When I came here in 19-- "

Mr. Yim interrupted, "That was two years of the 10 years."

Mr. Blok continued, "When I came in my boat, was a 75 foot boat, I had a 14 foot skiff on the boat with an outboard motor on it. When I left I put the 14 foot skiff on my mooring, that staying on my mooring and I shared that skiff, I let my friend use it because after my boat sunk and after I left and came back and I fished the Holokahana with Dale Shutte, we used my skiff which we kept on my original mooring to go back and forth to shore to drop off and take supplies and crew out to the boat. That's two years, you're right, that's two years I didn't fish and use the bay."

Mr. Yim asked, "How long were you selling real estate?"

Mr. Blok answered, "I was in business for about a year with Barry Machado."

Mr. Yim asked, "How many years did you work for another captain?"

Mr. Blok replied, "It's like we were partners, like you know, we shared expenses, I buy gear for him, you know."

Mr. Yim again said that you did not own that boat.

Mr. Blok replied, "That was only for a year and a half on the Holokahana."

Mr. Yim, "So we're talking about for maybe four and a half years."

Mr. Blok insisted that it would be about 2-1/2 years, and that he had always been on the mooring, his skiff was always on the mooring in the bay. He claimed that he would be able to give a resume and fish records for month to month from 1975 to 1980.

Mr. Yim addressed Mr. Sakuda, Administrator for the Division of Aquatic Resources and asked him if all commercial fishermen must report their catch.

Mr. Sakuda responded that the skipper of the boat must file his monthly catch report. During the period of original investigation, Mr. Blok did not have a boat and also did not have a commercial marine license as he was not fishing.

Mr. Blok said that at that time he was looking for a boat and didn't renew his license. He said he had a license for 1987-88 and he had fish catch reports for 12 months, \$99,000 worth of fish sold from April '88 to March '89. He said his most recent catch reports are from '88 to '89.

Mr. Yuen said that sometime ago the Board made a decision to try to get all moorings removed from Kealakekua Bay except those which the Board would consider grandfathered in. He said he did not know if the Board established any strict criteria what that would be. His idea would be long-standing, continuous use of a mooring. He understands it probably would be better for Mr. Blok to moor in Kealakekua Bay instead of Kailua Bay but that's also true to anybody else for anyone who buys a large boat and would like to moor the boat in Kona. He said that he feels Mr. Blok is sincere and is an active fisherman but the history that he has heard doesn't tell him that he's had a consistent long-standing use of the bay. It's been on and off and there's been a substantial time period that he was working with somebody else that was moored in the bay.

ACTION Mr. Yuen's motion was to follow staff's recommendation on this matter under Item E-2. Motion was seconded by Mr. Apaka and carried unanimously.

Mr. Blok addressed the Chairperson and requested a contested case on this item. He said he would follow with a written request within 10 days.

ITEM H-7 CDUA FOR A SINGLE FAMILY RESIDENCE AT LAUPAHOEHOE POINT, HAWAII, TAX MAP KEY 3-6-2:12; APPLICANT: JOHN GRACE

Mr. Evans said that staff is staying with their recommendation as shown on the submittal. This afternoon he was apprised of a preliminary Attorney General's opinion on this matter that is directly related and there is some concern that has been expressed to him that the client had not been consulted prior to the issuance of this opinion.

Mr. Evans said that he has indicated to the applicant that staff is prepared to go forward with their recommendation this morning. He said that the applicant has indicated to them that all things considered for his client, he would like to ask permission for his client to withdraw his item from the agenda.

For information, Mr. Yuen asked Mr. Evans if on an application like this one, does his staff do a site inspection. Mr. Evans responded that normally his staff would request assistance from the neighbor island DOCARE officer in conducting a site inspection and report.

Chairperson Paty suggested that from time to time on a sensitive issue, staff has an opportunity to visit the site. This will afford staff in observing any environmental concerns or if the area was suitable for the use.

MOTION Mr. Yuen moved to allow the applicant to withdraw without prejudice. The motion was seconded by Mr. Arisumi.

DISCUSSION Mr. Steve Menezes said that he represented the applicant and he did not seem appropriate for them to withdraw at this point since they have not had an opportunity to get a full understanding of what the opinion actually said.

Mr. Menezes asked how he would be able to obtain a copy of the opinion and also guidance on how to proceed.

Chairperson Paty informed him at such time that the opinion is available, it will be made available to him and he could be guided on how to proceed.

ACTION The Chairperson called for the question and motion carried unanimously.

ITEM B-1 See page 21 for Action.

REQUEST FROM THE LINERIDERS MOTORCYCLE CLUB TO USE A PORTION OF THE OLD KONA AIRPORT STATE PARK FOR A

ITEM E-1 FUNDRAISER

ACTION Unanimously approved as submitted. (Yuen/Arisumi)

ITEM E-2 See page 24 for Action.

ADDED **REQUEST TO USE AINA MOANA (MAGIC ISLAND) STATE RECREATION**
ITEM E-3 **AREA FOR A BON DANCE AND FIREWORKS DISPLAY**

Mr. Nagata said part of the request is also for a concession stand and staff is recommending denial of the concession operation.

ACTION Mr. Arisumi moved for approval of Item E-3 with the amendment to allow the applicant a concession stand. Seconded by Mr. Apaka, motion carried.

ADDED **SPECIAL USE PERMIT APPROVAL FOR ALOHA WEEK NONDE-**
ITEM E-4 **NOMINATIONAL DEVOTIONAL SERVICE ON IOLANI PALACE GROUNDS**

ACTION Unanimously approved as submitted. (Yim/Apaka)

**ADDED
ITEM E-5** REQUEST BY THE BIG ISLAND WOODWORKERS' GUILD TO HOST A
RECEPTION AND TO COLLECT ENTRY FEES AT THE WAILOA CENTER,
WAILOA RIVER STATE RECREATION AREA

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:

Item F-1-a Assignment of Grant of Non-Exclusive Easement (Land Office Deed No. S-27872) from Anthony E. and Lucy Mae Canastro to Mr. and Mrs. Jose Tablada at Kapaa Homesteads, Kauai, Tax Map Key 1-9-11:12

Item F-1-b Request Authorization to Issue Revocable Permit to Jean Shak for Parking Purposes at Hanapepe, Kauai, Tax Map Key 1-9-11:12

Mr. Young requested to make an amendment on Item F-1-b under COMMENCEMENT DATE. He would like to have it read: To be determined by the Chairperson and the term to be for one (1) year. Under RECOMMENDATION, Condition 1 should be amended to read: Issuance of the revocable permit be subject to compliance with Chapter 343, HRS.

Item F-1-c Request Authorization to Issue a Revocable Permit to the Department of Transportation, Harbors Division for Temporary Parking at Sand Island, Oahu, Tax Map Key 1-5-41:130

ACTION Mr. Apaka moved to approve Items F-1-a and F-1-c as submitted and F-1-b as amended. Seconded by Mr. Arisumi, motion carried.

ITEM F-2 REQUEST BY DEPARTMENT OF THE ARMY FOR RIGHT-OF-ENTRY AT
LALAMILO, WAIMEA, HAWAII, TAX MAP KEY 6-6-01:2

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-3 REQUEST BY HAWAII MEDICAL INVESTORS LIMITED PARTNERSHIP
(HMI) FOR EXTENSION OF RIGHT-OF-ENTRY AT PIIHONUA, SO. HILO,
HAWAII, TAX MAP KEYS 2-3-31:1 (POR.) AND 2-3-32 (POR.)

In his presentation of Item F-3, Mr. Young said there was a correction on the date on the first line in the first paragraph, which should be August 24, 1990.

ACTION Unanimously approved as corrected. (Yuen/Arisumi)

ITEM F-4 REQUEST BY U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC
AND ATMOSPHERIC ADMINISTRATION FOR R-O-E TO PORTIONS OF
VARIOUS GOVERNMENT PARCELS ON THE ISLAND OF HAWAII

ACTION Unanimously approved as submitted. (Yuen/Apaka)

REQUEST AUTHORIZATION TO HOLD A PUBLIC HEARING ON THE WITHDRAWAL OF LANDS FROM THE UPPER WAIAKEA FOREST RESERVE, PANAWEA FOREST RESERVE, UPPER WAIAKEA FOREST RESERVE AND THE OLAA FOREST RESERVE, ISLAND OF HAWAII, TAX MAP KEYS 1-8-12; 2-4-08 AND 2-4-49

ITEM F-5

ACTION Unanimously approved as submitted. (Yuen/Arisumi)

ITEM F-6 See page 13 for Action.

ITEM F-7 See page 4 for Action.

ITEM F-8 See page 8 for Action.

AMENDMENT TO BOARD APPROVAL ON A DIRECT LEASE TO MAUI LAND AND PINEAPPLE CO., INC. AT HONOKAWAI, KAAPALI, LAHAINA, MAUI, TAX MAP KEYS 4-4-01:15 AND 16 (POR.) AND 4-4-02:15, 17 AND (POR.) 18 AND 20

ITEM F-9

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

REQUEST FOR SET ASIDE BY HIGH TECHNOLOGY DEVELOPMENT CORPORATION FOR LANDS AT WAIHOLI, KEOKEA, KULA, MAUI, TAX MAP KEY 2-2-02:54 (POR.)

ITEM F-10

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

AMENDMENT TO BOARD APPROVAL FOR ISSUANCE OF A LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD NO. 8365-B, APANA 3 AT WAIHEE, MAUI, TAX MAP KEY 3-2-10:1

ITEM F-11

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

REQUEST AUTHORIZATION TO (1) ACQUIRE PERPETUAL NON-EXCLUSIVE EASEMENT FOR HAWAII FILM FACILITY EXPANSION DRAINAGE SYSTEM, AND (2) SET ASIDE SAID EASEMENT TO THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES AT DIAMOND HEAD, OAHU, TAX MAP KEY 3-1-42

ITEM F-12

ACTION Unanimously approved as submitted. (Yim/Apaka)

RENEWAL OF DEPARTMENT OF THE ARMY LEASE CONTRACT NO. DACA 84-1-76-31 FOR THE FORT SHAFTER ELEMENTARY SCHOOL AT FORT SHAFTER MILITARY RESERVATION, HONOLULU, OAHU, TAX MAP KEY 1-1-08:8

ITEM F-13

ACTION Unanimously approved as submitted. (Arisumi/Yim)

REQUEST BY THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF TRANSPORTATION SERVICES FOR A BUS SHELTER EASEMENT AT ALOHA STADIUM, HALAWA, OAHU, TAX MAP KEY 9-9-03:70 POR.

ITEM F-14

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM F-15 See page 16 and 19 for Action.

ITEM H-1 See page 5 for Action.

ITEM H-2 See page 12-13 for Action.

ITEM H-3 See page 18 for Action.

ITEM H-4 See page 3 for Action.

ITEM H-5 **CDUA FOR COMMERCIAL AGRICULTURAL PRODUCTION, AND AN AFTER-THE-FACT SINGLE FAMILY RESIDENCE AT SOUTH HILO, HAWAII, TAX MAP KEY 2-6-11:22; APPLICANT: ANNIE BRACH**

Mr. Evans made the presentation for Item H-5. He said that initially this application was for an after-the-fact single family residence and commercial agricultural production.

Mr. Evans said staff's recommendation regarding the violations were \$500 each for four violations for a total of \$2000. On the application, staff would like to make a modification, that upon compliance with Section A of the violation, then staff is recommending approval of the house but taking the farm land out of it, you'll see on page 12. That under the commercial agricultural production aspect or farming aspect that the Board deny without prejudice, that proposal to carryout that commercial agriculture. Applicant has demonstrated to us in the past that she's never been a farmer but has a friend who has helped her. There's been no business plan extended for review. Applicant doesn't have even a knowledge of what crops are growable in the area. Based upon those kinds of things it would not be prudent for us to recommend approval of commercial farming at this time.

Mr. Yuen asked if she's been notified that there's action going to be taken?

Mr. Evans said the only representation that he can make is that all applicants were sent letters of notification on Monday.

Mr. Yuen said that his feeling on her agricultural request is to give her approval to clear an acre and plant something on within that same area that she's talking about.

Mr. Evans said that the agricultural service said they would work with her. He said that the CDUA could be modified so that the Board approves the one acre for experimental crops and to then to be presented as an amendment to this CDUA at a later time.

ACTION Mr. Yuen moved for approval reducing the fine to \$500.00 and authorize the clearing of one acre but not within the stream banks and within an area that has previously been cleared. To be presented as an amendment to the CDUA at a later time. Approve as modified subject to payment of fine be made first. Motion second by Mr. Arisumi and motion carried.

CDUA FOR THE CONSTRUCTION OF PIER 3 AND THE SUBDIVISION OF THESE STATE LANDS IN ORDER TO BE SET ASIDE TO THE DEPARTMENT OF TRANSPORTATION FOR HARBOR PURPOSES AT NAWILIWILI HARBOR, NIUMALU, KAUAI, TAX MAP KEY 3-2-3:OFFSHORE 43; APPLICANT: DEPARTMENT OF TRANSPORTATION

ITEM H-6

Mr. Evans informed the Board that Young Brothers are expressing concern that they don't want to have public fishermen access through their fenced area.

Young Bros did support what DOT was doing during the public hearing. They want to clarify their concern about the public access. 1) They list liability. They feel their liability will go up because the public fishermen will be going in through a fenced in area; and 2) within the fenced in area there are a lot of storage of equipment of people's personal goods and services and they feel there would be an increased possibility of theft.

Mr. Evans said it's reading that the applicant is going to continue to provide public access within the proposed fenced area, the new area. That's what Young Brothers is objecting to.

The fenced area would be the new area. Mr. Evans was suggesting they fence a pathway so the fishermen can go through. But Mr. Apaka is saying that the fishermen don't use that area.

Mr. Apaka said there's a rock wall there and the fishermen don't fish there. It's off the pier area they've been fishing, small boat harbor they've been fishing but not in the area where the new pier is going.

Mr. Apaka asked if DOT had any representative present as he would like to ask a reconsideration for the machine shop. He felt they should be allowed to remain in the same place.

DOT had represented that they would be required to give month to month permits and they are required to give 30 days notice. Harbors Division has given them a 6 months notice or till the end of the year, but DOT was firm and they would have to relocate.

DEFER

Mr. Apaka moved for deferral of this item to the next Board meeting, seconded by Mr. Arisumi, motion carried.

ITEM H-7

See page 25 for Action.

ITEM J-1

APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4781, ETC., AIRPORTS DIVISION

ACTION

Unanimously approved as submitted. (Arisumi/Apaka)

ITEM J-2

DIRECT SALE OF LEASE OF EASEMENT AT HONOLULU HARBOR, PIER 31A, OAHU (SHELL OIL COMPANY)

ACTION

Unanimously approved as submitted. (Apaka/Yim)

ITEM J-3 DIRECT SALE OF LEASE OF EASEMENT, PIERS 33 AND 34, HONOLULU HARBOR, OAHU (HAWAIIAN INDEPENDENT REFINERY INC.)

ACTION Unanimously approved as submitted. (Apaka/Yim)

ITEM J-4 DIRECT SALE OF LEASE EASEMENT, PIERS 31-34, HONOLULU HARBOR, OAHU (HAWAIIAN INDEPENDENT REFINERY INC.)

ACTION Unanimously approved as submitted. (Arisumi/Yim)

ITEM J-5 RIGHT-OF-ENTRY FOR U.S. COAST GUARD HISTORIC MARKER, HONOLULU HARBOR, OAHU (ALOHA TOWER DEVELOPMENT CORPORATION (ATDC) FOR U.S. COAST GUARD

ACTION Unanimously approved as submitted. (Arisumi/Yuen)

ITEM J-6 ISSUANCE OF REVOCABLE PERMIT AT PUBLIC AUCTION, PIERS 5 AND 6, HONOLULU HARBOR, OAHU

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NAWILIWILI HARBOR DISPOSAL AREA, KAUAI (KAUAI SCRAP IRON, LTD.)

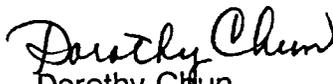
ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, ALA WAI BOAT HARBOR, HONOLULU, OAHU, (HULA DOG, A HAWAII PARTNERSHIP)

ACTION Unanimously approved as submitted. (Apaka/Yim)

ADJOURNMENT There being no further business, the meeting adjourned at 2:45 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, Chairperson

dc