

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

DATE: FRIDAY, AUGUST 23, 1991
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

ROLL CALL Chairman William Paty called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Mr. Christopher Yuen
Ms. Sharon Himeno
Mr. T. C. Yim (12:05 pm)
Mr. William Paty (Excused at 1:45 pm)

STAFF: Mr. W. Mason Young
Mr. Roger Evans
Mr. Henry Sakuda
Ms. Dorothy Chun

OTHERS: Mr. Johnson Wong, Deputy Attorney General
Ms. Dawn Chang, Deputy Attorney General
Mr. Peter Garcia, Department of Transportation
Representatives Cynthia Thielen, Jackie Young
and Whitney Anderson, Ms. Bonnie Heims, Mr. Andrew
Yanoviak, Ms. Shannon Wood, Ms. Brenda Luming and
Mr. Jack Hitchcock (Item F-6)
Mr. J. Young, Rep. Cynthia Thielen, Mr. Terry Carroll,
Ms. Barbara Smith and Ms. Annette Kaohelaulii (Item
F-7)
Mr. Rhett Hurless (Item H-4)
Mr. Jerry Allen, Mr. David Gillette, Ms. Louise Ing
Mr. Andrews (Item F-5)
Mr. Mike Burke, Mr. Ted Nakata, Mr. Darrell Yagodich
(Item F-4)
Mr. William Pyle (Item H-1)
Ms. Melody MacKenzie (Item F-2)
Mr. Steve Nagata, Stanley Suyat (Item H-3)

MINUTES Minutes of April 12, 1991 and July 19, 1991 approved as circulated.
(Apaka/Arisumi)

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

Item F-1-d Hawaii State Public Library Request Consent to Warehouse Lease Agreement at 99-1151A Iwaena Street, Aiea, Hawaii, Tax Map Key 9-9-73:17

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

ITEM F-6 REQUEST FOR AUTHORIZATION TO ACQUIRE LANDS HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL AND SCENIC VALUES, TAX MAP KEY 4-2-05:2 AND 3, KAWAIILOA, KAILUA, OAHU

Mr. Young presented Item F-6 to the Board and requested staff be given approval to acquire the land on Mt. Olomana to provide for the preservation of the landmark.

Questions of the Board to Mr. Young were:

1. Was there any consideration for a land exchange? Response: Not to his knowledge.
2. How many other private properties are there on Mt. Olomana? Response: Did not know the answer and there are several other private properties but doesn't know if falls under same category.
3. How soon will rezoning be done on this property? Response: Not sure of time frame as it will require a public hearing for rules change and also approval from the Governor's office.

Mr. David Fazendin addressed the Board saying that it has been agonizing over the past 4 years and traumatic in getting due process. He went over what had happened in the past and felt they had met all the criteria. He read from different sections of his written testimony and quoted all the expenses incurred during the years 1987, 1988 and 1989. He said he was advised by DLNR to obtain legal counsel but has not been able to hire an attorney as none will take his case.

Responding to the Chairperson's question of the sequence on the driveway situation, Mr. Fazendin went over the reasons for rerouting the driveway so that there would be the least damage to the environment. His proposed building plans are all completed and he went over them with the Board. He again stated that they have been trying to do the right thing to get their home built.

The Chairperson addressed Mr. Fazendin saying that the Board recognizes that he has been through a very trying experience, not only the frustrations of working his way through the DLNR but with all the community and political concerns that have been addressed to it. There is before the Board a request for a Contested Case, so that will be taken under advisement and responding to that in due course.

Representative Cynthia Thielen said she understood that the Fazendins have been through a very difficult time but she said what should be remembered here is that no one said that the Fazendins not be compensated for the fair market value of their land which would include their architectural and engineering fees. What they are saying is Mt. Olomana is bigger than a single family residence. It is a significant windward landmark to the state at large and one that must be preserved in perpetuity which means that no further buildings should occur on that mountain.

Representative Jackie Young urged the Board to keep Mount Olomana pristine and she strongly supported the staff recommendations on the Lanikai seawall, and the acquisitions of the Kaiwa Ridge and Mount Olomana properties. (Copy of written testimony placed in Departmental Land Board Folder.)

Representative Whitney T. Anderson strongly urged the Board to look at this seriously as it seems this case will set a precedence of any type of building on conservation land. He was concerned that people owning conservation land in similar circumstances will not be permitted to build their dream home but will have to continue to pay taxes. He felt this was very unfair. (Copy of written testimony placed in Departmental Land Board Folder.)

A representative from Councilman Steve Holmes' office read his written testimony which fully supported the recommendation that both the Wacor, Inc. property and the Fazendin property be acquired by the State to ensure the preservation of these invaluable scenic resources. (Copy of written testimony placed in Departmental Land Board Folder.)

Ms. Bonnie Heim, Chair of the Kailua Neighborhood Board said that the Kailua Neighborhood Board speaks for approximately 64,000 people in the Kailua Community. They urge the Board to take action that will insure the preservation of Mount Olomana and also Kaiwa Ridge. (Copy of written testimony placed in the Departmental Land Board Folder.)

Mr. Andrew Yanoviak, President of the Save Mount Olomana Association said that the community voted on an initiative in 17 precincts during the last general election to save Mount Olomana. After that they have worked very closely with their legislators and council people in trying to preserve and protect Mount Olomana.

Ms. Shannon Wood of Save Mount Olomana Association and also speaking as a resident of Kaneohe also urged the Board to take every step to preserve and protect Mount Olomana.

Ms. Brenda Luming, resident of Maunawili and also of Save Mount Olomana Association said she has lived there for 20 years and also urged the Board to buy this property to preserve the mountain.

Mr. Jack Hitchcock of Save Mount Olomana Association said he has been doing research and would like to work with staff regarding which parcels are in agriculture, urban and conservation by acreage and TMK.

ACTION Unanimously approved as submitted. (Himeno/Yuen)

ITEM F-10 BEACH TRANSITING AND LAND USE REGARDING CDUA KA-2434,
PASSENGER BOARDING AND DISBOARDING AT A PUBLIC BEACH AT
HANAIEI, KAUAI

Mr. Young said under Item F-10, the question is whether the beach transiting is a land use that requires a Conservation District Use Application (CDUA). In light of the boating problems, the Office of Conservation and Environmental Affairs feels a CDUA is necessary for beach transiting for a commercial venture. The Division of Land Management feels a CDUA is not necessary for regular

beach transiting but the proper mechanism to regulate water related activities should be through the Department of Transportation's rules and regulations. The Division of Land Management is requesting that the Board at this time, provide some internal management guideline decision.

Therefore by way of presentation today, staff is recommending that the Board defer to the Department of Transportation's water rules as they feel that beach transiting is not a land issue. He mentioned that this is not addressed to the Greff situation but statewide.

Chairperson Paty added that this item was on the agenda and he wasn't sure that it should have been because it represents a division of opinion between two of the departments divisions. Being it is an item on the agenda, he will allow those that have come to testify on this to come forward and give their observation.

Mayor JoAnn Yukimura, County of Kauai, said this is an item of great importance to them. She was present today to request the Board reaffirm their decision that a CDUA is required for Mr. Greff's commercial activities in the Conservation Area between the highwater vegetation line and the ocean's edge at Hanalei Bay on Kauai. He has requested a CDUA permit for the transiting of customers and the loading and unloading of customers by Hanalei Bay. She said it would have great impacts upon the community. She spoke of the concerns for the community regarding Mr. Greff transiting his customers daily across the beach at Hanalei. She also spoke strongly against people using public property for their private profits. The nature of commercial activities tends to be regular and the level of activity tends to be more intense than non-commercial activities. In summary she said that she feels that the CDUA permit for Clancy Greff's application needs to be required. Under the existing rule of commercial use of Conservation District also has the reason it will have great impacts on the area.

Ms. Kathy Watanabe, Kauai County Attorney also addressed the Board speaking about necessity of a CDUA, 30 day public hearing notice, and agencies be made aware of procedures. In the event this is routed through a CDUA they would like to request a contested case hearing.

Mr. Harold Bronstein talked about the CDUA request of Clancy Greff of commercial use of beach conservation zoned land. He mentioned the processing of a CDUA. If this is not going to a CDUA he will request a contested case hearing.

ACTION Mr. Yuen made the motion to withdraw this item from the agenda. Seconded by Ms. Himeno, motion carried unanimously.

REQUEST FOR AUTHORIZATION TO ACQUIRE LAND HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL AND SCENIC VALUES AND FOR INCORPORATION INTO THE NA ALA HELE TRAIL PROGRAM, TMK:
ITEM F-7 TMK: 4-2-02:17, KAIWA RIDGE, LANIKAI, KAILUA, OAHU

Mr. Young made staff's presentation and informed the Board that the applicant or representative were not present.

Members of the community testified strongly supporting that the area be preserved and protected. It was mentioned that this was another area of concern to the community which should be preserved and protected. The following testified:

Mr. J. Young, Chairman of the Kailua Neighborhood Board
Representative Cynthia Thielen
Ms. Bonnie Heim, Chair of the Kailua Neighborhood Board, #31
Mr. Terry Carroll, lifelong resident of Hawaii and hiker
Ms. Barbara Hoppy Smith, Board member of Lanikai Association and past president

Ms. Annette Kaohelaulii, Vice Chair of the Sierra Club said that they would like to see the Na Ala Hele acquire lots of trails for the hikers.

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

RECESS 11:00 am -- 11:20 am

**RECONSIDERATION OF CONSERVATION DISTRICT USE PERMIT (CDUP)
FOR IMPROVEMENT TO KUHIWA WELL, WATER TRANSMISSION LINE
AND ELECTRICITY TRANSMISSION CORRIDOR, NAHIKU, MAUI, TMK:
1-2-04:03; APPLICANT: MAUI PINEAPPLE COMPANY; AGENT:
WILLIAM PYLE, A.G. SYSTEMS HAWAII**

ITEM H-1

Ms. Himeno requested that she be excused because of a conflict of interest.

As part of his presentation this morning, Mr. Evans wished to make some remarks hoping that the Board will understand several different statutes and rules that many people will try to apply to this case. He felt that it needed to be said for the public record that insofar as staff's recommendation is concerned, this is basically recommendation for relief from provisions of law or rule or requirement made pursuant to the power granted by law to the Board.

He gave a history of the Board's past practice regarding water issues and during and after the formation of the Water Commission.

He went over in detail the recommendations of staff to the Board.

Mr. Yuen asked for clarification should someone come in with a request to build a pipeline in the conservation district, they would still need a CDUA.

Mr. Evans said that was correct. To drill a well would still need the Board's approval but how much water they're going to extract, what's going to be the flow underground after the extraction, measurement of the certain flow of water, (they must have all the land use aspects approved by the Board by way of a CDUA) the actual water components themselves, that is properly not before the Board but this responsibility should go before the Water Commission.

Chairperson Paty added that it is the Land Board's prerogative however to review and approve water leases.

Mr. Bill Pyle of Maui Land and Pineapple Company said that they have no objection to this change and it helps them to clarify the division of the issues of a CDUA and the pumping permits which are two separate applications that they have been working on.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

AMENDMENT TO CDUP FOR THE WAILUKU HYDROELECTRIC POWER PROJECT, WAILUKU RIVER AND KALOHEWAHEWA STREAM, HILO FOREST RESERVE, HAWAII, TAX MAP KEYS 2-5-9:2, 3, 4 AND 2-6-18:4, APPLICANT: WAILUKU RIVER HYDROELECTRIC POWER CO. INC.

ITEM H-4

Mr. Evans made reference to a question that came up at the last Kona meeting regarding an approved CDUP that had already gone through a public hearing that required a subdivision and would it be necessary to go through another public hearing. There is no requirement by statute or administrative rule for this practice and staff is recommending the Board approve this amendment request because no public purpose would be served by an additional public hearing on this project.

Mr. Rhett Hurless, Project Manager of the Wailuku River Hydroelectric Project was requesting support of this amendment. Responding to the Chairperson's question: 1) All permits are in place. 2) They are making all efforts to comply with all the necessary requirements and articles within those permits such as, conducting archaeological studies, botanical studies and fish studies which are ongoing. 3) The aspects of the power of the project include selling the power to the local utility companies. The power purchase contract between Wailuku River and HELCO is presently before the PUC with all parties in agreement on that. 4) The other aspect, during the last two legislatures, special purpose revenue bonds were authorized for funding the project. They are trying to obtain the necessary backing, financing to go ahead with that project. Their goal is to go to construction before the end of the year.

Mr. Evans said he had to bring to the Board's attention that when the Board approved this application stated that there would be a one year time frame to start construction and three year time frame to complete construction. The applicant came in for an extension of that time frame which was granted to start construction on November 5, 1990.

Mr. Hurless said that there has been an extension to start that construction by September 22, 1992 and completion deadline for the project September 1994, he had a copy of the extension which he read from.

Mr. Yuen said he sees the logic suggested by Mr. Evans that there was a public hearing on this and everyone understood that there was going to be a power house on the site and sees no reason for another public hearing.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

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

ITEM F-5

Mr. Young presented Item F-5 in much detail going over the purposes of the request as stated in the submittal. He stated that staff had no objections to the rescindment, the assignment, the extension and the mortgage. Staff's concern related to the sublease and are recommending denial of the sublease. Justifications for the denial are offered in the submittal. Mr. Young then went over the Recommendations A., B., C., D. and E. for denial as listed.

Mr. Young added that the department's Fiscal Office had informed him that there is a delinquency on the lease in the amount of \$3,748.00. This is the recent annual rental that needs to be paid up front.

Responding to Mr. Apaka, Mr. Young said that it is their understanding that presently at the University of Hawaii Experimental Station in Waimanalo, there is substantial land and a warehouse and it was built for that.

Mr. Jerry Allen and Mr. David Osborne Gillette the mortgagors were present and also Ms. Louise Ing who was representing the Agri Tech Trustee.

Mr. Allen said he felt the primary issue was the use of the 8.86 acres for diversified agriculture. He then made his presentation regarding the warehouse, the med fly program. He also presented letters from the State of California requesting that the State of Hawaii take favorable action on this request and a letter from the USDA who have a facility at the University of Hawaii, Manoa area and their letters point out that the Hawaii Fruit Fly Eradication Program is part of their ongoing research efforts.

Ms. Louise Ing representing the Ag Tech Trustee said she was present today to support the request by Mr. Allen and Mr. Gillette. She said they were impressed with the proposal of use of the land and warehouse and their willingness to negotiate the underlying lease rent.

Mr. Gillette added that they are not in a financial position to build another warehouse like this. The Department of Food and Agriculture of California's budget has been severely cut and they don't have the means to build a facility on another piece of property.

Chairperson Paty asked, "If the Board approved the consent but not the subdivision, what would your approach be at that point?"

Mr. Allen said that they would have to back out.

MOTION

Ms. Himeno moved to go into executive session to consult with legal counsel. Seconded by Mr. Arisumi, motion carried.

Before going into Executive Session, the Chair was approached by Mr. Andrews.

Mr. Andrews wanted to say that apparently a sublease was provided for Agri Tech in the past and there was a sublease executed in the past to Agri Tech. The other comment is that the State of California did go to the University property and they talked to them and they declined putting in a facility over there and they feel that the only facility on the island is the one that they're asking to sublease.

Ms. Himeno clarified with Mr. Young that the previous sublease is the one that he said was probably an oversight. Mr. Young said that that was correct and it is mentioned in the submittal.

**EXECUTIVE
SESSION**

Mr. T. C. Yim joined the Board in the Executive Session from 12:17 pm to 12:35 pm.

**ACTION
TO DEFER**

Ms. Himeno moved to defer this item until a legal opinion can be obtained from the Attorney General's Office that would concern her. Seconded by Mr. Apaka, motion carried.

**WITHDRAWAL OF LAND FROM GENERAL LEASE NO. S-4229 TO
PIONEER MILL COMPANY, LTD. AND CONVEYANCE IN FEE SIMPLE TO
HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR LAHAINA
MASTER PLANNING PROJECT AT LAHAINA, MAUI, TAX MAP
KEY 4-5-21:3 (POR.)**

ITEM F-4

Ms. Himeno requested to be excused because of a conflict of interest.

Mr. Young said staff is recommending that the Board approve the withdrawal of the subject area from the operation, find it to be an economic use and also under paragraph C authorize the conveyance of the 380 acres to HFDC. He then passed out an Amendment to Item F-4 for the Board to approve with respect to the conveyance. The reason for the amendment is the fact that in the conveyance of the property to HFDC, there are compensations that's due OHA and DHHL. At the time the Board authorized the withdrawal and conveyance of the 68 acres to HFDC, the Board also asked the Office of State Planning (OSP) to negotiate and formulate a memorandum of agreement with respect to the compensation.

Mr. Neal Wu of HFDC made his presentation to the Board going over the details of their request and concerns after which he answered questions of the Board.

Mr. Michael Burke of Pioneer Mill Company said that they had submitted a letter listing their concerns. They basically wanted to make sure that their infrastructure was kept whole. They have supported the HFDC project in the intent to build affordable housing. He said that HFDC has given them some assurances that they will solve a lot of the problems that will be created by their withdrawals. Nothing has been formalized as yet.

Discussion followed on the mauka-makai roads, harvesting, crop damage, controlling erosion, cane haul roads, drainage swales, irrigation ditches and relocating roads.

Mr. Ted Nakata of the OSP said that at this time no compensation agreement has been reached. HFDC is negotiating directly with both OHA and DHHL. Mr. Yagodich from DHHL said that they have met with HFDC several times and they were close to reaching an agreement.

**ACTION
TO DEFER**

Mr. Arisumi moved that this item be deferred to the second meeting in September to allow HFDC and Pioneer Mill to work out more details on crop harvesting and replanting. Mr. Arisumi also asked that figures on the cost of the houses be available also. Seconded by Mr. Apaka, motion carried.

ITEM F-2

**CANCELLATION OF HOMESTEAD LEASE NO. 68 AND ISSUANCE OF
HOMESTEAD LEASES COVERING LOTS 29-C AND 29-D, NAHIKU
HOMESTEADS, NAHIKU, KOOLAU, MAUI TAX MAP KEY 1-2-02:18**

Mr. Young said after conferring with the Attorney General's Office, staff was advised by letter that the Board should comply with the Court's Order and approve the partition.

Mr. Young presented the Board with the following amendments to Item F-2:

- A. Affirm the Final Judgment by the Circuit Court of the Second Circuit, Civil No. 88-0589(3), Hokoana vs. Jarnesky entered on November 7, 1990, which are incorporated herein;
- B. Title to the leasehold interests created in these separate parcels shall descend as provided by law;
- C. Approve the partition and assignment of Homestead Lease No. 68 to:
(1) Homestead Lease No. 68-A to Jarnesky, et al. covering Lot 29-C;
and (2) Homestead No. 68-B to Joe and Marona Hokoana covering Lot 29-D, subject to the following:
 1. The manner of disposition and documentation (homestead lease) shall be determined by the Office of the Attorney General;
 2. The term shall be the remainder of the lease term under H.L. No. 68;
 3. The lessees shall comply with all applicable statutes of the Federal, State and County governments;
 4. All applicants shall waive and assign their respective rights and interests to the above-described Lots 29-D and 29-C;
 5. Terms and conditions contained in Homestead Lease No. 68 and compliance thereof by the new lessee;
 6. Commencement date to be determined by the Chairperson;
 7. Authorize the Chairperson to impose other terms and conditions which will best serve the interest of the State and comply with the intent of the above-described Court Orders.

Mr. Young said that according to the ladder of succession, once someone dies normally it would go to the remaining children with joint tenants with the rights of survivorship. In this case, two of the children were not involved in the initial probate. They made their claims and as a result of the court judgment to partition the lease it would allow the two different families to have the two respective lots.

Ms. Melody Mackenzie said that she was present to represent one of the Rodriguez family and she has also been in contact with the representative of the Hokoana family and they are all in agreement with the proposed settlement that has been approved by the Court.

ACTION Mr. Arisumi's motion was to approve Item F-2 as amended by staff, seconded by Mr. Apaka, motion carried.

EXCUSED Chairperson Paty was excused from the meeting at 1:45 p.m. Vice-Chair Arisumi conducted the remainder of the meeting.

CONSERVATION DISTRICT USE APPLICATION (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-2

Mr. Evans informed the Board that this item was deferred from the last meeting to allow the DOT to reconsider the relocation of the Nawiliwili Machine Shop, Inc., and also to allow staff to look into the concerns of the Kauai and Maui Board members.

In the follow-up, staff contacted a representative from the machine shop who indicated that they currently have plans to relocate the business to Grove Farm Industrial Park located at Puhi. However, according to a representative from Grove Farm, infrastructure at the park is not expected to be completed until late next year, around 1992. The representative from the machine shop also mentioned that they currently have requested from the DOT to lease an approximate 20,000 square foot area located mauka of the small boat harbor entrance. DOT has indicated to staff that they are presently considering this request but yet to make a final decision.

There were concerns expressed by Mr. Apaka and concern expressed by Mr. Arisumi that notwithstanding, whatever the Board decides, don't let it be a precedent, particularly to the Maui situation whereby Young Brothers allow fishermen in the area. As a result, staff did take a look and they are sensitive to the machine shop's predicament, they do recognize that DOT has jurisdiction to manage the area, which means the RP's, and there is concern of Young Brothers opposition to maintain a public access in the enclosed fenced area.

In Condition 3 it allows DOT to designate specific times and uses and DOT could incorporate conditions when issuing fishing permits in this area.

Staff has seen nothing that would cause them to change their recommendation.

Should the Board decide to delete Condition No. 3, staff has suggested to amend it as such:

The approval of this application is based upon a unique set of circumstances. Approval should not be construed in any manner as creating any precedent about how the board may, or should act on applications for harbor development in the Conservation District in the future.

Mr. Apaka referred to parking for the public within the fenced area, the understanding that he had was that fishing would be allowed within the fenced area, but actually the new area for the pier, there's no fishing going on in there. If they were talking about public parking to pick up cargo, that's another matter.

Mr. Peter Garcia of DOT said that the owner of the Nawiliwili Machine Shop, Mr. David Callahan has requested a directly negotiated lease from the Harbors Division of DOT. Right now the machine shop is a holdover revocable permit and it originally was under the DLNR. The purpose was for ship repair, small boat dry docking, fabrication, welding as its permitted activities. Under these activities, the DOT could under Chapter 171-59b, directly negotiate a lease. He understands that there have been discussions and another site has been found, an area containing 25,000 square feet which is closer to the small boat harbor.

The Harbors Division is willing to give a directly negotiated lease under conditions that arise for maritime uses to be consistent. Secondly, the exterior and roofing of the buildings shall be painted in earth tone colors to blend in with the environment; landscaping plan of appropriate plantings, including salt tolerant varieties shall be submitted for prior review and approval of the Harbors Division. The applicant shall acknowledge that the adjoining property is proposed as a package sewage treatment site and by such acknowledgement shall not complain about the effects of the sewage treatment plant should it become a reality. The applicant shall construct improvements, including a building of not less than 4,000 square feet, that includes floor area and total construction cost would be \$250,000.00. The lease would be at a fair market value to be determined by an independent appraiser. The term of the lease would be flexible right now. They would like to have it for a term in which the owner can recover his cost or mortgage or amortize his improvements.

Mr. Garcia said that he understands that there has been a verbal agreement between the DOT and the machine shop owner. The DOT will be coming back to the Board after they finalize agreement. Present tenant will also be given reasonable time to construct his facility to allow his move.

ACTION Mr. Apaka moved for approval as modified by staff on Condition No. 3. Seconded by Ms. Himeno, motion carried.

ADDED
Item F-1-d Hawaii State Public Library Request Consent to Warehouse Lease Agreement at 99-1151A Iwaena Street, Aiea, Hawaii, Tax Map Key 9-9-73:17

ACTION Unanimously approved as submitted. (Himeno/Apaka)

**AFTER-THE-FACT CDUA 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**

ITEM H-3

Mr. Evans informed the Board that this item was deferred from the last meeting to allow the Board members to take a field inspection of the seawall property in Lanikai and several members did take the opportunity.

Staff's recommendation at the last meeting was for the boulders and the seawall to be removed. The Board expressed its consensus at the time that perhaps the seawalls should be removed and had reservations relative to the boulders because apparently the boulders had been taken back in 1954 when the Pali Tunnel was being built and put on the property and they were not done by this landowner. Staff's recommendation remains the same.

Mr. Evans then said that he has had an opportunity to discuss this matter with Ms. Barbara 'Hoppy' Smith who was here at the beginning of the Board meeting but had to leave. He would like to convey her concerns to the Board:

- 1) That she believes that the private property owner has a right to protect his or her property using his or her own private property.
- 2) Relative to the removal of the boulders, that the Board should be cognizant that the removal of the boulders not cause more environmental damage than the boulders be left in place.

Discussion followed with questions of the Board to Mr. Evans regarding the request to allow the encroachment to remain in its totality, the seawall and the boulders. It was determined that they would need an easement on a separate application for use of State lands.

Question arose about the ownership of a small piece of land between the wall and ocean. Mr. Yuen said that there was a Certified Shoreline in 1986 which the line would place some of that sand in that area in private ownership and his understanding is that a certified shoreline is good for only one year and it may be that there is a change today.

Mr. Steve Nagata and Mr. Stanley Suyat representing the applicant were present to answer any questions. Mr. Suyat asked for clarification of the portion of land being referred to in the certified shoreline of 1986.

Mr. Nagata said that Mr. Yuen was correct regarding some sand mauka and that it was approximately about 10' x 5' in size. They feel that the two slivers along both walls are the main issue today. Mr. Nagata also felt that if they were required to remove the boulders, it would require another engineering project and once you start removing boulders the stress factors would change and it seems that it would cause more damage to the environment.

Vice-Chairman Arisumi voiced his concerns that should the wall be torn down and a new one constructed in trying to straighten out the wall would not be productive because in taking out some of the stone it may be worse. He

mentioned one alternative was to fine the applicant and allow the applicant to come in with a request for an easement.

Mr. Evans informed the Board that in the past staff has recommended that if the seawall was on State land that it be removed but, the Board has handled decisions at times on a case by case basis.

Mr. Suyat and Mr. Nagata said that in late 1986 the original foundation of the old seawall was in disrepair so the contractor built on the old foundation. After it was built they found out that it was makai of the certified shoreline so that in 1989 they moved a lot of it back and what is left now is that subject of this CDUA. The Waimanalo side of the seawall was demolished and moved back, explaining that it was a pie shaped slice going from almost nothing to about 7 feet at the widest point in width. The range of the width of the encroachment is about a foot or foot-and-a-half. Mr. Nagata pointed out that at the time the landowner did not intend to conscientiously violate or take State land. In fact he did remove a large portion of that after 1986 or in 1989. He did have the intent not to violate and go past the certified shoreline. As to why everything was not removed at that time, he believed that there some misunderstanding as to what was makai and what was not makai, what might be appropriate for an easement process or what might be more appropriate for a CDUA process. He apologized on their part for the misunderstanding. He again stated that there was no malice or bad intent on the part of the landowner to take any State land at that time and most of the major encroachment was removed.

Discussion continued on the building of the seawall on the base or foundation and removal of the foundation and whether it would be more of a problem. No point in tearing down the wall and moving it back a miniscule amount that is not going to increase public access. There continued much discussion on future decisions on seawalls with the possibility that landowners may claim that they are only 2 feet onto State land or only 3 feet.

Mr. Yim addressed a question to Mr. Evans, "In this particular case, by asking the owners to remove the wall and build it on their property, what public interest is being served?"

Mr. Evans said, "The public interest that's being served is that public lands held in trust for the public will remain in trust for the public."

Mr. Yim said, "As a broad brush, we have leased property of public land to all kinds of people for all kinds of use, can you be more specific. What in this case public interest especially, if there is a very high charge for easement right, for the use of public land. Other than that, we move it back, how much public interest has been gained, would they be having more beach to sun tan, to swim, just what is the specific public interest that we will gain by that one foot or whatever."

Mr. Evans replied, "What we probably would gain is a measure of confidence from the community that you are holding public lands which are those trust lands in the public trust."

Mr. Yim asked, "In the case when we are charging a fair return from the public, as I said earlier, we have leased, sold public lands for all kind of purposes and

still serve public interest, so in this case if we were to do the same by getting some money for easement to use that small amount of land, what public interest is being hurt when we are being compensated for that right, by way of easement?"

Mr. Evans responded, "Providing you remain consistent, as long as you are going to allow the public beach to be used by private property owners for a payment of a fee, in this case, be consistent and allow all beaches to be used."

Mr. Yim commented that each case differs. Citing a situation where the public interest may be gained, where there is access for the public to walk through and another difference would be the intent. Every situation is not the same, so one of the big factor would be intent and there's no way of really proving what the intent of the developer's were, or the owner's were. If the Board suspected any intent to violate he felt that the Board would automatically say 'remove the wall, move it back,' or if it's about 5 feet to 10 feet they would automatically ask them to move it back. He felt that there must be some gray area for which the Board are here to make decisions on which is very difficult in drawing the line.

Mr. Evans said that in all the 12 years that he has come before the Board, there hasn't been one applicant that stated they intended to violate the law.

**EXECUTIVE
SESSION**

Ms. Himeno moved that the Board go into executive session to confer with legal counsel; seconded by Mr. Apaka, motion carried.

2:35pm-2:50pm

Vice Chairman Arisumi called the regular meeting back to order.

MOTION Ms. Himeno moved that the Board approve the staff recommendation as set forth on pages 10 and 11 with the exception of the deletion of Recommendation A. 5 which would require them to remove all of the boulders and rubble from the old seawall foundation. She commented that she didn't think that they should have to do that as that existed before they acquired the property and was pre-existing at that time. Motion was seconded by Mr. Apaka

Ms. Himeno commented that with seawalls the Land Board will have to take them on a case by case basis. Some of the factors that were compelling to her that although they were only talking about a foot into State land, it is one of the most beautiful beaches in the State of Hawaii and certainly one of the most prime real estate in the State of Hawaii. From the picture submitted at low tide people can walk from Kailua Beach Park up past the property all the way up on the other side. In light of that she feels it's very important that, even if it's only a foot, that the applicant should remove the encroaching wall if necessary, or those parts of the wall that are encroaching onto State land. Also the fact that the wall was put up fairly recently and was put up by the present owner himself.

ACTION Vice-Chairman Arisumi called for the question and motion carried.

REQUEST FOR APPROVAL TO AMEND THE AGREEMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) FOR HAWAIIAN FISHERIES DEVELOPMENT

ITEM B-1

ACTION Unanimously approved as submitted. (Himeno/Apaka)

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

Mr. Young presented the consent calendar to the Board.

Item F-1-a **Assignment of General Lease No. S-5071, lot 35, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, Tax Map Key 1-4-02:15**

Item F-1-b **Issuance of Land License to Rego's Trucking, Ltd., Government Land at Kawalele Mana, Kauai, Tax Map Key 1-2-02:1**

Mr. Apaka asked if there were any outstanding violations by Rego. Mr. Young said that there were none.

Item F-1-c **Land Patent in Confirmation of Land Commission Award No. 3237, Apana 3 at Wailuku, Maui, Tax Map Key 3-3-04:24**

For Item F-1-c, should the Board give its consent, Mr. Young said that he would like to make an amendment to the submittal, that is to delete under Recommendation, where it says "subject to review and confirmation of said area and its location by Survey Division, Department of Accounting and General Services." He said that statement was not necessary.

ACTION Mr. Apaka moved for the approval of Items F-1-a, F-1-b and F-1-c as amended; seconded by Ms. Himeno, motion carried.

Item F-1-d See page 11 for Action.

ITEM F-2 See page 10 for Action.

ONE (1) YEAR HOLDOVER OF GENERAL LEASE NO. S-4349 TO JOSEPH J. DAY, LOT 33-A, WAILUA HOMESTEADS, WAILUA, HANA, MAUI, HANA, MAUI, TAX MAP KEY 1-1-06:38

ITEM F-3

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-4 See page 9 for Action.

ITEM F-5 See page 7-8 for Action.

ITEM F-6 See page 3 for Action.

ITEM F-7 See page 5 for Action.

AUTHORIZATION FOR SALE OF A PASTURE LEASE AT PUBLIC AUCTION AT WAILUA, LIHUE, KAUAI, TAX MAP KEY 3-9-05:19 AND 20

ITEM F-8

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-9 AUTHORIZATION FOR SALE OF A PASTURE LEASE AT PUBLIC AUCTION AT WAILUA, KAWAIHAU, KAUAI, TAX MAP KEY 4-1-09:17

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM F-10 See page 4 for Action.

ITEM H-1 See page 6 for Action.

ITEM H-2 See page 11 for Action.

ITEM H-3 See page 14 for Action.

ITEM H-4 See page 6 for Action.

ITEM J-1 CONTINUANCE OF REVOCABLE PERMITS H-82-994, ETC., HARBORS DIVISION

Ms. Himeno asked to be excused from acting on H-82-1011 for Matson Navigation because of a conflict.

ACTION Approved as submitted. (Apaka/Yim)

ITEM J-2 AMENDMENT NO. 4 TO LEASE NO. DOT-A-84-12, KAHULUI AIRPORT, MAUI (AVIS RENT A CAR SYSTEM, INC.)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT NOS. 4796, 4797 AND 4798, AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-4 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 52 GATE, SAND ISLAND, OAHU (BAUTISTA'S FILIPINO KITCHEN)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-5 CONSTRUCTION RIGHT-OF-ENTRY AND DIRECT SALE OF LEASE, SAND ISLAND CONTAINER FACILITY, OAHU (SEA-LAND SERVICES, INC.)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-6 AMENDMENT TO DIRECT SALE OF LEASE OF PIPELINE EASEMENT AT BARBERS POINT HARBOR, OAHU (HAWAIIAN ELECTRIC COMPANY, INC.)

Ms. Himeno requested to be excused due to a conflict of interest.

ACTION Approved as submitted. (Yuen/Apaka)

ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAWAIHAE HARBOR, HAWAII (HAWAII PLANING MILL, LTD. DBA HPM BUILDING SUPPLY)

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAWAIHAE HARBOR, HAWAII (KEITH C. MCINTYRE, DBA PACIFIC CINDER TRANSFER)

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-9 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAWAIHAE HARBOR, HAWAII (KONA TRANSPORTATION COMPANY, INC.)

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-10 CONTINUANCE OF REVOCABLE PERMITS H-90-1634, ETC., HARBORS DIVISION

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-11 CONTINUANCE OF REVOCABLE PERMITS H-88-1484, ETC., HARBORS DIVISION


ACTION Unanimously approved as submitted. (Himeno/Apaka)

ADJOURNMENT The meeting adjourned at 3:00 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED:



WILLIAM W. PATY, Chairperson

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