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

DATE: November 22, 1991
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

ROLL CALL

Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS:
Mr. John Arisumi
Ms. Sharon Himeno (excused at 2:15 p.m. (Item H-3))
Mr. Christopher Yuen
Mr. T. C. Yim
Mr. William W. Paty

ABSENT & EXCUSED:
Mr. Herbert Apaka

STAFF:
Mr. Ross Cordy
Mr. Gordon Akita
Mr. Mason Young
Mr. Roger Evans
Mr. Ed Henry
Mr. Michael Buck
Mr. Ralston Nagata
Ms. Geraldine M. Besse

OTHERS:
Linnell Nishioka, Esq., and Johnson H. Wong, Esq., Dept. of the Attorney General
Mr. Peter Garcia, Dept. of Transportation
Mr. Joe Kilkelly, Item F-1-b
Ms. Jan Sullivan, Item F-2
Mr. Clyde Nagata, Item F-5
Mr. Jerry Allen, Item F-8
Mr. Carl Christenson, Item F-15
Mr. Michael Rearden, Item H-1
Benjamin Matsubara, Esq., Item H-2
Ms. Barbara Smith, Item H-2
Martin Wolff, Esq., Item H-3
Mr. Mark Van Pernis, Item H-4

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

ITEM F-5: **HAWAII ELECTRIC LIGHT COMPANY, INC. (HELCO) REQUESTS FOR RIGHT-OF-ENTRY TO PORTION OF GOVERNMENT LANDS SITUATE AT PU'U ANAHULU, NORTH KONA, HAWAII, TAX MAP KEY 7-1-01:POR. 1 AND 7-1-02:POR. 1**

Ms. Himeno asked to be recused from participating on this item.

Mr. Young stated it is anticipated that there will be a demand for additional service in the West Hawaii area and, therefore, HELCO has asked for a right-of-entry to do siting studies.

He stated he received a letter from the Kona Outdoor Circle asking that the Board disapprove the right-of-entry because it is concerned about the scenic result of a power plant, as well as the possibility of pollution.

Mr. Young noted the department's Division of Forestry and Wildlife was looking at this area as part of its game management area.

Mr. Clyde Nagata stated that a study was done in 1987, and a community advisory group was formed and included representatives from the resorts, the Outdoor Circle, private individuals, and government. These representatives have been informed of their activities and options at Kawaihae and other alternatives; however, he said they have not been contacted regarding the Puuanahulu area. Mr. Yuen stressed the importance of early meetings with the public.

ACTION Unanimously approved as submitted (Yuen/Yim).

ITEM F-2: **HUEHUE RANCH ASSOCIATES, L.P. ("HRA") REQUESTS APPROVAL IN PRINCIPLE OF PROPOSED SETTLEMENT OF LAND DISPUTE COVERING LAND AT KIKAUA POINT, KUKIO 1ST, NORTH KONA, HAWAII, TAX MAP KEY 7-2-04:POR. 5**

Mr. Young asked that the Board approve the proposed settlement in principle. The staff would then come before the Board with the "nuts and bolts" of the proposal.

Mr. Young explained that the easement was a means of conveyance in order to negotiate with HRA; if by lease the lease would have to go out for public auction. Mr. Yuen explained that a major concern was whether "long term" or "perpetual" presented a problem. Ms. Sullivan said initially they looked at "easement" versus "lease" and felt that to negotiate it would be preferable to take the "easement" route. As far as obtaining a perpetual grant, Ms. Sullivan stated she felt the State would not be presented with a problem if the use itself in the document was very specific and restricted. She said they wanted to make it clear that the purpose of the easement is for public park uses. If the easement were to be changed, if the use were to differ, the easement would revert back. Mr. Yuen stated it could be for a term easement; Mr. Young stated it could be given for 65 years. Mr. Young noted that if the easement is abandoned for one year, it reverts. Mr. Young stated he believed a term could satisfy all parties, and Mr. Yuen responded that a long-term would be fine. Mr. Young stated he would discuss the matter further with Ms. Sullivan and get back to Mr. Yuen.

ACTION Unanimously approved as submitted with either a perpetual or long term easement (Yuen/Himeno).

ITEM F-1-f: **CONSENT TO SUBLEASE PORTIONS OF GENERAL LEASE NO. S-3624 COVERING GOVERNMENT (CROWN) LAND OF WAIAKEA, SO. HILO, HAWAII, BETWEEN RAILROAD AVENUE PARTNERS, SUBLESSOR, AND:**

(1) **BIG ISLAND MOVING AND DRAYING, INC., A HAWAII CORPORATION, SUBLESSEE;**

(2) **J. E. MARK AND ASSOCIATES, INC., A HAWAII CORPORATION, SUBLESSEE;**

(3) **WORK RITE SYSTEMS, INC., A HAWAII CORPORATION, SUBLESSEE;**

(4) **LEON STOCKDALE AND KANIU K. STOCKDALE, SOLE PROPRIETORSHIP, SUBLESSEE;**

(5) **ANVIL, INC., A HAWAII CORPORATION, SUBLESSEE;**

(6) **HAWAIIAN HOUSEWARES, A HAWAII CORPORATION, SUBLESSEE;**

(7) **E. J. MAHONEY, III DBA STUFF-IT-MINI STORAGE, A SOLE PROPRIETORSHIP, SUBLESSEE;**

(8) **TRUE GEOTHERMAL ENERGY CO., A WYOMING PARTNERSHIP, SUBLESSEE**

Mr. Young stated that the total of the above leases amounts to $191,000. It is an old lease and does not provide for a "sandwich" profit.

ACTION Unanimously approved as submitted (Yuen/Himeno).

ITEM F-1-a: **ISSUANCE OF REVOCABLE PERMIT TO KFVE JOINT VENTURE DBA KFVE CHANNEL 5, GOVERNMENT LAND OF WAIAKOA AND PAPAANUI, AT WAIAKEA AND PAPAANUI, MAKAWAO (HONUAULA), MAUI, TMK 2-2-07:POR.5**

ACTION Unanimously approved as submitted (Arisumi/Himeno).

ITEM F-8: **RESUBMITTAL -- REQUEST TO RESCIND PRIOR BOARD ACTION OF FEBRUARY 9, 1990 (AGENDA ITEM F-1-E), EXTENSION OF LEASE TERM, CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-3775, LOT 36, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-27:09**

Mr. Young stated that this item was deferred and staff was instructed to obtain a clarification from the Attorney General on whether a sublease can be allowed under a lease without a subleasing provision. The Attorney General stated that a sublease can be issued on this leasehold.

Mr. Young stated that staff recommended approval of all items except the sublease to the State of California for the medfly project. He stated that the proposed use is not consistent with the present lease. To amend the use of a sublease, is contrary to the intent of the public auction, and the medfly project does not meet the intent or purpose of the lease, which is diversified ag.

Mr. Young clarified that the warehouse is included in the total acreage. He stated that not only the warehouse but the backup property is used to determine the viability of the activity.

Mr. Young informed Mr. Yim that based on the last Waimanalo auction, the rent would amount to $30,000. He said that at the last auction there were 25-30 people bidding for two parcels.

Mr. Jerry Allen stated he is asking for sublease as the Attorney General has stated that it can be done. He referred to his letter of August 5, which detailed the project. The business plan for the property is the cultivation of coconut.

Mr. Allen asked to make a couple of corrections to page 3 of the submittal: (1) there is 50 square feet or approximately one acre for the greenhouse, and the duplex, 2,000 square feet, which left four to four and one-half acres that can be used for ag. The rest of the facility is for support and warehouse. He stated that the three to three and one-half acres had never been put in ag but will increase the entire property for ag. He said there was an expression that they might experience a "windfall" on this property. He stated they purchased the facility for $600,000. Their loan is to substantially improve their warehouse.

He said they are not attempting a sandwich position. The lease as proposed would partially service the debt. In addition, taxes of $8,000 per year is anticipated; insurance of $7,000 per year and 4% excise tax. There are approximately 13 years left on the lease, and it was questionable whether the trustee would allow the property to be reauctioned. He maintained that the medfly is a proper activity and directly supports agriculture.

Ms. Himeno noted there is a demand for existing use and did not feel the proposal was inconsistent and went along with the general intent of the lease.

Mr. Young stated that the lease would have to be amended to include the medfly as an ag use, that the use must first be amended. Mr. Allen stated his attorney reviewed the situation and advised that the Board has the right to change the lease.

Mr. Young stated there was a similar situation where the Board did change the lease from poultry to diversified ag.

ACTION Ms. Himeno moved to approve staff recommendation with the exception of Recommendation "C." Mr. Young suggested that the Recommendation be amended as follows:

"RECOMMENDATION:

That the Board:

A. Rescind its prior Board action dated February 9, 1990, Item F-1-e, that consented to the assignment of the leasehold from Rainbow Properties, Inc. to West Coast International, Inc.

B. Consent to the assignment of General Lease No. S-3775 from Thomas E. Hayes, Trustee for Agricultural Research and Technology Group, Inc., Assignor, to Jerry Eugene Allen and David Osborne Gillette, Assignees, subject to the following conditions:

1. To the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to rights of holder of security interest.

2. Review and approval as to form by the Department of the Attorney General.

3. Such other terms and conditions as may be imposed by the Chairperson.

C. Approve modifying the "Character of Use" for General Lease No. S-3375 from "Diversified Agricultural" to "Diversified Agricultural and the Cultivation of Med-flies" for purposes of qualifying said lease for the above-described $1,000,000.00 First Hawaiian Creditcorp mortgage loan.

D. Authorize the extension of General Lease No. S-3775 for fourteen (14) years from December 2, 2004 up to and including December 1, 2018 in order to meet the lending requirements of the First Hawaiian Creditcorp, subject to the following conditions:

1. Immediate reopening and redetermination of the lease rental and additional reopening every ten (10) years thereafter, said redetermination of lease rental to be based on appraisal by an independent appraiser.

2. No assignment of lease to be permitted for a period of five (5) years from the effective date of any mortgage resulting from the extension granted.

3. That the proceeds of the loan shall be used as indicated in the application for extension.

4. All proposed improvements, grubbing, grading shall be completed within two (2) years from the effective date of First Hawaiian Creditcorp loan resulting from the extension granted. The lessee shall submit to the Department for review and approval two (2) sets of grading plans and appropriate permits and approvals from applicable State and County agencies prior to commencement of any work.

5. New lease assignment provision be included in the extension agreement.

6. The interest rate on any and all unpaid or delinquent rentals shall be one percent (1%) per month, plus a service charge of $50.00 per month for each month of delinquency.

7. Performance bond at twice the prevailing annual lease rental.

8. New sublease provisions be included in the extension agreement.

9. Current Hawaii Revised Statutes requirements for serving Notice of Default if lessee is delinquent in rent for more than thirty (30) days.

E. Consent to the mortgage of General Lease No. S-3775 by and between Jerry Eugene Allen and David Osborne Gillette, Mortgagors, and First Hawaiian Creditcorp, Mortgagee, for a loan of $1,000,000.00 subject to the following conditions:

1. The provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to the rights of holders of security interests.

2. Review and approval of the Consent to Mortgage documents by the Department of the Attorney General.

3. Other terms and conditions as the Chairperson may prescribe.

F. Approve Consent to Sublease Agreement between Jerry Eugene Allen and David Osborne Gillette, Sublessors, and the State of California, Department of Food and Agriculture, Sublessees, under the above-listed terms and conditions which are by this reference incorporated herein and subject to the following conditions:

1. Review of the Sublease Agreement by the Attorney General's Office.

2. Review by Staff Appraiser to determine if there is a sandwich profit between the sublease rental and the lease rental. If there is a sandwich profit, the annual lease rent of General Lease No. S-3775 shall be increased by that amount."

Ms. Himeno amended her motion to incorporate Mr. Young's amended recommendation. Seconded by Mr. Yim and unanimously approved as amended.

ITEM F-15: ANNUAL REVIEW OF REVOCABLE PERMITS IN THE ISLANDS OF HAWAII, MAUI, MOLOKAI, OAHU AND KAUAI

Ms. Himeno asked to be recused.

Mr. Young stated they are in the process of converting permits to long-term leases. He also noted that they are going through a strategic management plan of agriculture lands.

Mr. Carl Christenson, staff attorney at Native Hawaiian Legal Corporation, asked that the Board deny the recommendation of staff in that a number of parcels are ceded lands. He stated that the use of revocable permits for long-term leases is a device used by the division and is improper.

He said that the Board has not taken it seriously to generate income from State lands that are part of the ceded lands trust and are not used for any of the five purposes under the Admissions Act. He stated that a blanket percentage increase does not seem to reflect an effort to determine the proper market value of those parcels.

Mr. Paty pointed out to Mr. Christenson that Sand Island, an example used by Mr. Christenson, was mandated by legislative action.

Mr. Young indicated he would welcome a meeting with Mr. Christenson and constituency regarding his concerns.

ACTION Approved as submitted, with Ms. Himeno recused (Yim/Arisumi).

RECESS The Chairperson called a recess from 10:40 to 10:56 a.m.

ITEM H-1: **EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA 1948A, SINGLE FAMILY RESIDENCE AT NORTH KOHALA, HAWAII; TMK 5-7-1:5; APPLICANT: MICHAEL REARDEN**

Mr. Evans stated that recommendation was for approval.

Mr. Yuen moved for approval as submitted. Seconded by Mr. Yim.

Mr. Rearden asked to bring the Board up-to-date. He stated that the circuit court did dismiss the last lawsuit with prejudice; however, another action has been filed. He said he will ask the court to prohibit any further suits by this individual as being frivolous. Mr. Rearden asked for an additional six months to clear legal entanglements.

Mr. Evans stated he would recommend remaining with the September, 1992, deadline in order to speed up the project; if in August 1992 an extension was necessary, applicant could then reappear before the Board with his request.

Mr. Evans stated that a standard condition has been added to past permits and concerns environmental statements of mitigation relative to environmental impacts and is now a standard condition and that there are no vested rights in many instances and any statements made pursuant to this request which when granted by Board and subsequently found to be false would render the application null and void.

Mr. Yuen asked whether the following was acceptable to Mr. Rearden:

(1) that if any statements or representations were made by applicant regarding environmental mitigation that would be done in the course of the project that it would be incorporated in the permit; and

(2) if any statements or representations were false the permit would become null and void.

Mr. Rearden agreed.

ACTION

Mr. Yuen moved to amend his motion to extend the application to March, 1993, with the above conditions. Seconded by Mr. Yim and unanimously approved as amended.

ITEM H-2: **CONSTRUCTION PLAN REVIEW FOR CDUP OA-2051, SINGLE FAMILY RESIDENCE AT LANIKAI HILLSIDE, OAHU, TMK 4-3-2:1; PERMITTEE: RALPH AND BETTY ENGELSTAD; AGENT: BENJAMIN MATSUBARA**

Mr. Evans stated that in 1989 the circuit court did invalidate the Board's decision on denial. As a result, applicant is now asking for approval of his construction plans. Mr. Evans stated that the recommendation is to "downscale" the present proposal to conform to the surrounding community and the recommendation is that the present plans be rejected. He stated that they have been in communication with the Department of the Attorney General, which has expressed concern and requested deferral of this item. Applicant submitted a position statement on November 21.

In response to Ms. Himeno, Mr. Evans stated that the Attorney General's request was because the present application is unique in that the matter was taken to the First Circuit Court, which issued a ruling on the issue. The ruling was contrary to the Board's position and staff recommendation and that the uniqueness would require that staff provide the Attorney General an opportunity to look at this. He noted the department was not under a 180-day deadline--whatever action the Board may take there may be legal action involved, and the Department of the Attorney General would have to defend the Department and, therefore, requested a review of the matter.

Mr. Paty announced he would proceed with the hearing and subsequently go into executive session to consider the request by the Attorney General.

Mr. Yuen questioned Mr. Evans concerning the letter to Mr. Matsubara (Attachment 1) saying that the one-year time-frame initiating work and construction is set beginning March 29, 1989. He asked whether construction was initiated before March 29, 1990. Mr. Evans stated the letter was signed March 29, 1989. "The letter stated that work and/or construction, which is item 15, which is a standard condition, would initiate as of the date, March 20th, that the judge set for the ruling. On page two of our submittal, we indicate to you that work

did indeed commence and was completed between July to December of '89, and that was surveys and soil testing. The way the standard condition reads, and we've had another case where the Board can modify these from time to time and in this case the Board accepted the standard conditions as they did not, for example, say construction of the house must proceed." Mr. Evans went on to say that there is a difference between "work occurring on a property" and "actual construction of a house."

In reply to Mr. Yuen, Mr. Evans stated that the standard condition for completion would be three years. He said it was not included in the memo but it was highlighted in Condition No. 15. If the starting date for the three-year completion was March 20, 1989, the completion date would then be March 19, 1992, and it is a condition of the project.

Mr. Matsubara stated they have a position statement. He asked to summarize his concerns:

"The total property which is the subject of this action consists of approximately 76 acres, and they were purchased by my client, Ralph and Betty Engelstad in 1969. The purpose for acquiring the property in 1969 was so that they could build a retirement home in the event of retirement. It is my position that I have discussed in my position paper, that based on the applicable statutes, regulations, administrative actions, court orders relating to this project, my clients are entitled to build their home as reflected by the plans submitted with their CDUA and that the Board's review of the final working plans and drawings is limited to insuring that the final plans we have submitted to you conform to the plans and drawings we submitted with our CDUA.

"The basis for my position is as follows: . . . . We filed this CDUA on June 24, 1987. Pursuant to your regulations 13-220(f), with our CDUA we included a location map, site plan, floor plan, elevation and landscaping plan. In addition, we provided an EIS, drainage study and detailed architectural plans. On December 18, 1987, this matter was scheduled for action. Following the Board hearing on this docket, the Board took a vote but was unable to take a definitive action because of the quorum that was present at the time. Therefore, at that meeting, the CDUA was being approved by operation of law, which basically provides that if a CDUA is not acted upon in 180 days it is approved. Subsequently, this Board on its own motion reverts its action of December 18, 1987, and voted to deny the CDUA. This reconsideration by the Board was based on the Attorney General's opinion that the 180 days had not run as of December 22, 1987, and that it would run in January of 1988. The basis of this dispute between when the 180 days began centers on when the application was filed. According to your rules and regulations, the application is being filed when it is filed with the Chairman's Office. AG's office contended that in addition to the $50

fee at the time of filing there is an additional fee required for hearing needs to be scheduled. So they started counting 180 days at the time we were informed an additional fee was needed although under our reading of the regulations it is for commercial CDUAs that these fees are required and paid the fee so the count on the 180 days by the AG's office, in their opinion, really started when the subsequent fee came in even though your regulations indicate that filing begins at the time the application is filed.

"When the Board reversed its decision of December 18, 1987, in January of '88, we appealed this matter to the First Circuit Court, the principle issue being when does the 180 days start. Judge Klein of the First Circuit Court agreed with our calendaring of the 180 days and reversed the Board's revocation of the permit which you had earlier indicated we had received through operation of law.

"Now, statutory provision regarding approval of a CDUA by law, to me, is unambiguous. H.R.S. 183-4A provides, in pertinent part, that if within 180 days of the application the department shall fail to give notice, hold a hearing and render a decision consistent with the standards set forth in subsection (b)(1), the owner may automatically put the owners' land to the use or uses requested in the owners' application. The statutory provision was affirmed by the First Circuit Court.

"The use we requested was described in detail, not only in our CDUA, but in the hearing preceding the Board's action in December and that included 50 exhibits that we filed. It was not a naked request for a house. We asked for a house, and we provided the detailed plans, architecture drawings included for that particular house. By statute, to me, the described request and use has been granted.

"The staff has raised in their report the issue of incompatibility. I'll address this even though I believe that the court action and the law, as it presently stands, has found that the project is compatible. If you are aware of the location of the project, the lower adjoining property also consists of single family dwellings. My client intends to construct a single family dwelling. Staff points out the house is grandiose, and there's no two ways about it--the house is a large house, but you have to place the relationship of the size of the house and the lot together. My client is asking to build one house on 76 acres. It is a large house but they happen to have a large lot. The request for a single family dwelling on this lot size is more reasonable when considering the density of the adjacent single family dwellings, assuming on the average they run 10,000 square feet and conservatively the homes run 2,000 square feet under roof. You're looking at a density of the improvements taking up perhaps 20% of the real property. We're looking at this home, assuming with all improvements, driveways, decks and so on, is an acre or an acre and a half. It's just over one percent, one and one-half percent perhaps of the total lot size.

"Now, the house also, based on concerns that were voiced to us prior to us filing the CDUA, is located on a shelf on the hillside, set it back. The finish of the structure as indicated in the drawings and renderings and plans that were submitted will be natural earth toned masonry and stained wood, allowing the house to blend in with existing textures and colors of the surroundings. The area will also be landscaped according to our landscaping plans. The house is intended to blend in.

"Let me sum up. I believe my clients have complied with the, from the inception, with not only the letter but also the spirit of what you required in order to get a request granted. We met with those in opposition to the project prior to us filing the CDUA to try and work out their concerns. Based on these meetings, some of those concerns were addressed, and we redesigned our project. But there are certain concerns that we were not willing to deviate from and that is the size of my client's home, which is basically the same size as the home he presently lives in.

"When this application was pending, we inquired of staff when the action was scheduled to take place on the CDUA. They informed us it was scheduled on January of 1988. We counted and we called staff back and indicated to them prior to the December meeting that, 'I think if you're scheduling us for January, 1988, according to our count you're going to be over the 180 days so I would suggest you take a look at it again to make sure that your count is the same because my count does not come out that way.' Subsequently, we received notice that the hearing had been changed and the hearing was in fact held in December of 1988. We have not tried to slip by on any technicality. Even if we felt it was based on some honest mistake on the part of staff or this Board, we've corrected it. We've never tried to get this approved by default. It just happened that the day scheduled for the meeting you had five Board members, one disqualified himself because of conflict, one voted my way, and three others against me, and with three you didn't have a quorum.

"By operation of law you may not like the law, but I think the law is pretty clear, and I think that if any changes should be done, perhaps the law should be looked at which requires that anything filed with you in the form of a CDUA, which is not approved in 180 days, is automatically granted with the right of that applicant to automatically pursue what he's requested, perhaps that should be examined but we've conformed our processing to the law as it exists, the regulations as they exist, and I think we are entitled to a like interpretation that if the law says that, even though it's a difficult interpretation for you to make because I know this is not an easy project to approve, I think perhaps the law should be examined, but I think we've complied. I think we fall within the parameters, and I don't think the provisions that are involved in the argument I've made in my position paper are that complicated. I think if you look at 183-41, which I believe is the governing provision, which

the circuit court also felt was the governing provision, you would be able to see that. It's not a convoluted argument we make, and we're just asking that your law says this, we're asking to be allowed the benefit of your administering that law to us in that form."

Mr. Yuen asked Mr. Matsubara whether he agreed there is a valid condition that this construction has to be completed within three years of March 20, 1989. He answered in the affirmative and stated that they are faced with that deadline, which is just around the corner. In answer to Mr. Yuen, Mr. Matsubara stated that if the plans were approved, the construction could not be completed by the deadline.

Ms. Barbara Smith, member of the Lanikai Association, its past president and land use chairman, and adjacent neighbor of the property in question, stated:

"The Engelstads did try a couple of other times to get the same house in the exact same location built and were denied by the Board. One time they even withdrew the application before it could be acted upon because we had been besieged with rather heavy flooding a month prior to that date so you should be aware of that." The plans were presented to Board, she said, three times before this application came in.

"When the application came in, the application not only requested a single family use, it requested a subzone change from 'L' to 'G' and under your rules and regulations that subzone change requires a public hearing and that public hearing was not, fee was not paid, until August of 1987, not in June when the application was time-stamped, and I believe that is the date that staff used to consider the application complete and ready for processing, which is the difference between the time frames, one would have been the end of January and one would have been at the December date Mr. Matsubara stated. The Association believes that the staff was correct with the August date, which is what they published at the public hearing, and there was no complaint from the applicant or his agents that the date was wrong as announced at the public hearing so we were prepared to wait until January.

"We received a call at quarter of five the afternoon before the item went on the agenda that it was to be on the agenda the next day, and the statements about how many Board members were here are accurate. We did appeal, because we were under the impression of the later time-frame. Judge Klein overruled that but I still have, personally now, I'm speaking, still have a hard time believing that if you require, ask for a subzone change that the application is complete before you pay for the public hearing that you must have, and it does not say commercial or residential--it just says subzone change. So, up until then we have voiced many opinions as to why we feel that this is an inappropriate use in a limited conservation zone.

"We think the law was a good law. We think that putting the land in conservation was good. We feel that Judge Klein in his ruling possibly approved the use. He did not necessarily approve the plan, and we would like to make a request for a declaratory ruling on what his meaning was because, obviously, if it was the use, you're approving the use of a single family dwelling, he is not approving the plans that were submitted. We also feel that the Board under their rules and regulations of the conditions that are attached to a conservation district permit does have the right to review plans submitted and request that the applicant make changes, and we hope that you will do so."

Mr. Yuen asked Mr. Evans about concerns if there was an uncompleted dwelling in the conservation district and the Board terminates it from a nuisance and eye-sore point of view. Mr. Evans replied that the staff perspective would be to take into consideration the reasons as to why it has not been completed, reasonableness in terms of the staff review, arbitrary, capriciousness, any action the Board might take. "Just as we came before you this morning on an earlier request, here we had an individual who had problems, the problems were spelled out. If you will recall my statement going to that particular case, I believe the record will recall that at time I used the term 'reasonableness' and out of that comes, if we say 'no,' am I acting arbitrary, am I acting capriciously."

Mr. Yuen asked whether if the dwelling was started and the time were not extended and not completed, the Board would have the authority to require that it be demolished. Mr. Evans stated that if the dwelling was not completed within the time-frame the Board could choose to have the dwelling removed.

Mr. Yuen stated that Mr. Matsubara's letter claims inaction on his construction plans from when they were submitted in April. Mr. Yuen asked whether from March 1989 to March 1991, the applicant had submitted other information or material. Mr. Evans replied that the final construction plans were submitted on April of 1991. He stated the staff was not satisfied with that because of the concerns expressed by the community and specifically went back to the applicant and informed him staff still had a problem that they would like to take a look at "how's it going to look on the ground." They asked the applicant to submit a three-dimensional model and in early August the model was submitted. Between August and the present, Mr. Evans, said they went through the process and are now before the Board with the staff recommendation.

Mr. Evans clarified that the three years start the day the Board approves the application. "Generally speaking," he said, "it doesn't hold true in this case because basically by this matter going to court and resolved before the court, the three-year complete, one-year start date, really starts from the date of the court action, the date the judge signed the order."

Ms. Himeno questioned Mr. Evans concerning the approval of the CDUA by court order whether the court had any of conditions in it. Mr. Evans stated that under the rules, "Any use approved under this rule is subject to these conditions." Those conditions, he said, are listed in the rules. He said that the condition that the plans are subject to approval by the department is specifically in the rules. He said it is a standard condition. Mr. Evans stated that when they informed the applicant in June of 1989 of the court ruling, the standard conditions were listed. Relating to the chairman's approval of the rules, it would have been in one of those items--from one to 14. Mr. Evans further stated that in the Attachment 1, which was sent to the applicant, the staff highlighted the standard conditions that would have incorporated that condition, which would be no. 7. Mr. Evans stated that approval by the chairman is ministerial in nature.

He stated that the applicant argues that he came in with a CDUA and along with that CDUA he submitted a very specific proposal. The 180 days lapsed and there was no negative action by the Land Board; therefore, he claims not only is his land use approved, his single family residence, but the specific single family residence which he submitted.

Mr. Paty noted that normally when the Board is looking to decide on the size of the house the permit has not been issued. In this case, approval has not been forthcoming by the Board.

Mr. Evans stated that in this situation the staff suggests that when an individual is granted a CDUA for a single family residence, there is a follow-up step where the Board need not grant the applicant the house that is being proposed. The second step is a condition, which is condition no. 7, which specifically states that plans and specifications shall be submitted to the Chairperson or authorized representative for approval. Those plans need to be approved by the staff. Applicant is claiming that he submitted but his application was not acted upon so his plans are also approved. The concern of the staff is that the standard conditions state that the plans must harmonize, has to be compatible. Mr. Evans stated that clearly it's not and to be consistent the staff has to recommend denial.

Mr. Yim stated it is a legal issue. Mr. Evans agreed saying that the Attorney General should be respected on their request for deferral.

Mr. Yuen asked whether the Attorney General was prepared to address the reasons for the deferral in executive session. Mr. Wong said it could be discussed but did not feel that they could make any recommendations on such short notice, that input from staff would be required.

Mr. Yuen moved for an executive session; seconded by Ms. Himeno.

Mr. Matsubara asked to make another point. He said as he was going over the chronology, he had indicated that DLNR reversed its decision in January of 1988 and they filed their appeal with the circuit court in March of 1988, and the Board had some concerns about when the submittals were done by the applicant. Mr. Matsubara stated he left out the conflict with the City and County of Honolulu. In January of 1988, the City passed a moratorium, which included the issuance of any permits for any projects in the Lanikai hillside for two years. He said they testified before the City Council against the moratorium, their statement was that if applicant had his CDUA before the moratorium went into effect, that is, if the decision that he had the CDUA in December of 1987 by operation of law, then the moratorium would not apply to his clients, but the decision by the Board was reversed and no CDUA was granted; therefore, when the moratorium went into effect, his clients did not have a CDUA, as the matter was under appeal to the circuit court. Mr. Matsubara stated that because of the two-year moratorium, he was unable to obtain any permits from the City and County. In his chronology he was addressing the background and history to the relationship between his project and the Board.

Mr. Matsubara stated that the moratorium went into effect on February 21, 1988, Ordinance 88-31, which imposed a two-year moratorium on all grading and building permits for the Lanikai hillside area between March 16, 1988, through March 16, 1990. He said there is correspondence with the department requesting that when the moratorium expired in March of 1990 permission be granted to conduct soil tests to finalize the construction and excavation plans.

Mr. Yuen stated that page two of the submittal said that soil tests and survey were completed between July to December, 1989. Mr. Matsubara clarified that additional tests were done after March 1990. The tests were done on the house site and the driveway. He said as soon as the moratorium ended, they made the effort to resume the planning on the construction.

Mr. Yuen stated that even if the plans are approved, applicant would still have to request an extension to complete. Mr. Matsubara stated they have calendared it and will not be able to complete the project in time. They are obtaining the approvals as they go along, and its a foregone conclusion that the project will not be completed by March 1992. Applicant will have to come in and illustrate to the Board why they need an extension, what activities have occurred in the interim and satisfy the Board that the reason for the extension is not based on being derelict. Mr. Matsubara stated he believed the Board would have to look at the facts as they exist at the time with fairness and equity in that decision. He said that if they were precluded by matters beyond their control then those factors should be considered. He agreed that it was at the discretion of the Board.

EXECUTIVE SESSION

Mr. Yuen renewed his motion for executive session; Ms. Himeno seconded the motion, and it was unanimously approved. The Board went into executive session from 11:55 a.m. to 12:18 p.m.

ACTION

Mr. Yim moved that the item be deferred to the next Oahu meeting on December 20, 1991; seconded by Ms. Himeno and unanimously carried.

Mr. Paty advised Ms. Smith that it was hoped that all legal issues would be resolved by that date. Mr. Evans stated that the request is from the Attorney General and staff will be working with the Attorney General's office and that the advice unless otherwise directed would be attorney-client privilege. Mr. Paty said that to the extent possible to accommodate those concerned, some dialogue may be appropriate.

ITEM H-4:

LAND USE ENFORCEMENT REVIEW FOR CONSERVATION DISTRICT USE PERMIT FOR 30 FOOT WIDE ACCESS AND UTILITY EASEMENT AT KUA BAY, HAWAII, TMK 7-2-04:12 (SPECIFICALLY LOT D); PARTIES: MARK VAN PERNIS; MARK AND JOAN BURKHOLTER; AND WALLACE GALLUP TRUST; AGENT: MARK VAN PERNIS

Mr. Evans stated that there has been no new information to change the staff submittal. On the violation itself, the staff asks for the imposition of two violations of the administrative rules, the grading of the trail and the grading and backfill of the pond, and $500 fine for each violation, and in the event of failure to settle the imposed fine within 30 days the matter be turned over to the Attorney General for disposition and administrative costs.

Relative to the restoration, Mr. Evans asked that the Board concur and affirm the final consent judgment for restoration of the property. This was a judgment worked out with the Army Corps of Engineers and the court had indicated that the final judgment had to be brought before the Board for review and approval and it was suggested that the owners submit a restoration plan to the department within 30 days of the Board's decision which would comply with the department's instructions for a restoration order, which would include a potential per day violation fine. All restoration activity would be supervised by designated departmental personnel.

Mr. Evans stated that specific plans had been approved for the property; however, work on the property exceeded what had been authorized. He stated that the restoration plan, as suggested by the Army Corps, asked that the landowners work with the department's historic sites staff who are familiar with the site. He stated that specific discussions have been held with the Department of the Attorney General, land branch, who suggest no change to the recommendation, that the department proceed forward and that this Board reach a definitive conclusion on the violations and restoration.

Mr. Yuen stated that the consent decree states that sediment is to be pumped out of the pond, but it was his understanding that it was naturally occurring. Mr. Evans referred his comment to Dr. Ross Cordy. Dr. Cordy stated that the Corps analyzed the damage to the pond and the query should probably be directed to Mike Lee of the Corps. Mr. Evans stated that when a restoration plan is submitted it is circulated among the divisions for comment. Mr. Henry said that in his conversations with the Corp they want the pond restored as identified in the plan. Mr. Henry stated that essentially what they were attempting to do was have two agencies coordinate with each other regarding jurisdictions. He said he called the County Planning Department and there are other matters involved, including a potential SMA violation, which has been deferred to the Corporation Counsel.

Mr. Van Pernis asked to correct some errors. He said the State is the successor to Mr. Lunden and Mr. Smith as purchaser of the properties, subject to the consent judgment, covenants and owners association. Mr. Van Pernis stated that he has communicated with Mr. Evans. Mr. Van Pernis also pointed out that this property is subject to litigation in the Third Circuit. The court has ruled on a partial summary judgment, and that the State's liability commences on January 28, 1991. He stated that his appraisal and the State's appraisal are approximately the same; however, the State does not want to pay the price, claiming that the property has depreciated by the matter of the trail and the pond and is only worth one-third of the appraisal.

Mr. Van Pernis admitted that the real issue is whether there was grading beyond what was appropriate. He claimed that the State is "grossly in error on the filling of the pond." He stated that Phillip Grey was present at all times during the grading; he is the civil engineer on the project. He took photos and has signed an affidavit. Mr. Fleming, another civil engineer, prepared the plans and submitted them for Mr. Ono's approval. He stated that the County of Hawaii authorized all grading that he did. He said there is some dispute regarding the SMA. He said he would like to have the above individuals present at the hearing, as well as Mr. Lee. Mr. Fleming and Mr. Lee, he said, agreed there was no pond filling and less grading than authorized.

He stated that the Army Corps requested a right-of-entry to use the pond to try to preserve shrimp that were being destroyed by the filling of anchialine ponds at the Hyatt and needed to have the sediment pumped out. He said the applicants wanted to have it pumped also because it would enhance the value of the property.

Mr. Van Pernis stated that the staff report states that the pond was partially filled but Dr. Cordy presented no evidence.

Concerning the trail, he stated that State agreed to the alignment of the trail. He pointed out the shoreline certification which shows the trail. He said there is dispute regarding grading the trail.

He pointed out that on the consent judgment the restoration plan was to remove unauthorized fill within 10 feet of the alkaline pond. Mr. Lee found that some of their fill came within 10 feet of the edge of the pond, not in the pond. When the Corps approved the grading plans, the Corps requested a 10-foot setback from the pond. He said that was the only violation.

Mr. Van Pernis noted out the letter of February 8, 1985, to the civil engineer and allowed all the grading on the property--page 9 of Exhibit F. He pointed out the pond with the isthmus. He said it is one pond and pointed out the grading area where they encroached. He claims there was no filling of the pond and had asked that Mr. Lee supervise the work.

He said they obtained right to grade the easement approximately the same time the Hyatt was being graded. There was a great deal of community concern about the grading and filling of the anchialine ponds and resulted in litigation. When Mr. Van Pernis' bulldozer was put up on the property along the highway they experienced several thousand dollars worth of survey work destroyed by vandals pulling up the stakes, and vandalizing the bulldozer. During construction a gate was put up but it was constantly torn down. Therefore, they had someone on site at the time of the bulldozing so that they could not be accused of acting improperly. That individual was Mr. Grey taking photographs during the bulldozing. He pointed out that Mr. Grey had signed an affidavit.

He said as landowners it was to their advantage to improve the trail and the pond. They cleared the trees near the pond which was the cause of the "muck." Their intent was to restore the trail to what it was nearby on the lava flow.

He said there are no wetlands and that the Army Corps did approve the filling. The Corps called it an "intermittent overflow area." He conceded to the County's position that the grading permit was "subservient" to the SMA permit, in the two-step process. He said they turned it over to their engineers and contractor who apparently were without adequate supervision from the landowners.

He would not concede that they filled the pond. He said if this matter went further, he wanted to have the opportunity to have Mr. Lee present, as well as the bulldozer operator, and Mr. Watson.

He said he believed there is an agreement between the North Kona Development Group and the State to contribute $2.5 million for improvements in grading a park at Kua Bay. He asked whether it was effective to talk about the restoration work now when work will be done in about a year.

He stated that the State has disagreed with its own representative concerning the location of the trail.

He pointed out in correspondence that he specifically asked Mr. Lee and Ms. Billington to assist because of the concern of violating any SMA laws, conservation laws, etc. The Corps specifically waived the DA permit. He pointed to other correspondence and assumes that the Board was aware of them.

He stated that the responsibility for the violation falls on the owners of the four lots and the owners' association and that the State as current owner may have to bear a portion of the burden. He requested deferral to a meeting in Kona where he could have the other individuals present.

Regarding the grading plans, Mr. Evans stated that Mr. Hamasu approved it but it was only for the access easement, although reference was made by Dr. Cordy to house lot grading. Mr. Van Pernis stated that there were plans for Mr. Smith's house; that he never requested grading plans for a house. Mr. Henry confirmed Mr. Van Pernis statement. He said the plans were authorized by Mr. Ono, the same plans submitted to the County for grading of the road and also the easements along the back of the property. The County informed applicant he was to do the grading for the access and then come in and get a second permit to grade on the private property. He claimed that the County gave his engineers and contractors permission to grade 100% of the property in "one shot." Between the Planning Department and the Building Department they revised the grading permit to an after-the-fact permit for only that portion. As for the State, plans approved by Mr. Ono were given to the contractor and the work done. He said the landowners could possibly be blamed for not knowing the grading was for the easement on the public property and not the private property. The purpose of the grading was to clear the kiawe and access to the beach. He said at the time they wanted to elevate a particular spot for potential house site. The concern was that of high water and preserving the shoreline by the elevation; however, that work was not done. Mr. Henry stated that although the plans show the lot and elevations the plans would not be acceptable if they came in for grading of the lot. However, he stated there was some miscommunication in what was approved. Mr. Fleming was under the same understanding as he concerning the grading, not only of the easement but for all of the grading.

Mr. Van Pernis stated that when he first came before the Board discussion was on grading and filling of other areas on the lot. Mr. Evans pointed out that he was at the meeting and the approval of the Board was specifically for a certain tax map key and a certain proposal. Mr. Van Pernis stated that the Board was taking a narrow view of the permit.

He said that the permit was issued in 1982 and the actual work done in 1985 and there was numerous interaction with the various agencies that if the plans submitted were not "ok" then they would be rejected.

Referring to Condition No. 19, Mr. Van Pernis stated that there was an archaeologist present when initial grading was done. Mr. Van Pernis stated he did not believe an archaeologist was present at all times of the grading. It spanned several weeks.

Regarding the tidal pools, he said the pools are also affected by rainfall. Variation is 4-6 inches he believes.

Mr. Evans indicated that he still felt comfortable with the staff report. He stated that if nothing is done $500 is the maximum but the report and recommendation state that if the fine is imposed and is complied with, there is no problem. However, if the applicant does not comply the fine is $500 a day. Written notification must be provided the applicant and then the fine continues.

Mr. Van Pernis asked for the evidence the Board was considering on the filling of the pond. Mr. Evans stated that it was based on the consent judgment Mr. Van Pernis agreed to and signed off on which states the applicant is "to remove the accumulated sediment and aquatic plants in the pond and to dispose of the materials in upland areas."

Mr. Yuen stated it appeared to him that Mr. Van Pernis placed fill in an area where sometimes there was standing water, whether rain or high tide conditions, adjacent to a deeper pond area. Mr. Yuen moved to impose a $500 fine for grading beyond the boundaries allowed on the grading plans for the destruction of the trail, and an addition of $500 because of encroachment into the anchialine pond area. He stated he is concerned about having the owner dredging the naturally occurring sediment in the pond because this will be State property in the near future and would like to have a biologist's opinion on whether it is a good thing to do and a good thing to do for the management of the pond before concurring with whether it should be done. The restoration of the trail should go forward. The motion was seconded by Mr. Yim.

Mr. Evans clarified that the department will still require a restoration plan, which will be brought before the Board and have a biologist present.

Mr. Yuen stated that the applicant went beyond the grading plans that were approved by the Board action and didn't see anything to indicate when the grading plans came in that they were correlated with the archaeological findings in the area.

Mr. Evans clarified the language to read "encroachment into the anchialine pond area."

Mr. Yuen clarified that he was asking that the applicant submit a restoration plan to include all elements subject to Board review.

ACTION Unanimously approved as submitted (Yuen/Yim).

ITEM F-1-b: **ASSIGNMENT OF GENERAL LEASE NO. S-4269 BETWEEN HADLEY-SPECTOR, INC., AS ASSIGNOR, TO K & H HORIZONS HAWAII, A GENERAL PARTNERSHIP, WHOSE PRINCIPAL PLACE OF BUSINESS AND POST OFFICE ADDRESS IS 2211 ALA WAI BLVD., SUITE 805, HONOLULU, HAWAII 96815, AS ASSIGNEE, GOVERNMENT SUBMERGED LAND BEING PARCEL A FRONTING THE AHUPUAAS OF PUAAHALA AND KAAMOLA, MOLOKAI**

Mr. Paty stated that there was concern expressed by the people on Molokai, and that he received a letter from the Department of Business and Economic Development to defer.

ACTION Mr. Arisumi moved for approval with the understanding that the developer and State work together with the community. Seconded by Ms. Himeno and unanimously approved as amended.

ITEM A-1: **APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO UNDERTAKE OSTEOLOGICAL ANALYSIS OF HUMAN SKELETAL REMAINS**

ACTION Approved as submitted (Arisumi/Himeno).

ITEM A-2: **APPROVAL TO ENGAGE THE SERVICES OF HAWAIIAN ISLAND NURSERY AND RESOURCES TO ESTABLISH HISTORICAL MARKERS ON THE WAIANAE COAST, OAHU**

ACTION Unanimously approved as submitted (Arisumi/Himeno).

ITEM H-3: **CDUA FOR PASSENGER BOARDING AND DISBOARDING OPERATIONS AT BLACK POT BEACH, HANALEI, KAUAI: APPLICANT: CLANCY GREFF DBA CAPTAIN ZODIAC; AGENT: MARTIN WOLFF**

Mr. Evans stated that this matter was deferred from the last meeting as applicant's counsel was out of town. At that meeting applicant stated that if the CDUA was not granted he would ask for a contested case hearing.

Although the matter was deferred, Mr. Evans stated that the staff recommendation remains as submitted. The recommendation is one of denial on a relatively narrow basis:

"Firstly, we did, the department did require as part of this application an environmental impact statement be done and as part of the statute once the department makes that requirement unless an environmental impact statement once required is accepted, to use the term, the Board, in our view, cannot entertain the underlying CDUA on a favorable basis. The statute seems quite clear to us and in this case the applicant did not, for whatever reason, complete the required EIS.

"Secondarily, it has been brought to our attention that the proposed use is contrary as it was originally proposed, that it is contrary to the Department of Transportation's administrative rules and as we go through our review of applications we basically review what people propose and in this case we found that what was proposed is contrary to DOT's administrative rules so we're sitting before you this afternoon with the recommendation for

denial. That recommendation is relatively narrow in terms of the rationale behind it in scope; however, the rationale behind it in scope we feel is significant in that in effect we would be precluded from recommending any approval. Now we can point out to you that we are in receipt of a couple of letters.

"Firstly, one dated November 7 from the Office of the Mayor, signed by the Mayor of Kauai, and she does indicate to us that for the record that they are now embarking. They do ask you to postpone any decision should you not consider denial of this CDUA, particularly, again, in light of the fact that the EIS, the required EIS, has not been prepared. They also point out to us that they are now embarking on a county planning initiative to manage for the SMA, specifically the Hanalei River SMA and commercial boat activity, and they indicate they will be requesting our department's expertise during the next several months. Also, we're in receipt of a letter dated November 14 of this year, again, from the Office of the Mayor, this time to the Governor and again pointing out that they intend to move at an intensive pace and plan to have a management plan in place by the end of March.

"And what they are basically going to be looking at, as I understand it, would be to have determined the level appropriate for the role Hanalei Estuary plays in light of the environment, and economy of the community. With that and those letters, we would be prepared to answer any questions, again, very narrow basis, you may have, of us."

In answer to a question from Mr. Yuen, Mr. Evans stated that the 180 days runs out at the end of the month.

Mr. Wolff drew a map of the Hanalei River area, pointing out the Hanalei Pier, Weke Road, Sheehan Boatyard and boat ramp, the beach area fronting Black Pot Park and the sand bar. From Weke Road, he said there is a State right-of-way coming down to the beach adjacent to the pier. The staff report properly represents that there is this right of way, that historically this area has been a boat launching area since the 1930's, it was believed. He stated that the staff report indicates that the Hanalei Pier since the 1940's has been used for recreational fishing and swimming activities but going back to its date of construction it was built as a commercial pier.

He further stated that "prior to 1985, there was limited commercial tour boat activity out of Hanalei. That activity was primarily Captain Zodiac, the applicant before you now, although since 1981 to 1985, many other people jumped on the bandwagon. From the inception, your current applicant, Mr. Greff, followed all rules and regulations and application procedures both of this department, DOT, the Coast Guard and the County. He was in total compliance at all times with all regulatory agencies. He historically operated out of Tunnels. As you know, this current Board in its last action at Tunnels reduced Mr. Greff to two boats. He had been operating 10."

Mr. Wolff stated that the immediate effect of that action was that since the 10-boat operation was financing a $200,000 per year loss in Maui, the Maui operation has been shut down and people have lost their jobs and they are also looking at laying off people at Hanalei.

"In 1985, DLNR, many of you not being present, . . . on December 6, 1985, Mr. Evans, staff planner, made a recommendation to the then Board on their 'recommendation' that the Board ratify staff's position that beach transitting as an incidental activity, provided it is not an integral part of an overall operation or not inconsistent or incompatible with the primary purpose of the beach does not constitute a land use and, therefore, no CDUA is required. And in fact the Board adopted that policy in December of 1985. . . . In adopting that policy the Board allowed 48 boats to operate out of Hanalei without a CDUA and where did they operate from? Beach fronting Black Pot Park immediately adjacent to the Hanalei Pier and they operated there under DLNR permit or permission, without a CDUA. . . .

"Approximately one and one-half to two years later, all of the boat activities were transferred to DOT from DLNR. This was done, I believe through a right-of-entry to the mouth of the Hanalei River." He indicated the right-of-entry on the map, which ran from the Hanalei Pier all the way across to the Princeville side to the Sheehan property, the entire Hanalei River and out to sea. He believed it to be 150 yards. "When DOT got that right of entry it was for the sole purpose of managing the commercial tour operations. Now, at the same time, the County transferred an SMA permit to DOT. The SMA permit had been applied for by DLNR and the County of Kauai Department of Public Works jointly. And that was for the 48 boats operating off of the State right-of-way, adjacent to the Hanalei Pier. It was the SMA permit that this December 1985 action gave clearance for and there was no CDUA. DOT took over the management of the boating activities and moved the boats inside the river mouth, moved them off of the beach adjacent to the pier, moved them inside the river mouth within the SMA area. Now remember the SMA area is mauka of the shoreline. The reason I emphasize that point is because when DLNR and the County of Kauai Department of Public Works jointly applied for an SMA permit to regulate this boating activity from the beach adjacent to the Hanalei Pier there was no SMA jurisdiction of the County, absolutely none, and Planning Director Tom Shigemoto has confirmed that under oath in a deposition--that DLNR and Kauai Department of Public Works did not need an SMA permit because all of the activity was conducted on the beach or makai of the shoreline. But using that SMA permit as the basis, transferring to DOT, then DOT moved all the boaters inside the mouth of the river, definitely within the County SMA area, definitely. At that point the boats were no longer being launched off of the right-of-way next to the pier, they were being launched off Weke Road boat launch, and the community became irate.

"Let me explain to you why and as an attorney for the boating association, let me tell you why the community became justifiably irate. You had Weke

Road boat launching now, congested with somewhere in the neighborhood of 25 or 30 vehicles hauling zodiac boats, the length of Weke Road from various locations, from Princeville, from Anini, from inside Hanalei, one boat came from Haena. Certain times of the morning and the afternoon, no one could get near Weke Road boat launch. Wherever the passengers being loaded on the river bank adjacent to Black Pot Park, which meant the passengers who were parking along Weke Road, who were parking on private property, who were filling the State Park parking lot so no one else could leave Black Pot Beach Park would walk through Black Pot Park to get to the river bank. They would use the toilet facilities in Black Pot Park. They totally disrupted any recreational use of the Black Pot Park. It literally became a situation where for a couple of years . . . this area was basically off-limits to local people, when it was under DLNR regulation. When it went under DOT regulation, it became worse and this entire area became basically unusable by local people seven days a week, and they were irate, and as I said justifiably so, and suits were filed.

"As a result of one of the lawsuits, DOT withdrew from the County SMA process. Under an Attorney General opinion that stated DOT didn't need a County SMA permit merely to regulate boating activity they withdrew from the SMA process. This was October 1, 1988, that the SMA expired, DOT had dropped out of the process so from that point on there was no SMA permit to anyone to regulate the boating activities in Hanalei. However, in 1987, Mike Sheehan applied for and received an SMA permit for the Sheehan Boatyard. That boatyard allows the customers to park, he built bathroom facilities, he has a storage area . . ., where the boats can be washed, the engines can be flushed. They went through an environmental assessment, they went through public hearings. There were four management options discussed by staff. The County selected one which allowed all commercial tour boat operators who had an existing DOT or DLNR permit to operate out of the Sheehan Boatyard. Condition No. 6 said no one could launch and retrieve boats from Sheehan's or load and unload passengers until DOT consented. DOT's consent came a couple of years later to that particular point but at least as of the time Sheehan Boatyard was approved it was seen as the answer to the Black Pot Park problem.

"In addition to the lawsuit that had been filed, DOT held ad hoc committee hearings all along the North Shore of Kauai over a ten-month period. As a result of those ad hoc committee hearings the rules referred to by Mr. Evans correctly in his staff report and known as ORMA, those came about as they applied to the North Shore of Kauai from those ad hoc committee hearings that were on Kauai. The people who were opposed to the use of Black Pot Park and filed the lawsuit supported the Sheehan Boatyard. Now that all of the commercial boaters, except for Mr. Greff, who still operates two boats out of Tunnels, now that they are all operating out of Sheehan's, they are now objecting to the Sheehan Boatyard, and they are objecting to the boaters use of that boatyard under the Sheehan SMA. Now that dovetails with DLNR giving the authority to DOT, DOT taking people from outside an SMA area, moving them

inside the SMA area, then the County moving them further back into the SMA area so the boaters now are really locked into that SMA area and suddenly there are 11 lawsuits over whether or not they can legally operate out of that area, not including 84 citations that have been issued by DOT for operating in that area. Let me explain that DOT for three years after the adoption of these ORMA rules, notified the County, notified all the boaters they were not going to implement the ORMA rules until the County resolved the boating issue.

"Last summer, all of a sudden, DOT started issuing citations out of the blue, they just started issuing. . . . The County has been trying now since November of 1988 to shut down commercial tour boat activity in Hanalei. You received letters, we see things in the newspaper, we see all kinds of wonderful statements that the County is trying to solve the problem. I understand although I haven't seen them that these two letters from the Mayor indicate they're now embarking upon a program that's going to culminate in March, which is going to resolve this issue. Because of these letters, I need to give you a little bit of the history of Mayor Yukimura's administration and what they have done in terms of dealing with this boating controversy. I've given you a brief history in terms of DLNR and DOT and the SMA process. In 1988, Mayor Tony Kunimura's administration, not Mayor Joann Yukimura's administration filed the first lawsuit to shut down commercial boating in Hanalei. Mayor Yukimura didn't come into office until January of '89. In March of 1989, though, Mayor Yukimura asked the alternative dispute resolution center, which is an adjunct of the Hawaii Supreme Court, to mediate the problem of boating on the North Shore of Kauai. I went to the first mediation session with four of my clients. The Mayor's administrative assistant at the time, Jeffrey Melrose, opened the mediation by saying the following: Mayor Yukimura's administration doesn't see any future for commercial tour boat operations on the North Shore of Kauai. At that point I stood up and said, 'We have no business being here,' and we walked.

"Larry King and I immediately drove to Koloa where the Mayor was holding a community meeting and we asked her point blank in front of her deputy, Warren Perry, 'Did Jeffrey Melrose properly state your administration's position?' She looked us cold in the eye and said, 'Yes.' So we did not go back to mediation. She announced a month later that she was going to solve the boating problem by issuing some temporary permits. Never happened. Never happened. Every year when the legislature starts talking about a solution to this problem, the Mayor comes up with an effort to solve the problem locally. Her two letters are just more of that same attempt to deter the State Legislature from doing anything meaningful this year. Let me explain why.

"When I came back from the very trip that caused this meeting to be delayed, I read in the newspaper that the Planning Commission, while I was gone, had taken the Mayor's request for this new recreational management plan for the North Shore of Kauai, and the Mayor was quoted in the newspaper as saying that she was putting forth this proposal but its success depended upon the cooperation of all parties

involved, all parties involved. Now the Mayor, her attorneys, her Planning Commission, all know when I'm on Kauai and when I have to meet my obligations out on Micronesia, which is ten days every month because we had to adjourn administrative hearings so I could make the trip. They all knew I was off island for those 10 days. They calendared this item knowing I was off island. They did not notify my office, they did not notify the North Shore Charter Boat Association and did not notify any member of the North Shore Charter Boart Association. . . . This was a week ago Friday I believe they had the Planning Commission meeting. So this statement for it to work takes the cooperation of everyone involved caused me to send a letter to the Mayor saying, 'Aren't the boaters involved parties or are we just the helpless victims? Are we part of the solution or not?' And I thought her whole approach was pure shibai if in fact she meant that all concerned parties had to be involved because we were excluded from the very beginning. Now you also need to know she has gone to the Council, Kauai County Council, and asked them for money to fund a recreational management study for the North Shore of Kauai and twice they've turned her down so now she went to the Planning Commission to get them to adopt her philosophy of implementing some kind of management plan. Two days later I saw an article in the newspaper which made several very interesting points about this management plan. The first point was that they were going to hold four community meetings in the community of Hanalei to get public input. And then the comment was that the public input that they would get during these meetings would provide the information that the boaters had failed to include in their EIS. Now we did an EIS that cost $45,000 and we got what I considered to be and what our EIS preparer considered to be a scathing attack on our EIS from Roger Evans. . . .

"Our EIS preparers estimated that to comply with all of Mr. Evans' requirements and requests would take four years of study and cost more than $5 million. Knowing that--how in the world can four public hearings in Hanalei supplement our EIS with the information we failed to supply. Now, these four public meetings that are going to be held in Hanalei to develop a management plan are being held by a new member of the Kauai County Planning staff. . . . This person was on the original Waiola letterhead. Waiola is the organization that started the attack on the commercial tour boat industry by filing three law suits, one against DLNR and DOT and two against the County, three lawsuits, not four. And now this person who is in charge of 'finding a solution to the problem' is one of the people who started Waiola to put the commercial tour boaters out of business. This person doesn't stand a chance of finding a resolution of the problem, not a chance. . . .

"The four public meetings that have been set up--I found out about them through the newspaper, my clients found out about it through the newspaper. No one from County government made any effort at all to involve us, the affected operators, in this process. Now the most ludicrous thing about the Mayor's declaration that they're going to come up with a management plan is the following: When the

Sheehan SMA was approved, there were four management plan alternatives put forth by the County. They selected one. They approved the Sheehan SMA based upon management alternative no. 3, and Mayor Yukimura has refused to recognize, honor, or implement that management plan, which was lawfully and properly adopted.

"Point no. 2--DOT has adopted a management plan, ORMA. And Mayor Yukimura refuses to acknowledge, recognize or allow implementation of DOT's rules. Unfortunately, or fortunately depending upon your point of view, on June 1, this board is going to have the responsibility for the entire North Shore boating industry under legislation that went into effect from the last year's session. It was House Bill 917. . . .

"To bring us up to this current application, two years ago, when you extended Mr. Greff's permit at Tunnels, you gave him a warning, an admonition, you said 'make alternate plans because next year we're going to cut you back,' and you did. True to your word, this last year you cut him back to two boats. In the interim and your report this last year so indicated, Mr. Greff made this application. Now unfortunately, Mr. Greff was relying upon a draft of the DOT rules when he filed this application, and he was also relying upon common sense. He believed that the DOT right of egress and ingress under ORMA was the same launching ramp that had been used since 1930 adjacent to Hanalei Pier. But that isn't where ORMA designates the ingress/egress. In fact, ORMA, as Mr. Evans correctly states in his report--ORMA says no motorized vehicles, no cars, no boats, no nothing shall use this area again. So even though it's been a launch ramp and a road since the '30's, now under ORMA that's erased. Now, the ingress/egress area is the Hanalei River seaward, and it encompasses this sand bar and this is the area that Mr. Greff meant to be applying for in this application because that's where he thought it was. He wanted the DOT approved ingress/egress area and because of misinformation supplied by DOT his application misstates the location so at this time I would like to correct the application and state unequivocally the application is for the DOT ingress/egress area at the mouth of the Hanalei River.

"Mr. Evans in his presentation indicated that the applicant did not complete an EIS for whatever reasons. The notice of acceptance of the application and the environmental determination was sent on July 3, 1991, to Mr. Greff. I sent a letter to Mr. Paty on July 10, 1991, asking for clarification of things in that letter. As I sit here today, . . . I have received no response to my inquiry for clarification. I have also sent Mr. Paty four other letters of inquiry, and I have sent three letters of inquiry to Mr. Hirata at DOT asking for explanations of either DLNR or DOT policy or interpretations so that we could pursue a proper application and EIS, and the response that I got from both Mr. Paty and Mr. Hirata was identical to every inquiry and I think I know why. . . . I think

Deputy Attorney General Dawn Chang wrote the response for both parties. . . . Basically, the response was, 'We can't discuss this because there's ongoing litigation involving the State of Hawaii Department of Land and Natural Resources and Department of Transportation relating to the commercial vessel activities in Hanalei. Accordingly, we have no comment on the subject matter pending a definitive ruling by the Court.' Signed 'Mr. Paty,' in this instance, or 'Mr. Hirata' in the others. So every time I attempted to determine something relevant to this application, that was the reply I got. That's why there's no EIS, that's one reason why there's no EIS. We never got the information back from either department that would allow us to go forward with an EIS but for even more important reasons there's no EIS, and I ask this in one of my letters. Since we are applying for a DOT ingress/egress area, which there was an environmental assessment completed for in the process of adopting ORMA, what's the basis for requiring someone using that area to do an EIS. Now I can understand that in Mr. Evans' reading of Mr. Greff's application and Mr. Evans' understanding that Mr. Greff is outside that ingress/egress area an EIS would be required. I can understand that but if in fact you accept the amendment or clarification that it's in that ingress/egress area of DOT that we're really applying for and they did an environmental assessment to adopt ORMA then an environmental assessment should not be required of Mr. Greff merely to use that area. Likewise, a CDUA shouldn't be required. Because if DOT has a right of entry for that area and they've adopted rules to manage that area, what 's the purpose of a CDUA. Also what is the purpose of a CDUA when Mr. Greff's activities are those same exact activities that in December of 1985 the Board said are not activities requiring a CDUA. Now, Mr. Evans is correct that once an EIS is required you really can't take any affirmative action without it except that at a meeting like this before the expiration of a time on a permit, we can ask you was that determination for an EIS appropriate. You're the people who make the decision. You have the final word, not your staff. You can say today that no. 1, this is an activity that doesn't require a CDUA. You can reject this application on the grounds that a CDUA is not required. . . .

In response to Mr. Paty who asked if the Board ruled a CDUA is not required, 'We would then go to DOT immediately with that position and ask DOT to issue a commercial tour boat permit to operate in that area, out of their ingress/egress area off of that sandbar because the DOT ORMA rules say that we have to comply with DLNR's rules and if you say we do not need a CDUA under your rules, we go to DOT and say now we've complied with DLNR. They say we do not need a permit from them, we don't need a CDUA so there's nothing stopping DOT from issuing your permit. That's what I would do next. . . .

"With respect to the sandbar area, there is something in the report that Mr. Evans has provided you that says this area at the time of high waves is an unusable area. That is a true statement. There's no contradiction of that; however, after the County went to court and obtained a preliminary

injunction against the boaters in November of '88, when DOT dropped out of the SMA permitting process, the boaters moved out to that sandbar and operated off of that sandbar for more than 10 months successfully, very successfully. On the days when there's high surf that prevents them from using the sandbar the ocean conditions are too rough to take tours out anyway. They wouldn't be operating on those days anyway. If they can't load or unload from the sandbar they can't run tours anyway so that's not a problem. And for 10 months and I think if I'm not mistaken, Mr. Paty, and you can correct me if I'm wrong but I think you gave a deposition in one of the Waiola cases where Mr. Bronstein asked you about the boaters operating off of that sandbar there was some dialogue there and I'm certainly in no position to quote all of it but DLNR was aware that was an acceptable alternative location for these operations outside of the SMA jurisdiction and in fact if no CDUA is required, and we have applied for and obtained the DOT permit, there is no SMA permit required, it's makai of the shoreline. The boats will still do all of their activities in the Sheehan Boatyard, park the cars, use the bathroom, do everything but they will load and unload their passengers at the sandbar as they did before. That does require walking the passenger along the bank of the river to get up to the sandbar but the County has said more than once, more than 10 times, they have said that these people transitting the SMA area does not require an SMA permit so that I'm not concerned about.

"I guess some of you might be wondering is there any precedent for rejecting a CDUA application on the grounds that one is not required, not needed, for transitting the beach, and I would refer you to a letter of mine dated April 15, 1991, which, should be in this file because I asked it be included in this file, and in it is an affidavit that I filed in one of the lawsuits with DLNR and Waiola, this was Civil No. 90-0225, and I list for you in paragraph 8, 14 CDUA files here at DLNR, one on the Big Island of Hawaii, one on Oahu, and all the rest of them are on Kauai, all the rest are on Kauai, and of all of those CDUA files, three of them after December of 1985, you returned the CDUA applications with the statement that 'transitting the beach does not require a CDUA permit and, therefore, we are returning your application to you,' so I'm not asking you to do something today that you haven't done before.

"Also in this affidavit is another history. . . . But I researched your files here at DLNR and I have a very distinct statement, historical statement of your policy on transitting the beach, and I would like to give it to you very quickly. . . . November 29, 1978, DLNR does not require a CDUA for passengers transitting the beach to load and unload boats offshore. That's your policy. Then May 7, 1979, DLNR does not require a CDUA for passengers transitting the beach to load and unload boats offshore. July 5, 1989, DLNR admits no prior CDUA application at Tunnels. This was an application where you admitted there had been

activity all along, no CDUA. December 5, 1983, DLNR does not require CDUA for transitting the beach, only for landing. This is where the distinction is made for the first time by DLNR in transitting the beach and landing the boats on the beach. March 20, 1984, there's a statement by one of the DLNR members at a hearing: DLNR is flying by the seat of it's pants. CDUA is not required for transitting. That was the bottom line, the CDUA was not required for transitting but one of the Board members made the statement: DLNR is flying by the seat of its pants. March 20, 1984. Staff questioned fees for commercial use of State parks. December 26, 1984, CDUA not required for use of surface waters. December 28, 1984, CDUA not required for casual landings on beaches but is required for commercial landings. A CDUA was granted to transit the beach for the first time, December of '84. April 25, 1985, the second time a CDUA was required to transit the beach. . . . June 25, 1985, a CDUA was not required for transitting the beach. Right after two CDUAs were required to transit the beach, one was not required. . . .

"Until December of 1985, there was no consistent position of DLNR on a CDUA to transit the beach but before December 1985 a CDUA had only been required twice, and it had not been required many, many more times. After December 1985, no less than four CDUA applications were returned for applications on Kauai because CDUAs were not required to transit the beach to load and unload tour boats. The DLNR files also reflect two CDUAs issued for the exact area that the face of Mr. Greff's application requests, the beach immediately adjacent to the pier. One is for Blue Water Sailing, Richard Marvin, and one is for Lady Ann Cruises and those were issued before the adoption of ORMA but they're still in effect as far as I can determine. So there are two CDUAs to operate off of, in front of Black Pot Park in effect today.

"The last point Mr. Evans made was that to approve it at this point next to the pier would be contrary to DOT rules, as I indicated we want to be within the DOT ingress/egress area and within their rules so that I guess that objection would become moot. . . ."

Mr. Yim noted that if the applicant is requesting a different location, the staff report has no bearing and would assume a new CDUA would be necessary, citing exactly where he wanted to be located. Mr. Yuen stated that the proper procedure would be to deny and if he wants to apply for a different area, then he should apply for somewhere else. Mr. Yuen said he didn't think an applicant can come before the Board and change where he's applying for after he's applied.

Mr. Evans stated that Mr. Wolff based his presentation on Board policy that was authored by Mr. Evans and approved by the Board, the statement or representation being that transitting is an incidental activity. He asked if Mr. Wolff could share the policy document with members of the Board and read the document in total. Mr. Evans claimed

that Mr. Wolff's statement does not end with a "." Rather, Mr. Evans, stated it goes on to consider matters that are incidental, matters that are incompatible, matters that are not consistent with the primary purpose of the beach. "As a result, we do not and have not entertained an activity, a proposal, something before us that is inconsistent or incompatible with the primary purpose of the beach. What you have before you and is listed on page 9 of your submittal is commercial recreational land use. Because it is a commercial recreational land use in the conservation district, a CDUA is clearly required and was applied for properly by the applicant and now was reviewed by a number of different agencies, including other state and county agencies. Also based upon a specific proposal that was presented to us an environmental determination had to be made and, again, Mr. Wolff is, articulate as he is, to set the record correct, the staff does not make the environmental determination. . . . What the staff does do is the staff upon consultation again with a number of inhouse, even members of citizen organizations, citizens groups, we develop a recommendation for the chairman. That determination is ultimately made as in this case by the chairman. What we have before us, therefore, is the conservation district use application for commercial recreational use of which an environmental impact statement was required, upon which there was no completion in such a fashion that it was considered acceptable, based upon the proposal sent before us the review of the proposal at the location presented to us, you see us before you with our recommendation this afternoon. What is clear and as you read the policy definition that you adopted back in 1985, it is quite conceivable that if one reviews the records of the conservation people, OCEA, and 14 CDUAs come in and some are subsequently returned upon review they were found not to be commercial recreational use so we're found to meet the requirement of transitting and that's why they were rejected on that basis. We see no inherent inconsistency to that at all so we feel that the issue before you based upon all factors considered remains our recommendation and rationale no. 1 and rationale no. 2."

Mr. Wolff: "Under normal circumstances, I would have the same concerns of Commissioners Yuen and Yim have but in this case we have a documented effort by the applicant with DOT to establish where the ingress/egress area was. We have a documented effort by the applicant to get information from DLNR with which this application could have been supplemented or amended prior to today. This file is replete with efforts to obtain the information by this applicant from DLNR and DOT so we wouldn't be in this predicament today and every response we got was 'we're not giving you any information,' so we're here in the dark without any information from DOT or DLNR except what we can get from the newspapers. Every single letter we've gotten back says 'we're not going to answer your questions.' DOT even gave us the wrong map. DOT gave us wrong administrative rules and when we wrote to Mr. Hirata asking why are we getting wrong information from the Lihue office we get the same letter again--this matter is in

litigation, we can't answer your questions. Not only do I think the applicant has been treated unfairly in that respect but this Board held a meeting to discuss its policy transitting the beach and I sent a letter to the Board on August 30 to Mr. Paty indicating that I had just returned from a trip abroad and learned of this meeting from the newspaper article and I asked for the matter to be brought up again and I received a letter this time with a very detailed response as to why the matter would not be brought up again, and I pointed out in my letter that neither the applicant nor I got notice that this meeting was just to discuss the policy generally and had nothing to do with disposition of this particular application, KA 2434, That's what this letter says. Signed for Mr. Paty by Mr. Keith Ahue. It says that meeting was just to discuss the general issue and had nothing to do with the disposition of KA 2434 so I obtained a copy of the staff report that was submitted as the basis for that particular meeting you held. The staff report is dated August 23, 1991, subject: . beach transitting and use regarding CDUA KA 2434. KA 2434 was the very reason for this staff report and that discussion you held and my client and I did not get notice of that meeting, we wrote a letter to you immediately advising that we didn't get notice, we weren't here, asking you to bring it up again and we get a letter back, 'oh, that meeting had nothing to do with your application,' and yet the staff report says that's our application being discussed. Gentlemen, I just don't think that this Board is treating this applicant fairly either in the way it's holding meetings to discuss his application or the manner in which DLNR refuses to respond to legitimate inquiries for information that an applicant needs, legitimately needs, to process an application, and I think in any application process many times an application goes through metamorphosis, changes before it comes out in the end. You put conditions on things, things are redefined and to redefine that we're going to move 100 yards down the beach is not a new application with all due respect. To move 100 yards down the same beach to be within an area where DOT has designated, where we had a map that it was 100 yards to the west and the correct official map says that it's 100 yards to the east, I don't think we're talking about a new CDUA application. I think we're simply defining the location involved.

ACTION Mr. Yuen moved to deny the application. "I think the law is clear that where there's been a determination that an EIS is necessary we cannot approve the application and, secondly, I believe there has been a very important and material change in the application between what was originally submitted and what the applicant is trying to get today." Seconded by Mr. Yim and unanimously approved.

Mr. Wolff then requested a contested case hearing. Mr. Evans stated the request will be taken under advisement under administrative rules relative to contested case hearings.

ITEM A-1: See page 20.

ITEM A-2: See page 20.

ITEM A-3: **APPROVAL TO AWARD GRANTS FOR THE ADMINISTRATION AND OPERATION OF THE MAIN STREET PROGRAMS**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM D-1: **PERMISSION TO HIRE CONSULTANT FOR JOB NO. 80-MP-H11 PALAAU STATE PARK WATER SYSTEM IMPROVEMENTS, MOLOKAI**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM D-2: **APPROVAL TO AWARD CONTRACT FOR JOB NO. 93-KP-J, EXTENSION OF WAIMEA PIER, WAIMEA, KAUAI**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-1-a: See page 3.

ITEM F-1-b: See page 20.

ITEM F-1-c: **SUBLEASE BETWEEN KEKAHA SUGAR COMPANY, LTD., SUBLESSOR AND ROBERT B. WHITE, DBA SANDWICH ISLAND JAMS & HONEY, SUBLESSEE, COVERING GENERAL LEASE NO. S-4222 AT KEKAHA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-01**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM F-1-d: **ISSUANCE OF REVOCABLE PERMIT TO MASAYUMI, INC., COVERING GOVERNMENT LAND AT WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-1-07:POR. 51**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM F-1-e: **ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT (LAND OFFICE DEED NO. S-27784) BETWEEN NALANI KELE, ASSIGNOR, AND EDMUND KELII SILVA, JR., UNMARRIED, AS HIS SEPARATE PROPERTY, ASSIGNEE, COVERING SEAWALL GROIN AT KUALOA, KOOLAUPOKO, OAHU, TAX MAP KEY 4-9-08:ADJ. 5**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM F-1-f: See page 2.

ITEM F-2: See page 2.

ITEM F-3: **DEPARTMENT OF HEALTH REQUESTS RENEWAL OF LEASE AGREEMENT, NANAWALE ESTATES, PUNA, HAWAII, TAX MAP KEY 1-4-50-23**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-4 **DEPARTMENT OF HEALTH REQUESTS FOR LEASE, PORTION OF LOT 57, LEILANI ESTATES, PUNA, HAWAII, TAX MAP KEY 1-3-4412**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-5: See page 2.

ITEM F-6: **AMENDMENT TO LEASE AGREEMENT NO. 90-679 FOR STORAGE SPACE FOR THE DEPARTMENT OF HEALTH AT KAHULUI, MAUI**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM F-7: **AMENDMENT TO PRIOR BOARD ACTION OF APRIL 10, 1981 (AGENDA ITEM F-10) FOR THE DIRECT SALE OF EASEMENTS TO GTE HAWAIIAN TELEPHONE COMPANY, INC. AND MOLOKAI ELECTRIC COMPANY, LIMITED, AT HOOLEHUA, MOLOKAI, TAX MAP KEY 5-2-01**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM F-8: See page 4.

ITEM F-9: **REQUEST FOR AUTHORIZATION TO ACQUIRE LAND FOR LAIE POINT STATE WAYSIDE USE, LAIE, KOOLAULOA, OAHU, TAX MAP KEY 5-5-10:2 & 22**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-10: **AMENDMENT TO PRIOR BOARD ACTION OF JULY 26, 1991 (AGENDA ITEM F-20) AUTHORIZING CONVEYANCE IN FEE SIMPLE OF REMNANT PARCEL 6B FOR AN ELDERLY HOUSING PROJECT, SITUATE AT KAKAAKO, HONOLULU, OAHU, TAX MAP KEY 2-1-51:06**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-11: **WITHDRAWAL OF PORTION OF LATERAL DITCH NO. 4 AND ALL OF LATERAL DITCH NO. 5 FROM G.L. NO. S-3827 AND QUITCLAIM OF RIGHT, TITLE OR INTEREST, KAPAA HOMESTEADS, 2ND SERIES, WAIPOULI, KAUAI, TAX MAP KEY 4-4-14**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-12: **REQUEST TO AMEND PRIOR BOARD ACTION OF JANUARY 8, 1988 (AGENDA ITEM F-16), DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES, HANALEI, KAUAI, TAX MAP KEY 5-5-04:POR. 18**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-13: **CITIZEN'S UTILITIES COMPANY AND GTE HAWAIIAN TELEPHONE COMPANY REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ELECTRIC AND TELEPHONE TRANSMISSION FACILITIES, KEAPANA, KAPAA, KAUAI, TAX MAP KEY 4-6-09:32 AND PORTION KAPAA STREAM**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-14: **COUNTY OF KAUAI DEPARTMENT OF WATER'S REQUEST FOR ISSUANCE OF EXECUTIVE ORDER FOR WELL SITE AND ACCESS ROADWAY, HANAPEPE, KAUAI, TAX MAP KEY 1-8-05:27**

ACTION Unanimously approved as submitted (Yuen/Arisumi).

ITEM F-15: See page 7.

ITEM F-16: See page 20.

ITEM H-1: See page 8.

ITEM H-2: See page 16.

ITEM H-3: See page 31.

ITEM H-4: See page 20.

ITEM J-1: **APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4812 AND 4826, AIRPORTS DIVISION**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-2: **RENEWAL OF REVOCABLE PERMITS 2972, AIRPORTS DIVISION**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-3: **REQUEST FOR AUTHORIZATION TO LEASE STATE LANDS AT HONOLULU HARBOR, OAHU (ALOHA TOWER DEVELOPMENT CORPORATION (ATDC))**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-4: **DIRECT SALE OF LEASE FOR WAREHOUSE SPACE, PIERS 19/20, WAREHOUSE NO. 8, HONOLULU HARBOR, OAHU (AALA SHIP SERVICE, INC.)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-5: **DIRECT SALE OF LEASE EASEMENT AT PIER 34, HONOLULU HARBOR, OAHU (GASCO, INC.)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-6: **DIRECT SALE OF LEASE, WAREHOUSE SPACE AND PARCEL OF LAND, PIER 31, TRANSIT SHED, HONOLULU HARBOR, OAHU (CLEAN ISLANDS COUNCIL)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-7: **DIRECT SALE OF LEASE FOR OFFICE AND PARKING SPACE, PIER 24, HONOLULU HARBOR, OAHU (HAWAIIAN TUG & BARGE CORPORATION)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-8: **ISSUANCE OF REVOCABLE PERMIT, KEEHI COMMERCIAL SUBDIVISION, HONOLULU, OAHU (HAWAIIAN STEEL BOAT BUILDING, INC.)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-9: **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HONOKOHAU BOAT HARBOR, HAWAII (WILLIAM HAWKS)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-10: **ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40 SHED, HONOLULU HARBOR, OAHU (HAWAII MARITIME CENTER)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-11: **USE OF HARBORS DIVISION FACILITIES, PIERS 10 AND 11 SHED, OAHU (HONOLULU MARATHON ASSOCIATION)**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-12: **CONTINUATION OF REVOCABLE PERMITS H-85-1281, HARBORS DIVISION, OAHU**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-13: **REVISION OF LAND BOARD SUBMITTAL, ITEM J-7, APPROVED ON OCTOBER 26, 1990, DIRECT SALE OF HIGHWAY REMNANT, FARRINGTON HIGHWAY, EWA, OAHU**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ITEM J-14: **AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF HIGHWAY REMNANT TO ABUTTING OWNER, KAAUHUHU, NORTH KOHALA, HAWAII**

ACTION Unanimously approved as submitted (Arisumi/Yuen).

ADJOURNMENT: There being no further business, the Chairperson adjourned the meeting at 3:10 p.m.

Respectfully submitted,

Geraldine M. Besse
Secretary

APPROVED:

WILLIAM W. PATY, Chairperson