

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

DATE: FRIDAY, FEBRUARY 28, 1992
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

**ROLL
CALL**

Vice Chairman John Arisumi called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Mr. Christopher Yuen
Ms. Sharon Himeno
Mr. T.C. Yim
Mr. William Paty (arrived at 9:35 a.m.)

STAFF: Dr. Don Hibbard
Mr. W. Mason Young
Mr. Roger Evans
Mr. Ralston Nagata
Mr. Michael Buck
Mr. Eric Onizuka
Mr. Gordon Akita
Mr. Maurice Matsuzaki
Mr. Edward Henry
Ms. Dorothy Chun

OTHERS: Ms. Linnel Nishioka, Deputy Attorney General
Mr. Peter Garcia, Department of Transportation
Mr. Richard Haake, Ms. Charmaine Tavares
(Item F-13)
Ms. Anne Mapes (Item H-8)
Dr. Donald Hall (Item H-5)
Mr. Lee Sichter (Item H-7)
Mr. Ken Williams, Mr. Howard Schwiebert, and
Mr. Paul Ruse (Item H-2)
Mr. Herman Soares (Item H-3)
Mr. Steve Oliver (Item F-10)
Mr. Ronald Grant, Mr. Gregory Reeser,
Mr. Zoltan Rudolic (Item H-6)
Mr. Don Ocvirk (Item E-1)
Mr. Neal Wu (Item F-12)

MINUTES Mr. Yuen made couple corrections to the minutes of December 20, 1991. The first on page 6, 8th paragraph, 3rd line where it reads "21 acres", should be 21,000 acres. On page 10, 5th paragraph, 2nd line where it refers to "He was of the opinion ...", this was not Mr. Yuen's opinion but the opinion from staff of the Division of Forestry and Wildlife.

Mr. Apaka made a motion to approve the minutes as corrected, seconded by Mr. Yuen, motion carried.

ADDED ITEM With a motion by Mr. Apaka and second by Ms. Himeno, the following item was added to the agenda:

Division of Conservation and Resources Enforcement

Item I-1 Appointment of Volunteer Conservation and Resources Enforcement Officer, Island of Hawaii

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

ITEM A-1 **APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE A SHORT-TERM MANAGEMENT PLAN FOR THE KE'E HULA SITE AREA, HAENA, KAUAI**

After his presentation, Dr. Hibbard responded to questions of the Board. He said that funds from the County of Kauai will not be involved for the requested services. These were CIP funds that have been appropriated to the Department by the legislature. Dr. Hibbard said that he has been working with the Mayor of Kauai and he thinks that she will be allowing their division to administer the park for the county, that is State Parks for the county. It will be under the administration of the Division of Historic Preservation, who will be drafting the documents. The Division of Historic Preservation presently have in the supplemental budget a request to have someone on Kauai to oversee the supervision.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM A-2 **ALLOCATION OF HISTORIC PRESERVATION GRANTS-IN-AID CERTIFIED LOCAL GOVERNMENT**

ACTION Unanimously approved as submitted. (Yim/Yuen)

ITEM F-1 **DOCUMENT FOR BOARD CONSIDERATION**

Item F-1-a **Assignment of Sublease Bewteen Miko Meat Corporation, Assignor, and Rocky Road Products, Inc., Assignee, Portion of Food Distribution Center, 1st Increment, Kaakaukukul, Honolulu, Oahu**

Mr. Young said that not included in the submittal for the Board's information, is the General Lease for this area runs to July 18, 2029 and they presently pay \$168,000.00 per year. The sublease rent for this particular Rocky Road is presently at \$4,200.00 per month.

Mr. Yim clarified the above info and also asked for the rental figures for the other renters. Mr. Young said that he did not have the figures with him.

Question arose if staff would automatically look at the sandwich in this situation of assignment of a lease and a sublease. Normally they would but in this case because it is a cooperative and they're paying to themselves, it is rather difficult to determine the sandwich.

ACTION Unanimously approved as submitted. (Yim/Himeno)

AMENDMENT TO PRIOR BOARD ACTION OF JUNE 22, 1990 (AGENDA ITEM F-5) RELATIVE TO THE WITHDRAWAL OF LAND FROM GENERAL LEASE NO. S-4229 TO PIONEER MILL COMPANY, LTD. AND CONVEYANCE IN FEE SIMPLE TO HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR THE LAHAINA MASTER PLANNED PROJECT TO WAILUKU, LAHAINA, MAUI, TAX MAP KEY 4-5-21:POR. 3.

ITEM F-13

Mr. Young began his presentation with background information of what transpired at the meeting of June 22, 1990. This covers the 68 acres that the Board authorized withdrawal from Pioneer Mills' General Lease No. S-4229. The action that was done by the staff was to provide for the housing project by Housing Finance and Development Corporation (HFDC). The 68 acres was intended to be part of the project for the housing that HFDC is proposing and of that 68 acres approximately 20 acres was to be earmarked as an addition to the Lahaina Civic Center. The County has come forward today to request that of that 20 acres that has been earmarked, they would like to have at this time 9 acres taken out of that 68 acres earmarked for HFDC and subsequently set aside to the County as the addition to the Lahaina Civic Center.

Mr. Young said that his understanding is that the County of Maui as well as the Councilmen of that area worked out with the Winter League, a proposal to construct the facilities there and they are in concurrence with the proposed development. Staff is recommending today that we take out from the 68 acres that was marked for HFDC, 9 acres and in turn set it aside to the County as an addition to the Lahaina Civic Center with the conditions described in the submittal.

Mr. Young pointed out that these lands are ceded lands and also they have 30% revenue to the Department of Hawaiian Home Lands (DHHL). Staff is making it subject to the condition that the set aside and any revenue generated from there, 20% will go to OHA and 30% to DHHL. The applicant has also asked for permission for a right-of-entry to go into the site to commence with the construction of the facilities. They have contacted Pioneer Mill Company and they have no objection to the right-of-entry as well as to the withdrawal and the subsequent set aside. Mr. Young mentioned that he understood that the matter of crop damage has been taken care of.

Mr. Young said that Councilman Tanaka of Maui was present today as well as representatives from the Winter League to answer questions of the Board.

Maui County Managing Director was also present to answer any questions of the Board.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

CDUA FOR AN ACCESS ROAD, A GRADE-SEPARATED (UNDERPASS) INTERSECTION, AND AN IRRIGATION LAKE AT KAUPULEHU, NORTH KONA, HAWAII, TAX MAP KEY (3) 7-2-2:03, APPLICANT: PIA KONA LIMITED PARTNERSHIP; AGENT: BELT COLLINS AND ASSOCIATES

ITEM H-8

Mr. Evans reminded the Board that this item was deferred at the last Board meeting at the request of the applicant and there's been no subsequent information following the Board's deferral at the last meeting. Staff has not

changed its recommendation for approval subject to the 17 conditions listed in the submittal.

Mr. Roger Harris said he represented the applicant, PIA Sports Properties. He had seen the submittal and had one comment that Conditions 7, 8 and 9 are quotes from the State Department of Transportation Highways Division. He wanted to say that they have met with staff of State Highways Division in an effort to clarify the conditions. They have some concern over the exact meaning of Condition 9.

They had no problem with the first sentence in Condition 9. On the second sentence, they needed a clarification of what is meant over time, they are working with the DOT to have it clarified but they don't have any answers at this time. He said he simply wanted it noted in the record that they have a little concern on that.

Question was asked if projects along the Queen Kaahumanu presently have a similar condition attached. Mr. Harris said that it varies, to his knowledge, some do and some don't. Regarding Kaupulehu, he said that they have a condition from the land use change and the zoning and SMA which basically says that they need to monitor the traffic. This is actually for the makai resort area and then provide improvements along Queen Kaahumanu Highway as required by DOT.

There was discussion on the crossing of the Kiholo Trail. Mr. Harris said that there will be no crossing in the CDUA area. They have met with the Na Ala Hele group and there would possibly one or two more crossings necessary in addition to where its been breached by a fire break and ranch road. They will be needing a grading permit from the County and they are in for a zone change with the County and it will be part of the Historic Site Mitigation Plan.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

Mr. Yuen commented that this applicant has been very sensitive to some of the resources on the property including the trails and including some of the dry land forest resources that they have.

**REQUEST FOR TIME EXTENSION TO COMPLETE CONSTRUCTION
REGARDING CONSERVATION DISTRICT USE PERMIT FOR A VERY LONG
BASE ARRAY (VLBA) FACILITY AT THE MAUNA KEA SCIENCE RESERVE,
HAWAII, TAX MAP KEY 4-4-15:09; APPLICANT: UNIVERSITY OF HAWAII,
INSTITUTE FOR ASTRONOMY**

ITEM H-5

Mr. Evans made the presentation of Item H-5. He said that the University of Hawaii did start construction within the time frame, however, the caveat on this condition was that they complete construction within three years. They do have some difficulties with the end of the completion and as a result they have come in and requested a time extension and completion date. Staff has taken their concerns into consideration and their review notes that the applicant has been attentive to initiate the project, they have been attentive to all the other conditions and the University in the past has operated on this application on a reasonable basis. Staff is recommending that the Board approve a one-year extension to complete construction, date will be January 13, 1993. Staff has

added a few more conditions which is in keeping people in conformance with the department's administrative rules and the Board's discretion as they open themselves and come back to the Board.

Dr. Donald Hall, Director of the Institute for Astronomy introduced Mr. Paul McClaren, Associate Director for Mauna Kea. Dr. Hall informed the Board that construction has in fact already been started and is proceeding rapidly. They fully expect that the antenna will be completed in the fall before the onset of bad winter weather and feel the one year extension is adequate.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

**CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR
COMMERCIAL RECREATIONAL USE AND THE INSTALLATION OF ONE
VESSEL MOORING LOCATED OFFSHORE AT WAILEA BEACH, MAUI, TAX
MAP KEY 2-1-08:109; APPLICANT: TSA DEVELOPMENT CO., LTD.;
AGENT: WILSON OKAMOTO & ASSOCIATES**

ITEM H-1

Mr. Evans informed the Board that the Department would like to request a deferral of this item until the Maui meeting on March 13, 1992.

Deferred Ms. Himeno moved that the item be deferred to the next Maui meeting, seconded by Mr. Apaka, motion carried.

**REQUEST FOR TIME EXTENSION OF CONSERVATION DISTRICT USE
PERMIT FOR KALOKO WATER SYSTEM IMPROVEMENTS, KALOKO,
NORTH KONA, HAWAII, TAX MAP KEY 7-3-09:POR. 17; APPLICANT: TSA
INTERNATIONAL, LIMITED; AGENT: WILSON OKAMOTO & ASSOCIATES**

ITEM H-4

Ms. Himeno requested to be excused because of a possible conflict. Vice-Chairman so noted.

9:35am Chairperson Paty in attendance at meeting.

Mr. Evans said this was a request for time extension and applicant has expressed difficulties relative to construction and financing difficulties, as well as other permit processes. Staff feels that finance difficulties should not be laid on the government, however, permit processing sometimes can be laid on the government regardless of whether it's a federal, state or local agency. They do ask for a six months extension to initiate construction.

Responding to Board member Yuen's inquiry, Mr. Evans said that there were three additional conditions added since the original application came in and they are Conditions No. 3, 4 and 5. Those are conditions that they would add on any permit now that were not there when the original permit was issued.

Applicant's agent had nothing to add and had no objections to the additional conditions.

ACTION Unanimously approved as submitted. (Arisumi/Yuen)

**CONSTRUCTION PLAN REVIEW FOR CONSERVATION DISTRICT USE
PERMIT: "REMEDIAL IMPROVEMENTS" AT THE HONOLULU COUNTRY
CLUB, TAX MAP KEY 1-1-63:17, APPLICANT: HONOLULU
INTERNATIONAL COUNTRY CLUB; AGENT: BELT COLLINS AND
ASSOCIATES**

ITEM H-7

Ms. Himeno asked to be excused because of a conflict on this matter.
Chairperson so noted.

Mr. Lex Smith, on behalf of the Honolulu International Country Club requested a deferral on this matter to the next meeting.

Chairperson informed Mr. Smith that the Board would like to review the situation with staff, then subsequently should he wish to make his request and if it were appropriate, then he could do so.

Mr. Evans began by giving some background to the Board. This permit was first issued back in the late 70's. At the time the permit was granted, there was in effect in the Administrative Rule that listed a number of permitted uses. Among the permitted uses were: Country clubs, hotels, resorts and airports.

Mr. Evans also gave examples of a land use that was in existence and the land use had burned to the ground and the landowner wanted to come back in and re-establish that use. The landowner was allowed to re-establish that use but had to come in under the new Administrative Rule which allowed for the discretion on the part of the Board. He gave another example where the Board approved a golf course on the windward side. The golf course had their problems with complying with all of the conditions on the permit. They came back to the Board to request some new authorizations and they, themselves came back and opened up the case. Once they did that, staff could inform them of what they were granted under the original rules and now there are new rules. Because they opened up the case, now what would be applicable under the new rules or under the new discretion that the Board has today.

Staff is now recommending that the Board impose a three year deadline, so that the completion of the project, in terms of time would be September 13, 1993. Should the Board sustain staff's recommendation, that the applicant could still be allowed to come back and ask for an additional extension at the end of that time providing that they could provide a reasonable justification.

Question was raised by the Board if the applicant had any construction plans or other kinds of plans sitting on the department's desk right now for approval.

Mr. Evans said that he understood that they do. He wasn't sure whether it was for the addition of or change of some of the holes on the golf course.

Chairperson Paty said that there appears to be the question that relates to the status of the activity at this point in the plans. The Board would like to get the picture of what's going on now.

Mr. Lex Smith said that the work that is being done there now has up to a week ago, in their understanding, has been within the existing permit which was issued a long time ago. For only about a week now, they have been aware of

the possibility that it might not be within the existing permit and that there might be a time deadline placed on the work that they're doing and that's the reason they need more time to respond to that.

Mr. Lee Sichter, of Belt Collins and Associates, said that presently they are in the process of implementing a revision to the improvement over the golf course, which is taking the form of repairs and redesign of various fairways on the golf course. The process started October 19, 1990. The construction of two new fairways. This allowed them to insure that a total of 18 fairways would be retained in operation during the entire renovation process. Since October 19, 1990, they have renovated four fairways on a regular consistent manner. They have fourteen fairways to go.

Mr. Yuen asked him if this was the work that was approved in September 1990 at the department level.

Lee Sichter responded that there was an approval in 1990 that approved the construction of the two additional golf holes. In October 1991, we submitted a master plan for the landscaping of the entire area, golf course area and the work that's being done is consistent with that master plan.

Mr. Yuen also inquired if that master plan was approved by the DLNR administratively.

Mr. Sichter said he believed it was. My files indicate August 29, 1991 that the staff member stated the landscaping plan falls within the actions allowed under the original Conservation District Use Permit, it is therefore approved, although we have not yet received written confirmation of this.

For the record, Mr. Sichter said that the original permit for the Honolulu International Country Club Golf Course was approved in 1966 and not 1976.

During more discussions, Mr. Sichter said that to his knowledge he was not aware of any plan sitting at the department pending approval. The last thing submitted was the plan on May 1, 1991. He believed that they could complete the entire renovation in 4 to 5 years. The time involves not only the replanting of trees, the relocation of trees but the resodding of the fairway and the reconstruction of the irrigation system that is in the fairway. The actual new fairway cannot be open for play until the grass is entirely in and that process takes a number of months, 6 to 9 months from the time that an individual fairway is renovated until it's available for reuse in the golf course.

Chairperson Paty commented that the Board is in a position here where in effect you are asking for 4 to 5 years to implement work on the conservation area and as Mr. Evans has indicated, this is not the normal. We usually have a start and finish and some way to come back and say where are you on the situation. He felt there was a need to examine this to see where we are on this.

Mr. Sichter said that this is their intention also. They were not aware that the department was thinking along those lines. There have been no prior indication that there was a concern and that's the reason we're seeking the deferral. We would like the opportunity to meet with staff to work out what exactly are the problems and see if we can come to some agreement and what type of a

master plan time frame ought to be implemented for the project.

Discussion followed to clarify that the mentioned master plan was the landscaping plan.

Mr. Sichter said that the landscaping plan, the redesign of the golf course involves an in-house conceptual plan about how the golf course would be designed and then the landscaping master plan actually is document which lays out the design of the course, the definition of the fairways. The document with the most impact upon the project.

Mr. Yuen entertained a motion to go into an executive session to consult with legal counsel. Seconded by Mr. Arisumi. Motion carried.

EXECUTIVE SESSION 10:00 a.m -10:20 a.m.

The Chairperson called the regular meeting back to order.

Mr. Sichter said, "Mr. Chair I'd like to amend my comments if I might. I was advised by one of your staff during the executive session that we do have a proposal plan that is related to, it's a component to the layout of the golf course, it's a lake I understand. So there is something in. I do not know the date that was submitted."

Mr. Evans said, "Mr. Chairman and commissioners, during the executive session, staff had an opportunity to discuss the question of verbal approval and I've been informed by the OCEA staff that at no time have they been authorized nor have they given any verbal approvals."

DEFERRAL Mr. Yuen made a motion to defer this item and said that he would like to see it brought back as soon as possible. His concerns were:

1. On this landscaping master plan, if it was not approved then it would seem that work is being done without authorization and we need to check up on that aspect of it.
2. On this lake plan that's come in, he had some concerns on these old CDUA's that come in and have whiskers on them and ask back 25 years ago for work being done under the CDUA. If this work were brought in today, it would need a new CDUA and there would be a lot of other conditions placed on it if it were approved other than the kind of conditions that were put on it 25 years ago.
3. He would like to go as far as legally possible, in giving the kind of scrutiny to the work being done in the conservation district under these old CDUA's as we would to work being brought to the Board today. He felt it could not be dealt with today.

Motion was seconded by Mr. Arisumi and carried unanimously.

Chairperson commented that they will try to get it back on the agenda as soon as possible but there were several issues that need to be addressed.

**CDUA FOR A TELECOMMUNICATION FACILITY AT PALEHUA, EWA,
OAHU, TAX MAP KEY 9-2-005:13; APPLICANT: CHRISTIAN
ITEM H-2 BROADCASTING ASSOCIATION**

Before beginning his presentation, Mr. Evans notified the Board that the department had received a request for deferral so that the neighborhood board out in Ewa has an opportunity to discuss this. He then pointed out that in late November 1991, staff sent a copy of this application and also the notice of the public hearing to the Ewa Neighborhood Board. At that time there were not a lot a concerns from that neighborhood board. Recently staff was notified that there is a new president of the Ewa Neighborhood Board and they have indicated that they would like to have the matter deferred so that the neighborhood board can discuss it.

The Chair recognized the request and like the previous item felt staff's review should be heard and decision made.

Mr. Evans requested to make a correction on page one of the submittal. Within the first paragraph, the statement that says the proposed project is located within the forest reserve is incorrect, as this property is not in the forest reserve.

Condition No. 22 on page 11 is a new condition whereby the applicant is to notify the department in writing when construction activity is initiated and when it is completed.

During his presentation, Mr. Evans said that there were concerns relative to radiation, particularly the (RF) Radiation Factor. There were concerns that were expressed by people who questioned when the towers are put up, what happens to the radiation factor. Relative to the RF radiation, there are no particular American standard anywhere in the United States. The experts in the field use the Russian standard for RF radiation. Staff had these people make these RF measurements and those measurements indicated that this one tower going up would not be any danger level relative to RF using the Russian standard.

Mr. Evans said that staff is recommending approval subject to the conditions listed.

Question was asked if the request from the neighborhood was in writing.

Mr. Evans said that the request came by telephone and if it came in writing he did not have it handy. There were no specific concerns mentioned. It was just the idea that one president did not see it as a priority matter and where the new president felt that they might want to discuss it with the Board. Staff informed the new president to be present at this meeting but noticed that he was not present.

Mr. Paul Ruse said that he was representing the applicant, Christian Broadcasting. He commented on the request for a deferral, saying that they felt it unfair for the applicant to delay this process because of the negligence in the past of the neighborhood as they had six months to come forward with their concerns. Mr. Ruse said he feels that they have complied with all requests and agreed to all the conditions to make this a minimal impact on the environment.

Mr. Ruse explained that after the Public Hearing they went over the concerns that were expressed. In January they met with a representative group to go on a field trip up on the ridge. The group consisted of three people who represented all the residents of Palehua Ridge, people from Campbell Estate and people from the department. They went over the proposal and additional conditions were derived from that to mitigate the concerns. They feel a delay would be a hazard to the applicant. He explained that the hazard there is that they're running on borrowed time. They're supposed to be out of their existing location by the 31st of December and they haven't been able to get a new site. The additional costs mount up everyday that there is a delay and because of the increased rents because they're on a month to month basis.

Mr. Howard Schwiebert said that he represented Campbell Estate and basically this process that they helped to coordinate with the applicant and department staff after the December 19th public hearing, they had agreed that it would be beneficial to have a meeting up there and to help make it manageable to try to get representatives of the tenants. After the site visit they discussed various issues and concerns. A second letter was sent to the residents, basically going through what the mitigation efforts would be and the conditions that might be imposed on the applicant. He did receive a telephone call about three days ago from the acting chair of the neighborhood board expressing their concerns. He understood that Jane Ross resigned about two or three weeks ago. He invited them and there were about four neighborhood board members that went up to the site and spent several hours there. They talked about mitigation efforts and the concerns that individuals had raised. They didn't express any specific concerns about the project but concerned about the process that Jane Ross hadn't formally put it on their agenda.

Mr. Ed Henry responded to the Chair that he had received a Fax copy on Wednesday requesting that this item be deferred. The fax was not from the president of the neighborhood board but from a board member who said that he was authorized by the chairman to do that.

Question was asked whether applicant had complied with Condition No. 4, that verification of the project location in relation to the vegetation, plants, and species impacted should be completed before the project is approved. Staff responded it was not to his knowledge.

Mr. Ruse explained that a survey is being made and the ridge is of such a nature that it's only 80 feet wide and 150 feet long. This is the confines and there will be a vegetation screen on the Diamond Head side of it to obscure the buildings. It hasn't been staked per se. He mentioned that there were two sandalwood seedlings away from the construction area that they will be fenced in to make sure they wouldn't be bothered during construction for their protection.

Discussion then centered on DOFAW's comments on top of page 5 regarding the rock. Mr. Evans said he thought there was a condition to stay away from the rock. He later said that he stood corrected that there was no specific condition relating to the rock.

Mr. Ruse said that there was a stipulation in one of their letters that they would revise the roadway to stay clear of those aesthetic rocks. He also stated that

they would have no problem with adding another condition.

It was suggested by Board Member Yuen that staff could incorporate into the conditions specific paragraphs from the letter dated February 19, 1992 from the applicant. Paragraph #3 refers to the sandalwood trees, koa trees and paragraph #14 relates to the rock. Then paragraph #7 from the letter could be incorporated into a planting screen condition.

Mr. Schwiebert suggested that they use the natural screen that's there and not introduce any non-native species to migrate into the Nature Conservancy Area.

Mr. Yuen suggested that a planting screen using native species found in the area should be used. He then referred to paragraphs 8 and 9 of their letter which says there is a security gate for the residents and security fence and asked if those were in the conditions.

Mr. Evans said that could be added in the conditions.

ACTION Mr. Arisumi moved for approval as amended. Mr. Evans listed the amendments as follows:

New Condition 17, from the applicant's February 19, 1992 letter relative to the representations made to mitigation of paragraphs 3, 7, 14 and 9 be incorporated with native trees found in the area.

Motion was seconded by Mr. Yuen and carried unanimously.

For the record, Chairperson Paty commented to the Ewa Neighborhood Board that the Board was sensitive to their request, but this seemed like a situation where they had administrative problems with their board. The Board very closely scrutinized the conditions and feel comfortable that any conditions they might have relative to this were adequately addressed.

Mr. Schweibert said that he had offered to meet with them on their request to give an over view of the master plan.

ITEM H-3 **CDUA FOR AN AFTER-THE-FACT SINGLE FAMILY RESIDENCE AT WAIALUA, OAHU, TAX MAP KEY 6-8-8:5; APPLICANT: HERMAN SOARES**

Mr. Evans said that this was a revisitation of a request that was heard previously. In July of '91 the applicant was allowed to withdraw his request to allow him to obtain authorization from the other land owners on this split ownership parcel and also to obtain an SMA clearance from the City and County of Honolulu relative to building a single family residence in Waialua.

He said that the applicant came in with a proposed after-the-fact use of the property claiming non-conforming status and he has indicated that he has gotten approval from 13 of the other 17 owners of the property.

Staff is recommending denial for the single family residence and in addition three violations on the property.

Discussion followed as to whether this particular property was originally in the

forest reserve as of 1957, whether it would be allowed a non-conforming use and the subzone of the property. At the request of the Board, Mr. Evans described the present structure on the property and the dimensions. A structure was on the property back in the 1930's and apparently abandoned. Applicant has been residing on this property for quite some time and is not requesting a new structure.

Mr. Herman Soares, applicant said that currently he was still residing on the property. He said that he had submitted the names of the landowners to staff. As of today, he had the approval from the Honorable Titcomb from his side of the family, but could not obtain the signatures of 2 members of the family that were back in China somewhere.

Since the last meeting, Mr. Soares said that he had gone ahead and removed the structures of the kitchenette and the deck. Presently he still has the bathroom and the trailer. He started to remove the bathroom but was held up in not doing it by the neighborhood board. He had gone to the neighborhood board through the City at a public hearing and they had approved his bathroom structure at their January 28, 1992 meeting. Prior to that the City had asked him to dismantle it or remove it or adjust it back to the shoreline which was causing the variance that he had asked for. Having gone to the neighborhood board, they instructed him not to remove the bathroom structure or relocate it. The bathroom and shower, concrete hollow tile is not being used right now.

He explained that he has lived there since 1978. Prior to that he would just go to the site and clean up and make it usable. Before that there was a cesspool before he was born, probably when his uncle and grandfather lived there. His grandfather was farming there and by his testimonial letter there was a structure on that beach property which was probably torn down. He reactivated the cesspool in 1978.

Responding to questions of the Board, Mr. Soares replied that when he moved there he constructed the bathroom and the kitchen area. The only thing there was the cesspool.

Staff was asked if this property could be traced to a kuleana grant.

Mr. Soares said that this was a grant back in 1873, from his grandfather then handed down to his mother, then his uncle (who is still living) to him. He said that it used to be Mahele land. Right now they are in the process with the government for the Dillingham area. This is the only portion that they have right now which is supposedly 1/2 acre, but because of the erosion is not 1/2 acre anymore. They had it surveyed back in 1990 by certified surveyor and they had lot 11,611 square feet of property, eroded out into the ocean. This is why he was trying to get the variance for that portion to where it is now. All he is asking for now is the presence of his bathroom and trailer. The bathroom is sitting about 5 foot above the high water mark. To move it he would have to dismantle it or try to move it back into the 20 foot shoreline high water mark.

Mr. Yuen asked Mr. Evans, "if he could trace back to a kuleana grant, we could bring him in under a kuleana, exception to non-conforming."

Mr. Evans said that he did not know, because of the location and split

ownership. Split ownership could present a problem of a possible subdivision. He did not want to mislead the definition of kuleana.

It was explained to the applicant regarding qualifying under the rules and that there was one exception that he might be able to qualify and that would be the kuleana rule. He would need to trace the property back to kuleana grant to 1853 and that he might need some assistance from OHA or the Native Hawaiian Legal Corporation to obtain a title and submit it to the Department.

Mr. Soares said he understood.

Mr. Yim asked staff if this were kuleana land, what would then be the recommendation.

Mr. Evans said that the recommendation would be that the proposed use stays and on the violation a fine would be recommended. The Board could then make its judgement accordingly. It would be recommended that what is there would be allowed to remain as his house under the rule of a kuleana.

Mr. Yim said that he was still unclear, that he sees this as a technicality, by words if its kuleana it's o.k. and if not then no. In addition to that, if we were to do it all over and classify the lands conservation, etc., would this particular parcel fall under the definition of Conservation Land, etc. He felt this particular parcel doesn't fall in any definition of conservation land.

Mr. Evans explained that it's the Land Use Commission (LUC) that makes that judgement. Absent the kuleana potential, in the rules, staff's recommendation would have no flexibility.

Mr. Yim said that when we generalize things in every situation, there always are exceptions and in light of this example, many more that we had before the Board and will come before the Board, whether rules can be looked again and with some flexibility to take into exceptions because these kinds of strict adherence to certain rules and regs and laws, certain things doesn't fit exactly. And whether through rules and regs they could take care of those kinds of situations.

Mr. Evans said that one thing that they might be able to develop, is if you are willing to sustain or sort of agree at this point in time of a possibility of a deferral to the next meeting or to the March meeting. If the gentleman is able to establish kuleana, then you already know what is going to be the recommendation. If on the other hand, the gentleman is not able to sustain that request, then at that point, the Board may consider that the applicant be required to go to the LUC and have the land rezoned urban.

DEFERRED Mr. Yuen moved to defer this item, seconded by Ms. Himeno, motion carried.

**RESUBMITTAL --WITHDRAWAL OF LAND FROM THE OPERATION OF
GENERAL LEASE NO. S-4222 AND SUBSEQUENT SET ASIDE TO COUNTY
OF KAUAI AS AN ADDITION TO THE KEKAHA SANITARY LANDFILL,
ITEM F-10 KEKAHA, KAUAI, TAX MAP KEY 1-2-02:POR. 1**

Mr. Young informed the Board that this request was resubmitted on January 10,

1992 and was again deferred to allow the County of Kauai to address the Board's concerns. On pages 4 and 5 of the submittal staff has listed the six concerns in the form of questions and the responses from the County Engineer of the County of Kauai, Department of Public Works. He then went over the six concerns.

Staff was questioned as to when the existing 35 acres were granted to the County and mining rights of the sand.

Mr. Young informed the Board that the first executive order for the dump site was back in 1958 and there was a further expansion of the site of 18 acres. The first site was approximately 17 acres. Regarding the mining rights, the State would have the rights. The County would have to come to the State if they wish to take it off the property, but if they use it as fill material on site then there wouldn't be any objection to that.

Mr. Apaka wanted to know who would issue the permits for sand mining and as he understood there's a use of sand for cattle bedding at Meadow Gold.

Mr. Young said if the sand mining were for a commercial use that permits would be issued from this department. He was unaware of the situation at Meadow Gold.

Mr. Steve Oliver, County Engineer, Department of Public Works said that Meadow Gold has moved its facilities to the northeast side of the island, other side of Anahola and also the contractor that handles the recycling on Kauai, has been shredding newspaper to be utilized by Meadow Gold for bedding material.

Mr. Apaka said there is still a problem with the shredded paper, Meadow Gold is not sure if they can use all that paper. He also asked if the County had a solid waste management plan and when it would be effective.

Mr. Oliver responded that the request for proposal for the development of the plan is going out for bid next month. The criteria generally set by the guidelines by the Department of Health in accordance with the State regulations are guidelines which they are attempting to work with all counties because the requirement is that the State produce along with the counties a general plan for solid waste. It does call for some reduction going to the landfill. The requirement is a 25% diversion to the landfill by 1995 and a 50% diversion by the year 2000. They have many projects which they have examined thus far and the reports from those projects, everything from composting to the potential for using waste energy programs have to be looked at to come up with the most economical method to be used for the island.

More discussion followed regarding a solid waste program, area needed, average cost of the waste going into the landfills, length of time needed to prepare plans, recycling and related matters.

Mr. Apaka expressed concerns and stressed the fact that he would like to see a plan first and also had concerns with recycling. He felt they need to see the plan first as it will affect Kauai and all the other islands. His recommendation would be to deny this application until they come back to the Board with a plan.

Mr. Oliver said, "The County has no objection to denying. Other than that we expect that the longer it is postponed the higher the landfill is going to have to go, there's no doubt about it." He said according to law, they have to have that plan completed by December 1992.

Mr. Oliver was informed that he could probably come back to the Board with a request for a right-of-entry to start things like testing, etc. Getting a right-of-entry would not necessarily guarantee that they would be getting the property.

ACTION Mr. Apaka moved that the request be denied. Seconded by Mr. Arisumi, motion carried.

Chairperson Paty said, "Recognizing that it was not taken because we feel that we want to impede the very necessary desire to get this thing going. We just want to move and convey to the Mayor there's a larger concern that the Board is looking at and we recognize that we are with you on your concerns that the landfill will get any higher than it is."

PETITION FOR RECONSIDERATION AND AMENDMENT OF CDUA FOR PROPERTY CONSOLIDATION AND RESUBDIVISION, MANOA, OAHU, TAX MAP KEYS 2-9-33:24 AND 2-9-34:15; APPLICANT: MR. & MRS. GREGORY REESER; AGENT: MR. RONALD V. GRANT, DWYER, IMANAKA AND SCHRAFF

ITEM H-6

Mr. Evans said that this was a matter that was previously before the Board. He said that back in November 1991, the Board did approve a consolidation and resubdivision subject to a land use violation payment of a fine relative to that. There's been some discussions back and forth not relative to the non-conforming use. We are concerned relative to many of the statements that have been made. We are aware that the applicant can seek remedy by going to the Land Use Commission (LUC) for district boundary amendment. All things considered, we still have a recommendation for approval, however there is a violation there. We do recommend a fine of \$500 and Administrative Costs. Basically we remain convinced in our view that when you have a piece of land and you consolidate or resubdivide that piece of land, you essentially have changed the lot lines or the boundaries of those pieces or piece of land. Any change you lose the non-conforming use. With that, as such our recommendation stands, non-conforming use is lost.

During discussion with Board members, staff clarified that an easement doesn't necessarily remove a non-conforming use but a subdivision would. Staff is also concerned with the 20 foot setback which was established and applicant building within the 20 foot setback.

Staff was questioned if applicant was suggesting that they just take off the eaves and not project into Bishop Estate property. Staff Planner Ed Henry said that it's a recommendation that all encroachment on Bishop Estate property be eliminated, which is the eaves and they have been removed from encroachment over the property boundary.

Mr. Henry then mentioned that there's the setback issue and the housing code issue, regarding how close the house is to a common property boundary and fire hazard, etc. recommended for the Board to consider.

Mr. Evans illustrated what could happen here is, 1) the eaves come off; No. 2, the Board in its discretion can say you came in with plans, the department approved your plans for a 20 foot setback, now you didn't meet the 20 foot setback. No. 1 we're going to fine you \$500 or we're not going to fine you, your judgement; No. 2, You can say, notwithstanding you didn't make the setback, it's within our discretion to let it remain or within our discretion to knock it out, move it back as you initially represented. This is where the discretionary thing comes in.

Responding to the Board, Mr. Evans said that the purpose of the easement that they were asking for in one of their prior correspondences does not solve their setback problem. He had a meeting with City and County Building Department and they informed him that they have a problem with the setback and the rationale is the fire wall problem. There apparently has to be a certain amount of property between properties lines open to allow for the fire wall. What they represented to me is we have a problem. Now there's ways to resolve the problem, either or not they can require to be knocked down themselves or they can issue a waiver. But the fact that we act here today or these or any representation that says the Building Department is not interested in our problem is not the case at all.

Mr. Arisumi: If I'm not mistaken, the foot of the house is about two feet from the boundary line.

Mr. Evans: .94 feet. Where we originally said, when they came in with the plans and said we're not going to come any closer than 20 feet, we said, "we approve it." After that was done, they went and built up to .94 feet.

Mr. Arisumi: Yes, because the fence was there, it kinda misguided them, right? The chain link fence was there. Even if we approve this they have to go to the City and get approval from the City.

Ms. Himeno: And the City has a part to say, knock the house down if we approve ...

Mr. Evans: The Building Code people do based upon the Oahu Fire Department restrictions, or based upon your action, the building department people can say, let's issue a waiver. But they cannot say, there cannot be a representation made that the Building Department has washed their hands off it.

Mr. Ronald Grant, attorney and agent for the applicant placed several maps on the board to be used in his presentation.

Mr. Grant: As Mr. Evans pointed out, Mr. Reeser came and in and got approval... Mr. Evans has before him copies of two plans. This one is the one prepared by BMS Drafting and stamped by Andre Toth, the engineer and this is the one Mr. Reeser relied on in proceeding before the Board and proceeding to get a building permit and its the one that he gave to his contractor. One important point, (points to map or drawing) this portion is the existing footprint. This is not a piece of bare land that he comes in that he can arbitrarily put where he wants. The approval before the Board and the approval before the building department was, take down existing one-story house and rebuild on the same footprint with these additional areas. Even with these additional

areas, looking at the map submitted, Mr. Toth said that it is 20 feet from the corner of the extension to the edge of the property. Unfortunately we all now know that's not where it is. It's not a question of the builder or the owner building it differently from what the plans said, it's a question of the plans not being correct in terms of where the house was on the property. So what we have is a building that was built on the footprint that the Board approved, but the footprint wasn't properly drawn by the engineers and now instead of being 20 feet away, it's less than a foot away.

Now as I understand it, the eaves have been removed because that was a problem that had to be resolved and they were taken down and we don't have an encroachment there. We are still close to the edge. Now couple of points came up where the building department was concerned. As Mr. Evans correctly states, they had a setback problem, what they have is a fire proximity problem. And as I understand it, he's correct in saying there's two possible solutions. One's a waiver and one's a tear down. I think there's a third. You add a certain amount of gyp board or sheet rock to increase the fire resistance, I believe if the Board were to look at the notice of violation of the City, that was their concern. With the proximity that we've got, the average gyp board isn't thick enough. It doesn't give you exact time of 1 or 2 hour of fire resistance, but if additional gyp board were added, I understand from the Building Department, that would resolve that problem and that they are willing to defer to how close the house is aside from the fire problem to this board. So if this board decides that is discretion under the unique circumstances, that a house as built with distance from the house to the boundary is okay, we can then go back and resolve the fire problem with the City. I would also point out to the Board, you can see in the picture, we have a space from the side of the house, here to this fence, the existing chain link fence. This space is the only flat level area of the Bishop Estate Property adjacent to the property. Immediately past the chain link fence, it falls off. It's one of the things we've pointed out in our correspondence. It is virtually impossible to conceive any way that anybody would build anything in this space here. So it's not a question of us being close to some future building that Bishop Estate would want to put up. So we don't think the setback exemption here would be a problem.

That is why we have asked this Board, Commissioner Himeno has pointed out that one of our letters to the Board we've said, well, if redrawing the boundaries is going to lose non-conforming use, what about an easement. Our understanding from talking to members of the staff, was that would be a problem too. So what we've asked for the Board to do, and what I understand with the imposed conditions, that staff is approved and suggested recommendation for approval. Is approve it as it exists. Mr. Evans can correct me if I've misstated that, but that's what I understand. Staff is saying approve as exists without trying to solve ... or subdivide or trying to add an easement.

Ms. Himeno: If the Board did approve it as it exists, why do you feel it's important to have the condition in there that the applicant would waive his non-conforming use.

Mr. Evans: Because the petition for reconsideration and the amendment is for property consolidation and resubdivision. On page 1 we're reacting to what they asked us for specifically. They specifically asked us for a property consolidation, and a property resubdivision.

Ms. Himeno: Can they amend their CDUA to subsequent correspondences and contact with the Board in writing and otherwise?

Mr. Evans: They certainly requested it. If they're saying now that the only interest is in an easement, rather than a subdivision.

Mr. Grant: I believe you correctly understood and then you recommended. The recommendation set it out. We're not asking for an easement.

Mr. Evans: Our recommendation stands, you're asking for a resubdivision, we're saying we're willing to give you under this condition, you lose your non-conforming use, that's page 1, your representation. So, now when the question comes up on easement, that's another variable but that's right you're not asking for an easement.

Ms. Himeno: They're asking for in essence a variance from the Board. I don't know believe if that term is legal ramification but our relaxing the 20 foot requirement and saying okay the house can stand as it is. Assuming that they have requested an amendment of the existing CDUA. The existing CDUA was asking for a subdivision. And saying that we don't want a subdivision, we don't want an easement, we want to amend our original CDUA and ask the Board to approve the house as it stands and waive the setback requirement, can they do that? Can they amend their original CDUA by an after-the-fact correspondence with the Board, saying, "Hey, look, we don't want to subdivide any more but we want the Board to approve the house as it stands?"

Mr. Evans: I think they can amend their CDUA. Now what that does relative to the non-conforming use question, I'm not sure there.

Ms. Himeno: Cause if they're no longer asking for a subdivision, which trigger a non-conforming issue, or an easement which would also in staff's opinion trigger a non-conforming issue, simply asking the Board to approve the house as it stands, does a non-conforming issue even come into play?

Mr. Evans: I'm not sure because if I go to the basic purpose of zoning, which is to bring everything into conformance, the basic purpose of zoning is to bring everybody into conformance with the zoning regulation. I come in, I do my house, I have it tear down, I put up a new house, now something was wrong with the new house, now I want you to take care of that, but all at the same time now, I still want to be non-conforming. When, the question in my mind, is if the basic purpose of zoning is to bring someone into conformance, when would they ever come into conformance. So I don't know the answer to your question. One thing that could help me, perhaps our attorney general could say, we had a tear down, had a house, we tore it down, we built another house, we built this other house that wasn't the way we represented it was going to be built and if our attorney general says we still keep non-conforming, that's the answer.

**Executive
Session**

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

Mr. Grant: Mr. Chairman, before you do that, one point to consider when you sit down with counsel and that is, as Mr. Evans has pointed out, all those facts

are correct but the Board did approve construction on that house on that property although not in that exact site, did not require waiver of nonconformance use at that time. So that's one thing I'm asking you to consider.

Mr. Zoltan Rudolic, excuse me before the Board goes into Executive session, the owners of the adjacent property have come and asked me to make a statement to the Board, so that you folks are aware of all the facts involved in this matter, before the decision is made. I believe the owners had submitted some documents to you regarding this property and construction.

Chairperson Paty: We are going to clarify a legal issue and will come back and bring everybody involved forward before we do any decision voting.

12:20 pm - 12:45 pm

Chairperson Paty called the regular meeting back to order.

Mr. Grant: There was a fine imposed by the Board and it has been paid. The fines that are recommend here have just been imposed so it would be clear that they have not been paid. Another housekeeping item that came up in the context with Bishop Estate is the fence, the letter that they submitted, they want that fence removed and as you can see, it's entirely on Bishop Estate's property. They didn't put it there, Mr. Reeser didn't put it there and we're not sure who did, some predecessor. Is the Board inclined to give advisory opinion so to speak, would you require a CDUA to remove that if you were so inclined, given potential impact upon erosion control, or safety on the edge of the property.

Mr. Evans: We would not require a CDUA to remove it insofar that it's a fence that exists. If it's determined that the fence came into existence subsequent to our administrative rules, we would require an after-the-fact CDUA to retain the fence. Bishop Estate would have to sign off as the landowner to retain the fence as an after-the-fact fence.

Mr. Reeser: There are couple things that I think I really need to clarify and forgive me if it's repetitive. As far as how they got here, when we tore down the old house the last CDUA, my agent had requested that I be allowed to build the new house on the existing foundation of the old house. We built the new house exactly on top of the thirty year old foundation, reinforced of course. We did not relocate the .. the problem with the boundary line came after we had built the house. We did not build the house in a different location, we testified that we were going to. That's one thing. The other clarification is, there was a question of the eaves encroaching onto the adjacent property and that has, the eaves have been removed and I have certification from the surveyor stating that there is no encroachment on Bishop Estate land or the adjacent land at all and that the eaves have been removed. He continued to explain the boundary of the property pointing to the photo and drawings on the wall.

Essentially the land that Bishop Estate owns would unlikely have a structure built on it because the width is about 20 feet wide and behind the vegetation is a sharply rising cliff of lava rock, inaccessible and approximately 2 feet outside the fence line is a sharp drop or cliff that goes almost straight down.

He said that he had another report from an architect and engineer regarding the importance of the fence. He then read from the letter which said that "We understand that the fence is not on your property but on land that is owned by Bishop Estate. Bishop Estate has the right to remove the fence, however we recommend that the fence unless some better run-off control measures are planned be retained for the following reasons:

1. It currently directs the majority of run-off water so that it does not flow over the bank and cause erosion of the slope, which is exactly what we're trying to do with conservation land, I believe.
2. It also provides for the safety of the residence of the house and surrounding neighbors.

What he's trying to say is, if you remove the fence you could walk right off the cliff and have that consequences.

The fence has been there many years even before I bought the property four years ago and I did not build the fence. It's a very important fence and was put there for obvious reasons.

Mr. Zoltan Rudolic said that he represented the landowners who were presently in Japan. He was the previous owner of the house, the property that Mr. Reeser has, he sold it to him in 1988 or 1989. He said that he was also the owner of the property that he sold to the Nakagawas. They have authorized him to come here and state their case as their was a death in the family that they have gone back to Japan.

Mr. Rudolic: I don't know whether the Board has documents that were submitted by D&S Drafting and a number of other people who should be quite clear as to who was responsible for the survey construction. I don't know what the Board's decision is going to be regarding this property. I think the staff at least has some responsibility to the Nagakawas and the owners of 3105 Huelani Place because of the documents that were submitted and our contention is that the staff did not check out exactly where the survey lines were and there was a survey done on the property in 1986 when I purchased it. Those surveys were handed over to Mr. Reeser so he knew exactly where the property lines were. We have no objection, you folks legalizing Mr. Reeser's house, but we do have objection to the fact that you are not requiring him to do some sort of work on the driveway. We've already had one major accident at least, my car overturned because of the damaged driveway, I ended up in the hospital and they had to sew one of my fingers back on. The driveway is so badly damaged that Mr. Henry from your department is unwilling to drive his car up there. Now they continually have open houses and the insurance company is cancelling all liability insurance on 3105 Huelani Place in which Mr. Reeser has an access over. Now I hate to see Mr. Reeser bankrupt and that's not the intention here. Our intention is because, the staff was lax in some aspect of investigating, I believe you folks require a certified survey which was never submitted. It's also stated in those documents that you folks have, that David Mirafior specifically required Mr. Reeser to give him a certified survey, a recent survey and Mr. Reeser also pointed out to Mr. Mirafior that he knew exactly where the property lines were when Mr. Mirafior came up to inspect prior to putting the plans together. So there's a misrepresentation here and as I say,

that I think if you don't legalize his house he may have some serious financial problems. If you're not going to go the route of buying the Bishop Estate land, he's now going to have to spend \$114,000.00 to acquire that, maybe perhaps some of that money he's going to spend on Bishop Estate land. Should he be required to spend on fixing the driveway. As it stands now, there are a number of people being named in the lawsuit. You told us, six months ago, whenever it was that it's a civil matter and you folks don't want to get involved in it. We tried to, the owners tried to serve him, Mr. Reeser in Seattle with the subpoena to appear or at least answer. He avoided us, we thought he would not pick up the registered letter was sent back here. Now, if that's an indication of someone trying to work things out, I just don't get it. Now, there's also another two individuals down the road from his property, a Mr. Yamashiro and I believe a Mr. Yee, whose property he also damaged and he asked me to also bring that up. He also promised to fix their property which was not done so. Now if the Board or if the staff would have investigated where this house was going to go, they would never have given him a permit to build the two-story house or at least not on the location. And I think what you need to do, I asked the Board to do this before, is to investigate. Take a boring as to where that slab is, that slab is extended at least 3 to 4 feet from of where the old slab was. I've asked you folks to assist the owners of this before. Our legal bills are probably up to \$10,000.00 so far and it's going to be much, much higher. Now I, we feel that the Board has some obligation to the adjacent landowners at this point. As far as the fence, if you will look at the fence that was put up sometime in 1982 or 1983 when Rick Jordan owned the property. The property line, I believe goes right through here (pointing to drawing on wall.) barely misses the corner of that property. When I sold it to Mr. Reeser, he was informed as to where the property line was. Now you folks have letters from David Miraflor. Have you folks gone through that at all?

Mr. Yuen: Addressing Mr. Rudolic, "When you sold him the property, you had a disclosure statement attached to your DROA?"

Mr. Rudolic: There were no disclosure statements required at that time. All DROA's have disclosure statements to them now. Patricia Choi of Patricia Choi Inc. was the one that got the survey and the survey was done by R. M. Towill, I believe. And I believe we also sent you folks a copy of the survey so you have it on file somewhere. The thing that I don't understand is, and also David Miraflor, you folks also, supposed to have those letters in your files that said that specifically told him that he was not going to do a survey. The survey was supposed to be done by Mr. Reeser. So, how could he make a statement in the application that his engineers are the ones that made the mistake, when he himself took this particular plot plan, right here and submitted it to David Miraflor and Mr. Toth. Now I've had D&S Drafting do work for me before and it's an automatic stamp, as soon as you take a plot plan into them, they stamp it and that's it. There's no investigation on their part whatsoever. Now what Mr. Toth said that, he did not do any study of the lot layout, the only thing that he did is he put the stamp onto his structural plans.

Mr. Yuen: When you sold the property, did you tell Mr. Reeser that the house was 3 or 4 feet from the property boundary?

Mr. Rudolic: Actually the house was within the setback requirements.

Mr. Yuen: Well, you said the slab was extended about 3 or 4 feet.

Mr. Rudolic: Mr. Reeser extended the slab about 3 or 4 feet.

Mr. Yuen: So before he extended the slab about 3 or 4 feet, it was still, now it's one foot, so then it was 4 feet from the property boundary.

Mr. Rudolic: I'm willing to bet, if you go there, you take coring samples of that property and it will tell you where the old slab was and where the new slab is.

Mr. Yuen: No, he's showing that he did extend the slab 3 or 4 feet, I think that's the shaded part of ...

Mr. Rudolic: Oh wait, he just made a statement here earlier saying that he put the old house on the existing slab.

Mr. Yuen: No, he said that they did build the house on the existing slab and they did extend in those shaded areas 3 to 4 feet, so they did come closer to this corner. My question, so if they only extended 3 or 4 feet than before, the old house was only 4 feet from the ..

Mr. Rudolic: No, the old house was within the 5 foot setback. I believe on the side yards is it 5 foot setback, I believe so.

Mr. Yuen: Well, there's no setback requirement on this property because it's in conservation district, I'm just asking ...

Mr. Rudolic: I'm sorry I can't give you an answer, all I know is that the house that was on there was within legal boundaries. Again, I want to stress this that one of the conditions you need to put on there is for Mr. Reeser to take care of his obligation which letters he signed in front of the neighborhood justice system for the Justice Board and also the Manoa Neighborhood Board saying that, and you also have copies of those documents, saying that he is responsible for the driveway and he will take care of it. So that has not been done.

Chairperson Paty asked Mr. Rudolic if he felt that matter of the driveway repair is germane to the application here.

Mr. Rudolic: Absolutely, absolutely. Now I think it's to the benefit of Mr. Reeser as well as the Nakagawas that an agreeable amount be established prior to him getting his approval. I don't think anyone's trying to bankrupt Mr. Reeser, but there were serious misrepresentation when the application was put in. No one up to this point has addressed that. Mr. Evans has not addressed that. Obviously those documents were there. Now, the only thing we have put in, we have put in for an emergency application there to put a chain across the driveway, because the insurance is no longer in effect for liability and people continue coming up and guess who's responsible for that. It's certainly not Mr. Reeser, because if another accident is going to occur, it's going to happen on 3105 Huelani Place and not 3101.

Chairperson Paty asked Mr. Evans if he felt this was pertinent to the issue.

Mr. Evans: Mr. Chairman, Commissioners, if you will recall in my mind, I specifically addressed this. If you will recall at the last board meeting this specific question came up and in my addressing it to the board, my indication was that this was a matter that was between neighbors and at that point in time, my representation to the board was that particular issue was not a part of this CDUA for a proposed subdivision or a part of the issue before us. So please correct me in my mind I did entertain the question and did address it in public.

Mr. Rudolic: Now I don't believe that's what we're talking about, I think my statement was, that today you have not addressed the issue in front of this board regarding the false filing of documents with DLNR. How do we address that issue? Is the board willing to take some time to find out what the true facts to this application is? What I'm saying is those documents that were submitted and there are plenty of conditions that you put to his application, saying that if any misrepresentation regarding this application, this permit is null and void.

Mr. Evans: Commissioners, in addressing the issue the last time, before the board, I had indicated to you that as I didn't feel that it was a matter properly before this body, it was a matter probably before the courts and that would be the appropriate body to delve in those issues. There's been nothing that's transpired here between the last public meeting we had on this where I did address the issue in that fashion and today, today's public meeting, in my mind, view that matter is still a matter that is not properly before this body but rather is one that is properly addressed before the courts.

Chairperson Paty: Do I understand the matter is already under litigation?

Mr. Evans: Yes

Mr. Rudolic: We are in litigation. A lawsuit has been filed regarding the driveway. The matter that we're talking about now is the fact that Mr. Reeser filed false documents. In order for him to obtain the building permits, he filed false documents with you folks. Now, as I pointed out the last meeting ...

Ms. Himeno: What specifically are you talking about?

Mr. Rudolic: I'm specifically talking about the plot plan. If Mr. Reeser originally submitted this (pointing to the drawing on the board) would the Board or would his staff, Mr. Ed Henry's staff given him the permit to build the two-story house there. You folks have always followed even though you're saying the City and County has no jurisdiction over or on Conservation Land. You've always followed whatever the City and County building requirements have been.

Ms. Himeno: So you're saying, at the time he submitted the plans that show, the plan down there, that he knew that was incorrect?

Mr. Rudolic: Absolutely, this right here, (pointing to board again) this document right here was submitted, that's what he go his permit on and the thing that I don't understand is why is that not in front of the board here. He submitted all of those.

Ms. Himeno: On what do you base that he knew that was an incorrect plan that he submitted?

Mr. Rudolic: Well, he's blaming his engineers that they made a mistake. Do you understand that so far. It's in the application, he went in after the fact, after he built the house, after there was problems with the damaged driveway and such, I guess, that's when the complaint was made, that's when the owners came down here and they inspected his plans and someone discovered it, hey, wait a minute, this house doesn't lay on the property as it's submitted right here. So further investigation was done and we told you the last time that this was not done properly.

Ms. Himeno: My question is upon what do you base the assertion that when he submitted those plans that he knew they were incorrect.

Mr. Rudolic: Okay, in his application to make this thing legal, there are couple statements in there that saying that the property was incorrectly surveyed. Well, who in the world surveyed it? Does Mr. Reeser have a certified survey? If he knew where the property line was, and he's saying that he knew where the property line was because the survey was done, that's what I'm basing my conclusion on and then let me pull this letter out.

Ms. Himeno: I think he said that there was no survey done.

Mr. Rudolic: Yes there was. There was a survey that was done in 1986 and Mr. Reeser has copies of those surveys. When I sold him the house all those things were turned over to him. He was specifically told that this property, everything on the left side of the fence is Bishop Estate land. As a matter of fact, there was originally a hot tub that was located right here (pointing to drawing) which was torn down which was also Bishop Estate land.

Ms. Himeno: So when you sold him the house, you gave him a correct survey. (Mr. Rudolic, "That's correct.") That shows that this was incorrect. (Mr. Rudolic, "That's correct.") And you have a copy of that survey?

Mr. Rudolic: I don't have a copy of that survey but he also knew where the pins were located. So he knew exactly where that was. What I'm suggesting here, is not to tear down Mr. Reeser's house, but I'm trying to avoid lengthy litigation here, tremendous amount of expense and part of that blame or responsibility belongs with the State because you folks did not go out and certify or did not check where the property lines were. And you specifically, you are .. it says in there that you need a survey.

Mr. Yuen: Wait now, how did his locating the house in the wrong place, building the house in the wrong place affect your problem with the driveway.

Mr. Rudolic: Well, if you folks have gone out there, inspected the property, he does not conform to the setback requirements. You would not have given him your permit to do a two-story house. He could have rebuilt the original house. Do you understand, because he does not ..

Chairperson Paty: (Interrupted) I don't think that was his question.

Mr. Rudolic: What was your question then?

Mr. Yuen: Your problem is your driveway got wrecked. How does this have

anything to do with your driveway getting wrecked?

Mr. Rudolic: What do you mean?

Mr. Yuen: Well, if he had gotten a permit, suppose he had gotten a permit to build the house on the right place, would he still have wrecked your driveway?

Mr. Rudolic: No he would not have wrecked the driveway because cement trucks would not have come up there. Cement trucks came up and I presume you know how large a cement truck is and how much it weighs when it's loaded down with cement. Now Mr. Henry has been up there and there's no way this driveway can support a cement truck on that driveway.

Mr. Yuen: He could have built a house, he could have built any kind of house on the lot.

Mr. Rudolic: You don't get it, do you? There was no need for the amount of cement that they trucked up there to build a one-story house. The existing slab was already there. They didn't need to pour anymore slab, they could have rebuilt the existing print of the house.

Mr. Yuen: They could also have built, instead of extending the house on the side that he did, he could have extended it on the other side.

Mr. Rudolic: On which side? With the sheer cliff right there? As you can see, if you folks would look at the plans properly, you'll see that this is a sheer cliff right here, so he couldn't move the house back any further. The problem with this is that this plan is completely obscure. When this was submitted, you folks did not go out and did not check the plan.

Mr. Arisumi asked to whom was he referring to when he said, "you folks".

Mr. Rudolic responded, "Staff, staff is responsible. He then apologized for the mistake."

Mr. Arisumi accepted his apology and said in clarification that they did not go on a site inspection of every project that comes before them.

Mr. Arisumi: Mr. Chairman, I think the matter that this gentleman is bringing before us is a matter that should go before the court and not before this board.

Ms. Himeno's question to Mr. Reeser: Did you receive a copy of the survey of the property? At the time it was sold or any other time?

Mr. Reeser: No I did not.

Ms. Himeno: Were you ever aware that a survey had been done in '86 or any other time?

Mr. Reeser: I was not aware that any survey nor was there any disclosure statement given by Mr. Rudolic.

Ms. Himeno: Did he ever tell you that the land right there was owned by

Bishop Estate and how close it was to the house?

Mr. Reeser: 'Yes' to the first part and 'No' to the second part. Mr. Rudolich pointed out the boundary corners, the tall tree at the top, a pin somewhere down there in the jungle and a pin somewhere up there and Mr. Henry would attest to the fact that it's up in the hills somewhere, and we never walked the property. He pointed to the three points and that's the basis of where I thought the property line was. No survey was given to me, no disclosure statement.

Ms. Himeno: Mr. Chairman, I'd like to make a couple of statements first and make my motion. First of all I agree with Board member Arisumi that your concerns are, I don't think properly before the Board. I understand your point and I understand where you're coming from but I also understand your frustration that you have to incur legal fees to get a remedy. But, I think the flip side of that would be if the Board undertook that job, to make that determination we would have to have a full basically court hearing on the issue and you know we may decide that Mr. Reeser's right and you're wrong, but I don't think it's our place to go through that kind of dispute. I think it's Circuit Court's place and you have properly brought that before the court's attention. I don't think we're at liberty to undertake that concern, notwithstanding your reservations.

I think the issue before us right now is Mr. Reeser's property and the setback problem that he faces. I think there's a real concern if we approve the setback of the house as it stands now, that this may not encourage, but may send the message to others that, 'hey, we can build a property line or a setback line and come in after the fact, get approved and the Board's not going to make us tear down the house because, and we can get away with it.' I'm very concerned about that, principal concern to me. Reasons to make the motion is that 1) I accept your statement that you did not know about this problem at the time your new house was constructed and couple of things, 2) that your house went basically into the same footprint, granted there was some extension at this point, basically it was the same footprint of the house, 3) that because of the drop-off and 20 foot wide strip on the Bishop Estate property, it is very unlikely that anyone will build there, I don't think the Bishop Estate will and also the inaccessibility of that property will also leave some conclusion there that no one will ever build there. Because of all of these very unique circumstances in this case,

MOTION Ms. Himeno's motion:

- 1) Relative to the violation: \$500 fine for the violation and \$750 fine to cover administrative costs.
- 2) Relative to the land use: Approve certification of residence at the existing location without subdivision on the existing lot. Because non-conforming would not be an issue now, Condition No. 3 on page 4 can be deleted.

Motion was seconded by Mr. Yuen.

Mr. Rudolic addressed the Board: I presume the Board has approved Mr. Reeser's house. I believe that Mr. Evans did not present to the Board the documents, and I also presume now that the Board is not going to take any action or investigation whether the documents were knowingly, false documents submitted to DLNR in order to obtain the deferments. Even though this is pointed out to you folks now, you are still going to approve this application.

That's all I wanted to know, congratulations, Rick. The other thing is and I believe I'm allowed an administrative case, that is I'm requesting a contested case.

Mr. Evans: I can point out to the Board that this issue before the Board as indicated on page one was a subdivision. Whenever the Board has a subdivision, we have a public hearing. Now, my understanding under our administrative rules, whenever we have a public hearing, the request for a contested case must be made by the end of the public hearing, otherwise it is not considered timely. So while the request, and we should entertain the request from the gentleman, we will be sending the request over to our Attorney General for their review.

ACTION Chairperson called for any further discussion. There being no further discussion, called for the question and motion carried.

ITEM E-1 REQUEST TO USE THE OLD KONA AIRPORT'S EVENTS PAVILION AND ADJACENT AREA FOR A CAR SHOW

During Mr. Nagata's presentation he informed the Board that the applicant had also requested that he be allowed to set up a small Pepsi Booth for sale of refreshments and maybe plate lunches because the length of the show. There would not be any sale of the automobiles on site.

Discussion followed on the use of the pavilion, limits on number of days of usage and rental of area.

ACTION Mr. Yuen moved for approval as amended by staff, seconded by Mr. Arisumi motion carried.

ITEM E-2 APPROVAL OF GRANT-IN-AID FOR THE HUI O KANANI O KAHANA, OAHU

ACTION Unanimously approved as submitted. (Arisumi/Yim)

ITEM F-12 HOUSING FINANCE AND DEVELOPMENT CORPORATION'S REQUEST FOR A RIGHT-OF-ENTRY TO STATE LAND AT WAHIKULI, LAHAINA, MAUI, TAX MAP KEY 4-5-21:POR. 3

Ms. Himeno requested to be excused because of a conflict. Chairperson so noted.

After Mr. Young's presentation of Item F-12, Mr. Neal Wu of the Housing Finance and Development Corporation explained the purpose of the right of entry was to complete their survey and topographic work that the consultant started in 1990. They are at a point right now where he is going to move in the upper portion of this project and he needs to solidify the metes and bounds and this should take place in the next six months or sooner.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM B-1 **REQUEST FOR APPROVAL TO AMEND/EXTEND AGREEMENTS WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) DURING FY 1992-1993**

ACTION Unanimously approved as submitted. (Yim/Himeno)

ITEM C-1 **REQUEST APPROVAL OF CONTRACT WITH WILL AND JUDY HANCOCK TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM**

MOTION Ms. Himeno moved for approval of Item C-1.

Mr. Yuen questioned the plan shown. The plan shows they have money for a nursery but the budget for planting trees appears like they're buying all the trees.

Mr. Buck explained that they will be growing some trees and some they will be getting from the Kamuela State Tree Nursery. They plan to do some of the more rare and endangered species.

ACTION Motion was seconded by Mr. Yuen and carried unanimously.

ITEM C-2 **REQUEST APPROVAL OF CONTRACT WITH MOLOKAI RANCH, LIMITED TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM**

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM D-1 **APPROVAL TO AWARD CONTRACT - JOB NO. 3-9W-H1, KUALAPUU RESERVOIR IMPROVEMENTS, MOLOKAI IRRIGATION SYSTEM, MOLOKAI**

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM E-1 See Page 27 for Action.

ITEM E-2 See Page 27 for Action.

ITEM E-3 **APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE A MASTER PLAN AND ENVIRONMENTAL IMPACT STATEMENT FOR HAENA STATE PARK, KAUAI**

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM F-1-a See Page 2 for action.

ITEM F-2 **COUNTY OF HAWAII REQUEST FOR RIGHT-OF-ENTRY TO A PORTION OF THE GOVERNMENT LANDS SITUATE AT PUUANAHULU, NORTH KONA, HAWAII, TAX MAP KEY 7-1-03:1**

After his presentation of the County of Hawaii's request for a right-of-entry to a portion of the government lands situate at Puuanahulu, North Kona, Mr. Young requested to make an amendment because of the concern of the dryness of the area. Amendment to add under "RECOMMENDATION" the following condition that "The County of Hawaii shall prior to entry, work out a fire protection program with the Hawaii Division of Forestry and Wildlife Branch

Manager, Mr. Charles Wakida."

ACTION Unanimously approved as amended. (Yuen/Himeno)

ITEM F-3 **REQUEST AUTHORIZATION TO SELL A PASTURE LEASE AT PUBLIC AUCTION, KAUPU, HANA, MAUI, TAX MAP KEY 1-8-01:3**

Mr. Young requested an amendment on Page 2, under "RECOMMENDED LEASE TERM" last sentence should be revised to read "Lease term to commence from the date of sale if the present occupant is the successful bidder, or thirty (30) days after the date of sale if the successful bidder is not the present occupant."

ACTION Unanimously approved as amended. (Arisumi/Himeno)

ITEM F-4 **AMENDMENT TO PRIOR BOARD ACTION OF JANUARY 11, 1991 (AGENDA ITEM F-7) AUTHORIZING REALIGNMENT OF EASEMENT ON LAND COURT APPLICATION NO. 1582, KALUAHOLE, HONOLULU, OAHU, TAX MAP KEY 3-1-37:6**

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM F-5 **CANCELLATION OF PRIOR BOARD ACTION OF NOVEMBER 22, 1991 (AGENDA ITEM F-1-e) REGARDING CONSENT TO ASSIGNMENT OF GRANT OF NON-EXCLUSIVE EASEMENT (LAND OFFICE DEED NO. S-27,784) COVERING A SEAWALL GROIN AT KUALOA, KOOLAUPOKO, OAHU, TAX MAP KEY 4-9-08:SEAWARD OF 5**

ACTION Unanimously approved as submitted. (Yim/Apaka)

ITEM F-6 **DEPARTMENT OF HEALTH REQUESTS APPROVAL TO LEASE WITH WARD COURT DEVELOPMENT COMPANY AT 350 WARD AVENUE, HONOLULU, OAHU**

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM F-7 **STAFF RECOMMENDATION TO APPROVE SUPPLEMENTAL AGREEMENT NO. 2 TO EXTEND ARMY CONTRACT NO. DACA84-3-83-2 (LAND OFFICE DEED NO. S-24,413) COVERING USE OF WELL NO. 2803-05 AT KUNIA, OAHU**

ACTION Unanimously approved as submitted. (Himeno/Yim)

ITEM F-8 **AUTHORIZATION TO AMEND REVOCABLE PERMIT NO. S-6738 AND AUTHORIZATION TO ISSUE REVOCABLE PERMIT TO HAWAIIAN ELECTRIC COMPANY, KEEHI LAGOON, MOANALUA, OAHU, TAX MAP KEY 1-1-03:POR. 3**

Ms. Himeno asked to be excused because of a conflict. Chairperson so noted.

ACTION Approved as submitted. (Yim/Apaka)

REQUEST TO APPROVE AMENDMENT TO LEASE BETWEEN CAMPBELL ESTATE, LESSOR, AND STATE OF HAWAII, LESSEE, KAHUKU AGRICULTURAL PARK, KAHUKU, KOOLAULOA, OAHU, TAX MAP KEY 5-6-05:9; 5-6-06:POR. 19, AND 5-6-08:POR. 2

ITEM F-9

ACTION Unanimously approved as submitted. (Himeno/Yim)

ITEM F-10 See Page 15 for Action.

STAFF REQUEST FOR AUTHORIZATION OF INTENT TO SELL GENERAL AGRICULTURAL LEASE AT PUBLIC AUCTION. LOT 56-B, ILI OF WAIAHOLE, WAIMEA VALLEY, WAIMEA, KAUAI, TAX MAP KEY 1-5-03:1

ITEM F-11

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM F-12 See Page 27 for Action.

ITEM F-13 See Page 3 for Action.

ITEM H-1 Deferred. See Page 5.

ITEM H-2 See Page 11 for Action.

ITEM H-3 Deferred. See Page 14.

ITEM H-4 See Page 5 for Action.

ITEM H-5 See Page 5 for Action.

ITEM H-6 See Pages 26 & 27 for Action.

ITEM H-7 Deferred. See page 8.

ITEM H-8 See Page 4 for Action.

ADDED APPOINTMENT OF VOLUNTEER CONSERVATION AND RESOURCES ENFORCEMENT OFFICER, ISLAND OF HAWAII

ITEM I-1

ACTION Unanimously approved as submitted. (Yuen/Yim)

LEASE - CONCESSION, OPERATION OF BAGGAGE CART DISPENSING SERVICE, OAHU, MAUI, KAUAI (SMARTE CARTE, INC.)

ITEM J-1

ACTION Unanimously approved as submitted. (Himeno/Apaka)

AMENDMENT NO. 20 TO LEASE NO. DOT-A-78-2, HONOLULU INTERNATIONAL AIRPORT, OAHU (MARRIOTT CORPORATION)

ITEM J-2

ACTION Unanimously approved as submitted. (Himeno/Apaka)

AUTOMOTIVE SERVICE STATION LEASE, KEAHOLE AIRPORT, HAWAII

ITEM J-3

ACTION Unanimously approved as submitted. (Yuen/Yim)

ITEM J-4 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4831, 4832 AND 4847, AIRPORTS DIVISION, LIH, HNL

ACTION Unanimously approved as submitted. (Himeno/Yim)

ITEM J-5 RENEWAL OF REVOCABLE PERMITS 0932, ETC., AIRPORTS DIVISION, HNL, KOA, LIH, OGG, HDH, MKK, ITO, HNM, LNY

Mr. Garcia informed the Board that he had received a request to defer the request for renewal of R.P.'s 4713 and 4752 to the next Maui meeting.

ACTION Unanimously approved as amended. (Arisumi/Apaka)

ITEM J-6 CONSTRUCTION RIGHT-OF-ENTRY, NAWILIWILI HARBOR, KAUAI (MATSON TERMINALS, INC.)

Ms. Himeno requested to be excused because of a conflict. Chairperson so noted.

ACTION Approved as submitted. (Apaka/Arisumi)

ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HILO HARBOR, HAWAII (HAWAIIAN CEMENT, A HAWAII GENERAL PARTNERSHIP)

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ADJOURNMENT The meeting was adjourned at 2:00 p.m.

Respectfully submitted,


Dorothy Chun
Secretary

APPROVED



WILLIAM W. PATY, Chairperson

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