

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

**DATE:** FRIDAY, MAY 22, 1992  
**TIME:** 9:00 A.M.  
**PLACE:** BOARD ROOM, 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  
Mr. Herbert Apaka  
Mr. Christopher Yuen  
Ms. Sharon Himeno  
Mr. T. C. Yim  
Mr. William W. Paty

**STAFF:** Mr. Don Hibbard  
Mr. Linford Chang  
Mr. Ralston Nagata  
Mr. Mason Young  
Mr. Roger Evans  
Ms. Anne Furuuchi  
Ms. Geraldine M. Besse

**OTHERS:** Mr. Randall Young, Deputy Attorney General  
Mr. Peter Garcia, Dept. of Transportation  
Ms. Susan Matsuura (Item E-1)  
Mr. Al Rogers, Mr. Wyatt George, Mr. Ron Johnson, Mrs. Adela Johnson, Mr. Kaipo Gorai, Mr. Stewart Vierra, Carl Christensen, Esq., Ms. Ululani Beirne, Mrs. Beatrice Soga, Mrs. Elizabeth Kahala, Mr. Ben Schaefer (Item E-2)  
Mr. Robert Henriques (Item F-1-c)  
Mr. Ronald P. Weidenbach (Item F-1-d)  
David Z. Arakawa, Esq., Mr. Ron Hedani, Williamson B.C. Chang, Esq., Mr. Charles F. Ice, Mr. DeGray Vanderbilt (Item F-8)  
Mrs. Bonnie Lee Echiberi and Mr. Echiberi (Item F-14)  
Mr. John White (Item F-16)  
Benjamin Matsubara, Esq., Ms. Barbara "Hoppy" Smith and Ms. Molly Cody (Item H-2)  
Mr. Don Ballard (Item J-2)

**MINUTES**

The minutes of the meeting of May 8, 1992, were unanimously approved as submitted (Apaka/Himeno).

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

**ITEM F-1(d) ISSUANCE OF REVOCABLE PERMIT TO RONALD P. WEIDENBACH, GOVERNMENT LAND, BEING THE FORMER DILLINGHAM QUARRY SITE SITUATE AT KAENA, WAIALUA, OAHU, TAX MAP KEY 6-9-01:PORS. OF 3 AND 33**

Mr. Young asked for two amendments to the revocable permit if approved: (1) the conditions under the CDUA be incorporated under the recommendations; and (2) with respect to the CDUA a farm operations-caretaker building, as well as a hatchery office-caretaker building, were permitted and should be included in the permit.

Mr. Yim asked that Condition No. 6 be deleted as the project had been reviewed and approved by the Division of Historic Preservation.

**ACTION** Unanimously approved as amended (Yim/Yuen).

**ITEM H-2: EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT OA-2051: SINGLE FAMILY RESIDENCE AT LANIKAI, OAHU, TAX MAP KEY 4-3-2:01, APPLICANT: RALPH & BETTY ENGLESTAD; AGENT: BENJAMIN MATSUBARA**

Mr. Evans explained that the item was for a time extension by the Englestads, applicants, for construction of their residence on private land in Lanikai in Limited Subzone, the parcel consisting of approximately 76 acres. The request for extension of time was deferred from the April 22, 1992, meeting because a verbal request for contested case hearing was made at that time. Upon completion of the presentation on April 22, 1992, Mr. Evans stated that when members of the public spoke, a request for a contested case hearing was made. He stated it was proper under the rules for requests for contested case hearings. The public, he stated, were aware of the rules and the request was properly made at the April 22, 1992, meeting; however, according to the rules, there is a requirement that the verbal request be followed by a written petition within ten days, and that was not submitted by the individual.

Mr. Evans explained that in June of 1987, the original application for a single-family residence was filed. On January of 1988, the Board denied the application, and in March 1989, the First Circuit Court invalidated the Board's decision and ruled that the applicant's CDUA was approved by default. The applicant was subsequently notified of that. Mr. Evans stated that OCEA came before the Board within the 180-day deadline, and the staff's recommendation was to deny the subzone.

It was a two-pronged request: One was to take a portion of the property, which is all in the Limited Subzone, and have a portion of it changed to General; and, two, and if that change was approved then to request a single-family residence. The staff recommended denial of the entire request because they felt it was inappropriate and thought it would be considered "spot-zoning." He stated that at that hearing only five Board members were present. Mr. Ing, who was on the Board at that time, recused himself, which left four Board members. Three of the members voted to sustain the staff recommendation, and one voted against it. As a result, the application was then approved because it did not have the necessary votes to be denied. Mr. Evans recalled that the staff returned to the Board sometime later, at which time, the Board voted and sustained the staff recommendation for denial of

everything. He explained what had transpired between the first appearance before the Board and the second appearance and that the applicant chose to take the matter to the court, which ruled that the second time the Board voted was beyond the 180-day deadline. Therefore, the applicant received his land use as a matter of law, which was the house. Following that the applicant did begin soil and survey testing. Mr. Evans stated that soil and survey testing is a legitimate requirement but the staff position basically was that the court ruled that the applicant did get the house but did not get the change of subzone--that in itself is not a land use, Mr. Evans explained--the house is but the subzone change itself is not. Mr. Evans further explained, "The courts have ruled you get your house but you do not get the change of subzone because that in itself is not a land use. The house is but the subzone change itself is not.

" . . . here you have a house that is effectively in the Limited Subzone. Here comes now our applicant, we said, 'Notwithstanding all the other terms and conditions that we have as standard conditions for any land use are still applicable to you.' So here comes the applicant and he begins to try to comply with all these other standard conditions. One condition is start within a year, one condition is to be done within three years. The issue before us this morning is to be done within three years. Now, the applicant this morning is requesting an extension of no more than 18 months following the receipt of all required permits for completion of the construction of a residence. Now, they indicate that there have been, applicant indicates to us that there have been delays in this action. There have been, for example, a moratorium over in that area from the City and County. The City and County effectively are the people who give out the building permits. He couldn't get a building permit over there. So, we took a look at this now and say--what do we recommend today? We are recommending approval. We felt we had to look at this matter under the guise, if you will, of reasonableness. Reasonableness, in our view, we sort of define, tried to define, what is reasonableness. Here, we got a court, the court order says 'get a house.' Now, if we come to you and say for whatever reasons, 'we don't think you should get your house,' in the staff's view, are we being vindictive? In the staff's view, are we now being arbitrary and capricious? These are the concerns the staff had in its mind, particularly when the arguments that are presented to us, the request for this time extension comes in before the time was up, some of the arguments made by the applicant have no bearing on the applicant. There are legitimately related to actions by the City and County relative to the moratorium. We feel that, based upon these kinds of variables that have just been explained to you, that the applicant's request for time extension be allowed, are basically, we're asking that the authority for this extension of time be granted under your rules and practices for procedures, which is Title 13, Chapter 1, not Title 13, Chapter 2, which is your basic conservation rule. We feel that whenever a person or agency has a right or is required to take an action that the Chairperson, the Board or its Chairperson, may for good cause and if permitted before the expiration of the prescribed period, which this did occur, upon application the permit had to be done after the expiration of the specified period; that if there is good cause that the Chairman could actually grant this time extension under the rules. We did not go to the Chairman and ask him to act in a ministerial fashion; rather, we felt that because of the obvious sensitivity within certain segments of the community it was incumbent for us to do whatever we do in the public arena before the public. However, because we are concerned with the basic single-family residence being an action now, granted by the court, that we would be somewhat remiss if we did not consider reasonableness, that certain elements relative to reasonableness could be brought to bear on us as staff, as I've explained, that as such we sit before you this morning with a recommendation that there be an approved extension. Firstly, that the time allowed for actual construction be no longer than 15 months from issuance of the last required permit and, secondly, that the applicant submit copies of all required permits issued for the project to us for our records. With that I'll try to answer any questions you may have of me."

Mr. Evans announced that the applicant as well as some members of the public were present to address the Board.

In response to a question from Mr. Paty concerning the normal practice for extensions of time in CDUA areas, Mr. Evans stated: "We feel it is a requirement that if someone finds themselves in a situation where they find for whatever purpose they cannot comply with the standard conditions or any other additional conditions that the Board may put on a CDUA that there is an obligation on the part of that applicant and the specific obligation is, firstly, timely notice to us and that is that the applicant come in and tell us before that any deadline would happen that, 'I cannot meet the deadline.' If the applicant comes in after the deadline, we don't consider it timely; we perhaps would then require a new application. Here, the application has come in before the three-year deadline, with the knowledge that they could not complete and letting us know they felt they could not complete and asking the Board for an extension. So, procedurally, we feel that we're consistent in terms of substance that would occur before us. What we do is when an application is filed on a timely basis, we then begin to look at the substance. And, in terms of substance, we ask, in terms of staff, is 'OK, you couldn't meet this condition, tell us why?' And they have to come in and then give us the reasons why. And we take a look at the reasons why and we ask ourselves--is this because of negligence on the person's part? Is it because of simply inattentiveness on the person's part? Is there a rational basis why this could not occur? We try to analyze that substance and then based upon that analysis provide you with a recommendation, which is what we've done here. Firstly, we feel the request was made before the time required. Secondly, in terms of substance, we feel that the reasons that were given to us by the applicant for not being able to meet the deadline are rational, are reasonable, and because of, perhaps, among the variables, the moratorium by the City and County of Honolulu somewhat put beyond their control. Because of those kinds of thinking on our part, we felt, at least from the staff perspective, comfortable sitting before you with this recommendation this morning."

Mr. Apaka stated he had a problem with Condition No. 1 which gave the applicant 15 months to complete his project after receipt of the last required permit. He asked whether there was a list of required permits and time-frames for completion for each time-frame. Mr. Evans stated that there is no list per se but a list could be developed. "One of the examples, as an example, one of the specific requirements the applicant has to meet is that the size of the house must be compatible with the surrounding neighborhood. Now the applicant has begun to develop some different sizes. You have heard some discussion of different sizes. What we expect will have to happen is that applicant will have to work with the community, has to work with the staff, your staff, try to come up with some house sizes, bring in the house sizes to the Board. It seems clear from our perspective, and we've so indicated to the applicant that the original size of the house he proposed was simply not compatible with the neighborhood. We've let him know. They know they got to cut down the house size. So they have to work on that problem. They have to come back to DLNR. We, in all likelihood, would want to bring that back to you folks so there is time there. Once that occurs then there's the subsequent grading plans, subsequent landscaping plans, the subsequent building plans, all have to come through us, then they start their process with the City and County. Much more ministerial but nevertheless another process. So this is why it is difficult for us to say--these things can be done within a certain period of time. Applicant asked for 18 months. What we're suggesting--no, we don't want to give the applicant 18 months; we give him 15 but again that is our recommendation. But that's how we developed the recommendation. He's far from out of the woods if you grant him this today."

Mr. Apaka noted that some of the conditions could run together or a single one stretched out for a period of time. Mr. Evans stated, "It could very well be. If you say you have one month and you have, and we're told or our guidance is you go back and meet with the community one time and that meeting will occur within 30 days and the community, they get one shot, then I can start to plug things into a time-frame but the applicant may have to meet with the community more than once, they may have to meet with the staff more than once. When you have kind of ongoing process it becomes very difficult to pin even us down to a time-frame."

Mr. Apaka suggested that some reasonable time-frame could be worked out with the applicant.

Mr. Yuen expressed concern about the same condition, "It seems to me the way it's worded that applicant could wait 20 years to get their building permit and then they come in 15 months after they get their building permit. Then, as long as they complete within 15 months after they get their building permit, the applicant could delay, and we don't like to stretch things out because the conditions may change."

Mr. Evans stated that, "It would seem to me that the applicant would not be as interested in delay if, for example, you say that the applicant has 10 months in order to come in and at the same time you require the applicant to come in with something final and the applicant has to go to the community, and the community is aware that if he doesn't get back in there in 10 months the permit is dead, then the approach from the community who is not satisfied with the project may be to just extend the delay to 10 months to kill the project. So, we're looking at something that's fair for both sides."

Mr. Yuen asked whether there had been similar cases in the past. Mr. Evans stated he couldn't say it was 15 months but his recollection was that they had gone through something similar before but had given an applicant an "x" number of months after they got through all the permit processes. Mr. Yuen wanted to know what the last permit would be. Mr. Evans stated the item could be deferred in order for him to check the CDUA records. Mr. Yuen wanted to also know how the department would know what the last permit was and a set number of months for completion of his project. Mr. Evans stated that they tried to answer that through Condition No. 2.

Mr. Benjamin Matsubara, attorney for applicant, addressed the Board. He stated that, "On April 22nd when we had the public hearing on this request, similar concerns were raised and at that time a solution I thought of offering to alleviate some of the concerns the Board had and the applicant in this situation would just allow the thing to go on for years the way the condition is drafted, I indicated a willingness to provide annual reports to the Board regarding what activities occurred during the year assuming the Board sees fit to grant us the extension. We could file an annual report at the end of each anniversary year period indicating the steps we have taken and if we are aware of the permits that remain to be obtained we could also indicate that during the report. The difficulty, I guess, in setting a specific time-period for us was that there are multiple agencies that have jurisdiction over this project and it's not, it doesn't rest all with the State. There are County requirements that need to be met, which is the building permits, Public Works Department, sewer, etc., and so on, and I have no firm fix on how long that would take but I believe if we report to you annually, provide you a status report of what activities we've gone through, what permits we have obtained and what further permits we need to obtain that may give you some measure of confidence that something is being done and if for any reason you are dissatisfied with the annual status report we provide you I

imagine you could ask me to appear before you and further explain matters which do not meet with your satisfaction. One of the problems, for example, is that the County has indicated that we need to get an SMA permit, a shoreline management permit, and we disagreed with that. We've appealed that decision. We feel there's a single-family dwelling exemption but those are some of the things that also involve which make it difficult for me to stand here and tell you in good faith that we could do it in 'x' period of time so the only way I thought of doing it is at least giving us a reasonable period following receipt of the last permit, we're willing to let you know what we're doing in the interim and if for any reason you feel we have not been diligent in doing what we need to do then I imagine I will be back before you to explain it. If I may be permitted to address some other things . . . ."

Mr. Yuen asked, "Suppose the Board doesn't feel you've been diligent, then what do we do?"

Mr. Matsubara stated, "I imagine as long as I require a permit from you to continue doing what I need to do I would be subject to your supervision and control in fulfilling the conditions attached to the permit, and I think that's a pretty heavy control you have over me in regard to my being able to do what I want to, we're not proceeding in good faith."

Mr. Yuen asked, "You mean the Board could revoke your permit if they, after reviewing the annual report, determine that you weren't diligent in pursuing the project?" Mr. Matsubara answered, "I imagine that the Board would have the authority if the Board felt that the conditions attached to a permit were not being complied with, that would be one of the remedies available to you. I imagine you could issue a 'show cause' to have me appear and explain why I'm not in compliance with your conditions. I would think that the conformance to your requirements would be one of the prerequisites for the continuation of any permit we have from this agency."

"Just some of the other points I wanted to raise in regard to the staff report. If you recall a public hearing was conducted on this April 22nd last month and prior to the conclusion of the public hearing a request was made by counsel for contested case. Now under your rules, a written request stating the basis for which a contested case is being requested needs to be filed with the Board within 10 days. I assume under your normal procedure I would receive a copy of that. I would be permitted then to file objections to that particular request. Since that, since the written request was not filed by the parties requesting the contested case, I didn't address my objections to that but, philosophically, I believe the way the Board administers its CDUA's is that you have multiple public hearings, you have multiple contested case hearings as requested prior to the issuance of the CDUA and I think you are all familiar with the number of cases we've gone through regarding this particular issue. Once the CDUA is issued, however, I believe its the Board's jurisdiction to enforce the permit pursuant to the conditions attached to that permit. It's really a ministerial function where the Board is ensuring the conditions you've imposed upon me are being carried out. I may have caused confusion in this by labelling my request a 'petition' as opposed to a 'motion,' but the format of my request is in terms more of a 'motion' under your rules. 13-1-34 permit me to file my request stating my reason and including a memorandum or an affidavit attached thereto, and if it's viewed more as a motion I don't think we get into the contested case scenario. We have not received any counter proposal by the party requesting the contested case, no reasons why a contested case is required and under the circumstances I think the public hearing has concluded on this issue, the Board would be permitted to act on this particular proceeding. I believe that under 13-1-14, which was cited by staff in its report, the chairman does have the authority and the Board

to grant ministerial requests that are filed with the Board by a CDUA holder in regard to ensuring that your conditions are carried out expeditiously and the way you want. At this point in time since the public hearing has been concluded as of the April 22nd hearing and the request for contested case was denied, which even though was made, I do not think, appropriate under the circumstances, I would request an action on this particular motion."

Ms. Barbara Smith representing Lanikai Association clarified that she had to leave the last meeting on April 22nd early and the representatives present informed her that the request for a contested case was being referred to the AG's office to see if it was appropriate under the circumstances and that a response would come back letting them know. She stated a response was never received; therefore, a written request for a contested case was never submitted. She stated she didn't know how they could submit it anyway since the Board deferred action on the item. She said right now they're in "limbo" and reiterated that they were not informed whether the request was appropriate and there was to be a ruling on the appropriateness of the contested case. Ms. Smith said she was informed by Don Horiuchi that the meeting was scheduled for today and was back on the agenda because the Association had neglected to file a written request for a contested case. She said she was "stymied" and in checking with Mrs. Hodby and Mr. Andy Winer who were present at the April 22nd meeting both were under the impression that a ruling had to be given before the Association submitted a written proposal.

Ms. Smith stated that the Lanikai Association has submitted some very good arguments in opposition to granting the extension. Ms. Smith stated that in his history of the case, Mr. Evans neglected to mention that the applicant and his agent have a history of waiting until the last minute to bring matters to the Board's attention or make a request or withdraw an application. He has done this historically in every case prior to the current one which began in 1987. The one before that, she stated, was on the agenda for the Board to hear and three days before the Board meeting the applicant withdrew the application. Then he submitted the exact same thing, she said, again and there was discrepancy on the 180-day time-frame. "I still have my own personal reservations about that in feeling that the Board and the staff was correct in that it began when the application was complete with the submittal of the fee charged for the public hearing, which would have been August 3rd, rather than 25th of 1987, and, therefore, you would have been in line with hearing it before the end of January; however, Judge Klein did disagree and I don't know how thoroughly that point was argued, but, anyway, Mr. Matsubara or the applicant himself, I don't know who, waited until the very last minute to call to staff's attention that the 180-day time-frame was up on, I think, about December 18th or 20th of 1987, and we were called at 4:30 in the afternoon the day before to say that item was on the agenda. I don't think history speaks well of the applicant acting in a timely manner. I have checked before the last Board meeting here to see if there had been a permit submitted to the City for a single-family house construction and the permit had been sent in a year ago but it has now been taken away. They could not tell me who took it away or where it had gone, it was not in process so the applicant had pulled the permit before, apparently before you had made your decision in December that they had to, you know, relook the size of the house. I believe in December the applicant's agent was asked if they were going to ask for an extension and the answer was that he didn't know at that time. Again, the applicant waited until a month before the time-frame was up, which is legal under your rules and regulations but it is still 'last minute.' So I'm concerned that if you grant an extension of any sort he's going to wait until the last minute to ask for another extension, and we will be carrying the process out for years and years and years, which your rules have now been set up to prevent because, I guess you had tremendous abuse of them 20-30 years ago. I don't know what I can add to what the Association has submitted. I think they have

done very well in presenting arguments. I think there are alternatives. There are practical alternatives for the Englestads to do. That was one thing. No adverse effect on the environment. Well, applicants and their agent say one thing, the community says another so, you know, that has to be looked at carefully. The objections of the subzone, since it's still in Limited, it is still in conflict with them, and the public health, safety and welfare, and I don't see anything in the conditions that help to insure people that they won't have problems once construction began if you grant the permit. I know there are other CDUPs that have had extra conditions put on them to particularly address that for things like falling rocks, landslides, things like that occur in areas where there are steep hillsides. The moratorium which they keep referring to, I had been informed by staff, I'm sorry I do not have the document as to date, time and exactly whom I spoke with, that was moot because if the Department of Land and Natural Resources granted the permit and the approval of the plans the City had no choice but to go along with it so to me that argument that the moratorium held them up had no bearing because if that's the case then he should have been underway and started construction a long time ago. I guess you're just going to have to look at it all and read everything that's been submitted and, hopefully, make a decision that is amicable to everybody, but I do feel that he does have alternatives and they did meet with the community once, they listened to the community's concerns and, to be very honest with you, I don't think they thoroughly addressed them and they have not come back to say, 'this is what we've done.' They have not asked to come back."

Ms. Molly Cody also representing the Lanikai Association stated she was present at the April 22nd meeting when Ms. Himeno said the decision would be deferred until the AG's opinion, and it was very definitely her impression that they would be informed of the AG's opinion as to whether or not the contested case hearing was right and proper. She asked that the Board bear in mind that they are all unpaid volunteers and are not hired by anyone and have to rely on their own resources and the good will of the Board. She said she felt that they should have heard from the Board before their contested case request was summarily "thrown out." "As for a number of the things that Roger Evans discussed here in attempting to be overly fair to the applicant, I believe his recommendations are being extremely unfair to the community in that he has in fact, as Mr. Apaka and Mr. Yuen pointed out, literally is offering them an open-ended deal in which they have an unlimited amount of time should they wish to drag this out, which as Hoppy Smith has pointed out has been their history. This could go on for years and this is patently unfair to this community, which has for many, many, many years and many hearings before you people come to try to protect that hillside and have it developed in a way that would fit in and would be compatible with the community's desires. Remember, you're dealing with thousands of people down below versus the wishes of one man up above. I also would like to say that I feel that their argument and Mr. Evans heavy reliance that the moratorium did not allow them to build and is the cause for this delay is ridiculous. That moratorium was never tested by Mr. Engelstad. They never went to see whether or not it really applied and whether or not they could get their building permits. They didn't go forward. Again, it was just cases of delay, delay, delay, and I would ask you to very seriously to weigh whether or not in being overly fair to the applicant you're being grossly unfair to the Lanikai community."

Mr. Yuen asked Mr. Evans whether there was a pending legal challenge from the applicant to the Board's decision rejecting the building plans. Mr. Matsubara answered in the negative, that they had not taken the Board to court on that.



Mr. Evans stated that regarding the conditions, "As I represented to you earlier, should you grant this today by no means is this applicant out of the woods. He's got to come with zoning plans, how large is the house going to be. There's that aspect to it. Concomitant with the size of the building plans, then there are subsequent grading plans, along with that there are landscaping plans and it would seem to be reasonable and my sense would be reasonable to the applicant as long as these kinds of things are still outstanding on the project there may be opportunities within those vehicles to further address one of the concerns and sensitivities of the community's, to what degree I'm not sure but it seems to me to be some vehicles still outstanding where perhaps the staff could look at some further sensitivity in terms of the community."

Regarding Mr. Yim's query concerning Condition No. 1, Mr. Evans stated that if the applicant could not complete construction in 15 months, the applicant would have to come back before the Board. Mr. Yim asked to amend the Condition to read that, "The time allowed for actual construction will be no longer than 15 months," deleting "from the issuance of the last required permit for the project." Mr. Evans stated that one of two things would happen. "Within 15 months the house is going to be built and completed or that applicant's going to be back in here for another extension explaining to you why."

Mr. Arisumi stated his concern whether the intent was to complete construction within 15 months and did not feel that an individual could start construction, going through all the "red tape" and complete the house in 15 months.

Mr. Evans clarified that his interpretation of the proposed amendment was that the applicant has to be done with the construction in 15 months. Proposed Condition No. 1 would read: The time-frame allowed for completion of actual construction will be no longer than 15 months.

Ms. Himeno asked whether the time-frame might not be an unrealistic time-frame in light of the facts of the case where they are right now, where the applicant could begin and finish construction in 15 months, assuming his plans were approved and brought the house size down and complied with all of that, just the physical fact of completing construction in 15 months, seemed unrealistic. Mr. Evans answered that one of the concerns that's been addressed by the community is that the applicant tends to drag the project out and what would happen here is if the Board says the time for completion of construction is 15 months period. "Now, the applicant's going to do one of two things--he's going to be completed or he's not going to be. In the case where he's not going to be completed, he's going to come back before you and he's going to be able to say, 'And this is what happened in month one, I met with the community. This is what happened in month two, this is what happened in month three,' and then you folks can decide, have some, perhaps, better handle on why is this thing being dragged out and then make a decision at that time accordingly."

Mr. Paty noted that in order to give the applicant more flex time for the permits he could be given 18 months. Mr. Evans stated that the applicant's request was for 18 months, after he obtains all his permits. Mr. Paty stated the extra three months would allow the applicant to address the permit problem.

Mr. Evans stated that the position is that the applicant has already started construction by way of soil work and soil borings and that this was consistent with CDUA requirements because if someone wants to come on the land and do land work and that's all they want to do they are still required to obtain a conservation amendment. That was a land use that has started.

Ms. Himeno stated she had questions she wished to ask counsel and moved for an executive session. The motion was seconded by Mr. Arisumi and unanimously approved. The Board met in executive session from 9:50 a.m. to 10:10 a.m.

Ms. Himeno stated, "I have a concern about the process for a contested case request in writing in this instance and because from the record it appears that there may have been some confusion about what the Lanikai Association was supposed to do as far as submitting a written request for a contested case hearing, what I would like to do is move that we defer this matter, that we give the Lanikai Association ten days from today's hearing to file a written request for a contested case hearing and come within the parameters of our rules and that we refer that then to the AG's office for an opinion as to whether the Lanikai Association has standing to request and participate in a contested case hearing."

Mr. Paty stated he felt the need for a time-frame and asked whether this could be completed by the next meeting. Mr. Evans stated that, "Insofar as Commissioner Himeno has indicated 10 days from today, should the Board sustain as a motion ultimately, what your staff would do is as soon as this is over we would get together with the two public representatives, Ms. Cody and Ms. Smith, and we'll take them into our office and we'll hand them the form this morning and then they could at the maximum have it back within the ten-day requirement period. At that point in time we would be prepared to forward that matter to the Attorney General's Office with the expectation that we would have a ruling back from the Attorney General's Office relative to the viability of such an action and be prepared to come back to you at the next Board meeting, which would be on Oahu."

Mr. Evans went on, that "We would then be guided at the next Board meeting in two aspects. The first aspect will be as we suggest the viability of the contested case hearing and, secondarily, should it come to pass in terms of the process then the substance of what you have before you this morning."

**ACTION** Ms. Himeno moved ". . . to give the Lanikai Association ten days from today's date to file a written request for a contested case hearing and that we defer the matter H-2 until we can get an opinion from the Attorney General's Office as to viability of the request and to defer this matter to the next Board meeting on Oahu." The motion was seconded by Mr. Arisumi and unanimously approved.

**ITEM E-1: REQUEST FOR A ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MOOR AT THE KEALAKEKUA BAY STATE UNDERWATER PARK, KEALAKEKUA-KONA, HAWAII**

Mr. Nagata stated that the three permittees have been operating pursuant to their permit requirements. Mr. Nagata stated that in a sense they have been able to curtail the mooring activities of another commercial tour operator who had been tying on to one of the permittee's mooring as well as anchoring in the Bay. The other operator continues to conduct activities within the Bay as do other commercial enterprises.

Mr. Nagata stated that according Mr. Supe there have been no problems with the three permittees.

Mr. Yuen questioned whether there was any authority to regulate commercial activity within the park boundaries. Mr. Nagata answered that the problem here was that the commercial activity is operating on navigable waters of the U.S. Government and it was his understanding under the current situation that the

State is unable to prevent that activity--it is only when they tie up to State land or possibly if the activities are detrimental to marine life. Mr. Nagata informed the Board that he had discussions with the Attorney General's Office on this matter and the State is limited in its ability to control unless the boaters are tying on to the bottom.

Mr. Nagata informed Mr. Arisumi that the moorings near the monument are two-point moorings and the one boat was tying on to a rock or a chain which has since been removed. Mr. Nagata stated that one of the conditions of the permit allows tying on only in cases of emergencies and that Hawaiian Cruises did take legal action against the illegally moored vessel.

Ms. Susan Matsuura from Hawaiian Cruises stated that they did take legal action against the illegally moored vessel--that they would not tie up or interfere with their mooring site, which is two moorings. She stated that they have been in touch with Dave Parsons concerning light boating at Kealakekua Bay where there are swimmers. Mr. Yuen asked whether this could be addressed by something similar to the ORMA rules where there might be an egress/ingress area because of a hazard to swimmers. He asked how come there was a no-boating rule at Old Kona Airport Park. Mr. Nagata stated he thought the Legislature passed special legislation for MLCD's and wasn't sure whether it could be implemented in this situation but that the ORMA rules when looking at specific areas, the Department of Transportation had their hands off Kealakekua because it was under E.O. to State Parks and a MLCD. Initially, he said when they discussed the problem with DOT approximately three or four years ago, he was under the impression that they would be setting up a special mooring area in Kealakekua Bay and suggested that when Boating is transferred to DLNR there still existed the possibility that something similar might be presented to the Board. Mr. Yuen asked that Mr. Nagata look into the question of authority to regulate the live boating in the MLCD. Mr. Nagata said he would discuss the matter with Mr. Sakuda.

**ACTION** Unanimously approved as submitted (Yuen/Himeno).

**ITEM F-8: RESUBMITTAL--AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 14, 1988 (AGENDA ITEM F-5) RELATIVE TO THE DIRECT SALE TO KUKUI (MOLOKAI), INC. A WATER PIPELINE EASEMENT, MOLOKAI TASK FORCE AGRICULTURE SUBDIVISION, HOOLEHUA, MOLOKAI, TAX MAP KEY 5-2-01:POR. 24**

Mr. Mason Young explained that this item was deferred from the last meeting and staff was asked to come back to the Board. When the item was presented it was an amendment to the prior Board action approving the issuance of a permit to Kukui Molokai for a portion of the DLNR ag farm lots, and which went over and across Hawaiian Home Lands. Mr. Young stated that for those portions administered by the Department, the easement was approved, subject to the applicant obtaining the other alignment. Mr. Young stated he had been informed that they were not able to obtain the alignment from the other State agency and, therefore, an amendment was being requested to provide for the alignment around the Hawaiian Home Lands, as well as the ag park. He stated that a portion of the ag park would be crossed and that was the purpose of the easement being considered today to provide for an easement across a portion of the Department's ag park and then continue along the perimeter of the property and hook up to the applicant's existing line, which they propose to construct and install. The deferment, Mr. Young stated, was because the Water Commission intended to consider designation of the Kualapuu Aquifer as a designated area, which they did. The request today is merely to amend the prior action of the Board to facilitate the installation of the line and the reason for this is that the applicants have been asked to get out of the Molokai Irrigation System and in compliance with that were looking for alternatives to install their line.

Since he was not present at the last meeting, Mr. Arisumi asked for clarification, and Mr. Young pointed out on a map the alignment approved in October 1988, and the proposed alignment and easement.

Mr. Young pointed out that a request was received from the County of Maui containing conditions in the event the Board approved the request. Mr. Young stated:

"The County of Maui Public Works Department submitted a request that should the Board approve the disposition, the easement, that the easement be for access purposes as subdivisional approval is required.

"The developer shall submit a solid waste management plan to include the following: a solid waste reduction/reuse and recycling program to reduce the amount of solid waste to be disposed of at the County landfills.

"Secondly, all yard debris shall be composted and reused on their landscape plantings; and

"(c) Alternative means of disposal of grub material and rock shall be utilized other than disposed of at the County landfill.

"And this was sent to us by Mr. George Kaya, Director of the Department of Public Works, County of Maui."

In response to a question from Mr. Apaka, Mr. Young stated that at the last Board meeting, Mr. Williamson Chang expressed his desire to file a contested case.

"At the last Board meeting, when Mr. Chang had presented himself to the Board he had indicated his desire to file a contested case. Now, part of that was his concern with respect to the aquifer and the disposition. At that time, the Board deferred, decided to defer action, until the Water Commission had acted on the designation, and he also had some concerns with the size of the waterline that was proposed. There are two lines of 24 and 12. He was concerned as a result of the size of the line and its initial taking compared to what is actually going on as well as the designation of the aquifer."

Mr. Young stated he was not in receipt of a copy of the request for the contested case. As he understood it, it was a verbal request of the Board at that time, at the last meeting.

Applicant's attorney, David Arakawa, presented himself as representing the applicant, Kukui Molokai.

"At the outset, we are here for the deferred proceedings. We'd like to state for the record, at the outset, that we are willing to accept the conditions as stated by the County of Maui."

Mr. Yuen: "The question I had about your asking to cut across the corner of State land--if you couldn't do that, what would the consequences be?"

Mr. Arakawa then introduced Mr. Ron Hedani, Senior Vice President of Kukui Molokai, who answered that, "They're shrimp farms beyond here, an active shrimp farm operation and that's why we're cutting across before that."

Mr. Arisumi, "Mr. Hedani, Louisiana Land Company had 20 years to put in a waterline to use the Hawaiian Homes waterline that's currently in use, up to 20 years. Assuming we don't give you that easement, what would happen? You guys going to be bounced off?"

Mr. Hedani replied that the irrigation line that they are currently using is currently managed by the Board of Agriculture which provides MIS water primarily for the homestead area. He said, "Going back in history, when the land use was first granted, I believe a condition of land use for the original landowner was to use this line temporarily to get the project started and eventually get off that. I believe the State gave them a 20-year lease. Whether it can be extended or not I cannot really address that question nor could I answer it at this time; however, I believe that the intent of government was not to have private sector continually use their line. Also, in light of this designation, if the, when the Hoolehua area, homestead area, is developed by the Hawaiians of Molokai, if you have a 24-inch line, which is the prevailing line throughout the whole area, which is the means of transporting water from their water sources throughout the area, the capacity will be between 11-13 or thereabouts, depending. If we continue using the line, we are denying the Hawaiians our 2 million gallons flowing through this line. I think this is the original reason why back and during the Kaiaka hearings, the homesteaders wanted the landowners to get off the MIS line, going back in history, so whether or not we will remain, we'll be able to continue using it, I am not sure how I could answer you, Mr. Arisumi."

Mr. Yim stated, "Being a legislator at that time, the Legislature itself insisted that they get off the waterline during 20 years, and I was involved in that debate. Some of us, even at that time, were displeased that the State was giving in to allow the use of government pipeline from West Molokai. At that time we wanted them to put their own pipeline 20 years ago, and now here we are, I think the legislators think it advantageous that they get off the line. I doubt it whether the Legislature, it would be my guess, to allow them to continue to use that line."

Mr. Young indicated on the map the Hawaiian Home Lands area and the ag park. He said that initially when the easement was granted, they weren't going to extend the lines through Hawaiian Home Lands but instead go straight across, which would be a feasible route; now, it is being suggested that the line circumvent Hawaiian Home Lands. He stated it was his understanding that Hawaiian Home Lands acted on the matter, deferred and did not take any further action and until now is on deferred status. "My understanding also in talking to that department that they don't anticipate coming back to the Commission."

Mr. Young stated that the concern here as mentioned by Mr. Yim was that there is a mandate to get off the MI system and that Kukui Molokai is attempting to comply with that condition with the proposed easement.

Mr. Williamson Chang, Professor of Law at the University of Hawaii teaching in areas of water rights and Native Hawaiian rights, stated he was also the legal services director for the Native Hawaiian Advisory Council and appeared on behalf of the Council and its clients. Mr. Chang asked to clarify that, "I have prepared a written request for contested case hearing . . . will also submit if this Board seeks to move toward decision-making. I would like to spend a bit of time going back to the issue of the deferral that I requested at the last meeting and going over some of the reasons and why it might be prudent at this meeting to seek further deferral. I guess the way the issue was characterized, by the applicant I think, somewhat bothers me. He characterized that--simply following a mandate to get off a pipe system, which was true, that was the agreement back in the '70s but since then, especially since the passage of the Water Code, there's been much more understanding and scientific

examination of the island and that there is a aquifer, Kualapuu Aquifer, which is the central source of water in that area. It's not a matter of really hardware and pipe but of water. It doesn't matter whether you take the water out of the MIS or take it out of Well 17 and build a new pipeline; similarly, it will come out of the source, which everyone is seeking to use. The question really being that this is a source of water that Hawaiian homesteaders have always demanded be set aside for their use. As you note there are 25,000 acres of vacant Hawaiian Home Lands on that island. That's approximately 600 are homestead largely because there's a lack of water infrastructure. So, whether you get off the MIS and dig your own well and put it around, run around, I don't know how you put it, it's still the same issue.

"To get to the issue of deferral, the staff was correct in many of the reasons that I had suggested. But one of the reasons that I think has not really been laid out here is, the proceeding before the Hawaiian Homes Commission was a very significant one to the community for several reasons. One was that the Hawaiian Homes Commission took the position that they ought to approve the easement and allow the pipeline to have been built through their line, which is a more direct route, 12-inch pipeline. By representing to the community that they would, therefore, be in control of any expansion of plans since it would run across their lands, and I appear on behalf of my client, the Homestead Association, a number of times in front of the Commission asking them not to approve and they didn't and they went into negotiations with the applicant here and the community was not involved and we haven't really heard the result. So, it's somewhat disturbing to me that an action taken here would basically impair that promise or that representation.

"And the second point is that the matter of the jurisdiction of these two agencies. It seems to me that Hawaiian Homes' position on this is critical and they may testify or they may not; I haven't heard that they would testify but it seems to me that under your definition of the role of a party any State agency which has jurisdiction is a party and since they're almost a necessary party for the following reason, which is that the first application herein was in 1988 and for some reason it's been deferred this long, but in the interim the State Legislature amended the State Water Code. As to the section dealing with Native Hawaiian rights, the section which applies whether or not an area is designated; that amendment I have here says in effect that the Water Commission shall by rule reserve water in such locations and quantities as necessary to protect the rights and entitlements to water by the Hawaiian Homes Commission. Now the question we must ask is: why was it necessary for the State Legislature to enact a very explicit command to the Water Commission to go out of its way to set aside waters that may be necessary for Hawaiian Homes use because the argument is--gee, they have very good rights under 221. Wouldn't that be sufficient to protect them? Well, the underlying reason was that Hawaiian Homes was slow to act in coming up with its water needs for the future and hence a lot of the permits, construction well permits, or pump sites permits were being sought and in the meantime since Hawaiian Homes did not meet those needs a lot of decisions were being made, such as to grant the construction of a well, as long as you understand that, they have be called back when Hawaiian Homes needs that water. That's a pretty uncertain type of way to run things, and certainly for the applicant and certainly for Hawaiian Homes. The beneficiaries always felt--gee, once they build wells, pumps, pipelines, they start to have a very strong claim to reliance on the investment they put in, how is Hawaiian Homes going to come back later and gain the water that is necessary for homesteaders? So, in a way, it is, you might say, surplusage, but it is a reminder of an obligation and, therefore, a specific obligation. And you might ask--well, what really is it here because it addresses Water Commission. Well, the relevance lies in the committee report, which says in effect: The purpose of this bill, this bill reserving water for Hawaiian Homes, is to impose affirmative duties on, and I emphasize the language, State agencies, particularly the Commission on Water Resources--in other words, all State agencies must cooperate

with Hawaiian Homes in their attempt to address a long-standing issue, the failure to reserve water, so coming down to, my point here is the request for deferral was really based on, we're here because they're not here and, gee, they really ought to be here because if anybody has an affirmative obligation to come up with numbers and explain whether this pipeline is good, it's Hawaiian Homes Commission, and I think that absent a necessary party that we proceed to a contested case proceeding, there must be some rules regarding consolidation and pending matters. I don't think they formally denied the applicant so it is something Hawaiian Homes has got to make clear their position on this now, either in formal testimony or if we do go to contested case hearing I suppose they're going to have to be brought in there. The request for deferral was pretty much that we're operating in the dark, not knowing what is the position Hawaiian Homes is taking because in effect if they did deny the applicant the right to use the easement the grounds must be that they feel some danger exists in this in granting a direct, more straightforward easement across State lands, and if that's true they feel a danger, don't they have a concomitant obligation to come before another State agency as this amendment so obligates them to do so and object or participate in a proceeding so as a matter, I think, of commonity between sister State agencies, it seems to me they ought to be here. We don't like contested case hearings; maybe others do. I am prepared to submit my two written requests on, one, the people who have no awarded lands and not been able to get on them because of lack of water, and the other is Hoolehua farmers who do have lands and so I would like to put that on the record that I am prepared to do so but I think I'd like to leave the Commission with the opportunity to defer, with the request of Hawaiian Homes, that they prepare, some kind of written testimony be presented and that the deferral would last so long as they need to prepare this because it probably involves some kind of assessment in numbers, things like that, and that 30 days from that date we reconvene this body because I wouldn't see the viability having one agency undermine the practice or the policy or the desire of another."

Mr. Chang then presented the written requests for contested case hearing to the Board.

Mr. Young stated it appears the two issues before the Board--the pipeline vs. the aquifer, and it appears that Mr. Chang was attempting to put the two together and that as sister agencies the DLNR has a responsibility along with Hawaiian Homes. and, therefore, the requests for contested case. Mr. Young stated that his understanding of the responsibility of the Water Commission legislation was to take care of the allocation of water and before the Board today was an easement. Mr. Young stated he believed Mr. Chang's concern was the allocation of the water and the aquifer but with the designation of the Kualapuu Aquifer, Kukui, Hawaiian Homes, agency or a private individual desiring to take water from the aquifer would have to go through the Water Commission. He stated that at present it is known what is being taken by Kukui Molokai, and, "If it is agreeable to Mr. Chang or the applicants we may want to consider as a compromise to this that the taking not be any more than what they are entitled to right now under the MIS system and that the alignment be allowed to go through and, hopefully, this contested case hearing could be set aside. And that may result in the downsizing of the actual line that the applicants are proposing in order to remain status quo and let them go before the body of the Water Commission to determine whether the taking or any additional taking is appropriate. I see a mix, a mix here that I don't know whether the Land Board should be involved in the aquifer, that's the purview of the Water Commission and the action before the Board is an easement for a pipeline and the concerns by Mr. Chang is with respect to the aquifer."

Mr. Paty stated, "We recognize that. I think the Board's cognizant of that. With respect to the contested case thing, we may have to sort that out--whether indeed there is standing relative to an easement. Situation here is another issue as well so it may be that we'll rule on this but at this point unless there are other questions, we'll proceed . . . ."

Mr. Chang stated, "I think there's a problem in the reasoning here which is that, the reasoning that Mr. Young is positing is that no State agency need do anything because it can always, falls back on designation or the Water Commission. The first point is that designation really didn't have much to do with Hawaiian rights, I think 221 in the first place in that section 101, which protects section 221 - Native Hawaiian Water Rights, applies in designated and non-designated areas. And the second is that if you're going to rely on the Water Code, on what grounds does Hawaiian Homes denying this easement? In other words, why are they balking if they feel so confident that the Water Commission would fully defend their rights. Well, I just want to point out again that this amendment to the Water Code is an amendment to a Water Code in light of perceived inadequacies. In fact, Mr. Chair here, the department head, testified on this bill and the only part he objected to was the specification of federal reserved lands . . . but you didn't object to the imposition, and I quote 'affirmative duties' on State agencies, 'affirmative duties' meaning going out of your way to assist the Commission in implementation of its responsibilities. DLNR did not find a problem with broad command of this amendment. I think if you go back and look at the testimony of all the groups the amendment to the Water Code, which was last year, just because of the weakness of Hawaiian Homes--that's admitted--and being an aggressive body both as to compiling the planning data necessary to insert into the County and State Plans of the amount of water needed and being aggressive in terms of asserting its rights before the Water Commission, I think my life would be a lot easier if they were more aggressive and this was a recognition of some of the difficulties so there was testimony by DLNR that I do have as to this amendment so my last point to Mr. Young would be it's not that difficult to understand the Water Code was passed in '87 and in '91 it was perceived to be not strong enough to compel State agencies to recognize, what you could say was a duty that was pre-existing or implicit to begin with. This in my mind is a fairly explicit command across the board about State agencies."

Mr. Yim, "In light of the request for a contested case hearing, I'm not too sure as to what the Board can do as of this moment regarding the matter before us. I would like to move that the Board go into executive session to speak to legal counsel."

Mr. Paty stated that they would hear the testimony of others before entertaining the motion.

Mr. Charles Ice of the Department of Hawaiian Home Lands Planning Office presented the Chairman's testimony:

"The Department of Hawaiian Home Lands (DHHL) would like to convey its concerns over the request of the Board of Land and Natural Resources for a water pipeline easement to accommodate a 24-inch pipeline and a 16-inch pipeline to supply to the Kaluakoi area.

"For your information, the Hawaiian Homes Commission (HHC), at its public meeting of June 25, 1991, considered a request from Kukui (Moloka'i), Inc. (Kukui) for an easement across Hawaiian home lands for a 24-inch pipeline, and the request was denied. At that meeting, Kukui amended its request to specify a 12-inch line. The HHC's final action on the two requests is shown below:

"1. To deny Kukui (Moloka'i), Inc.'s request to install a 24-inch potable water pipeline within an easement granted to Moloka'i Ranch (MR) and subsequently partially assigned by them to Kukui, across Hawaiian home lands at Palaau, south of Moloka'i Airport;



"2. To defer action of Mr. Hedani's proposal to reduce the pipeline to 12 inches until a written proposal is received; and,

"3. To refer this matter to legal counsel for review as to ramifications.

"The HHC is waiting for the response from the Attorney General's Office regarding (3) before taking further action.

"DHHL's concern focuses on protection of its trust assets pertaining to groundwater and its priority rights to water needed for the purposes of the Hawaiian Homes Commission Act of 1920, as amended. What is currently in effect is a prior HHC action on March 21, 1986, approving easements and pipelines, then existing, based on prior agreements with Moloka'i Ranch, Ltd. and its predecessors, dating back to 1924. The existing pipelines are four-inch and six-inch lines.

"The Department claims a proportion of the correlative rights to the Kualapuu Aquifer, which is also a source for Kukui water. Authorized land uses at Kaluakoi would require five times the amount currently used, according to the resort's owners, up to a total of 6.0 million gallons per day (Mgd). The proposed 24-inch and 16-inch pipelines would have a capacity over 20 Mgd. No existing source of water has been developed to supply these amounts.

"The Commission on Water Resource Management (CWRM) recently designated the entire island of Moloka'i as a Water Management Area, which will require all users to obtain permits for existing use, and to provide information to guide decision-making over contested amounts of available water. We understand from DLNR staff that CWRM will handle decisions on water issues on Moloka'i, while BLNR will handle the land issues, the latter being the request on today's agenda. However we did want to share our concerns with you."

Mr. Yim asked about the referral to the Attorney General's Office, but Mr. Ice stated it was not his position to comment.

Mr. DeGray Vanderbilt, resident of Molokai, stated he was present because of his interest in the water situation on the island. He stated he is the director of the Chamber's Economic Development Committee and is also on the County's water task force appointed by the County Council. He stated he felt that the Board was not getting the "total scoop" from anybody. He stated that on the handout on the back of map in the highlighted area was an excerpt from their Water Use and Development Plan and what they have been trying to do on Molokai is to get all the parties together, Hawaiian Homes, Westin Developers, the County of Maui, Department of Water Supply and in the plan a task force was set up to help with the drafting of the plan and on page 3a it states: "Therefore, it is recommended that all perspective water users in Central and West Molokai attempt to work cooperatively together by entering into a negotiations agreement." This would include the County of Maui, Hawaiian Homes, Kukui, Molokai Ranch, Alpha and representatives selected by the community on Molokai. "That was our quick way to try to get everybody together because everybody was doing their own thing on Molokai with regard to water . . . ."

Mr. Arisumi interrupted to say that the matter was not under the jurisdiction of the BLNR--only the question of the easement.

Mr. Paty stated that Mr. Chang had been allowed to digress from the subject before the Board and would afford Mr. Vanderbilt the same consideration.

Mr. Vanderbilt continued, "What this referred to is an integrated pipeline. If you look up into the previous paragraphs that was referred to entering into negotiations agreement with regard to an integrated pipeline. Molokai Ranch, Kukui Molokai, and the County had a draft agreement to put in an integrated line with one potable line and one non-potable, and I think they were both at that time going to be 24 inches. Now we took that out of the community plan, I mean, out of the Water Plan and suggested that instead that before that happens, everybody get together and see what the impacts of this waterline would be. It had nothing to do with the water source at that time. This didn't happen and Kukui has still continued to go around the community; they do a lot of work at the County level and at the State level. They've been using Mr. Ron Hedani. He hasn't been getting too far lately in the last three years so now they bring in Mr. Fujiyama's law firm. We had, I see one member of Mr. Fujiyama's law firm here today and another member was at the water designation meeting, and I think that by granting this to Kukui it's going to just disrupt everything that we're trying to do to bring everybody together and it will give them some kind of hammer. And I can see their point, they're in the business and they're competing against Molokai Ranch and Alpha and a lot of other people but what about the Ranch? I've talked to Mr. Young after the last hearing and suggested that he get a copy of the agreement between Molokai Ranch and Kukui with regard to the pipeline. There's a lot of strategies that are going on behind the scenes. For instance, you talk about this pipeline, this easement across Hawaiian Home Lands. If Kukui gets that easement, they have to provide space in their new pipeline to the Molokai Ranch. If they don't get the easement across Hawaiian Home Lands, under their agreement with the Ranch, the Ranch is forced to give them an easement around their other lands. And I'm not sure whether or not they have to provide the Ranch with any space so all I'm saying is there's a lot of in-house fighting going on and, unfortunately for the island of Molokai, most of that takes place through fairly competent lawyers that are dealing with the people over in Honolulu or people in the County of Maui. I mean that's just the facts of life--we know that.

"So, basically, the other part that was attached there was our water use and development plan. I've highlighted what Kukui has recommended their needs for water in the future will be for the full development of their resort, and they say 3 million gallons per day. That was on page 14 of the excerpt. Now, as Mr. Ice from Hawaiian Homes said--there's two pipelines that they're going to take 20 or 20 plus million gallons a day. Is this pipeline just for Kukui's needs as stated in Mr. Mason [Young's] submittal? Or are there others involved on the sidelines? And I just think that Molokai, I think Mr. Paty will agree his, has shown a lot of maturity in trying to bring this water situation under control and work out a workable situation, and we've now got the designation. We're hoping that through our water use and development plan, people will come together but as long as side actions like this are approved by the Board, that's where it pulls the rug out from under us. As I understand things with Hawaiian Homes, some people at Hawaiian Homes were in favor of that pipeline crossing their line because they felt they had some control over the amount of water. Kukui was going to agree to put in only 2 or 2-1/2 million gallons a day into that pipeline and commit to an agreement to that. Now whether they had other strategies to back that up, I don't know, but they were willing to agree to that. So if this pipeline comes in, there ought to be some conditions. I couldn't understand the County talking about trash delivery and everything else in their recommendations. I would think that the County would want to have some controls over this pipeline 'cause that goes to their public housing in Maunaloa and other places so that if a pipeline did go in it shouldn't just be Kukui's pipeline. They should be required to make it available for other users and if it's just for Kukui's purposes just like they say and this Board feels it should grant it and they're willing to make the same commitment to use Hawaiian Homes of only 2-1/2 million gallons of water or 3 million gallons of water or whatever it takes for their plans then gallon size the pipe to that

but I don't think they would be willing to agree to that because they're going to need from 8 to 10 million gallons if you just go out on their resort plans as they're planning now, and they have an application before the County right now for 3 additional 18-hole golf courses and 1,400 lots, additional lots, so they've got some big water intensive uses planned for down the West End so I thought I would just . . . ."

Mr. Yim stated that he also felt that the Board has limited jurisdiction and the Water Commission has the major say in questions raised by Mr. Vanderbilt--so is the County of Maui, noting that Kukui had an application before the County of Maui for the three golf courses and advised that the concerns should be addressed to the County, that the battle is not to be fought here but with other agencies, again reiterating that the Land Board had limited jurisdiction--that the County had a certain say ultimately as to the amount of water this group can have.

Mr. Vanderbilt stated that if Mr. Young has a chance to obtain a copy of the draft agreement and the agreement with Molokai Ranch that would give the Board a general idea of the thinking involved. The County didn't want to be cut off the line and wanted to participate in it for public uses on the West End.

Mr. Yim noted that the leverage Mr. Vanderbilt is talking about is greater at the County level than at the Water Commission. Mr. Vanderbilt stated that they had more faith in the State.

Mr. Arisumi said he believed Kukui had an understanding with the County that it will provide water use to the new subdivision and asked Mr. Hedani whether he could confirm that. Mr. Hedani stated that Mr. Arisumi was correct and that the "County requested, this was back in Mayor Tavares' time, they were considering a public housing in the Maunaloa area and asked Kukui's help, then Louisiana Land, to provide water for this project, which Louisiana Land granted which we are honoring."

Mr. Vanderbilt pointed out that in the draft agreement with the County on the integrated water system the County wanted the right to take over that water line at some point in the future so if it's approved he didn't know where the County was on the whole position right now but that the draft agreement would indicate the County's concerns.

Mr. Dave Arakawa then stated, "I have prepared a Memorandum in Opposition to the Petition to Intervene, and I would like to file this at this time in open session. Basically, our arguments are the arguments that have been brought up by the members of the Board, that this body does not have the jurisdiction over the issues regarding allocation and just quickly to address Mr. Chang's statement, or his statement regarding what Mr. Young said, the Water Code does specifically address this issue, section 174C-7 states that the Commission on Water Resources has exclusive jurisdiction and final authority in all matters relating to the implementation and administration of the State Water Code. Also, section 174C-10 there's a specific reason as to dispute resolution in the Water Code, and it says that the Commission shall have jurisdiction statewide to hear any dispute regarding water resource protection, . . . which is what everybody's been talking about, intervenors or people . . . have been talking about, water permits or constitutionally-protected water interests which would be, the issue of protecting Hawaiian Home Lands water, or whether it's sufficient, or whether it's insufficient water to meet competing needs for water, which is another argument that's being raised. And it says, it goes on to say, 'The final decision on any matter shall be made by the Water Commission.' So the amendment to the law specifically provides in the State Water Code that the State Water Commission will have the exclusive jurisdiction of authority in these matters

and section 174C-101, there's a specific provision in the State Water Code regarding Native Hawaiian water rights, the addressing of Native Hawaiian water rights, so again, members of the Commission, we would urge, excuse me, members of the Board, we would urge that this matter, the matters brought up by potential intervenors are outside the jurisdiction of the Board of Land and Natural Resources.

"The second issue we would bring up is that there has been no showing of injury or harm to any of the intervenors. We are not asking for an additional allocation of water. All we're asking is to move off of the MIS line which we're required to do so in a few years and to go another route. In fact, the MIS line runs through the Home Lands so if we get out of the MIS line then there will be more capacity in that line for the Hawaiian Homes and I think Mr. Yim was talking about getting off that public line to make it available for more public lands. That's the idea.

"Lastly, the letter from the Department of Hawaiian Home Lands you'd note in the paragraph near the end that they do recognize that this Board makes the decisions regarding land dispositions, whereas, Water Commission makes decisions regarding allocations."

Mr. Chang asked to be recognized on a procedural issue in that he hadn't seen the memo; it was "procedurally inappropriate" and asked to respond. Mr. Arakawa stated, "For the record, I would note that I requested a copy of the Petition to Intervene from Mr. Chang. He refused, he did not give me a copy. He said he would give it to me later. I have not seen that either so I am making this argument."

Mr. Paty asked Mr. Chang whether he intended to give Mr. Arakawa a copy and said he had given Mr. Young all the copies. Mr. Chang stated, "I haven't seen his submittal of what is apparently a . . . brief in opposition to a petition that has not been filed so I don't see how he can be arguing against standing when we haven't filed a petition. He seems to be arguing the merits of the case, such as standing before the Attorney General has even had a chance to review the request so I would like to have a chance to respond to this and add to the grounds for deferral that this is going to require some time. We'd like to respond to this. Mr. Yim's point about the legal counsel from Hawaiian Homes supplying some kind of legal opinion on their decision seems to me would be very relevant. Given if they are denying their easement on the grounds that it harms water and under the Senate Committee Report that I read earlier it would seem that concern would apply to this State agency as well so I would like to see that Attorney General's opinion from Hawaiian Homes. I would like to add those two grounds to a request for deferral." Mr. Chang stated that a copy of his petition would be supplied to Mr. Arakawa.

Ms. Himeno seconded Mr. Yim's earlier motion for executive session and it was unanimously carried. The Board went into executive session from 11:15 to 11:35 a.m.

**ACTION** Relative to the contested case, Mr. Yuen stated that after discussion with counsel, "It appears there's no right to a contested case hearing granted to a third party who is opposing the State's consideration of a request for an easement across State land and for that reason I would make a motion to deny the request for contested case hearing." Mr. Yuen's motion was seconded by Mr. Yim and was unanimously carried.

Mr. Arisumi then moved that Item F-8 be approved as recommended; seconded by Mr. Yim.

Mr. Chang asked to be recognized. Mr. Paty advised that there was a motion before the Board at this point and would have to rule Mr. Chang out of order. Mr. Paty advised that he would be given the opportunity to address the denial.

Mr. Paty stated that the Commission looked at it particularly from the basis of water responsibility relative to a land disposition matter and were not involved in the distribution of water, the supply of water, the Hawaiian Homes situation, they were looking at it strictly what the Board's authority and responsibilities are relative to this particular disposition itself and the easement.

**ACTION** The motion made by Mr. Arisumi and seconded by Mr. Yim included the conditions requested by the County of Hawaii and was unanimously carried.

Mr. Chang stated that for the record he'd like to state that his position and that of his clients were that the Board violated it's own rules and the Constitutional Rights of Procedural Due Process both under State and federal law in that they filed a request for hearing not to be construed as a "petition" and that under the Board rules do allow ten days for the filing of a petition and that his request clearly stated it was not a petition and that, "There is a claim here that you violated your own rules, the rules of the Hawaii Administrative Procedures Act, as well as the rights of procedural due process both under State and federal law."

Mr. Paty stated Mr. Chang's comments would be referred to the Attorney General for review.

**ITEM F-1-c: ISSUANCE OF REVOCABLE PERMIT TO BIG ISLAND DISPOSAL, INC., GOVERNMENT LAND OF KEALAKEHE, KEALAKEHE, NO. KONA, HAWAII, TAX MAP KEY 7-4-08:POR. 17**

Mr. Bob Henriques, the applicant, stated that he agreed to the terms and conditions of the permit.

**ACTION** Unanimously approved as submitted (Yuen/Himeno).

**ITEM F-14: AMENDMENT OF GENERAL LEASE NOS. S-4892, S-4906 AND S-4902 COVERING LOTS 5, 19 AND 23, MAUNALAHA HOMESITES, OPU, MAKIKI, HONOLULU, OAHU, TAX MAP KEY 2-5-24:22, 23 AND 24**

Mr. Young explained that in February of 1991, the Board authorized, as a result of disagreement of the parties at Maunaloa, to work with the Center for Alternative Dispute Resolution, at the urging of Ms. Himeno, on whether the State could provide access to the three lots. The Center met with the parties, mediated their concerns as to easement for the properties as well as requested our Department as described in the submittal to assume some of the responsibilities with respect to the easement. One of the suggestions was to take down a mango tree as well as to provide for services to establish the alignment. Mr. Young stated that subsequent to the mediation of the concerns, the Board approved CDUA 10/15/90-2415 on March 8, 1991, to Mrs. Bonnie Lee Shea Echiberi. The purpose of the CDUA approved was to construct a single-family residence on one of the lots in dispute. The Board approved the CDUA subject to certain conditions described on pages 2-3 of the submittal. Subsequent to the approval of the CDUA and the filing of the lessee of necessary permits, building permits from the County, the Department received complaints by the neighbors describing the grading done by the lessee as a strip-mining operation and citing certain violations. The violations they focused on were: (1) the grading plan approved by the Department; (2) excessive removal of black sand; (3) violations of the general lease for unauthorized removal of the black sand and the disposition of it; and (4) department "not minding the store."

The complainants also requested the Department take prompt, decisive action to rectify the "travesty" as well as cease from allowing any further removal of the black sand from the premises. The Office of Conservation and Environmental Affairs as well as the Division of Land Management commenced the investigation and conducted the necessary research with the City as well as the lessees, and complaints and the findings are described on page 4-5 of the submittal. Mr. Young stated that when checking with the City, the City informed them that the grading permits that were filed with them had been approved and were in order. In contacting the City, they were of the impression that the excavation and the permits were in accordance with the permits filed.

Concerning the second part, the use of the lot for residence purposes would not be possible without the excavation, which is part of the approval of the plans submitted, and permits issued called for the excavation. He also said that the lessees have hired a contractor to remove the black sand in accordance with the grading permit and, as such, Mr. Young said, when the Division investigated, it was found the lessees are not selling the sand and are in compliance with the lease in that respect. The applicants or lessees are currently building a retaining wall approved by the City upon which a sprinkler system will be installed to water the vegetation to be planted as a cover on the excavated portion of the lot. There was some concern, Mr. Young stated, that the remaining scar would not be tendered to. The staff of OCEA had reviewed the existing conditions regarding lot grading and determined that no violations occurred with respect to the Board's approval of CDUA 2415. Regarding the approval for a single-family residence as a land use, the applicants have obtained the necessary permits from the City and are currently submitting to the Department approved revised grading plans. He also pointed out that the lessees have been very cooperative with the staff in the investigation of this matter and have complied with whatever was requested of them, including submitting the revised site plan. There was also concern about the remaining black sand on the property and when the Chairperson and staff looked at the site there was a huge mound of sand. The lessee related that in order to construct the driveway that they were proposing and that was approved in the plans he would have to retain the black sand. As part of a mitigating measure, the staff suggested that by doing away with the driveway with the construction of the retaining wall, the black sand could be used as a backfill to the wall, thereby keeping it on the property. To insure ingress/egress, staff is recommending amendment to the general lease to create the common easement for ingress/egress over the lots for the Kaaias, the Brandts as well as the Echiberis. Mr. Young stated that the proposed solution would remedy any further taking of the sand, allow for the appropriate ingress/egress to the respective lot owners and allow them to construct the homes they wish.

Mr. Young asked that an amendment be made to his submittal to correct the lease number identified as 4892 to 4888, which amends all three leases to create the necessary easements for ingress/egress for the three lots. A condition directed Mr. and Mrs. Echiberi to not remove any more cinder from the lot and the retaining wall be built by the Echiberis at the base of the previously proposed driveway to prevent any further loss of cinder or erosion as well as to the Maunalaha Homestead Road, which serves as the main artery into and out of the homestead area. The Department would comply with the conditions agreed to with the CADR and be subject to review and approval by the Attorney General's Office.

Mr. Young stated that earlier that morning a request for contested case hearing was filed by H. William Burgess, Esq., the subject matter being the amendment of the general leases and the specific disagreement is the denial or

grievance against the above matter was that the amendment would have the effect of retroactively approving the strip mining operation which was conducted from late January to May 1992 and he has his letters from his neighbors which are attached as an exhibit to his request for contested case hearing. Under the application, he is seeking the ceasing of further excavation, restoring the sand already removed, and that similar actions are not repeated.

Mr. and Mrs. Echiberi appeared before the Board and stated that they are agreeable to the easement but Mr. Echiberi stated he had to remove the sand if they come in with the driveway. He said there will be some debris coming down.

Mr. Young clarified, "We have a two part deal here. We're talking about the sand that's already on the property for which we want it to remain. Now, when we grant the amendment to the leases to construct the driveway, at that time when plans come in let us address what happens to the sand because, as you know, when we've been up there, when that driveway is constructed, there will be some excavation. Now, I'm going to suggest that if there's going to be excavation it be retained, left on the lots unless we approve for the withdrawal or removal of the sand from the lot. Because it is only a tentative alignment right now, we have to fix the alignment, let's survey it, let's come in with the grading plans, let's see what the County does to it, let's pass it through OCEA for review and approval, and then at the time make a determination."

Mr. Young stated they contacted the others who are all agreeable to the easement. Mr. Brandt said, "Let's work out the alignment." Mr. Young stated he is submitting a proposed alignment and that one of the conditions of the CADR is that the State will absorb the responsibility of sending a State surveyor to establish the alignment.

Mr. Young stated that he needed to submit the request for contested case hearing to the Attorney General's Office as to whether they had standing or not with respect to the Board's action on the disposition and the amendment. Mr. Young stated that in his mind they are referring to the CDUA because it concerns the removal of the sand; "We're taking care of an amendment of a lease, again, we get back to the proprietary responsibility of the Board with respect to the creation of the easement. It doesn't come into play, as I understand, with the taking of the sand with the CDUA conditions that were approved. But again, I need to refer to counsel, and with your approval of the amendment, I would refer the contested case to counsel for their review."

Mrs. Echiberi stated that the whole problem with Mr. Burgess is the removal of the sand. "Bear in mind that we started this project that sand had no value as far as we're concerned because we are aware that we cannot sell the sand. As far as removal goes, we paid somebody to take it out. We have no control over what that person does with that. As far as we're concerned, that's that, it's rubbish, it's debris. That's all there's to it. All of a sudden everybody was interested in the sand but we had nothing to do with it." Mr. Paty stated that was understood.

Mr. Paty stated that, "I think we may have the contested case issue where we can move ahead relative to the action on this though I think we have to . . ." Ms. Himeno moved for executive session to confer with counsel. The motion was seconded by Mr. Arisumi and unanimously carried.

The Board went into executive session from 11:55 am to 12:20 p.m.

Mr. Paty stated the Board would proceed with the second part, which was action on the amendment.

Mr. Yuen moved that the motion for contested case hearing be denied on advice of counsel, which was seconded and unanimously approved.

**ACTION** Ms. Himeno moved to approve F-14 as amended; seconded by Mr. Apaka and unanimously approved.

**ITEM J-2: RENEWAL OF 30-DAY REVOCABLE PERMITS 4713 AND 4752, AIRPORTS DIVISION, HNM**

Mr. Garcia stated that these two items were previously on the agenda. The Board had previously requested that both parties be present at a meeting in Honolulu to discuss the merits of continuing the revocable permit either by month by month method or whether to continue on an annual basis. Mr. Garcia stated he did speak to Mr. Isaac Hall, representing Friends of Hana Coast, and to Mr. Bob DeCamp of Kauai Helicopters. Apparently, Mr. Hall send a FAX to the chairperson that he was unable to attend the meeting; Mr. DeCamp was here but had to leave. Mr. Don Ballard was present and available to answer any questions although the purpose of today's meeting was to get the two sides to discuss the situation.

Mr. Garcia said the complaint was really based on activities within Wainapanapa Park itself. Mr. Hall complained that there should be another method of having tours or having visitors to the park being authorized to be there. They had filed a suit against the State and the helicopters to prevent helicopter noise and operations within the park, and the suit is still pending. It was nearly settled in that it would be a contested case hearing on that item or the Department of Land and Natural Resources through Ms. Hanaike advised that all that was necessary was to get a park permit for the operations within the park; however, the suit is still ongoing. Mrs. Dana had complained about helicopter noise and activities within the park and the helicopters landing in the park itself. She claimed the tour brochure stated that landings were in the park; however, Mr. Garcia stated that the landings were within the rainforest and the Hana Airport is within the rain forest. Based on that the Board decided on a month-to-month revocable permit until the matter is settled.

Mr. Donald Ballard stated that the purpose of the counter is really for check-in for transportation from Hana Airport to Kahului. They do some medical evacuation out there and when the airplanes are not flying for weather reasons they use the helicopters. Mr. Ballard stated that his understanding of the dispute was to control the impact on the State Park.

He stated that they have a tour that stops at Hana Airport and groups of six are taken to the State Park. There are 2-3 flights a day. Mr. Yuen asked whether he was supposed to apply for a permit to take the group to the park. Mr. Ballard stated and Mr. Garcia agreed that was part of the lawsuit. Mr. Yuen asked Mr. Paty whether a determination had been made as to whether a permit was required. Mr. Paty stated the Parks staff could determine whether the effect of this was such that, that if it had a negative impact, they could decide as opposed to a CDUA.

Mr. Garcia stated that the matter would have been settled if the Department of Land and Natural Resources went along with the Conservation District Use Application. The Department, however, felt that a park permit was all that was necessary and even then it was not decided whether a park permit would be required. The helicopter operation, the amount of people coming into the park, is a small part of the number of people going into the park. There are a number of tour busses taking people in so it's a question of how does it apply, does it apply to everybody or only the helicopter operations? It was a matter involving equity, Mr. Garcia said.



Mr. Paty stated that since Mr. Hall didn't get his CDUA that was his chance to get his "day in court" and absent that he felt that he didn't want to get together on a settlement. Mr. Paty stated it is a park management matter that can be hopefully addressed as to the impact of carrying capacity, impact on others enjoying the facility, etc.

Mr. Garcia stated that they would like to see a revocable permit for a year; that at this point nothing has been settled and that if the Board wanted to review the matter for any type of action it could come back before the Board.

**ACTION** Mr. Arisumi moved for a revocable permit up to a year from the original expiration date subject to revocation in the event of any problems. The motion was seconded by Mr. Apaka and unanimously approved.

**ITEM F-16: DIRECT ISSUANCE OF LEASE TO HAWAII FOOD BANK, INC., LOT 4, SHAFTER FLATS INDUSTRIAL DEVELOPMENT, UNIT II, MOANALUA, OAHU, TAX MAP KEY 1-1-64:28**

Mr. White stated they are in agreement the lease conditions.

**ACTION** Unanimously approved as submitted (Himeno/Yim).

**ITEM E-2: AUTHORIZATION TO SUBDIVIDE KAHANA VALLEY STATE PARK TO PROVIDE LONG-TERM RESIDENTIAL LEASES AND APPROVAL OF THE GENERAL LEASE DOCUMENT**

Mr. Nagata explained that Act 5 of the 1987 session, as amended, authorized the Department to enter into long-term residential leases for qualified Kahana Valley residents. The residents eligible to receive long-term leases were determined by the March 1985 report on residents of Kahana Valley submitted by the Kahana Advisory Board. It identified 31 eligible families. The June 24, 1988, approved policies for the implementation of the Kahana State Park Development Plan as amended by the Board two months ago includes policies reflected in the residential lease and housing area locations. The two residential village areas that are shown on maps attached to the submittal have a total of 34 house lots; however, only 31 will be occupied and the extra lots provide some flexibility in lot selection. A final draft, draft 8, which has a final revision date of June 24, 1991, of the general lease for the residential lots has been prepared by the Department of the Attorney General in consultation with the Valley residents and staff and was reviewed by the residents on August 5, 1991, meeting. There are no known unaddressed concerns at this time; that at the appropriate time, they will be requesting the Land Management Division's assistance to process the individual leases. The recommendations are: (1) that the Board authorize the subdivision of portions of Kahana Valley State Park into two residential subdivisions, totalling 34 lots, subject to the approval of the supplemental environmental impact statement by the Governor which is being processed at this time; and (2) that the Board approve the residential general lease document for a term of 65 years. Mr. Nagata stated that these leases would come up individually before the Board.

Mr. Paty asked Mr. Nagata to review the essentials of the leases, the terms and how they are addressed. Mr. Nagata stated that they would be for 65 years. Currently the residents are under revocable permits. In lieu of a rental the residents will be required to put in 25 hours per month for program services. This would be per family and such services are to be provided by the adult members of the family. The lease will be solely for residential purposes and by Board policy action, it will be providing opportunities for the residents to have separate agricultural areas. One would be like a Victory garden, which could be utilized by the residents gratis but

if larger areas are used for agricultural purposes these would be separate agricultural leases. There will be one dwelling unit per lease and there are clauses regarding assignments which are somewhat complex. There is also a clause for successorship. Basically, a successor would be someone in the family and there is provision should there be no successor how the department would replace the lessee. A number of the clauses are similar to those found in State leases concerning liability, insurance, mortgages, breaches, bonds, condemnation, right to enter property, performance of the rental obligation, quiet enjoyment of the property by the lessee, surrender clauses, withdrawal clauses, fire and extended insurance coverage and there will be a building requirement that the lessee must construct a dwelling unit within one year after the commencement date of the lease, which would be the date acted upon by the Board. There are other special terms and conditions. There is a plan of operation, how the programs within the park would work, with a program manager in the park to monitor the activities. There is also a clause against commercial operations. Lessees will be eligible for low interest loans up to \$50,000 to construct their dwelling units, and Mr. Nagata believed the interest to be at 3 percent. This fund was a special fund appropriated by the Legislature.

In response to a query from Mr. Arisumi, Mr. Nagata stated he believed everyone in the Valley had received a copy of the July 24 draft lease at an August 5 meeting but didn't know if everyone was present. Mr. Arisumi stated that he would like to be sure that everyone received a copy so that they could not come back later saying they did not understand the lease.

Mr. Nagata went on to explain that the lots were approximately 10,000-12,000 square feet and the locations are off to the side on Trout Farm Road and further in the Valley on the Kahuku side. He said 30 families have been selected, even though there are 31 lots, that one of those could possibly stay in the original location and they are checking to see whether they can overcome some hurdles as the site is within the flood plain or tsunami zone. The State is attempting to set aside an area in the immediate area for a Victory garden except for some areas that are in contention that are right off the estuary. State Parks probably would not want to have additional square footage added to the 10,000-12,000 square footage in order to allow those areas available for public access. He went on to say that there are approximately five families who were not in the prime general public use area; however, they are within the flood plain or tsunami zone and so they need to overcome some hurdles, including permission to build up those lots as well as other loan conditions that might be imposed on them. Mr. Nagata stated that the primary area where some of the residents are presently located would require their relocation.

Mr. Al Rogers stated that they have plans to do prequalification of the residents with assistance from the Bank of Hawaii, the Department of Human Services, and Self Help Housing of Oahu, and to work out any problems they may encounter.

Mr. Wyatt George appeared before the Board to say that he was a resident of Kahana Valley for 24 years and was on the 1973 list. He served in the Army for eight years but upon his return his name was taken off the list and was not put on the 1983 list or given the opportunity to apply. He said that families who moved in illegally before 1985 are now on the list.

Mr. Paty advised Mr. George that the Board is not in the position to address that issue but will ask the staff to review the whole situation and if he was deserving of being on the list and if there were other problems they would let him know up-front.

Mr. Kaipolani Gorai, President of the Kahana Community Association, says he lives back in the Valley on Chow Fun Road and is one of the families who

need to relocate to the forward portion of the Valley. He stated that his family has lived in the Valley for approximately 66 years and could not understand why the State Parks is willing to put up money for him to relocate. He described the area as being efficient, comfortable, convenient; he and his family have no problems there. He stated that they supply security for that area because of the tourists coming in and looking for the cave and who need to be redirected, this occurring at least once or twice a week. Mr. Gorai explained that it was a "waste" to develop Subdivision B. Mr. Arisumi stated that the flat plain where the residents are presently located is to be developed as a State Park and is the reason the State bought the property. He said that the majority of the families will be relocated to Subdivision A.

Mr. Ron Johnson stated he has lived in the Valley for 35 years and is the fourth of fifth generations living on the same spot. He expressed his concerns about certain elements of the lease: State Parks request would damage the goals and concerns of the cultural park; the approval prior to approval to the supplemental EIS; breaking of any linkages to the land where families have been living--for instance, the family burials in former kuleana land; and access to their lo'i.

[Ms. Himeno was excused at 1:10 p.m.]

He expressed his concern that the 25-hour lease requirement did not take individual capabilities or expertise into consideration. He said the recent survey did not list many other talents that the residents may have and that the value assessed for the 25 hours was not reasonable. He noted that he has to work two jobs totalling 56 hours a week with his wife working six days a week which would give them only one Sunday off under the proposed 25-hour requirement.

Mr. Arisumi suggested that maybe some residents could make monetary payment on the lease in certain circumstances, as in the case of illness or disability. Mr. Johnson stated that he felt this concern had not been addressed and, therefore, asked that the lease be deferred until such time as these concerns are addressed.

Mrs. Adela Johnson explained her plan concerning the program:

- Class I - laborers
- Class II - handicrafts
- Class III - craft builders
- Class IV - designers, planners, coordinators, consultants

She also explained the monetary value of each and activities under each class.

She said that there should be some provision made for openings at regular intervals to review the hours and value. She said there are other factors such as inclement weather or less visitors. Mrs. Johnson also explained her family projects; that some projects might involve other family members below 18 years of age. She said tangible, visible and other measurements of progress toward goals might be used in monitoring the program.

Mrs. Johnson related her concern about the subdivisions. She said the one on the Punaluu side would impact adversely upon the traditional lifestyle of the people living there. She asked that the approval of the lease be deferred until things could be worked out on the hours and the subdivision on the Punaluu side.

She said four years ago she had signed up to determine whether she qualified or not and that now finds out there will be prequalification.

Mr. Nagata stated it was his understanding that there are a handful of residents who may have problems qualifying for the loan and they are exploring alternative means of financing.

Mrs. Johnson said Millilani Trask assisted the residents in the documents and the forms, all of which were sent to Mr. Nagata. She claims there are more than a handful that do not qualify. Mr. Nagata stated if they do not qualify residents have been informed they would have to move out of the area. Mr. Nagata acknowledged that was a fear among the residents. There is general concern by the residents about staying where they are presently located.

Mr. Nagata explained that the first step was to get approval of the lease so that the qualification would be done as close to the date of the lease.

Mr. Paty stated he thought that staff was looking at moving ahead and relocation sites were required; that the lease document needs to be approved; the money is available for loans, but concerning the qualification was a matter of the "cart before the horse;" the infrastructure is ready so now they want to wrap it up with the lease document. He said that ohana and kokua should also be explored.

Mr. Yuen stated he wants to move forward and said he disagreed on the 25-hour requirement. He said the typical working couple spends 30-40 percent of after tax income on their shelter costs or approximately 25 hours a week; at Kahana Valley the State is asking 25 hours a month, working near their homes on a cultural project for their mortgage and felt it was a very reasonable deal from the State and asked for cooperation with the Parks in working this out.

Mr. Yuen noted that classifying people would cause a great division among the people.

Mr. Arisumi asked whether: if State Parks went through the process now whether he would know who did or did not qualify. Mr. Nagata answered in the affirmative. Mr. Arisumi also asked whether when the selection of the lots were made whether everybody went out to select their lot. Mr. Nagata stated that everyone did except Mrs. Johnson because at the time it looked like her house was out of the flood plain but there is a question there. Her new residence would be Area B but potentially she may have to move out if they cannot go the route as she presented at the last Board meeting.

Mr. Arisumi moved to approve E-2 as a start.

In the case of Mrs. Johnson or other individuals, Mr. Paty said if it was an adult household they can get their hours anyway they can put it together. The Board is not going to say that family members cannot kokua.

Mrs. Johnson said all residents received a letter from Mr. Nagata that the leases will be withdrawn if unauthorized persons were in the home.

Mrs. Kahala pointed out she and her husband are elderly, are not working and her concern was survivorship.

Mrs. Soga said she witnessed the '46 tsunami and has seen very little flooding in her area and asked to remain there.

Mr. Ben Schaefer said they had not received Draft 8 nor did the Native Hawaiian Legal Corporation and disputed the submittal which states there are "no known unaddressed concerns." He asked for deferral of the lease at this time.

Mr. Nagata said that it was his belief that everyone got a copy of the lease at the August 5 meeting and a copy of the letter, along with the draft lease, was in the file.

Stewart Vierra, a resident, said he was the fourth generation there and did not want to move. He stated his father said there was never any damage because of tsunami or flood.

Ululani Bierne noted that they would probably be before the Board on the supplemental EIS. She asked if the comment date on the EIS could be extended. It seems that only way they would get the 65-year lease would be with the subdivisions. She questioned why they grubbed before coming to the Board for the subdivisions. She said the area of hours is a concern. She asked that ohana dwelling be considered and would like to have it in the lease as Sister Kahala asked. She said that it appears that so much is going on in the Valley and they are notified at the last minute. She said that she had a problem concerning non-profits; that Al Rogers did not recognize Kahana Ohana Unity Council and the Kahana Community Association as the hui in Kahana; that only one person is recognized who has drawn up the by-laws for Hui o Kahana and who is the treasurer for the Advisory Council so that it would reflect that group as representing the community and that was not so.

She said that some areas need to be "thrashed" out and asked that the matter be deferred.

**ACTION** Mr. Arisumi moved that the subdivision portion of the submittal be approved; that the details of the lease document be further discussed with the Kahana Valley residents; and that recommendations be resubmitted at the next meeting of the Board on June 12, 1992.

Mr. Paty said certain areas should be addressed but the Board would take action on the lease one way or the other. Mr. Paty asked that the residents be given the opportunity for further discussion on certain concerns and stated that he would attend the meeting.

Mr. Yim seconded the motion which was unanimously approved.

**RECESS** The meeting was recessed from 2:20 pm to 2:27 pm.

**ITEM F-10: DIRECT SALE OF REMNANT AT AUWAIOLIMU, HONOLULU, OAHU, TAX MAP KEY 2-2-03:95**

**ACTION** Unanimously approved as submitted (Yuen/Apaka).

**ITEM F-1-a: DOCUMENT FOR BOARD CONSIDERATION: ISSUANCE OF LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD NO. 3890 TO POOA, LAND AT LAMALIKI, WAILUKU, MAUI, TAX MAP KEY 3-4-23:POR .5**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

**ITEM F-1-b: DOCUMENT FOR BOARD CONSIDERATION: ISSUANCE OF REVOCABLE PERMIT BY DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM TO DANGER ISLAND, INC. FOR USE OF DIAMOND HEAD FILM FACILITY, FORT RUGER, HONOLULU, OAHU, TAX MAP KEY 3-1-42:POR.9**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

**ITEM F-1-c:** See page 21.

**ITEM F-1-d:** See page 2.

**ITEM F-1-e: DOCUMENT FOR BOARD CONSIDERATION: ASSIGNMENT OF GENERAL LEASE NO. S-4250 BETWEEN HONOLULU GAS COMPANY, LIMITED, ASSIGNOR, AND GASCO, INC., A HAWAII CORPORATION, ASSIGNEE, NAWILIWILI HARBOR DISPOSAL AREA, NAWILIWILI, LIHUE, KAUAI, TAX MAP KEY 3-2-03:30**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

**ITEM F-2: DIRECT SALE OF ABANDONED RAILROAD RIGHT-OF-WAY, PANAWEA TRACT, WAIAKEA HOMESTEADS, SO. HILO, HAWAII, TAX MAP KEY 2-4-46**

**ACTION** Unanimously approved a submitted (Apaka/Yuen).

**ITEM F-3: QUALITY BUILDERS, INC. REQUESTS RIGHT-OF-ENTRY OVER AND ACROSS GOVERNMENT LAND AT PIIHONUA, SO. HILO, HAWAII, TAX MAP KEY 2-3-26:POR. 4**

**ACTION** Unanimously approved as submitted (Yuen/Apaka).

**ITEM F-4: WAIAKEA SETTLEMENT YMCA OF COUNTY OF HAWAII REQUEST FOR CANCELLATION OF DIRECT LEASE OF PARCELS 1 AND 2, BEING A PORTION OF THE GOVERNMENT LANDS OF WAIMEA, SO. KOHALA, HAWAII, TAX MAP KEYS 6-6-08:ROAD RESERVE AND 6-6-03:7**

**ACTION** Unanimously approved as submitted (Yuen/Apaka).

**ITEM F-5: DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT SITUATE AT WAIAUUA, WAIMEA, SO. KOHALA, HAWAII, TAX MAP KEY 6-5-02:PORS. OF 5 AND 31**

**ACTION** Mr. Young asked that the right of entry not be granted until the requirements of Chapter 343 are satisfied. Unanimously approved as amended (Yuen/Apaka).

**ITEM F-6: AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 14, 1988 (AGENDA ITEM F-3) RELATIVE TO SET ASIDE OF STATE LAND AT KEALAKEHE, NO. KONA, HAWAII, TO COUNTY OF HAWAII FOR KEALAKEHE WASTEWATER TREATMENT PLANT, TAX MAP KEY 7-4-08:POR. 3**

**ACTION** Unanimously approved as submitted (Yuen/Apaka).

- ITEM F-7: CONSENT TO ASSIGNMENT OF GRANT OF EASEMENT (LAND OFFICE DEED) NO. S-27837 AND AMENDMENT TO PRIOR BOARD ACTION OF DECEMBER 20, 1991 (AGENDA ITEM F-10) CONCERNING PERPETUAL NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES, PORTION OF THE WAILUKU TOWN GOVERNMENT LANDS, WAILUKU, MAUI, TAX MAP KEY 3-4-11:POR. 31**
- ACTION** Unanimously approved as submitted (Arisumi/Apaka).
- ITEM F-9: ISSUANCE OF DIRECT LEASE TO CITY AND COUNTY OF HONOLULU FOR HEALTH DEPARTMENT'S HEALTH SERVICES AND ADMINISTRATION PURPOSES AT HONOLULU, OAHU, TAX MAP KEY 1-5-09:10**
- ACTION** Unanimously approved as submitted (Yim/Arisumi).
- ITEM F-11: DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT FOR INGRESS/EGRESS FOR EXISTING AGRICULTURAL PURPOSES AT MOKULEIA, WAIALUA, OAHU**
- ACTION** Unanimously approved as submitted (Yim/Apaka).
- ITEM F-12: SET ASIDE OF STATE LAND FOR MOKULEIA FOREST RESERVE ACCESS PURPOSES AT MOKULEIA, WAIALUA, OAHU**
- ACTION** Unanimously approved as submitted (Apaka/Yim).
- ITEM F-13: DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES REQUEST CONSENT TO LICENSE AGREEMENT BETWEEN DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES AND ATOZ, INC. REGARDING THE ALAN SANFORD DAVIS PARK AT HONOLULU, OAHU, TAX MAP KEY 2-1-02:12**
- ACTION** Unanimously approved as submitted (Yim/Arisumi).
- ITEM F-15: AMENDMENT TO PRIOR BOARD ACTION OF MARCH 27, 1992 (AGENDA ITEM F-5) RELATIVE TO THE DIRECT AWARD TO THE CITY AND COUNTY OF HONOLULU OF A PERPETUAL NON-EXCLUSIVE EASEMENT FOR SEWER FORCE MAIN ADDITION, KAMEHAMEHA HIGHWAY, MOANALUA, KALIHI-KAI, OAHU, TAX MAP KEY 1-2-21:POR. 36**
- ACTION** Unanimously approved as submitted (Yim/Apaka).
- ITEM F-17: UNIVERSITY OF HAWAII AND DEPARTMENT OF TRANSPORTATION REQUEST FOR WITHDRAWAL OF LANDS FROM THE SAND ISLAND STATE RECREATION AREA FOR THE MARINE EDUCATION AND TRAINING CENTER AND PUBLIC BOAT LAUNCH FACILITY AT SAND ISLAND, OAHU, TAX MAP KEY 1-5-41:6 AND 130 (PORS.)**
- ACTION** Unanimously approved as submitted (Yim/Apaka).
- ITEM A-1: APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT TO PREPARE ARCHITECTURAL DRAWINGS AND CONSTRUCTION DOCUMENTS FOR THE WAIALUA COURTHOUSE, HALEIWA, OAHU**
- ACTION** Unanimously approved as submitted (Yim/Arisumi).

**ITEM A-2: AWARDING OF HISTORIC PRESERVATION GRANTS-IN-AID**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

**ITEM D-1: APPROVAL FOR AWARD OF CONTRACT - JOB NO. 63-HF-CI, KAMUELA SUPPORT FACILITY ADDITION, HAWAII**

**ACTION** Unanimously approved as submitted (Yim/Arisumi).

**ITEM D-2: APPROVAL FOR AWARD OF CONTRACT - JOB NO. 31-OL-F1, PEARL CITY YOUTH ATHLETIC COMPLEX SITE IMPROVEMENTS, OAHU**

**ACTION** Unanimously approved as submitted (Yim/Apaka).

**ITEM D-3: APPROVAL FOR AWARD OF CONTRACT - JOB NO. 34-KL-B, STREAM MOUTH MAINTENANCE, VARIOUS LOCATIONS, KAUAI**

**ACTION** Unanimously approved as submitted (Apaka/Arisumi).

**ITEM D-4: APPROVAL FOR AWARD OF CONTRACT - JOB NO. 1-OL-G2B, CARPETING FOR DIVISION OF STATE PARKS, OAHU**

**ACTION** Unanimously approved as submitted (Yim/Yuen).

**ITEM E-1:** See page 11.

**ITEM E-2:** See page 29.

**ITEM E-3: PERMISSION TO NEGOTIATE WITH COUNTY OF HAWAII FOR LIFEGUARD SERVICES AT STATE BEACH PARKS AND TO EXECUTE A MEMORANDUM OF AGREEMENT FOR SERVICES**

**ACTION** Unanimously approved as submitted (Yuen/Yim).

**ITEM E-4: APPROVAL OF AGREEMENT WITH THE UNIVERSITY OF HAWAII SEA GRANT COLLEGE PROGRAM, OAHU**

**ACTION** Unanimously approved as submitted (Yuen/Yim).

**ITEM E-5: PERMISSION TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR PORTIONS OF THE MAKIKI-TANTALUS AREA SELECTED FOR DEVELOPMENT FROM ALTERNATIVE DEVELOPMENT PLANS**

**ACTION** Unanimously approved as submitted (Apaka/Yim).

**ITEM F-1-a:** See page 29.

**ITEM F-1-b:** See page 30.

**ITEM F-1-c:** See page 21.

**ITEM F-1-d:** See page 2.

**ITEM F-1-e:** See page 30.

**ITEM F-2:** See page 30.



ITEM F-3: See page 30.

ITEM F-4: See page 30.

ITEM F-5: See page 30.

ITEM F-6: See page 30.

ITEM F-7: See page 30.

ITEM F-8: See page 21.

ITEM F-9: See page 31.

ITEM F-10: See page 29.

ITEM F-11: See page 31.

ITEM F-12: See page 31.

ITEM F-13: See page 31.

ITEM F-14: See page 24.

ITEM F-15: See page 31.

ITEM F-16: See page 25.

ITEM F-17: See page 31.

**ITEM H-1: APPROVAL TO PROCEED WITH THE SINGLE AUDIT OF THE DEPARTMENT'S FEDERAL AID PROGRAMS**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

ITEM H-2: See page 10.

**ITEM J-1: APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4863, ETC., AIRPORTS DIVISION, LIH, KEAHOLE, HNL**

**ACTION** Unanimously approved as submitted (Apaka/Yuen).

ITEM J-2: See page 25.

**ITEM J-3: RENEWAL OF REVOCABLE PERMITS 2010, ETC., AIRPORTS DIVISION, ITO, KOA, HNL, LIH, MKK, OGG**

**ACTION** Unanimously approved as submitted (Yuen/Arisumi).

**ITEM J-4: ISSUANCE OF LEASE BY PUBLIC AUCTION FOR OFFICE, FREEZER, AND WAREHOUSE SPACES, HARBORS DIVISION, PIER 15, HONOLULU HARBOR, OAHU**

**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

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

**ACTION** Unanimously approved as submitted (Yim/Apaka).

**ITEM J-6: ISSUANCE OF A VENDING MACHINE AGREEMENT BY NEGOTIATION, HARBORS DIVISION MAINTENANCE YARD AND BARBERS POINT HARBOR, OAHU (HAWAIIAN ISLES ENTERPRISES, INC. DBA HAWAIIAN ISLES VENDING)**

**ACTION** Unanimously approved as amended (Yim/Arisumi).

**ITEM J-7: ISSUANCE OF A VENDING MACHINE AGREEMENT BY NEGOTIATION, HARBORS DIVISION, ALA WAI SMALL BOAT HARBOR AND KEEHI SMALL BOAT HARBOR, OAHU (HAWAIIAN ISLES ENTERPRISES, INC. DBA HAWAIIAN ISLES VENDING)**

**ACTION** Unanimously approved as submitted (Yim/Arisumi).

**ITEM J-8: ISSUANCE OF REVOCABLE PERMIT, PIER 32 ROAD ENTRANCE, HONOLULU HARBOR, OAHU (CHEVRON U.S.A. INC.)**

**ACTION** Unanimously approved as submitted (Yim/Arisumi).

**ITEM J-9: ISSUANCE OF REVOCABLE PERMIT, HONOKOHAU SMALL BOAT HARBOR, HAWAII (MR. BRYAN S.E. CORNELSON)**

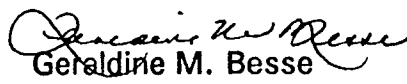
**ACTION** Unanimously approved as submitted (Yuen/Yim).

**ITEM J-10: CONTINUANCE OF REVOCABLE PERMITS H-85-1270, ETC., HARBORS DIVISION**

**ACTION** Unanimously approved as submitted (Yim/Arisum).

**ADJOURNMENT** There being no further business, the Chairperson adjourned the meeting of the Board of Land and Natural Resources at 2:43 p.m.

Respectfully submitted,

  
Geraldine M. Besse  
Secretary

APPROVED:

  
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WILLIAM W. PATY, Chairperson