

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

DATE: June 25, 1993
TIME: 8:30 a.m.
PLACE: Kona Surf Hotel
Mauna Loa Conference Room
78-128 Ehukai Street
Kailua-Kona, Hawaii

**ROLL
CALL**

Chairman Keith Ahue called the meeting of the Board of Land and Natural Resources to order at 8:30 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Mr. Christopher Yuen
Ms. Sharon Himeno
Mr. William W. Paty
Mr. Keith Ahue

STAFF: Mr. Henry Sakuda
Mr. Mike Buck
Mr. Manabu Tagomori
Mr. Mason Young
Mr. Roger Evans
Mr. Pete Hendrickson
Mr. Linford Chang
Mr. Hiram Young
Ms. Janet Swift
Mr. Glen Taguchi
Mrs. LaVerne Tirrell

OTHERS: Mr. Johnson Wong, Deputy Attorney General
Mr. Peter Garcia, Dept. of Transportation
Mr. Steve Morris (Item D-9)
Ms. Janice Rearden, Mr. Michael Rearden,
Ms. Toni Whittington (Item H-2)
Mr. Peter Staub, Mr. James Pedersen (Item H-3)
Ms. Margaret Stahl (Item H-1)
Ms. Mildred Carvalho, Ms. Mili Perez, Messrs.
Franklin Carvalho, George Lindsey, Everett Kaneshige,
Stephen Lim, Toni Whittington (Item H-4)
Messrs. Dennis Lombardi and Melvin Fortes (Item H-5)

MINUTES: Mr. Yuen moved 1) to approve the March 25, 1993 minutes with one amendment, that Mel "Ortiz" be changed to Mel "Fortes" and 2) to approve the May 28, 1993 minutes as submitted. Mr. Arisumi seconded, motion carried unanimously.

**ADDED
ITEM:**

The board voted unanimously to add the following item to the Agenda:
(Arisumi/Apaka)

Item H-6 Emergency Rules, HRS 91-3(B), Hurricane Iniki, County of
Kauai.

**ITEMS ON THE AGENDA WERE CONSIDERED IN THE FOLLOWING
ORDER TO ACCOMMODATE THOSE APPLICANTS AND INTERESTED
PARTIES PRESENT AT THE MEETING:**

**AFTER-THE FACT CDUA FOR A PASSIVE PARK, SUBDIVISION, AND
SHORELINE ACCESS TRAIL AT PUAKEA BAY RANCH, NO. KOHALA,
HAWAII, TMK 5-6-02:42; APPLICANT: PUAKEA BAY RANCH OWNERS
ASSN, AGENT: MR. EVERETT S. KANESHIGE OF ALSTON, HUNT,
FLOYD AND ING.**

ITEM H-4

This item was presented to the board by Mr. Evans with a two-part recommendation. The first part addressed the violation question which the board initially reviewed with an on-site visit. Staff categorized the violation into two parts. Category one are violations for which there was an application approved by the board but no construction plans submitted. Staff found six violations in this category. Category II are violations which occurred with no land board approval. Twelve violations are listed in this category. Staff has recommended a total fine of \$9,000 for the 18 violations listed in the submittal.

The second part of staff's recommendation deals with the after-the-fact and proposed land use items relative to the passive park development, subject to nineteen conditions.

Mr. Paty asked Mr. Evans to explain ownership of the trail i.e. what part would come to the state and what was to remain with the owners of the property.

Mr. Evans explained that as a part of this approval the makai trail would be developed and title to that trail, along with subsequent maintenance and liability would then pass from the current landowner to the State. Mauka of the actual metes and bounds of the trail, which currently is private property, would remain so.

In reply to Mr. Paty's question, Mr. Evans replied that Na Ala Hele has been on board relative to the trail alignment, etc.

In reply to Mr. Arisumi's question, Mr. Evans said that the trail would be maintained by DLNR, but he did not know the details of such maintenance.

Mr. Apaka asked about safety measures i.e. fencing. He felt uneasy about the State assuming this liability with no safety measures being recommended. Mr. Evans said that this question was partly addressed by restricting the trail to pedestrian traffic; how that would be addressed in the construction he did not know and referred the question to the Division of Forestry. Mr. Yuen said that he had talked to the Na Ala Hele head on the Big Island who indicated that they would be putting barriers in certain locations where the trails come very close to the edge of the cliff. There would also be signs asking people to stay on the trail.

George Lindsey, Attorney for the applicants and Everett Kaneshige, representing the Association of Home Owners came forward to testify at Chairman Ahue's request.

Mr. Lindsey stated they believed the existing mauka trail to be the safest trail. However, if the State wishes to have the shoreline trail, they have agreed to let it go. All they ask is that the State make a decision one way or another today.

With respect to the fines, Mr. Lindsey said that because one of the contractors went bankrupt Shirley Isaacs was forced to be contractor. She had relied on her experts and thought that they had followed through on construction plans, etc. He felt that the violations should be viewed as one, if at all.

If the State decides to take either trail, mauka or makai, Mr. Lindsey asked that the board consider the following language:

"The State hereby disclaims any right, title or interest it may have in the property covered by this application for the Isaacs and the Puakea Bay Ranch Association. And, further, the access granted above is intended to compromise any and all claims for access to the sea and along the shoreline whether by prescription, ancient trails, customs or otherwise without conceding the existors of such claims."

He explained that this language is necessary to bring some finality to this matter.

Referring again to the matter of the fines, Mr. Lindsey said that the shoreline trail takes up in excess of 60,000 sq. ft. On the basis of \$1.00 per sq. ft., the total amount is only \$60,000, so his clients are already losing money. He did not believe that any further fines, if there is an excess in terms of building the trail, should be assessed.

Mr. Paty said that the language as suggested by Mr. Lindsey would need to be reviewed by the Attorney General's Office. Mr. Kaneshige said that this language is identical to that entered into with Richard Smart in 1981.

Franklyn Carvalho said that at the last public hearing it was said that everything would revert back to the old trail. Now staff is talking about taking 10 feet back from the edge of the cliff. He asked why the State wanted this additional 10 feet. He said if he was the applicant, he would be fighting to keep this 10 feet.

Toni Whittington, Chairman for the Steering Committee on Citizens for Protection of the North Kohala Coastline said that her group, which brought this action two years ago as a part of the settlement of the negotiated trail, agreed not to oppose the CDUA, and they do not.

Ms. Whittington testified that the original location of this shoreline trail is a traditional pathway which has been identified by Na Ala Hele which ran from the Coastline Station, through this property, to Parker Ranch lands in the south. Portions of that trail were on the cliffside and Huipa Landing. Portions of that trail were also back from the coastline through the northern end of the park parcels. Their group has maintained all along that this would be an ideal location of the traditional trail for several reasons. One, that is what people are used to, it's safe and flat. She said also that they did not maintain that the State had to have ownership of the trail. The decision and even idea of state ownership of the trail was brought up by the applicant. What they wanted was just to have an easement over the traditional trail for the length of the area. It was the applicant's decision that they would like to reduce their liability by dedicating the lands to the State and that is why they held firmly to the fact that it be as close to the certified shoreline as possible. They did not care for that and were holding out for the traditional pathway. In terms of maintenance and safety of this trail, Ms. Whittington said that it has been along the cliff and the public has not had a problem. They do not feel that it is so close to the cliff that it would produce a safety problem. As far as maintenance of the trail, they have talked to Mike Buck of Forestry and others to work out some kind of stewardship for this trail. The reason they are willing to do this is because they are very sure that this trail will become part of the official Ala Kahakai trail. Ala Kahakai has been identified by Na Ala Hele as being a highest priority trail for preservation along the west coast of the big island.

Mr. Arisumi asked, "you said that Na Ala Hele is going to maintain the trail?" Ms. Whittington said that not only have they talked about maintaining the trail, but Mr. Buck has talked to them about also working out a stewardship program for the trail. Mr. Arisumi said that he did not want to see DLNR money used to maintain the trail. Ms. Whittington said that eventually Ala Kahakai will be covered under the entire maintenance program. She went on to explain the economic benefits to the State of the Ala Kahakai trail. Mr. Arisumi reiterated that he did not wish to use State monies to maintain this trail. Ms. Whittington reminded Mr. Arisumi that it was neither

theirs or the State's desire to take over the ownership of this trail. It was the applicant's request to do so. They would have been happy with just an easement on the trail and with the applicant maintaining maintenance of the trail.

Ms. Whittington explained that by staff's recommendation the fines imposed on the applicant would be applied toward the construction of the trail. The way she understood the submittal, any costs over that would also be borne by the applicant. It would not cost the taxpayers any monies to build. Mr. Arisumi wanted to make sure that the applicant understood what was being said.

Mr. Lindsey said that they did understand but did not agree with some of the allegations which were made by Ms. Whittington. The fact that the State is going to be deeded this property is essentially borne out of the fact that they believe that the makai trail is not safe. However, if the state is going to force them to give away the trail, then they should also take the liability. As far as it being their idea, he said that it was a negotiated stipulation. If it's a matter of settling the Ala Kahakai trail and this would do it, then, fine, take it.

Mr. Arisumi asked Mr. Lindsey for clarification as far as the landowner paying for the cost of the trail. Mr. Lindsey believed that they were to pay \$10,600.00, the estimated cost for building the trail. If the cost should be higher than that, Mr. Arisumi asked who would pay the difference. Ms. Whittington said that if the fines were set aside there would be more than \$10,600 -- \$9000 from the park parcel and \$3900 from the residence. She explained to Mr. Arisumi that the negotiated settlement was that the owner would pay for the cost of constructing the trail. No figures were involved. However, at the last board meeting on the Isaac case, the board decided that the fine imposed on Mr. Isaac would be set aside for the purpose of constructing the trail. Rather than taking the money from him and making him do the trail, they would take the fine from him and then apply that fine to building of the trail.

Mr. Yuen said that when the board made their decision on the Isaac's lot, the agreement was that the Isaacs would pay for construction of the trail on their portion. The fines would be offset against that. So, if the trail cost less than the fine, then they would pay the fines in excess of that. If the trail cost more than the fines, they would be responsible for paying that. The complete construction cost of the trail would be reimbursed to the State. There is an estimate of \$10,600 from the Division of Forestry and Wildlife.

Mr. Arisumi felt that it was unfair to the Isaacs if no ceiling was set for construction of the trail. Mr. Lindsey said that they were always talking about setting a ceiling. They did not envision a situation where Na Ala Hele could put cement on the trail, thus making it a \$400,000 trail. Mr. Yuen

informed Mr. Lindsey that their agreement said that the Isaacs would post a bond, letter of credit, etc. which the State could draw upon. Discussion continued with respect to the cost for constructing the trail. Ms. Himeno stated that she, also, felt that a ceiling should be set. Mr. Yuen said that the \$10,600 estimate was only made about three weeks ago. Ms. Whittington felt that the \$10,600 was rather low and suggested if there was going to be a ceiling that it be quite a bit higher than \$10,000. Ms. Himeno asked what was taken into consideration to arrive at the \$10,600 estimate. Mr. Yuen did not know what Rod Oshiro of Forestry had in mind when he did the estimate.

Stephen Lim agreed with Mr. Yuen that when Mr. Yuen, the applicant and Ms. Whittington went out on a site visit there were approximately 5 to 8 spots where there was a dispute as to how far back from the cliff the trail would run. Generally, the landowner taking the closer view and Ms. Whittington and Mr. Yuen taking the farther view. What he feels the DLNR estimate was based upon was the conservative view which is closer to the cliff view. This is why he feels that the \$10,000 is not low at all; in fact, he feels that it will be less than that. Mr. Lim said that in his conversation with Mr. Oshiro, it was his major intent that he did not want to go into a whole lot of construction on the trail. He seemed satisfied that the trail is back far enough that he could do minimal leveling of the trail, far away from the cliff edge. Mr. Lim said that he would like to see the cap on the trail cost be limited to the total fines incurred.

Mr. Yuen said that there were places where all parties came to an agreement as to where the trail could be located in the makai location because there was to be more construction. He did not believe that two locations were pegged. Mr. Lim said that they did. As the group was moving ahead all pegs were being driven. On every issue of dispute they pegged the two separate spots. Mr. Yuen said that there was no dispute on the one he was talking about because steps were to be built. If the steps were not going to be built then there would be a dispute. Mr. Lim did not recall this but said that they would go along with what's been pegged. This would not be a substantial amount of land. For clarification, Mr. Yuen said, "then your position is that you are willing to vary the trail to go around boulders here and there if you get a cap on the construction cost of \$12,000? Mr. Lim said, "that, plus we get to also offset whatever fines are left over if there are any fines left over to be paid against the extra give-away of the land. Mr. Lim said that they can submit the exhibit where it shows the certified shoreline in one direction and the dotted line showing the various locations of the disputed areas. This could also be used for the purpose of the record to show where the agreed mauka edge of the trail would be. After more discussion, it was agreed that the cap would be the maximum of the fine, which is \$12,900.00.

Mr. Yuen moved for the board to go into executive session. Ms. Himeno seconded. Chairman Ahue called for one more person to testify before calling for the vote.

Ms. Mildred Carvalho read into the record a letter signed by her father, Frank Carvalho:

"My name is Frank Carvalho and I would like to apologize for not being able to attend this meeting. However, I have granted my daughter, Mildred Carvalho, permission to act as a proxy on my behalf for I am in poor health. As for the letter dated June 2nd which I presented to you from Citizens for the Protection of the North Kohala Coastline, there was no permission given by myself or anyone else for the use of my name in the forementioned letter. My wife did receive a phone call on Tuesday, June 1, 1993 from Toni Whittington requesting to speak to me regarding the topic of the Mahukona development at which time I was not available to speak to her due to health problems. A copy of this letter was presented to myself with my name being used inside of that letter."

Ms. Carvalho acknowledged that Ms. Whittington did speak to her dad in a grocery store and the only thing her dad said was that she could call him. When she did make the phone call her dad was not available but she went ahead and used his name.

Before going into executive session, Mr. Kaneshige said that if it was the intent of the board to discuss the alignment of the trail, he said that he did have a plan showing the trail in red as it affects the Isaacs parcel and the Association's parcel. Also, the representation as just made, the trail as shown on this map follows the mauka most pins that were laid out by Mr. Yuen on the last walk.

Mr. Apaka asked who was responsible for the liability on the property being discussed today. Mr. Kaneshige said that it has been dedicated as an easement to the public. Because it's only an easement, the Isaacs and the the association have the right of way. Mr. Apaka asked if they had the liability responsibility over the entire trail. Mr. Kaneshige said, yes.

Ms. Whittington came forward to say that Mrs. Carvalho was incorrect about the business with Frank Carvalho. She said that Mr. Carvalho met three times with herself and Mr. Skover and he did express his willingness to participate in the contested case. However, because he had a heart attack before the hearing, their group voluntarily withdrew his name from participating. He did not ask us to withdraw his name.

Mr. Carvalho directed this question to Mr. Arisumi. Didn't Ms. Whittington comment that her group would maintain the trail if it was along the shoreline as agreed to? Ms. Whittington said that she did not make this

comment. If the State is to maintain it, then they agreed to participate in a stewardship program to help. Mr. Arisumi said that that was the indication he got but he was not sure of what she said. Mr. Carvalho said that if she is willing to have her group maintain the trail then he would like to see this in black and white.

EXECUTIVE SESSION: The board went into executive session at 10:50 a.m.

CALL TO ORDER: Mr. Ahue called the meeting back to order at 11:10 a.m.

ACTION: Mr. Yuen moved to accept staff's recommendation for a total fine of \$9000 with the following modifications that in view of the fact that the alignment of the trail is somewhat more mauka than originally anticipated in the settlement agreement and that the applicants have agreed to an alignment which minimizes the safety problems and the construction costs that the applicants will also be responsible for the lesser of the cost of the trail or the total amount of the fine, which includes \$9000.00 from the park parcel and \$3900.00, which is an earlier fine on the adjacent property. Mr. Arisumi seconded.

Mr. Paty asked Mr. Yuen if he wanted to make any reference to the proposed language. Mr. Yuen said that he would prefer that Mr. Lindsey work this out with the Attorney General. Mr. Yuen said that he is not comfortable with giving up all interest that the state may have in both of these lots. He was not sure if the state had looked into the matter of whether they have any ownership claim -- he did not know the status of title to these lots. He did know that we were compromising any claims that the state might have to the trail.

Mr. Evans said that under Section C., page 11, staff included that the board action relative to this matter be subject to review and potential minor revision by the Attorney General.

Mr. Ahue called for the vote. Motion carried with a majority vote. Mr. Apaka voted no since he still had a question about safety of this trail.

TIME EXTENSION REQUEST FOR CONSERVATION DISTRICT USE PERMIT (CDUP) HA-1948 FOR A SINGLE FAMILY RESIDENCE AT PAO'O, NO. KOHALA, HAWAII, TMK 5-7-1:5, APPLICANT: MS. JANICE REARDEN.

ITEM H-2

Mr. Evans explained that this is a request to complete, rather than start this project. Staff considered this a reasonable request so is recommending that the board approve a two-year time extension to complete the residence, and that the deadline to complete construction be established as of March 30, 1995.

Ms. Toni Whittington, Chairman of Citizens for Protection of the Kohala Coastline said that they had been looking at this application for several years now because this area is an area of high public use. It is the location of a surfing site called "Secrets", and is one of only three surfing sites in the 29 miles of the North Kohala coastline. It is also a very highly used camping and swimming area, and one of very few coral beaches on the coastline.

Ms. Whittington said that their group had written to the board on the date of the expiration of this application in March asking the board to let the application expire. She explained that this is only one of three residences on the entire coastline.

Another problem, said Ms. Whittington, is that a shed was built on this property. It was the Planning Department's discovery of this cabin, which is unpermitted, that triggered the application for a CDUA for a residence. The board did cite the owner for constructing the cabin, and at the hearing the owners said that the cabin would be used for a tool shed for construction and would be torn down after construction. She said that the cabin is still there and not being used as a tool shed as shown in photographs which she presented to the board.

Ms. Whittington said that their group has received many calls from people who have complained about being chased away from this area. People also squatted in the cabin periodically because it is open and unprotected. Another problem is access. At the last meeting the board said that this access was not to be impeded because at the time the applicant had a locked gate on state land. Ms. Whittington said that their reason for asking that this application lapse is because 1) it's been a long time; 2) since this application came in they have had interest in the location of the Ala Kahakai. They would like the Ala Kahakai location be identified before the board is asked to make a decision on the single family residence. Ownership of this parcel is also questionable. They did not find in their files any indication that the Rearden's are the actual owners of the property.

Michael Rearden said that he was involved in the early process of the permit and that their purpose from the very beginning was to build a residence on this property. It was not triggered by the moving on to the property of the tool shed, which was brought in on wheels when they applied for a permit for the well on the property. They did not think they were violating anything by bringing in this temporary structure. However, when they were told that they were, they said that they would take it down upon completion of the residence.

Insofar as the new easement is concerned, Mr. Rearden said that they had negotiated with the State; a figure was set, archaeological studies, surveys and appraisals were done at a cost of \$10,000 to \$15,000 and they had an agreement with the state for purchase of the easement.

Mr. Rearden admitted that they have lost some control of the property. Numerous reports have been made to the police department about vandalism. As far as fishermen, they have invited them to the property; they have invited the UH people to camp on the property and do archaeological studies there. When they received a request from the trails people, they immediately responded and told them that they would be happy to have them come through. They did not think it was a reconnaissance mission on behalf of Ms. Whittington to come down and make her locations assessments. He said that they have been hospitable and open to everybody who uses the coastline for a given useful purpose but they have not been hospitable to people who come down there to grade, to steal, to break beer bottles in the water, etc. Until they can be in their residence on their property they will not be able to have the kind of control the police have because they are not down there on a daily basis. When the easement is finished and safe, the people can use it. He said that he does not see people walking up and down the trail as described by Ms. Whittington. He sees people on 4-wheel drives, motorcycles racing up and down that drive. He explained that their sole purpose for building is to have this for their children. Things have been delayed because of a restraining order by the court. They are ready to go ahead with the project and their purpose is not to deny access to anyone who legitimately wants to use the shoreline for swimming, snorkeling, etc. He informed the board that Janice Rearden has been appointed trustee for the property and also that he has never seen Toni Whittington on the property in all the years he has been down there.

Mr. Arisumi asked if the two year extension is sufficient. Mr. Rearden felt that it was, although they would like to have more time. He thought it would be two years from today instead of from March 30, 1993.

Mr. Yuen asked who put up the gate which Ms. Whittington was talking about. Mr. Rearden suspected that it was put up by people who had moved into the shack. He said that he cut it down last week. There is also a full house under construction on my property -- footings have been laid, etc. After the road is completed, Mr. Yuen asked if the easement would be open to the public. Mr. Rearden understood that it would be a common easement.

As the applicant and trustee for the children and as the person who will have to see that the guidelines for the property are followed, Ms. Janice Rearden assured the board that, it was her intention to build their residence and that the gate was not put up by her.

Ms. Toni Whittington said that the only lateral access to the area is the jeep road and a portion of that road goes into this property. She wanted to know if the applicant intended to block off that road as well or will public passage be allowed on that jeep road through their property.

Ms. Rearden said that they have no intention of blocking any of the trails through their property. There are about 5-10 different ways to get to the property.

ACTION Mr. Yuen moved to approve an extension of two years from today, June 25, 1993, and that, relative to an existing lateral historic trail, the matter be reviewed by the Historic Preservation Division. Mr. Arisumi seconded; motion carried unanimously.

BREAK: 10:50 - 11:00 a.m.

Mr. Ahue acknowledged the services of Mr. Bill Paty and Mr. John Arisumi since this is their last meeting.

ITEM H-3 CDUA TO CONSTRUCT A SINGLE FAMILY RESIDENCE AT OPIHIKAO, PUNA, HAWAII, TMK 1-2-02:98; APPLICANT: PETER AND MIREILLE STAUB; AGENT: JAMES PEDERSEN.

Mr. Yuen asked about the County of Hawaii's comment about a possible public trail traversing the subject property.

Mr. Jim Pedersen, Agent for the applicant, said that they were advised by DLNR of the County's comments. They did look at the map attached and took a site visit with Mr. Oshiro of the Hilo office and found that the comment was based on a trail that was on another piece of property. Mr. Evans said that this information was verified to the County by DLNR.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM H-5 AFTER-THE-FACT AMENDMENT REQUEST FOR CDUA HA-1711 FOR LANDSCAPING AND ADDITION TO A SINGLE FAMILY RESIDENCE, KIHOLE BAY, NO. KONA, HAWAII, TMK 7-1-02:6 & 8; APPLICANT: ANN KEENAN; AGENT: DENNIS LOMBARDI (CASE & LYNCH).

Mr. Evans presented this submittal with a three-part recommendation: 1) Petitions for a Contested Case Hearing; 2) Violation; and 3) Application.

PETITIONS FOR A CONTESTED CASE HEARING:

ACTION Mr. Yuen moved to accept staff's recommendation to deny a contested case hearing by Sierra Club and E Mau Na Ala Hele, Incorporated, because of legal standing. Ms. Himeno seconded. Motion carried unanimously

VIOLATION

Staff has found the applicant in violation of six violations of the conservation district rules and recommended a total fine of \$3000. Staff has not recommended any restoration or any administrative costs.

APPLICATION

Staff is recommending approval with the exception of any grading done at the pond's boundary subject to the conditions listed in the submittal.

Mr. Dennis Lombardi and Mr. Mel Fortes came forward to testify on behalf of Mrs. Ann Keenan.

Mr. Lombardi said that initially they did not respond to staff's report since they were asked by staff not to respond until this meeting because of the contested case request. Staff preferred that the board rule on this issue before any response. As a result, a couple items were presented to the board.

Mr. Lombardi said that Mrs. Keenan supports staff's recommendation and he requested that the board approve her application with one caveat, or two. One is that she would like to see Condition No. 4 amended. As currently drafted it is not particularly clear as to what staff was attempting to accomplish.

Insofar as Mrs. Keenan's plans for the pond, Mr. Lombardi said that this is the same plan which was submitted to the Army Corps of Engineers who also have jurisdiction over this pond. Correspondence dated June 24 from the Army Corps reflected the observations they made at their site visit to the pond. USCE found the pond to be in excellent condition and thought this pond to be the best maintained that they have seen. Mr. Lombardi said that his reason for bringing up the Corps' comments is because of staff's recommendation no. 4 under APPLICATION which reads:

4. A management plan as described by the Division of Historic Preservation shall be submitted for review and approval prior to any further construction on the site. The plan shall incorporate conditions 2 and 3 above.

Mr. Lombardi said that he was confused with the above condition. First it provides for a management plan, doesn't save the pond or the landscaping but as described by Historic Preservation. Then it goes on to specifically incorporate two conditions that were recited earlier by staff that relates to landscaping plans and the use of indigeneous plants. Historic Preservation also talks about public access, signage, water monitoring of the pond for

water level and Hawaiian community input concerning all of these items -- restoration plan, pond maintenance, incorporation of material and interpretative signage. Mr. Lombardi said he was not sure where to pick and choose from the comments from Historic Preservation or whether staff has delineated those us by identifying the two conditions that has to be contained in the management plan. He said that if that is staff's intent, then he would like the board to review the plan that has been submitted by Mrs. Keenan and approved today, if possible. Mr. Lombardi said that they have enough evidence to show that if she continues to maintain the pond the way she has it will stay pristine.

With respect to Condition No. 4, Mr. Evans felt that it was clear. He thought this was an excellent way for staff to indicate their appreciation that this particular landowner could show the state of hawaii through adopting the historic preservation plan on pages 7 and 8. This would be an ideal opportunity for this private landowner to appreciate some of the very valuable and cultural elements here in the state of hawaii.

Mr. Lombardi did not disagree with Mr. Evans. But there are some differences between the condition and the adverse impact thought to be enumerated by this development activity. Here, there is no adverse impact shown on this pond whatsoever by what Mrs. Keenan is proposing to do at her home. Nonetheless, Historic Preservation is proposing public access and signage. Signage on your property, that you have to pay for, is a public invasion, just like public access is. Both are prohibited by the constitution. This is not to suggest that Mrs. Keenan has not been a good steward. She would object strenuously to any condition that would impose a management

plan requirement where that management plan is ill defined, is fairly broad in scope and includes requirements which may be improper i.e. public access, public signage and financing of public signage.

Mr. Lombardi asked the board to reflect on just what it is that it wants to do with this area. There is a vast park land out there, trails that traverse different areas. The signs that have been placed on different areas out there haven't lasted. He felt the State should have a master plan for this area. They would like to think that this pond is one which has been referred to in many historical writings but with some investigation the State might find that there is a lot of dispute and a lot of debate as to whether that is the case. This pond could have been formed in the 1801 lava flow. There are a lot of important, significant national wonders in the area that the board can evaluate but it requires a master plan. It requires input from the public in general.

Mr. Melvin Fortes spoke on the management plan for the area and named names of several well known people who had visited the Keenan's property.

Mr. Fortes said that the Keenan's understand that the shoreline is open to the public, but they also understand that the pond is public property and a source of water that must be protected. In terms of management of the pond, he asked that the board adopt the management plan that has been appreciated by the U.S. Corps of Engineers.

Mr. Lombardi felt that a revisioning of the fines might be warranted by the board. The reason is that no. 1 talks about failure to submit final plans. He said that he did have the plan approved by the board on April 18, 1989.

Mr. Yuen asked Mr. Lombardi if his house was built according to the set of plans he was referring to, except for the conversion of the garage. Mr. Lombardi said, yes.

Referring to item no. 2, regarding conversion of use of the garage, and item 4 which refers to the storage building, Mr. Lombardi was not sure if, under the board's rules, that constituted a violation since the building was moved onto the property. According to Lombardi, one violation, dealing with the Department of Health, was an oversight. They were unaware that the Board of Health had only provided preliminary approval, and authorized the construction of the system, so they did not go in for final approval at the but they did go in subsequently.

In reply to Mr. Yuen's question, Mr. Lombardi said that both Items 5 and 6 dealt with the septic system.

ACTION Mr. Yuen moved that the fine be \$2000 instead of \$3000 as recommended by staff. His rationale being that item 1. should not be a separate fine because the individual items which are noncompliance are being fined. He felt also that nos. 5 and 6 are really the same problem. He moved that the the board approve all other recommendations by staff. Mr. Arisumi seconded. Motion carried unanimously.

Mr. Lombardi said that he would strongly encourage the board to consult with counsel before they adopt this condition as proposed. As currently drafted it violates the rights of Mrs. Keenan and is probably subject to being stricken on review. Further, given Mr. Yuen's comments, the content of the condition is even further muddied. They do not have to do everything that Historic Preservation seemingly requires i.e. they do not have to monitor, but it is important that they consult with people regarding landscaping and restoration. If this board intends to adopt a condition that requires a specific management plan he strongly encouraged the board to be specific. He said that there will be tremendous input concerning their landscape plan. There is a specific condition that requires that they submit it to staff.

Mr. Evans explained that the board has approved this submittal for this master plan to go forward and, as represented earlier, it is rather specific

as to what historic preservation has specifically said. There are seven basic justifications on pages 7 and 8. Mr. Lombardi asked, "are they justifications or conditions?" Mr. Evans replied that they were requirements of the master plan.

Mr. Lombardi reiterated that public access cannot be made a requirement of the master plan. Historic Preservation says "public access", if not public access then "signage" on the property. Signage on the property cannot be made a valid condition to this permit.

Mr. Ahue said that as he reads the condition they are not requiring public access, nor are they requiring interpretive signs. They are asking that it be included as part of the plan, but no requirement. Mr. Lombardi asked, "then is the board's position that we may ignore anyone of the requests of Historic Preservation, that we are not compelled to honor the request?" Mr. Ahue clarified that they are not compelled to comply with the request but they will ultimately have to review the plan.

Mr. Lombardi asked that the board make clear its intent when it adopts a condition. He continued, "a catch-all condition that allows a third party to exercise the judgement of this board relative to a management plan is not either valid or appropriate under the circumstances. While plans may be reviewed for technical sufficiency, public policy is not best established by one of the board's divisions. It's best established by the board. I am still confused -- either they have an obligation to comply with Historic Preservation's request or they do not have an obligation to comply. If what the board is saying is that they have a condition and they get to test it later in the court, or they disagree, that's not resolution."

Mr. Paty asked deputy attorney general Johnson Wong if he would care to comment on this.

Mr. Wong agreed with Mr. Lombardi that you cannot impose a condition that constitutes the taking of a property. He suggested that the management plan as proposed be submitted to the board, who can then refer it to the Historic Sites Division for review and comment, but the final decision is with the board. He stated that what Mr. Lombardi was objecting to was that they have to comply with whatever Historic Sites is proposing.

Ms. Himeno asked, "you would not have a problem with submitting the management plan, getting comments from Historic Preservation, and then having it come back to the board?" Mr. Lombardi agreed with Mr. Wong's suggestion, if it were just referred to the Chairman it would help expedite

matters. All he was concerned about were conditions contained in Historic Preservation's comments which are unlawful and not understandable. He was not sure if he could pick and choose. He preferred to strike their comments entirely. However, if staff wants to refer this to Historic Sites for comments, fine and they will incorporate in this plan commentary concerning those people with whom they have consulted. Mr. Lombardi forewarned the board that they will address the concerns relative to revegetation of the shoreline by saying, "nature is taking care of it" because he does not want to require Mrs. Keenan to go through a series of SMA reviews again and a whole lot of other permits and requests.

ACTION Unanimously approved as recommended by staff, but with an amendment that the fine be reduced to \$2000 instead of \$3000 and that the management plan is to be submitted to the Chairman for review and approval. (Yuen and Arisumi)

CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR KAWAINUI MARSH FLOOD CONTROL PROJECT AT KAILUA, OAHU; TMK 4-2-16:1, APPLICANT: CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PUBLIC WORKS.

ITEM H-1

Mr. Evans informed the board that he received two phone calls asking if this matter could be deferred to Oahu. He indicated to them that the recommendation by staff was for denial because of failure by the County to get an SMA.

Because staff was not in receipt of the SMA, Mr. Yuen asked to defer. Mr. Evans said even we were to defer, word is that the SMA would not be in hand with the 180 day limit. Mr. Yuen asked if there was an attorney general's opinion saying that we could not issue a CDUA without an SMA. This being a legal question, Mr. Evans suggested that the board go into executive session to address this question.

Mr. Paty suggested first hearing from the applicant. Ms. Margaret Stahl, an ecologist with the U.S. Corp of Engineers, representing both the USCE and the City and County of Honolulu, said that they have been wanting to expedite flood control in Kawainui March ever since the flood in 1988. They had anticipated getting the SMA prior to the thirty days expiration date of the CDUA but this has not yet happened. The primary reason they do not have the CDUA is that DLU asked the city for some follow up information after the application was submitted back in December 1992. The follow up information had to do with "where is the 401 Water Quality Certification?" They put in an application to the Department of Health for a 401 and ran into problems since there is no federal permit associated with this project because the Corps does not give itself a permit. Therefore it did

not trigger the Department of Health's 401 certification program so the issues went back and forth as to how they would deal with this. They decided to go through the process but still had problems. It seems now that they will not get the CDUA for another three months from the expiration date of the CDUA. She asked if the board would let them have their CDUA conditional upon getting the SMA, which should take place within the next three months. Secondly, if they can get their CDUA, then they would like to have an extension until they can complete the process.

Mr. Paty was concerned with the board hanging itself up on technicality when they could be addressing the larger issue of public safety.

EXECUTIVE SESSION: The board voted unanimously to go into executive session. (Paty/Yuen)
(12:10 - 12:15 p.m.)

ACTION Mr. Paty moved to approve this item with the proviso that the applicant provide staff with the SMA as soon as possible.

Mr. Evans asked if the board would also include in the motion: "subject to all of staff's conditions as well as any conditions put forth in the SMA." Mr. Paty so moved. Mr. Yuen seconded. Motion carried unanimously.

ITEM D-9 **ROYALTY FOR GEOTHERMAL RESOURCE MINING LEASE R-2 FOR PUNA GEOTHERMAL VENTURE.**

Mr. Tagomori called the board's attention to a letter from Clayton Hee requesting deferral of this item for one month. Staff felt this to be a reasonable request and recommend deferral.

ACTION Mr. Arisumi moved to defer this item. Mr. Apaka seconded. Motion carried unanimously.

ITEM B-1 **ADOPTION OF HAWAII ADMINISTRATIVE RULES--CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS.**

ACTION Unanimously approved as submitted. (Paty/Apaka)

Mr. Sakuda took this opportunity to thank both Messrs. Paty and Arisumi for their many years of support and understanding of their program.

ITEM C-1 APPROVAL OF LICENSE RENEWAL TO ULUPALAKUA HUNTING CLUB FOR A COMMERCIAL SHOOTING PRESERVE.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

Mr. Buck, also, thanked Messrs. Paty and Arisumi.

ITEM D-1 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 1-OW-G5, FURNISH AND DELIVER "GOES" DATA COLLECTION PLATFORM TO THE COMMISSION ON WATER RESOURCE MANAGEMENT, OAHU.

ACTION Unanimously approved award of this contract to the low bidder, Sutron Corporation, for the total sum bid of \$10,560.00. (Paty/Himeno)

ITEM D-2 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 1-OL-HA, DEPT. OF LAND AND NATURAL RESOURCES, BUREAU OF CONVEYANCES OFFICE RENOVATION, OAHU.

ACTION Unanimously approved award of this contract to the low bidder, Stan's Contracting Inc. for the total sum bid of \$88,700.00. (Himeno/Yuen)

ITEM D-3 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 32-ML-B, ILIO POINT SECURITY FENCING, KALUAKOI, MOLOKAI.

ACTION Unanimously approved award of this contract to the low bidder, Kiewit Pacific Co., for the total sum bid of \$124,190.00. (Himeno/Apaka)

ITEM D-4 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 34-KL-D, WAIMEA RIVER CROSSING, WAIMEA VALLEY, KAUAI.

ACTION Unanimously approved award of this contract to the low bidder, Abhe & Svoboda, Inc. for the total sum bid of \$136,510.00. (Himeno/Paty)

ITEM D-5 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 34-KL-D1, WAIMEA RIVER WATER LEVELS SENSOR, KAUAI.

ACTION Unanimously approved award of this contract to the low bidder, Walter Y. Arakaki for the total sum bid of \$46,544.00. (Arisumi/Paty)

ITEM D-6 APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 64-KF-F, CLEARING OF DEBRIS FROM VARIOUS FOREST AREAS, KAUAI.

ACTION Unanimously approved award of this contract to the low bidder, Royal Contracting Co., Ltd. (Yuen/Apaka)

ITEM D-7 PERMISSION TO HIRE CIVIL/MECHANICAL ENGINEER FOR JOB NO. 17-HW-H, WAHIKULI WELL DEVELOPMENT, LAHAINA, MAUI.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM D-8 CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS.

ACTION Unanimously approved as submitted. (Yuen/Paty)

Mr. Tagamori and expressed his appreciation to Messrs. Paty and Arisumi for their services.

ITEM D-9 ROYALTY FOR GEOTHERMAL RESOURCE MINING LEASE R-2 FOR PUNA GEOTHERMAL VENTURE.

ACTION See Page 17.

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:

F-1 (a) Issuance of Land License to Kauai Freight Service, Inc., Portion of Government Land of Waimea, Waimea (Kona), Kauai, TMK 1-2-02:1.

F-1 (b) Issuance of Land License to County of Kauai, Govt. Land at Kawaiele, Mana, Kauai, TMK 1-2-02:1.

F-1 (c) Sublease Between Gem of Hawaii, Inc. Sublessor, and Child Evangelism Fellowship of Hawaii, Sublessee, Covering General Lease No. S-4643 on Govt. (Fast) Land of Kuwili, Parcel A, Kuwili, Honolulu, Oahu, TMK 1-5-20:6.

F-1 (d) Sublease, K. Kobata & Sons, Inc., A Hawaii Corporation, Sublessor to Ruis Sho Den, Inc., A Hawaii Corporation, Sublessee, General Lease No. S-5001, Parcel A, Waiakea, So. Hilo, Hawaii, TMK 2-2-32:10.

ACTION Mr. Arisumi moved to approve Items F-1(a), (b), (c), and (d) as submitted. Motion carried with a second by Mr. Apaka.

ITEM F-2 REQUEST FOR AUTHORIZATION TO ACQUIRE LANDS HAVING NATURAL ENVIRONMENTAL, RECREATIONAL AND SCENIC VALUES AND RESOURCES AT SO. KONA, HAWAII, TAX MAP KEYS 8-7-01:4, 6, 7 & 11; 8-7-12:1,3,4,6 & 7; 8-8-01:11,12 & 13; AND 9-2-01:5.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

RENEWAL OF LEASE AGREEMENT FOR DEPARTMENT OF HEALTH COVERING LOT 57, LEILANI ESTATES SUBDIVISION AT PAHOA, PUNA, HAWAII, TMK 1-3-44:12.

ITEM F-3

ACTION Unanimously approved as submitted. (Yuen/Himeno)

LEASE, PUBLIC AUCTION, STATE LAND AT WAIOHULI-KEOKEA, KULA, MAKAWAO, MAUI, TMK 2-2-04:1, 2, 29 & 66.

ITEM F-4

LEASE, PUBLIC AUCTION, STATE LAND AT KEANAE, WAILUA, KOOLAU, MAUI, TMK 1-1-08:5.

ITEM F-5

Mr. Young asked to amend this item by adding a new condition under Paragraph D of RECOMMENDATION as follows:

"Reserve in favor of the State of Hawaii the existing roadway over, on, and across the subject premises for utility and access purposes with the alignment and width to be determined by DAGS, Survey Division."

LEASE, PUBLIC AUCTION, STATE LAND AT HONOKALA AND MOKUPAPA, HAMAKUALOA, MAKAWAO, MAUI, TMK 2-9-05:20 AND 32.

ITEM F-6

LEASE, PUBLIC AUCTION, STATE LAND AT HAMAKUALOA, MAKAWAO, MAUI, TMK 2-9-06:21, 22 AND 23.

ITEM F-7

Mr. Young asked that, under Rental Schedule for lease, it be amended as follows:

.UPSET MINIMUM ANNUAL RENT: To be determined by staff appraisal, same subject to review and approval of the Chairperson.

.PERCENTAGE ANNUAL RENT: Percentage of gross revenue from all sources within the leased premises, excluding State Excise Tax (gross income) collected. Percentage rental to be determined by staff appraisal, same subject to review and acceptance by the Chairperson.

.EFFECTIVE ANNUAL RENT: Minimum annual rent or percentage rent, whichever is higher.

ACTION Mr. Apaka moved to approve Item 4 as submitted, and Items 5, 6 and 7 as amended above. Motion carried unanimously with a second by Mr. Arisumi.

ITEM F-8 MEMORANDUM OF AGREEMENT FOR THE KEEHI INDUSTRIAL PARK DEVELOPMENT AT KEEHI LAGOON, OAHU, TMK 1-2-23:VARIOUS.

ACTION At staff's request, Mr. Paty moved to defer this item to the next Oahu meeting. Motion carried with a second by Mr. Arisumi.

ITEM F-9 STAFF REQUEST AUTHORIZATION TO ENTER INTO MEMORANDUM OF AGREEMENT BETWEEN HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA) AND THE BOARD OF LAND AND NATURAL RESOURCES AND TO ISSUE REVOCABLE PERMITS COVERING THE MANAGEMENT OF HCDA LAND AT HEEIA, KOOLAUPOKO, OAHU, TMK 4-6-16:1, 2 AND 4.

ACTION Unanimously approved as submitted. (Paty/Yuen)

ITEM F-10 REQUEST FOR EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, GENERAL LEASE NO. S-4946 TO MOANA LOIS KINIMAKA, HANAPEPE, KAUAI, TMK 1-9-10:37.

Mr. Young asked that Paragraph A, Condition 1 under RECOMMENDATION be amended by deleting "(1/17/1007), (1/17/2014) and (1/17/2021).

ACTION Unanimously approved as amended. (Apaka/Arisumi)

ITEM I-1 APPOINTMENT OF LICENSE AGENT:THE SPORTS AUTHORITY, OAHU.

ACTION Unanimously approved as submitted. (Himeno/Paty)

ITEM Z-1 RESULTS OF THE PUBLIC AUCTION OF GOVERNMENT HOUSE LOT AND GOVT. LEASE ON THE ISLAND OF MAUI ON JUNE 3, 1993.

ACTION The board unanimously accepted this report as submitted.

ADDED ITEM H-6 EMERGENCY RULES, HRS 91-3(B), HURRICANE INIKI, COUNTY OF KAUAI.

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM H-1 See Page 16 & 17.

ITEM H-2 See Pages 8 - 11.

ITEM H-3 See Page 11.

ITEM H-4 See Pages 2 - 8.

ITEM H-5 See Pages 11-16.

**ADDED
ITEM H-6** See Page 21.

ITEM I-1 See Page 21.

ITEM K-1 **MOTOR COACH GROUND TRANSPORTATION SERVICES (AIRPORT SHUTTLE BUS), HONOLULU INTERNATIONAL AIRPORT, OAHU.**

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM K-2 **LEASE - HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (MANUIWA AIRWAYS, INC.).**

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM K-3 **LEASE - HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (SHELDON S. H. ZANE).**

ACTION Approved as submitted. (Paty/Apaka)

Ms. Himeno recused from voting.

ITEM K-4 **APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT 5047, HONOLULU INTERNATIONAL AIRPORT, OAHU (AMERICAN INTERNATIONAL AIRPORT, OAHU (AMERICAN INTERNATIONAL AIRWAYS).**

ACTION Unanimously approved as submitted. (Himeno/Paty)

ITEM K-5 **RESUBMITTAL OF REVOCABLE PERMIT 4920, HONOLULU INTERNATIONAL AIRPORT, OAHU (DAVID BETTENCOURT, LARRY W. KING).**

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM K-6 **GRANT OF EASEMENT, BARBERS POINT HARBOR, OAHU (CIRI LAND DEVELOPMENT CO., (CLDC).**

ACTION Unanimously approved as submitted. (Himeno/Paty)

**GRANT OF EASEMENT, BARBERS POINT HARBOR, OAHU 9W.H.
MCVAY, P.R. CASSIDY, C.D. PRATT, JR., AND C.R. CHURCHILL,
TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED (CAMPBELL).**

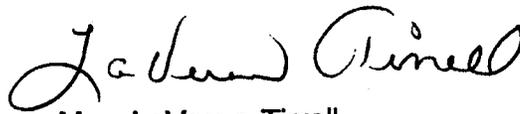
ITEM K-7

ACTION Unanimously approved as submitted. (Arisumi/Paty)

ITEM Z-1 See Page 21.

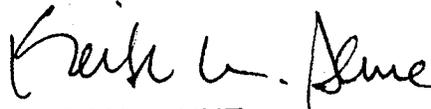
**ADJOURN-
MENT:** There being no further business, the meeting was adjourned at
12:45 p.m.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



KEITH W. AHUE
CHAIRPERSON

It