

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

**DATE:** Friday, September 24, 1993  
**TIME:** 9:00 a.m.  
**PLACE:** Kalanimoku Building  
1151 Punchbowl Street  
Room 132  
Honolulu, Hawaii

**ROLL  
CALL**

Chairperson Keith W. Ahue called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

**MEMBERS:** Mr. Herbert Apaka  
Mr. Christopher Yuen  
Mr. William Kennison  
Mr. Michael Nekoba (present from 12:35 p.m.)  
Mr. Keith W. Ahue

**ABSENT &  
EXCUSED:** Ms. Sharon Himeno

**STAFF:** Ms. Dona Hanaike  
Mr. Michael Buck  
Mr. Manabu Tagomori  
Mr. Mason Young  
Mr. Ralston Nagata  
Mr. Roger Evans  
Mr. David Parsons  
Ms. Janet Swift  
Mr. Hiram Young  
Mr. Gordon Akita  
Ms. Geraldine Besse

**OTHERS:** Mr. Johnson H. Wong, Dept. of Atty. Gen.  
Mr. Peter Garcia, Dept. of Transportation  
Mr. Charles Brook, Ms. Lynn Lee, Mr. Steve  
Morris, Mr. Alan Kawada, and Mr. Norman Olson  
(Item No. D-1)  
Dr. Jim Anthony, Mr. Guy Nakamoto, Rep. Ululani  
Bierne, Ms. Malama Vierra, and Mr. Albert  
Viduya (Item No. F-1-a)  
Mr. Albert Jeremiah (Item No. F-7)

Mr. Tom O'Brien, Dept. of Business, Economic Development & Tourism (Item No. F-9)  
Mr. Bumpy Kanahale, Mr. Nathan Brown, Mr. Glen Martinez, Rep. Jackie Young, Mr. Roger Watson, Mr. Myron Murakami, Ms. Kawehi Gill, Mr. Al Lewis, and Mrs. Rachel Haili (Item No. F-8)  
Mr. Wayne China (Item No. H-3)  
Mr. David Bills (Item No. H-4)

**MINUTES** The minutes of the meeting of August 27, 1993, were unanimously approved as circulated (Apaka/Kennison).

Items were heard in the following order to accommodate those applicants and interested parties present.

**ITEM F-9** DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM REQUESTS RIGHT-OF-ENTRY COVERING PLACEMENT AND PERIODIC MAINTENANCE OF WIND AND SOLAR MONITORING EQUIPMENT FOR HAWAII ENERGY STRATEGY PROJECT ON STATE LANDS AT KUAOKALA (KAENA POINT AREA), WAIALUA, OAHU; PULEHUNUI (OLD PUUNENE AIRPORT AREA) AND UKUMEHAME, WAILUKU, MAUI; AND LALAMILO, SOUTH KOHALA, HAWAII

**ACTION** Unanimously approved as submitted (Apaka/Kennison)

**ITEM H-1:** EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA-2055, KOHANAIKI, NORTH KONA, HAWAII, TAX MAP KEY 7-3-9:3 & 16; PETITIONER: NANSAY HAWAII, INC.

Mr. Evans distributed a copy of a communique from the Protect Kohanaiki Group asking that the extension be denied.

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

**ITEM H-2** EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT OA-2487, RELATED TO CERTIFICATION OF A SINGLE FAMILY RESIDENCE AT THE EXISTING LOCATION, MANOA, OAHU, TAX MAP KEY 2-9-33:24; APPLICANT: DR. AND MRS. BARRY NUTTER

Mr. Evans submitted a copy of correspondence from the City and County Director and Building Superintendent addressed to the applicants, Mr. Evans stating that the only remaining problem is the question of the setback.

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

**ITEM H-3 AMENDMENT TO CDUA KA-2260 FOR THE MOTOROLA TELECOMMUNICATIONS FACILITY AT KOLOA, KAUAI, TAX MAP KEY 2-8-01:1,2, & 5; APPLICANT: MOTOROLA COMMUNICATIONS & ELECTRONICS, INC.; AGENT: CUMMINS AND CUMMINS**

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

**ITEM H-4 EXTENSION OF TIME REQUEST FOR CONSERVATION DISTRICT USE PERMIT HA-2463, KAUPULEHU, NORTH KONA, HAWAII, TAX MAP KEY 7-2-3:1; PETITIONER: KONA VILLAGE ASSOCIATES; AGENT: GRAY, HONG, BILLS & ASSOCIATES**

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

**ITEM F-1a DOCUMENT FOR CONSIDERATION: RESUBMITTAL--ISSUANCE OF REVOCABLE PERMIT TO MR. SAMUEL L. GEORGE, KAHANA VALLEY, KAHANA, KOOLAULOA, OAHU, TAX MAP KEY 5-2-02:POR.**  
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Mr. Mason Young stated that at the last Board meeting the staff recommended the reduction of Mr. George's lot to 10,000 square feet. At that time, he said, the Board asked State Parks to consider certain scenarios with respect to resubdividing lots or moving the lots in an attempt to accommodate the situation presented by Dr. Anthony.

Mr. Nagata reported that State Parks had since met with Mr. George and Dr. Anthony and did a site visit to view the extent of the plantings on Mr. George's r.p. lot. Mr. Nagata stated that at the last meeting he had indicated there was 30 feet of planting but on site the actual footage was more in the area of 50 feet. The suggestion by the Board, which was to make the two adjacent residential lots narrower, which elongated the lots an additional 10 feet each extending them into the flood plain area. His impression from the applicant was that the configuration would not be to his liking. Mr. Nagata noted that Dr. Anthony would be presenting a proposal, which State Parks did not necessarily support, about having one of the two lots eliminated from consideration and in lieu of that the lessee who was scheduled for one of those two lots be allowed to remain at the Huiloa Fishpond area.

Dr. Anthony addressed the Board: "After our meeting last week, I took the precaution of asking for some information from Mr. Nagata and also suggested that his office and ourselves have a meeting so that when we came before you this morning we might have been able to have a joint consensus-type submittal that would save your time and ours. Unfortunately, we could not do that. Mr. Nagata couldn't see his way clear, to put it politely, to reach a consensus-type agreement that would satisfy us so we are here this morning to argue the case on behalf of both the Vierra family and the George family.

"You already know, Mr. Chairman and members of the Board, Mr. George has lived in Kahana for the last 20 years or so and you also know from the record that Mr. George currently has a 5.5 acre revocable permit type lease, and of that 5.5 acres some two acres have been very extensively landscaped, and I think Mr. Nagata's characterization of how that land

has been landscaped, I think is more or less correct. It is probably, in my view, the best kept piece of property in Kahana.

"The Vierra family comes into this because the Vierra family, you will recollect, is the family that has been allocated Lot B-4, and you will remember, and I've put a map up there but you can't see it very well from here, but the Vierra family has lived near Huiloa Fishpond--there's a drawing of Huiloa Fishpond here, and the Vierra family lived here for many generations, right next to the fishpond. There's an argument about the boundaries of the fishpond but they have lived there for many years. Alapaki Vierra, Stewart's father, . . . is 72 years old and lives on the property. Before him, his father Kekuaokalani, who was a noted kahuna lapaau, also lived on this land, and their ties to this land is very deep. Stewart Vierra and his family have always wanted to continue living here. This is their ancestral home. Al Rogers has contrived, it seems to me, in apparent collaboration with Carol Wyban, the consultant on the fishpond, to turn the Vierra family's ancient homesite into a parking lot. A letter dated September 16, 1993, from Mrs. Kathleen Matoon, with several attachments, is attached to the submission that is before you and that is marked 'A.' I'm not going to elaborate on that except to say that it speaks for itself, in very large part, and, secondly, it does emphasize the point. Many, many years ago, when the Kahana Valley Advisory Council was meeting, it was decided and recommended very strongly that the Vierra family would be allowed to live where they have lived for more than 100 years. There is further a copy of a letter from Rep. Bierne, who, I believe, is here this morning also, and she says pretty much the same thing, although her words are a wee bit more tempered. She does say that you've got to think very seriously before you move this family. The letter is attached; I don't want to elaborate on it. And then the Native Hawaiian Legal Corporation also wrote to the Department on the 7th of August 1991, and that is attached as Appendix C; that letter also speaks for itself. All of these letters taken together emphasize the point--that for many, many years the Vierra family has lived there; they have always indicated they wanted to stay there and so on and so forth. When I get to the end of this submission, I will say something about that.

"Now with respect to Mr. George . . . I submit to you as follows: The staff submittal is designed to balkanize, that is, to cut out Mr. George's existing 5.5 acre lot. In my view this is unnecessary and does not serve the interest of equity and justice. Number two, in an effort to be both flexible and fair we submit that in the interest of meeting the December 31, 1993, deadline for recordation of leases that Mr. George be allocated B-5 as his residential lease so let's get that one out of the way. Leave Lot B-6 where it is; that's the one furthest mauka on the right hand side of Trout Farm Road, and, again, only for reasons of convenience so that there is a minimum of disruption of staff's plans, particularly, with respect to the December 31, 1993, deadline for recordation. Note, that it is possible that this lot allocated to Martinez, one of the Bierne sisters, will only be used if she has to move from where she is now. That's a contingent arrangement. And then, Number Four, in the matter that I have discussed with Mr. Nagata and to which he does not seem to be strongly opposed to at all, although he doesn't say that he is supportive of it, we say--reissue Mr. George simultaneously with the issuance of a lease for his residential lot, B-5, a new revocable permit for all that 5.5 acre area covered by Revocable Permit No. S-6261. Let the areas covered by B-3, B-5 and B-6. By doing this the necessity to intrude into Mr. George's landscaped area is eliminated and all of the area landscaped by Mr. George and his family will be preserved for his use under the terms of the new revocable permit. Mr. George will submit a formal application for a new lease for the area

specified above. For its part, the Board ought to agree to give Mr. George or his successors first priority to this land as an agricultural lease. And then with respect to Stewart and Malama Vierra, I submit--Number One, that Lot B-3 be allocated to Mr. William Vierra and his family, both B-3 and B-4 are lots on which backfill has been dumped and not compacted. Both lots are, to put it mildly, unsightly, without any certification that they can or should be built on. This is yet another example, I think, of bad planning at Kahana. There is no way, Mr. Chairman, I asked for engineer certification from staff; I still haven't gotten it. There is no engineering certification. If you build a house on this lot and it rains too much this winter, that house would disappear so it's just unacceptable. That Lot B-4 be eliminated; that is the one, the second lot in from the makai side of the road. It should be pointed out that none of the Vierra family have prepared any plans for either B-3 or B-4. You may remember that Mr. Nagata said it may be difficult to do this because the Vierra's may already have some plans. They do not have any plans. Mr. Nagata has intimated to the Board at the last meeting that this might be the case. Malama Vierra made it quite clear to the staff and the community representatives at the meeting on the 15th of September that she has always taken the position that she and her family want to remain where they are and that this is what she wants and this is what she still wants. And both Mr. Nagata and Mr. Rogers agreed that this has always been Malama's position and that they have always known of it. Number Three, at the meeting on the 15th of September, it became clear that Mr. Rogers appears to have private plans of his own for the areas around Huiloa Fishpond. This is very clear in the correspondence that I have looked at, some of which is attached to this submission. None of these plans, or dreams of plans, have ever been the subject of public review. Most of them would not stand if put to public scrutiny. You will note particularly that Mr. Rogers tried to foist his unwritten plans on the Department of Transportation, and there is a letter to substantiate that. The Department of Transportation said, 'Hey, go away. When you may have some written plans, then come back and see us.' That was way back, about more than a year ago. With respect, I submit, that Mr. Rogers' role in this matter verges on the obscene. He has shown little sympathy or sensitivity for the Vierra's whose connection with the land on which they live is so deeply rooted and so affectionately held. Rep. Bierne, you will note, in her letter to Carol Wyban of September 2, 1993, was quite specific about letting the Vierra's remain where they are. See paragraph 3, last sentence, specifically. The letter from Mrs. Matoon . . . joins the records of the Kahana Advisory Council relevant historical background and lends support to the position articulated in this submission. In my view, Mr. Chairman, and gentlemen of the Board, there are compelling reasons to give to Stewart Vierra and his family the same option that was given to five other families, that is, the Martinez application, the Bierne application, the two Soga's and Johnson and that was consistent with the decision that was made by the Board as amended on the 27th of March 1992.

"There is no reason to discriminate against the Vierra's. The Vierra's have the same situation as the two soldiers, the two Bierne sisters, and also Adela Johnson. Now, my understanding is--Number Five, just in case the Vierra's are unable to get all of the permits which are necessary to build on the land presently occupied by them, such a contingency is consistent with the Board's decision as amended, and I am referring to the March 27, 1992, decision. Malama Vierra will be allocated Lot B-13, and William Vierra will be allocated Lot B-3 as I've already said. Mr. Nagata, when I talked with him last, seemed to be favorably disposed to this formula.

"Now, in summary, what I am asking the Board to do this morning is to revoke the present permit held by Mr. George for 5.5 acres; that is consistent, I think with what staff wants. And then I'm also saying that you should replace Revocable Permit S-6261 with a new revocable permit for the original 5.5 acres, and that's the area covered by Lots B-3, B-5, and B-6 with the understanding that Mr. George and/or his successors shall be given first priority to this area as an agricultural lease. Contingency provision three, Lot B-6,, in the event that Mrs. Martinez is allowed to stay where she is, on the old Bierne property and she doesn't need B-6, then B-6 will also be incorporated into the new temporary revocable permit that will be held by Mr. George. Mr. Nagata, in my assessment, seems to be open to this formula when we met. And then, of course, do what the staff says, that is, issue Mr. George with a lease for B-5. With respect to the Vierra family, that B-3 be allocated to William Vierra, then B-13 be allocated to Stewart Vierra in order to meet the December 31 deadline but that the Vierra family remain where they are now, next to Huiloa Fishpond on the same conditions as applied to Bierne and Soga, etc., consistent with the terms of the Board's decision of March 27, 1992.

"Let me say, finally, Mr. Chairman and members of the Board, why has this problem arisen and why am I before you this morning and why do I have to spend 20 or 30 hours of my time putting together a brief in the way that a lawyer would have to. There are no legal issues at stake here. None. None whatsoever. No legal issues at all. What is at issue here is administrative discretion. That is what is at issue here, and that is the one thing that this Board very rarely hears anything about. We are here to question the discretion of the bureaucracy. We think that discretion has been badly used, it has been indecently applied, they have ignored recommendations made by community groups and so on, and that's the problem why we are here. Now, I want to say one other thing with respect to the Vierra's. You know, Mr. Chairman, you applied to me, to our organization for a grant of \$80,000 for Huiloa Fishpond, and I think I sent you a memo the other day saying that we are still looking at that. We would like to help with Huiloa Fishpond. We have the money, that kind of money to help the Huiloa Fishpond, but our first priority is to the Vierra family. There are five children; they have an old grandfather living there; they have a brother who's living there; he has children; they have lived there for 150 years; this is a distinguished family. These are the people we should be supporting so I am here to say to you this morning, Mr. Chairman and members of the Board, that if it should come to a question--if you, as I think you should--accept my recommendation that if it should come to a question of money with respect to the Vierra family to get the engineer's certification and to get it they need to put in an appropriate sewage treatment system, I am prepared to say to you this morning that I will go to our Board of Directors and recommend that we assist very substantially with helping them to stay there because I understand that some of the other people, the other five families, have had some difficulty with this. Maybe that's one of the things that's holding them up--that is money. If it is only a question of money we will help the Vierra family in the belief that our money should be used first of all for Hawaiian families where you have a practical effect--that it can save them, it can give them some sense of integrity, it can allow them to live where their ancestors have lived and make their lives whole in some way. So that's the basis on which I come to appeal to you. I think the question concerning the George family is fairly clear cut. I have no doubts in my mind that based on reason alone that you will see your way clear to accepting the recommendation that I have placed before you. . . ."

Mr. Nagata informed the Chairperson that B-13 is open. There were three lots, Mr. Nagata said, and Lot 13 has to do with the other issue of Mr. Keith George's permit on the agenda. Mr. Nagata stated that it is currently within Keith George's revocable permit area that the staff is asking the Board to revoke the permit and to create a residential size lot before the lease takes effect (Item F-1-c). In answer to a question from Mr. Yuen, Mr. Nagata stated that there wouldn't be a problem if Malama Vierra were given Lot B-13; however, B-13 is included as part of the revocable permit to be considered by the Board that is being contested by Mr. Keith George--a separate issue. Mr. Nagata indicated it was his understanding that the Stewart Vierra family was willing to go to B-13, and that would clear up the issue on B-4. He stated that in order to meet the deadline, the Vierra's need to be assigned defined lots. For the State, closure is needed on the contract to clear lands for residential purposes as well as to put in the infrastructure.

Mr. Yuen suggested: What if we left for later the question of whether the Vierra's have the option to stay at the fishpond but we said if they don't go to the fishpond then they go to B-3 and B-13. Mr. Nagata stated it would be a question of the time-frame to do the actual recordation. He suggested the lots remain B-3, B-4 with the understanding that one would become 13 and there would be a switch between B-3 and B-4 as well and that the names could be inserted on the last day.

Mr. Young stated that the deadline could be met if the lots were issued per the Land Court map and recommended that the configuration not be changed. Mr. Yuen asked whether all the lots could be recorded with the understanding that B-4 could be issued to Same George as an agricultural. Mr. Young recommended issuance of the leases as recorded; should there be changes to be made, then cancel the leases and reconfigure.

Dr. Anthony was agreeable as long as there was an understanding by the Board that Sam George gets B-5 and the right to continue to use all the land excluding B-3 and B-6 and continue to use it under a r.p. The issue of applying for the agricultural lease will be handled at the appropriate time. He said he would like the Board to accord the Vierra's the same right as the Johnson's, Bierne's, and Soga's.

Mr. Guy Nakamoto explained that he is committed to the Hawaiian cause and urged that the Board increase Mr. George's acreage.

Representative Ululani Bierne noted that Carol Wyban had discussed different plans for the Vierra property and the possibility of a parking lot, and there was something wrong in bringing an outsider to take care of the fishpond that the Vierra's have been caring for over five generations. She summarized some of the problems that they have faced in the valley over the years.

Malama Vierra asked that the Board allow her family to remain where they are.

Mr. Albert Viduya asked that the Board grant the Vierra's request.

Mr. Young clarified Mr. Yuen's proposed motion: the current permit for 5.5 acres would be cancelled; honor B-5 as a lease, including B-4 to Sam George under a permit in the interim; issuance of a permit to Mr. George with respect to the remainder of area, less B-3, B-5, and B-6, and B-13 remaining open. Mr. Nagata further clarified that William Vierra on B-4 would go to B-3.

Mr. Nagata stated that Mr. Keith George (who was not present) had a residential-agricultural permit similar to that of Sam George and includes B-13; however, the difference was that most of the planting of B-13 has occurred since the clearing. Sam George had his planting for a number of years.

Mr. Yuen moved to recess action on Item No. F-1-a until Mr. Keith George was able to be present--that an hour would be allowed. Motion seconded by Mr. Kennison and unanimously carried.

**RECESS** The Chairperson called a recess from 10:40 to 10:50.

**ITEM F-8 REQUEST FOR AGREEMENT IN PRINCIPLE TO LEASE TO SAVE THE NATION FOUNDATION AND GRANTING OF AN INTERIM RIGHT-OF-ENTRY FOR TEMPORARY OCCUPANCY, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:80 AND POR. 79**

Ms. Hanaïke stated that the proposal was the result of extensive negotiations over the last few weeks regarding a situation occurring at Makapuu. She related that several months ago a Hawaiian fishing village was set up at Makapuu by members of the Ohana Council; then over a period of time several homeless families were also coming in to occupy the area. It created a very congested area; it was excluding people from the beach and becoming a problem for the County who "sort of passed it on to Hawaiian Home Lands." She said the Department has been working with the Department of Hawaiian Home Lands and has taken the lead in trying to resolve the situation in a creative way and a cooperative manner and today's request was the result of these negotiations.

She said basically the proposal has several different phases because of governmental permitting constraints that are required in order to effectuate the proposal. She said: "Immediately, what we'll be doing is relocating the families at Makapuu to a pasture lot in Waimanalo, presently unencumbered, to allow for the transitional housing, the camping area, and a staging area for the long-term project that is the center of this proposal.

"The main aspect of this proposal is a direct lease to the Ohana Council, their nonprofit arm called 'Save a Nation Foundation.' It's three parcels of a planned agricultural park, Waimanalo Ag Park, Phase II, three out of the six parcels. It's a direct lease for agricultural purposes. If you look at page two of your Board submittal, it's not just agricultural purposes but also for cultural, social, and educational betterment and wellbeing of the indigenous people of Hawaii. The idea is to have a staging area from the pasture lots up into the ag area and allow the Ohana Council to put into practice some of their philosophies that they have stated in the past. We believe they're sincere and we've had good faith negotiations with them over the last few weeks towards this end.



"The other aspect of this proposal is to allow multiple dwelling, kind of a Hawaiian village concept on the ag park lot parcels. Unfortunately, the area is not zoned for that and an exemption from City and County ordinances will need to be acquired and, thus, we're not asking you folks to approve that at this time, just to approve the concept and allow the Ohana Council to go to the City to make their case and go out to the community to make their case to the general public, and we will work with them on that.

"In addition to the alternative housing aspect of this proposal, there is an unencumbered State parcel right above these three ag lots, which contain some of the old ancient taro loi and the Ohana Council would like to move forward on that, as well to reactivate the taro loi. We're not asking for direct disposition of that today; we're asking for an agreement in principle to work towards that end because we have certain governmental permits that need to be acquired first, and we also need to discuss this publicly with the community, and we will do that through the environmental assessment process. Basically, those are the three aspects of the proposals. I have here a diagram of a conceptual plan that Ohana Council has provided, includes the three parcels, and it shows the area available for agricultural cultivation and some of their proposals. Presently, the ag park is not completed so we need to take care of a few details of that nature as well. I have pictures, maps here of the new lots that are targeted for lease as well as a portion of the acreage that would be utilized for the transitional housing and camp site. We have had good support from the Hawaii Housing Authority; they look at this project as an alternative to their present program that they are unable to address at this time and will work with us and the Ohana Council in trying to, making this project go forward and hopefully it will go forward in a successful and cooperative manner. The Department of Hawaiian Home Lands is aware of this situation--the land in Makapuu is under dispute between Hawaiian Home Lands and the State. They're sympathetic with the concerns that the State has dealing with the homeless situation and has stepped back to allow the Land Department to take the lead on this matter."

Mr. Bumpy Kanahale distributed U.S. Public Law 100-606, the Genocide Proxmire Act, the law and its legislative history, as well as S.B. No. 1028. Mr. Kanahale stated that his group has been in meetings with DLNR since last year, after the Iolani Palace incident, not only on the subject before the Board. He said as they discovered information and documented rights, it was decided to work with all the departments. He said they went to OHA for education; Hawaiian Home Lands with land, and DLNR with land. The intentions before the centennial was that Hawaiians needed the issue of land, the issue of independent rights, addressed. Basically, that is the reason for S.B. No. 1028. The Senate Bill, he said, addresses the whole package--it incriminates the State, at the same time it is a vehicle for Hawaiians to create a nation. Based on that, he said, they could obtain liens on property at this point. He said they stuck their necks out being that they are one of the most well-known land occupiers. He said by taking that step they were coming at least half-way in decisions pertaining to the Hawaiian culture and the independent rights of all people.

Regarding the homeless issue, it is "confusing." Mr. Kanahale said, "When we occupied Makapuu Beach Park, now Kaupo Village, the intent was to live there, and it still is. But then this Senate Bill came up, I was appointed to the commission to several different things that showed some kind of life that we would eventually be working together. Up to this point, there's a lot of things I don't understand in this lease that was rushed through. Up to the last

moment we were trying to get things together--us and Dona--and after we took a look at it last night it was like 'no way.' We come to you, not because of a homeless situation because the situation stems from the wrongdoings on our people. We're not homeless--we're houseless. And people shouldn't be labeled that way because of the wrongs that had happened. In Senate Bill 1028, it talks about everything. It shows how the State in this bill recognizes the inherent independent right of our people. Based on that, we felt that this was the working relationship we had with DLNR. . . . I have my advisors and people in the back who advise me on stuff like this. I think it's beyond Dona's position--the decision that is to be made upon what we're going do. Based on this Senate Bill and based on the Proxmire Act, the DLNR, the Board would not be out of its realm as far as law to grant us such a cultural preservation kind of lease until the transitional part happens, when our nation becomes real. The Senate Bill is real, as real as it can be, and until last night we really took a look at it, it really says everything and the whole ball of wax. This bill was created for our people to create a nation but the State couldn't get involved; they could only create this vehicle and throw it down and have us decide--decide beyond legislative mandate. This is what's it's all about. We're going right back into the international arena.

"Now, the homeless situation is actually secondary to this important problem, especially for our people, the Hawaiian people. We have non-Hawaiians that's down the beach right now and the reason why we opened it up to a lot of people was because they had no place to stay so we took things out of the State's hands, we helped them out. The intention from the beginning and this came from Norma Wong, was a transitional process, understanding we will not waive our independent rights. That's one of the things. As far as Dona, she's a very good person who's taking on a very messy responsibility. Harold Masumoto is, we'll work it out, the transitional situation, but let's get going. The whole thing is that they like get us out of the beach right now--bottom line, it's pointing to that, it's finally come out. And we've been very, very patient; we've tried every possible way to always work with DLNR, being that we started to work with the law enforcement first because we got in trouble with them guys. So, there's a very viable situation here.

"Now, on the other hand, on this lease, from my understanding, if we went for Ag-1 on the 34 acres, then we don't have to notify nobody. It's a farmer going on his lot and doing his thing. But then, again, we didn't have enough time to go out and share this with the community because we never had nothing solid in the department; everything was just, basically, how it is now--agreement in principle. So, the thing is, the Board is in a unique situation to either make or break the movement at this point, being that we are at the forefront of the movement and being that a lot of people around the islands are getting evicted. In my heart, I don't want this. I don't want the land if it's going to work and not describe our situation and our rights and everything, then maybe, maybe we need to take a break and renegotiate this lease and make sure the intent is on there.

"Now, the homeless situation again--we're not against the homeless in any way. We never thought that the responsibility would be as big as it is but you try to get 200 people on nine acres; it's a big problem and even us felt the burden that because I've lived in the community almost all my life, 39 years. The responsibility pointed out that the community wanted to go down camp but they couldn't go any more. So we've seen all these points, too. This is why we've tried working it out. Now, there are a few things that we can ask the Board

to take into consideration. Senate Bill 1028 is precedence, that the nation is coming in some form, fashion or way. It is coming. This cultural, this Hawaiian cultural program can work but it's got to come across that way on the lease. Just to give you some background, we've already opened up the taro patches up there. To give you an idea that the situation at the beach was so, we got so much people there so we took some of people and took them up so that we could grow food to take care of the needs now, not later. Understand that we occupy lands and we're geared to go jail. And there's no other way, peaceful way that it can be resolved. It only adds up files and more records for our records that it can be sent to the U.N., and we can have international law professors come in and look in on this and maybe even help guide DLNR and other branches, and maybe even the Governor's branch. Now, this--falling back on the Genocide Act, this Genocide Act, the treaty was created in 1948. It was passed in 1948 in the United Nations. The United States never signed this Act at all, the Treaty, not in 1948, but 40 years later. In November 1988 Ronald Reagan signed the Genocide Act into U.S. Public Law. This makes the United States of America obligated to uphold the U.N. resolutions. Now, this where our rights were always protected--treaties were broken, we've got the proof, we've got transmittal information from Neil Abercrombie saying that there were no treaties ratified between the years 1893 and 1900. Now, as you may know, may not know, the United States is bound to international law by Article 6 of the Constitution, which states, 'the treaties are the supreme law of the land.' Now, that's a whole different story. We're talking the real, real situations. We only ask that our people, the Hawaiian people, whoever it may be have an opportunity to provide this future coming up, nation. That's it. This lease cannot work; it's too confusing, too much, if you take out some pages and leave one, it might work, but Dona's been working hard, we've been working hard, going overnight, we just came in from Maui yesterday. We never really got back, and this is the first time we've seen the lease since yesterday, the revised part. But this cannot work. It shows that we're some kind of homeless people, just relocating ourselves. The newspaper, manipulation of the press release. Hanaike said, 'exists illegally on the beaches in the Makapuu area.' Something gotta be done about that--'exists illegally,' when our people start to occupy because the Senate Bill is there so, yeah, something's going to happen and then the law stops us from doing what we're going to have in the future through this Senate Bill. If anything, we have and will still work on it but we have a compromise to this lease. We don't want to take away from the fact that we are independent. The Ohana Council is independent and will always and never extinguish that right. Getting back to the Genocide Act, since it's become a U.S. Public Law and once you know about this. Imagine, knowing all about this, the Genocide Act, the law, you got the legislative history, and this is the hearing booklet, I couldn't get any copies for you folks. This is from Orrie Philipps. He is a judge. He points out that under the Constitution, a treaty is the supreme law of the land, superior to any State Constitution or statute and any existing federal statute and that once a treaty has been approved by the Senate no further action is necessary to make it part of the municipal law of every state binding upon individuals. So, all we're saying is--uphold the law now. Just uphold the law. It protects you. It doesn't do anything. It doesn't create a--or hinder your job in any way but somebody's gotta do it. Hawaiian Homes won't do it. You folks came talk to us because of Hawaiian Homes. We never asked for this proposal. It came down from the top saying that--let's go work out things. Let's go give you guys some lands and work out things. That's what came down. So if there's any way possible that the Board can take into consideration that we do come back and present you something real, from our side. I heard a lot of testimony that pertained to our rights again, and I'm only covering for that and the rest of the stories you know but we'd like to go back and take this back and really check this out,

touch base with the communities, which I really don't think we have to as far as Ag-1. But in respect and being there, and I know a lot of people on the Neighborhood Board and Al Lewis them and all that, then we can start to talk to them. We never had an opportunity to go out because we never thought it was real, until last week so how could we go--we're not used to doing stuff like this. We're just coming in to the system and . . . they say, 'We'll go work together; we going get our people back on the land, farming again, create homes for them,' then, let's go it that way." The Chairperson commented that the experience was also new to DLNR.

Mr. Ahue asked whether the Ohana Council was asking for a deferral. Ms. Hanaike indicated that the Ohana Council needed the ag lease; however, Mr. Brown stated that the lease did not address the total concern of indigenous group occupying Makapuu Beach. He said that in the event the principles are agreed, he asked when do they begin to move these people, and it wouldn't address their funding for the building of transitional housing. He said it was incapable of meeting the needs of the people as far as the cultural concerns. "Our true intent was to work out a transition into the future political status of Hawaii, and this is the intent that we have adopted and we was trying to work out with the administration. This is only due because of the laws of the international arena that protects our rights. There's a recommendation from our Ohana Council to you to check into these laws that really can assist in overcoming your limitations as far as getting around the State law, and that's all we're asking. There's a lot of resolutions, of covenants and declarations, including the charter of the United Nations that address these concerns, as far as indigenous people are right now in the arena. I would just like to read another declaration that was passed in 1960 in regards to decolonization of colonial territories. This address the right of people to self-determination. Just one section in here that I need to mention--'The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights,' and this is the kind of issue we want to address with the administration so we can have a peaceful and working relationship, and that's all we intended in this whole thing. The paramount issues of our people needs to be addressed before the public concerns are addressed, and we're looking at this to have everybody participate, not only Hawaiians, non-Hawaiians, too, are really considered in the interest of justice--the wrongs that has been done, and I think the Legislature has taken its step to look into the matters, and I think the administration should follow suit and work out the solutions that needs to be addressed, right here."

Mr. Yuen asked, "If we have an understanding that the exact terms of the lease are still open for negotiation and discussion are we in agreement in principle?" Mr. Kanahale answered that the Council had something "counter" and would like to pass it through the proper channels and then get back to the Board because he said they are taking a step beyond the legislative mandate. He further stated that the Proxmire Act does protect them, and the Board could be held liable for the crime of genocide by interfering and infringing upon their rights or the exercise of their rights.

Mr. Ahue stated the Board shared their concerns; because of the nature of the negotiations, the content of the lease has not been fully discussed with many of the parties who will be affected. As indicated in the proposal, he said, a lot of it is agreement in principle, and believes there are many people who have concerns about the actual implementation of the project that need to be addressed. The question, he said, is whether the Board should act on the

proposal and try to work out the details along the way or does the Board do nothing at this point in time and continue the process of negotiating.

Mr. Brown asked that another point be recognized as being very important to the administration is that the Council has been entrusted with the good faith and will of our people to see that every possible avenue is in agreement with them; that we do not be separated by the discretion of public opinions and further acts of the sort because of the intent of what they are trying to accomplish. Too often, he said, we lose faith in our people and they become very disgruntled. "We want to bring out clearly to them that this is just an interim thing here towards transition, and that has to be really stated clearly. We've been able to hold them off, you know, from getting very angry. They looked at the State as a possible avenue now to start into this transition. . . ."

Mr. Kanahale added, "It's just that, this kind of news when we're not aware of it before the press release goes out can create dissension among the groups. We've already talked to some groups when they found out what kind of press release went out and managed to at least take care of one island, to let them know that this was coming down on us. The situation of 'homeless' still confuses me, but--let me share this thing. I was also appointed on a steering committee for the Tourism Congress by Mufi Hannemann. Like you folks and like Hawaiian Homes and OHA we've been trying to work with DBED because they're trying to sell or trying to create more tourism but they're trying to sell the Hawaiian culture without ingredients involved. So now I'm in their face, too. What came about was real interesting because if they don't correct the aloha spirit and the Hawaiian culture, which is the top of the agenda, everything else won't work. And I told them that's better than having 1,000 Hawaiians walking down Waikiki saying, 'Tourists go home.' Because if you take us off the land, what we going do with our people now? . . . So the agreement in principle will be something like accepting the concept to work out more details?" Mr. Ahue stated that the question needed to be addressed whether the proposal in principle includes actual issuance of a lease and revocable permits.

Mr. Glen Martinez stated that he is on the Board of Directors of Ohana Net, the nonprofit group dedicated to ending the hunger and homelessness in Hawaii. He said they have been working the last couple of weeks with Mr. Kanahale and the Ohana Council and the Save a Nation Foundation and made great strides and progress, and they have been very optimistic. He stated that last Friday's meeting was a good meeting with DLNR and indicated that the Ohana Council and the Save a Nation was in no way interested in a month-to-month lease--this was not going to be part of any solution. It had to be a long-term commitment; that Ag Lots 3,4, and 5 would be accepted as Ag-1; the State land above it accepted graciously with the ag zoning that it has. This was discussed Friday with Mason Young and Ms. Hanaike. He stated that on Monday they sent a fax confirming all the issues that had been agreed to at the three-hour meeting. From Monday until yesterday, "It has changed, at the 11th hour. The press release is released without our consent, without our agreement, stating a situation that does not exist. We have not agreed to the terms of this lease. We have not agreed to immediately vacate the beach. We have not agreed to accept a month-to-month right-of-access. We have not agreed to pay the monies that are discussed. We entered into agreements, such as last Friday, that of the 34 acres of the ag lots, that there are five usable acres and that we would pay in the neighborhood of \$300 market value lease rent. And that as a nonprofit, we were notified that

we would pay 25% of that so we were looking at \$375 a year annual rent for this lease for 55 years. We stated that the preliminary financing that we've been lining up to go in there because we're coming into this penniless and we need to go for grants and loans, and loans are the most immediate; grants are a more long-term arrangement. In this regard, we needed to have a fixed portion so we could go immediately to the bank, where we've already established a line of credit, and they gave us guidelines of what we needed to bring to the table. But what we got yesterday in that press release does not address any of those issues. It is a 180-degree turn-around. Yesterday, we just felt like we had the rug pulled out from under the group. We don't know which way to turn, guys. This lease where you go through and it says, 'agreement in principle,' and you can go on the land, start paying rent today in advance but you cannot commence any work whatsoever without the Chairman's approval, that we have to go get environmental assessments. We're just going to ag, on ag land that already has a standing environmental assessment. We don't want to do anything other than what the land is zoned for. When we left the meeting Friday, it was with an understanding that Dona's group was going to the Board and recommend a favorable review, or vote for this thing, and we thought we'd walk out of here today with a letter that said: you agreed in principle to the long-term lease and two revocable permits on the other two parcels, on an annual basis, but that is not what the document says. The document says they were going long-term up on the hill for the three ag lots and then the other two parcels that we go for a one-year renewable on the uphill--that's fine, but all of a sudden this is the only thing we can do is taro growing on it. It specifically says--no dwellings on it. But we're supposed to relocate 150 people but it says not one residence on that land. On the three ag lots--3, 4, and 5--it makes us stipulate that we preagree to only one house per lot, that we do agree to go with the zoning, which right now is one house per lot. We are in full agreement with that, but the second thing we asked for on Friday, and we're told we had support for, was that we would get a letter of support that the Department of Land and Natural Resources endorse us getting a variance from the City and County, but it's not in your power to give us that variance; we have to go to the City and County. What we wanted to walk in there with a letter from you supporting that position but this lease asks us to waive all that--to preagree upfront that we go only for one lot and it negates all of that."

Mr. Ahue asked to clarify the matter: "As I understand the conditions and the lease are based on existing requirements so that's the way it has to be issued."

Mr. Martinez stated, "We want to do it with the existing zoning and with the agreement that if we are lucky enough to get a variance and it's on our heads to do it, to get it--no promises made, but if we do that we get to exercise it. We don't want in the lease that we can only taro farm. . . . Why would we agree to only taro? Why would we agree to not have the one house that we can have? We're cutting ourselves off before we get started. None of those things were discussed so we want the agreement in principle. We want the long-term lease. We want the two one-year revocable permits down below. We very much so. We would like the agreement in principle and have immediate access to those properties. We do not, as in this lease where it says to pay \$500 a month, to start paying rent on land that this lease says we can't do anything on for about three months."

Mr. Kanahale: "We just want to do this agreement in principle so that we can work out the details. I think that's the best thing to do at this point."

Ms. Hanaike stated, "I think there's a misunderstanding here. I understand that this lease . . . was done in the language that the Land Department uses, but I think it accomplishes the same interest that you want, referring to, and the details--maybe we could work out, but as far as the revocable permit for taro cultivation, we can't issue it because we don't have an environmental assessment so we need to go through that. The issue about houses will come up at that time. It's done on an interim basis so that we can go out and get the input we need, then come back with a proposal to go forward. We cannot agree up front to housing in that area until we go through this process. As far as the other lease area, it has the one house per lot. The idea is and we can insert it in here was if you get the variance you can come back in--that's not a problem. That's what's fortunate about a direct lease is that it can be amended without going to public auction and so that's not a problem either. If you would like to get an exemption from the rent that's something you can bring up to the Board right now. Our process is normally that--when we talked about figures, we still have to go through an appraisal. You cannot commit upfront. We were giving you the guesstimates of what we thought it would be. This kind of thing we can easily discuss when we do the lease document. . . . We were trying to get something conceptually out there. A lot of this is principle and there is flexibility to work out details with the staff if the Board will approve this proposal."

Mr. Kanahale: "We just wanted to share this with the Board because it was important and we don't know the procedures or the protocol. . . . Based on that and the communication has been so rushed, too, that we couldn't get a lot of people involved, especially in Waimanalo, the Neighborhood Board, the community associations, the Health Center, and stuff like that. I'm sure that if they understand and they way ahead of time on something, again, the only reason we couldn't get to them was because of the time. We were so busy doing this, I called the president of the Neighborhood Board two times, and I didn't call back because just got tied up doing something else, and the phone was busy that time so we've made efforts in the short time we've had but the bottom line is, if anything, the expectations--this is a critical thing in the movement, especially when you get off occupied land and start working with the State--guarantee look like you're selling out--that's our terms." He asked that the Board not put them in that position and asked that the Board grant the lease based on the Senate Bill--the fact that it is coming and somehow work it out. Mr. Kanahale stated that it was his preference to do it this way or "no way."

Mr. Kennison asked Mr. Kanahale whether he was accepting the concept; Mr. Kanahale answered in the affirmative and was asking for relief from the leases.

Mr. Kanahale reminded the Board that the Senate Bill played a big part in the decision before the Board--how it is worded and to throw it all under the Senate Bill would be better. He also reminded the Board about Public Law 100-606 where the Board could be held liable for the crime of genocide.

Mrs. Rachel Haili said she sympathizes with the Foundation. She said she and her mother are lessees of R.P. No. S-5154, parcel 80 on the map. She said she was asking the Board to consider that her family has run Haili's Hawaiian Food for the past 45 years and has used the lot to provide their store with ti leaves, bananas, etc. She said she supports the proposal but asked that the Board consider the effect of it on her. She said she had the choice of having her lease terminated or joining the association. She asked for relocation to preserve

her livelihood or that they be given more time for dialogue. She said the matter was important to her and her business; because of the deep terrain and water run-off, Haili's used approximately three of the ten acres.

Representative Jackie Young from District 51, which includes Waimanalo, said, she agreed with Mr. Kanahale that the issue was confusing, there being three separate issues. She said as far as the homeless, there is a Waimanalo task force that has been meeting for three years. She said they have been in negotiations with Hawaii Housing and there has been agreement, much to the dissatisfaction of some of the neighbors across from Frankie's Drive Inn, so they moved the portables to the area across the Drive Inn. One of the staying powers of the task force, she noted, was that they do not want the kind of portable transitional housing that has been evident in the Weinberg villages; they feel that the people are homeless, the majority being Hawaiian, deserve something better if it is transitional housing so there has been strong movement within the council that they have a different kind of housing and that if this is going to be the kind of Hawaiian village that she heard would be up there, which are portable transitional homes, is "appalling" to her. Transitional homes deserve to be better and agrees with the Waimanalo task force on that. She said as far as she knew the task force did not know about this; they have not heard that this will be provided for them. She said they have asked in the past--what is available to them--and that has never been offered to them as part of the solution of the homeless in Waimanalo so that is something completely new to them.

As far as the ag lots, she said that she gets calls occasionally, asking when the ag lots were going to open. She said the question now is: "Is this going to bypass the ag lot criteria as far as when you turn it over to the Department of Agriculture. Does that mean ag lots for the people who are on the waiting list? Those are questions, she said, they need to have answered.

She said the proposal caught "the whole community by surprise." She noted members of the Neighborhood Board, the agricultural community reading the article. She said this is the first they've heard of the proposal.

She urged deferral of the decision until the community has had an opportunity to hear what is going on. She said it was a major group moving into the back of Waimanalo.

Representative Young noted that there are three separate groups on the beach: the Ohana Council, another group that likes staying on the beach, and some straggler homeless and are the transitional homeless on the beach and she wonders how the Ohana Council could have the responsibility for all three groups, each with different purposes.

Mr. Myron Murakami, secretary for the Hawaii Farm Bureau Federation, stated they were completely caught by surprise with the proposal. He said the Farm Bureau and some other community groups have been working on ag park development for almost 20 years and then to find what was supposed to be six lots may possibly be three for commercial agricultural activity. "It's quite a shock." Mr. Murakami said the Board has to balance the considerations of the State but with the possibility of other State lands becoming available maybe the development of ag parks could be expedited. Mr. Ahue commented that the planning effort is underway.



Mr. Roger Watson stated he was present as a resident and member of the Neighborhood Board and Planning and Zoning Committee in Waimanalo. He said Mr. Kanahale had explained that there were plans to put a Hawaiian cultural park in the agricultural area as well as to restore the loi. He said it was an ambitious, wonderful plan. He said he was as shocked probably as Mr. Kanahale to read that now the Ohana Council was also responsible for the homeless on the beach. Second, that the Hawaiians were going to lose the beach, in effect, in this particular document that was drawn up. Mr. Watson said it appeared that there are some complicated problems that require careful thought but the heart of the problem was that as a community member having worked with the DLNR many times in the past over issues that have arisen in Waimanalo there seemed to be a precedent that was very workable--that the community was always notified about plans. The community was asked for input, but that in this particular case, this seems to be premature. He said they all need to sit down and talk about how these lands will be used and what will happen.

Ms. Kawehi Gill said she is a member of the Ohana Council and wanted to share that in 1985 she was the president of Kahea, Inc. "Kahea, Inc., was a nonprofit organization set up to protect Native Hawaiians on Hawaiian Home Lands. At that time we came up with what was known as the Waimanalo Advisory Council and Mason Young sat in those meetings. The community-at-large came out and we put together a master plan for our community, which also included Makapuu. In 1987 it was passed by the Hawaiian Home Commissioners and since then nothing has happened with those lands. Why I'm up here today is just to also let you know that--while on one hand mentions immediate removal of the campers and that now the land was under DLNR really confuses me as well. I want you to know while the Department of Hawaiian Home Lands and the Department of Land and Natural Resources is in a legal quandary, our people are caught in the middle. The reason why the City stepped back from Makapuu was not because of our people being on the beach. It was because the City finally did their research and found that they had no jurisdiction on the beach, and we have papers to prove that with letters coming from George Kaeo to the City Corporate Counsel and back again.

"The other issue is about public use of Makapuu Beach. We stated back in 1985 that Makapuu was indeed Hawaiian Home Lands and not State land and if the Hawaiians chose to keep the public off of the beaches that would be a decision that Hawaiians have. As far as the public is concerned, and I speak as a kanaka maoli here today, the public has all the other beaches in Hawaii, and a big one is Waikiki, all the way down to Ala Moana, and the manao about why Hawaiians chose to keep that beach Hawaiian they could do so is based on the law that we understand that came down from the Hawaiian Homes Commission Act in 1920. So I suggest that the Board do its homework, check into the WAC plan, all the discussions that went on in the community because in our discussion with Dona and I raised to her was that--we as the Native Hawaiians qualify under Hawaiian Homes Act do have the right to decide if we want to have a fishing village there, the community would be organized and discuss the issue."

Mr. Al Lewis, member of the Waimanalo Neighborhood Board, stated that they have been working on the homeless issue for a number of years. He, too, was surprised when he read about the proposal in the morning paper. He said they have been working with DLNR on a good-faith basis and with the Department of Agriculture on Ag Park II and community input would be on an ongoing basis. He stated that they had no "inclination" as to this project. He stated that the community should also be afforded the opportunity to participate in discussions

with the State. He said they had problems addressing the different parcels and that was one of the reasons they took so long to develop the homeless village. He further stated, "Some of us now are putting our necks to come up with this homeless village; we don't see the State playing a fair ball game with us. . . . One of my biggest concerns . . . Bumpy's group moves off of Makapuu Beach area. What precludes another Hawaiian group to then occupy the area? And then what? What are we going to do? We're going to then call out the State Sheriff or the DLNR people to evict them and then go into another confrontation? We've been through that on numerous occasions out at Waimanalo Beach Park and other areas, and what is that for us in Waimanalo? We do have a problem but we do want to work out our problem."

Ms. Hanaike stated that when they entered negotiations they were upfront with the Ohana Council. "Our interest in this was dealing with the homeless situation; Ohana Council's interest was something else, but because we were able to work out mutual interests, we were able to come to some kind of agreement. Taking out the homeless issue is not to our interests."

Mr. Ahue suggested that the matter be deferred until there is agreement in principle. Mr. Yuen stated, "I thought I was hearing that we did have an agreement; there are people, I mean as far as Bumpy's group and Dona, there are details to be worked out. And there are other people who testified that want us to hold off completely." He asked whether his understanding was correct.

Ms. Hanaike stated, "The reason we're moving on the lease so that Ohana Council could go after private grant foundation money to pursue their efforts. Under this proposal, the community will be consulted on the transitional housing aspect. The only thing that may be of some concern was the staging area; however, we need to deal with Makapuu Beach, and the Ohana Council was willing to take on that effort, and we were going to work with them on the details. We realize it's not going to be easy to talk to everyone on the beach and if they can't deal with all the people, then DLNR will have to deal with it separately. I think the issues that Ohana Council are raising can be addressed when we implement this because this will be a long-time putting together all aspects of the plan. I also think that the community will have input into this proposal through the discussions on the County level and we have put provisions in there requiring that Ohana Council consult with the Neighborhood Board, which, I think they want to do for this. I think they still want to do this so I think there's lot of opportunities to work out the problems if there are any in this proposal, but the main concepts of this proposal, moving the people off the beach to a staging area, getting the ag lease in place for the Ohana Council and then working towards the taro cultivation, the upper areas and so forth, I think works in to the interest of the Ohana Council, and I think we can address the community interest in the next six months as we finalize all these details. I think this proposal to deal with all the problems that have been raised . . . but it's up to the Ohana Council."

Mr. Martinez stated: "On behalf of the Ohana Council and the Save the Nation, they would like to move forward with the consensus of the group with the proposal as it is written there but what we're taking back in--we do not want to be the 'hatchet' or the 'tool' or the eviction force for the people at Makapuu. We have, in good faith, negotiated and want to be part of relocating and making other opportunities available but we were shocked that the newspaper story, which did not reflect the negotiations, and we're on the defensive on that."

How do you run out and tell everybody, 'We didn't write that story. We didn't send out that press release, and we never made those agreements.' And that's not what's on the table. What they want is agreement in principle for the ag lots up on the hill and the 34 acres above it with the one-year revocable and we clearly understand that we're going to the community. That is our desire. We don't like it somewhat turned around that we, in any way, that this group is part of railroading this thing through--exactly the opposite. We're quite willing to go to the environmental assessment and the two revocable permits. The ag lot does not require it. We're just going with what is. . . . The two revocables we want to go for but we do not want any part of moving a single person or making a promise to immediately vacate 150 people off the beach to land where it's not legal, where we haven't discussed it. We have not walked that land but we are in agreement in principle if we can find five or six areas down there that the community can agree upon and it may take two or three months to do that but we cannot make a commitment to move people tomorrow morning to this unseen piece of property but we do want the agreement in principle on it. We do need the backing of the Board. We don't even know whether it's worth spending more time and money in our efforts pursuing this but we're kind of thrown into a role being on the defensive here that is if we bring this proposal up and that we're railroading it through or are in any way meeting in secret or circumventing any processes we don't want to do that. We would like to have the agreement in principle. We would like to be able to go, to have the right of access to go up and survey the land, do our plans, and proceed with our mission. That's what we want but we don't want to give up any rights. The Ohana Council does not in any way want to subjugate themselves or in to in any way give up any rights they may have as a native or indigenous personnel or in any way sell out the people on the beach or the mission that they're on. But we're agreeing in principle that we want to work relocating those and giving them an opportunity in another staging area. We want to develop the ag lots for an ag project, educational project and the lands up above it. We were just shocked at some of the terms on it. That can be worked out and that's agreeable. That's great. We'd like to move forward. We just don't want to, the Ohana Council . . . in the agreement to pay \$1,500 for the assessment. We weren't prepared for that. We didn't bring a check for this, for that, or pay \$500 a month for this unseen piece of land down in the flatlands for the staging area. We're not saying we wouldn't but, you know, but it's like buying 'pig in a poke' here, and we don't want the other people in the community think that we're, that we 'stuffed the bag,' so to speak."

Mr. Yuen asked: "If the staging area is acceptable, is there an agreement by the Ohana Council to use its best efforts to persuade people to move out of the beach park on that?"

Mr. Martinez, "Yes, there is." Mr. Kanahale stated it was always their intention. Mr. Kanahale stated, "When we occupied Makapuu, we took in a lot of people, basically because police were after them, kicking them off out of the parks so we relocated everybody and told them, specifically, that we didn't want a few things happening in there. The main thing was drugs and then understand that these people that stays on the beach park side in Waimanalo, you know, they've been there forever, breaking down every Wednesdays or Thursdays and rebuilding every Friday. Now, they got to get used to a whole new thing because, apparently, that's what they were into down that end, and drinking. So, we took on this responsibility that the City and the State said, 'Right on, they're handling it,' but it come to a point where the public is putting pressure because we're on Makapuu Beach right now. The thing is all these people coming in also were advised that you had to understand about the Hawaiian culture and

your rights, basically, the Article 73 in the international arena and the whole thing. And that was laid out for them. To date we have about 60 to 70 people that is solidly behind the Ohana Council there. You're looking at about 10 to 15 families. We've been doing everything to help each other; the rest of them some camping, they camping close because they working on this side of the island and some just camping because that's all they know, that's all old habit from the other side. At the same time, we still going back there trying to get them involved. It's not like we just dumping things off and saying--well, this guys and that guys--it's all over. No, this is why we're coming in good faith and trust to the point where we see something like that it's kind of confusing but as Glen had stated, agreement in principle we should have it for us so we can work out the bugs. We end up working with the association in Waimanalo and getting input and sharing ideas, whatever we have, to . . . ."

Mr. Ahue noted that one of the concerns from the community is that even the issuance of the lease in terms of the particular areas being described, the uses, and so forth may be a problem and that the question is--once the lease is issued what is that conversation going to be like with the community, such as the Haili's--is it better to go ahead and issue the permits and lease without knowing what the community input might be or do that first. Mr. Kanahale said, as far as the Haili's, "There's no way we would relocate or tell her get off or anything and she could even get a better deal probably with us, given the 55-year lease. The lease could go in her favor. . . . It could work to her benefit. Some of the--like the ag guy that came and sat down--20 years they've been waiting for ag lots; the Hawaiians have been waiting for over 100 years--for lands, period."

Mr. Kanahale went on to say, "It's the same thing like us--we trusted up to this point. Now it's almost like the Board gotta give us that opportunity, and the community gotta trust. They've been involved, this community has been involved with a lot of different things. We've never a part of it for a long time. The Hawaiian community wasn't as involved. Now we came akamai in our rights and educated. We're bringing out this new thing. I think everybody needs to get educated on Hawaiian sovereignty and rights."

Mr. Yuen asked Mr. Kanahale--"What should our reaction be if you would move a certain group of people up to the staging area but there still is a large group of people down at Makapuu still camping out? What should DLNR's reaction to that be?"

Mr. Kanahale stated that he talked with Dona Hanaike asking for more time to talk to everybody on the beach one more time. "I already notified them a few--maybe one month ago, that a lot of things was going to change around here and get prepared to move out. Some was for the reasons of whatever habits they had. The others--they were just getting, they weren't getting involved. They were just hiding in the park and, you know, doing their thing and going in and fishing and whatever, but not really getting involved with the sovereignty movement so--I cannot, we can ourselves, we can remove everybody from there. It's not our choice because that's our people and, plus, we don't need the physical bull shit that might go on over there. Now, I think DLNR would have to do what they have to do with whoever is left there that don't want to listen to us at all. Again, they were, they came there because we opened up the place. We occupied the land; we had, you know, this is why people are there today because of the Ohana Council not because of our homeless or nothing else. So I think that's a big thing that we should all take into consideration. Nobody like 'em when they no

more place but when they're about to get one place then everybody concerned, you know--how come?"

**EXECUTIVE SESSION** Mr. Kennison moved for executive session to consult with legal counsel. Seconded by Mr. Apaka and unanimously carried. The Board was in executive session from 12:12 p.m. to 12:35 p.m.

Mr. Yuen asked Ms. Hanaike what the next step would be if the Board approved the submittal. She answered that they would work with the Ohana Council. She said, "Our interests are to relocate off of Makapuu to the staging area. We definitely have to work on the details of the ag lease, which I think we can work on. . . . We have to go forward on the environmental assessment, which would involve the community at that point as well, and work on the revocable permits for the staging area and the area above the ag lots."

Ms. Hanaike further stated that, "This is a new proposal and it needs discussion so through the environmental assessment we also included conditions in the submittal to consult with the Neighborhood Board and others as well. We'll be working with other State agencies . . . ." She indicated that comments this morning's comments would be considered.

Mr. Ahue clarified that the Board would not be issuing the lease at this time; that the lease document itself had to be drawn up even if Board approves the recommendation. Ms. Hanaike concurred that Board could approve the lease but the lease would need to be drafted and the terms worked out.

Mr. Martinez stated that they didn't want "these terms."

Mr. Kanahale assured the Board, ". . . we're going back; we're going to try to work with the Advisory Council and get probably members of the different associations in Waimanalo on that Advisory Council for Save a Nation Foundation because we want to settle this situation and yet not hurt or hinder anybody else and, further, to the community, no disrespect to you folks, it was just a fast-paced, something that we were looking for solutions that we never got back to you folks, and it will be done, though, this time."

Ms. Hanaike stated that she was sure there would be some problems since it was new to everyone but the problems would be worked out in a cooperative fashion. There are no game rules on this right now, she said, so the parties will walk it through and work it out together.

**ACTION** Mr. Yuen stated that a lot of progress has been made and that with trust and communication and good faith a lot more progress can be made. "The situation at Makapuu is one that really could not have just continued on and on and on, forever, and I know that everybody wants to try to resolve that situation without confrontation and, hopefully, by agreement, and this seems to be one way to accomplish that. It would also give people a chance to get on a piece of land and show what they can do--work with it and show that they can use a piece and then work with it. So I am going to move for approval with a couple of amendments:

"One is that that the exact lease terms are still under negotiations and that the Chairman, and I would move that we delegate to the Chair, the authority of approving the exact lease terms after further negotiations.

"That we waive the \$500 a month rental that is listed in G-2--that's for the r.p., at least I would say a year. They can come back and I'm not sure how long that r.p. is supposed to last for but I would say a waiver for a year, with the possibility of requesting a future waiver from the Board after that. There's a \$1,500 assessment that's been mentioned. I would also move that we waive that and, finally, that the DLNR and the Ohana Council and the Save a Nation fully consult with neighborhood groups immediately in all aspects of carrying this proposal forward."

The motion was seconded by Mr. Kennison and unanimously approved as amended.

**ITEM F-1c ISSUANCE OF REVOCABLE PERMIT TO MESSRS. KEITH GEORGE AND WALTER KIM, KAHANA VALLEY, KAHANA, KOOLAULOA, OAHU, TAX MAP KEY 5-2-02:POR. 1**

Rep. Bierne stated that Mr. Sam George was not present but the situation is similar to the Keith George situation because he has landscaped that area and even after grubbing has beautified the area. His situation, she said, would probably be the same that he would accept the 10,000 square feet for residential and the surrounding area for agriculture.

Mr. Young stated that Mr. George has 2.5 acres, which was originally Mr. Kim's, who passed it on to Mr. George. In light of the subdivision proposed for Kahana Valley, the staff recommended issuing two permits--one is to cancel the permit that Mr. George has for the total area, reducing the area so that he is given the ability to use that residential lot when the lease is issued under a revocable permit, and the second permit to Mr. Kim for his lifetime. Mr. Young stated, "The issue that Rep. Bierne is talking about is such that when we cancel the permit there was not a consideration with respect to the remaining area to be retained and used by Mr. George under a permit for agricultural purposes. . . . The initial permit that was issued to Mr. George was for agricultural-residential. In light of the subdivision plans for the Kahana Valley as I mentioned, we are proposing that two permits be issued, the remaining area to be brought back to the Department, and that Mr. George be allowed to have his permit until the lease is issued."

Mr. Nagata informed the Board that the area that has been substantially planted happens to be in Lot 13--the one discussed earlier--going to the Stewart Vierra's if the Board gives them consideration out at the Huiloa Fishpond and they find out that they are unable to work something out there, they would have to come back to Trout Farm Road, then they could be located there. "It's significantly different from Mr. Sam George, who is across the street, that the plantings here have been done fairly recently, and it's my understanding that Mr. Keith George was informed that this was a potential residential lot, but he was trying to stake his claim on that so this lot is partially cleared now. What would happen is when, if we're able to accomplish what we're doing with Mr. Mason Young, we would plan to go in and clear these

three lots for residential purposes. What may be a compromise that Rep. Bierne is saying maybe like Sam George this remainder portion, which is not currently planned for residential use, could be permitted back to Mr. Keith George on a revocable permit basis. The one thing between the Sam George and Keith George, though, is if this is allowed as agriculture, at this time we don't feel that the Board should make a permanent commitment but just a revocable permit for those areas that we're talking about for Sam George's lot."

Mr. Yuen moved to adopt staff recommendation on both F-1-a and F-1-c. "We have to go ahead, especially to finalize the lease recording for everybody in the valley. No. two, it is the intent of the Board that Mr. Sam George get use of the agricultural area that he's been using in B-4 and staff will work out the mechanism to do that; that then B-13 is to be held available to become a residential lot for the lessee that was supposed to take B-4 and that no action is taken today on the question of the Vierra's remaining at Huiloa Fishpond." The motion was seconded by Mr. Kennsion. Mr. Yuen clarified his motion: "Even though we're recording B-4 that staff will find the mechanism to allow Mr. George to continue the agricultural use."

Mr. Anthony asked for clarification, "You will cancel the current revocable permit to Sam George as you will for Keith George? You will issue a lease to Sam George for 10,000 square feet, which is B-5, and do the same thing for Keith George? You will issue a permit to Sam George with respect to that area that used to be part of his 5.5 acres, less B-3, less B-4, less B-5, and less B-6? Then we'll work out the mechanism for that? As long as that's clear and then my understanding is that the Vierra issue cannot be handled here today because it's not on the agenda and staff will work out a mechanism based on the representation to bring it back at sometime in the future." Mr. Yuen stated he could not say whether it would come before the Board or not.

Rep. Bierne clarified the area on the map that Mr. Keith George was using along the stream area and where it was cleared and grubbed. She asked that he be given consideration of Lot 13 for his agricultural permit.

Mr. Nagata stated that at the outset he did not really state why they were in opposition to the concept of allowing equal opportunity for the Vierra's, "As I indicated to Mr. Anthony at our meeting, it would not necessarily be a vehement statement, but basically, our staff in trying to plan for the residential house lots and stuff like that, had two considerations why we did not want to utilize the areas for residences at Huiloa Fishpond, where the Vierra's are, as well as in most of the areas where the residents presently occupy and this had to do with, we feel, that there are sufficient regulatory hurdles that those who have been given the opportunity to try to overcome will have a very difficult, if not impossible, time to hurdle so it's going to be very costly, time-consuming to them. Now, Mr. Anthony has offered to help finance that kind of services to look into these things so at least they may not have to spend money for it. The other thing is that these--at least we look at the Huiloa Fishpond, which is a national historic landmark, to be one of the primary resource areas available not only to the residents but the residents of the State as well. So, it's primarily for those reasons that we do not recommend, although the Board did approve the other four, five, Rep. Bierne's folks earlier. We did not recommend nor do we recommend for the Vierra's to remain in the other area, but that's not being decided upon here, but I just want to make that statement. The other thing is once the leases are formally recorded, there is a clause in there that requires construction,

essentially, to be completed within one year, provided all the infrastructure is already put in, and the infrastructure, with the action today, it helps, gives us the ability to keep moving forward on both the George's revocable permit areas, which would become restricted so we will be moving forward and from the sense of the Board if what is on the table is being proposed we would not plan to put any further improvements into Lot B-4 because one of the things that we were going to put in was the water meter, and from what I see, if we're going to be taking chances on this, we should be putting it at B-13 instead. We would be planning to grub those areas that were on Keith George's side, including B-13, but, if I don't hear any objections from the possible occupant, the Vierra's, we could probably leave the areas that were planted, recently planted over the last two years, leave that portion alone, and if there is some areas that have been overgrown over the years, we could raise that--am I saying that correctly, Al? Lot 13, B-13, was it thoroughly, completely cleared two years ago?" Mr. Rogers indicated it was a little less than half. "So, there's about half that was never cleared, and I think we owe it to the potential tenant coming in to clear that portion as well. So that would be our strategy there."

Dr. Anthony stated, "I will present to the Board a detailed analysis of what has been done so far with respect to Huiloa Fishpond because I think it's in the Board's interest and the public interest to know what's going on there. We can pick up those arguments later on."

**ACTION** Unanimously approved Item No. F-1-a and Item No. F-1-c.

**ITEM D-1 RESUBMITTAL--TO ESTABLISH A RESOURCE VALUATION METHOD TO CALCULATE ROYALTY FOR GEOTHERMAL MINING LEASE R-2 TO PUNA GEOTHERMAL VENTURE (PGV)**

Mr. Tagomori distributed the amended staff submittal. Mr. Tagomori noted that Mr. Charles Brook, geologist from the Oil and Gas Valuation Branch of the Minerals Management Service of the Valuation of Standards Division of the U.S. Department of the Interior, which was instrumental in developing the federal regulations for geothermal royalties, was present.

Referring to the charts, Mr. Tagomori stated that today's presentation was on the resource value. He indicated that the royalty rate had been set by the Land Board in 1981--at 10%. Mr. Tagomori added that the distribution of the royalty is State-County-OHA, 50-30-20.

"We looked at many methods and we locked into netback method. This method was developed by MMS--Mineral Management Service--Department of the Interior, and Mr. Charles Brook has been involved with it for many, many years--developing that program there. This method avoids negotiation. This is a simple method. It's up on the table; it does not create a means to go back and negotiate and recurring negotiations. It provides the producers--the advantage to the producers in netback would be to repair their capital cost in their early years of the investment period. In other words, the front-end, the value is low and at the tail end it comes up. The reason it is an advantage to the developer is it recaptures their capital costs up front. The value, the resource value, adjusts to the state of the economy. In other words, it floats on the economy--when good times, you have high value; low times, you adjust back to the low, so it's sort of a fair system where it floats on the economy."



"Calculation is straightforward. Auditing is also straightforward. Granted, when we begin the first year, you know, we're going to be looking at setting up a format but once this thing is set up--year after year after year, it's just plugging in the formula, addressing some of the changes that may be coming about, but it's a straightforward procedure. The method is fair, we believe, for both sides, the owner as well as the producers. It's logical and easy to administer. It does not, again, I emphasize the word, 'no negotiations' are involved, and it is not necessary to establish any arbitrary floor that we've talked about many times. It's a straightforward method. For that reason, we're looking at that method, only that method, here.

"Now, just one step going back into the calculation, the resource value, based on the gross electric revenue minus the adjustment, the transmission and generating costs, and it is in the parameters, not so much the method here, the parameters that differ. There's an MMS system here, parameters, and the staff proposal and, briefly, MMS generally uses a 2.0 multiplier and there's no limit to the allowable deduction on transmission and generating costs. In this way, it refers back the amendments that we have proposed in here. We'll go into that a little more. Whereas in the staff proposal we are recommending 1.5 instead of a 2 as more of a balance in terms of the results . . . and we are calling for some limits, whereas MMS does not call for any limits. We feel that this does not allow for any incentive on the part of the developer to watch how he invests in developing transmission and generating costs; however, with the limits, there's a built-in incentive for him to really watch his development costs and to be within his limits here and staff is proposing the limits to be an absolute limit. In the MMS system allows for the actual cost even if it exceeds--there's no allowable deduction here but we have in our submittal a clause there that would allow if the developer will show actual costs that we can break through this limit and in that way it will increase some of our problems with staffing reviewing what items they show us and what we would allow and not allow and it's going to be a difficult situation and the result may come up to zero royalties. That's the bottom line so we are calling for the limits to be at 50% of transmission cost and 2/3rds of tailgate value of the generating cost, and this is the absolute minimum that they have to work by and that's the definition of our staff proposal.

"The result of these numbers are shown in various charts here. This is the average industry levels of percentage between 30 to 50% range, and we will show that our numbers when we compare to present value comes right in the middle of it and Paul and Jan will show you. "There's another graph added on to this. The staff proposal is the straight line here. We, the 1.5 and all the primers that we calculate in putting into the formula, it comes below 28 to 30%. Then you notice that the front end of the years here--that below average and for the end it captures their tail-end costs. It gives the developer a chance to recapture his capital improvements here, capital costs here. Now, I've been using MMS as the other comparison. In their 2.0 in their calculations, there's a border, a period of time where it comes zero for value here, and then it comes up into the fashion. . . . You could compare the staff proposal and the MMS proposal. The other line here just gives you some indicator of 10% of the proceeds; 20, 30, and it goes up to the 35 to 50 and then the 40 line here so these are just 10% increases to give you a feel of how things are going here. It comes out to that and let me just summarize here what staff is recommending. Again, we are recommending that the netback method be adopted by the Board as opposed to percent of proceeds and the parameters be 1.5 and limit of transmission and generating costs. We have an absolute limit. The result, again, is that as shown by the graph it comes out to about 20 to 30% of gross electric revenues as compared to

the industry average of 35 to 50 but we're below that and the MMS, of course, will give you a zero royalty. Just one final point here that in our staff's proposal we are not recommending any floor or minimum to be established . . . ."

Ms. Janet Swift explained the 35-year period using present values, the staff method, using the 5% escalator, showed that it is just below the 42% of proceeds amount over the 35-year period. The second point, she said, the 42% of proceeds was right in the middle of the 35 to 50%.

Ms. Lynn Lee from OHA stated that OHA supported the staff's recommendation.

Mr. Steve Morris of PGV clarified that the netback method was not a common method, that the industry does not particularly support although he said they "could live with it because it does have some advantages to us. But there were some things when we talked about avoiding negotiations--one of the things that made sense about the MMS method to begin with when we started this discussion quite a long time ago was that it was a methodology developed by a third party with extensive public input and participation in the process. These rules were developed over a number of years, and we felt that in the State of Hawaii geothermal has become very controversial, why would we want to put forth a methodology or why would the State want to put forth a methodology--why not go with an established method that was developed by independent third-parties that's been working. So, when we say 'avoids negotiation,' this really has avoided negotiations. In fact, it's created negotiations because they changed the method--the staff proposal is not the netback method as devised by MMS. As far as provides producers with a means of recovering capital by putting limitations on the netback method, the State is proposing exactly the opposite of that. They're saying, 'You can recover your costs to only a certain extent,' and, again, I think Charles would attest to the fact that the whole idea of netback method is of the allowance of recovery of costs that are not related directly to the development of the resource but to the enhancements of the property for the benefit of the State, the whole purpose of it. So we're destroying that. Calculations straightforward, auditing straightforward, methodology--all these things, when you get into the netback method are not straightforward because every year you've got to look at what went into your calculations to determine your generation costs, your transmission costs. So if you're comparing netback to percentage of revenue method, every year is an audit situation because it's not just the capital costs that may be agreed to up front in the first year but it's the ongoing operating costs of transmission and generation that have to be reviewed, negotiated, audited and disputed every single year. So the netback method has a lot of flaws to it as far as convenience and ease that you don't have in the other methods of a straight percentage. There are some advantages to us and that's why we're not necessarily opposed to it but we'd like it in it's true form and not the modified form that the State is proposing.

"We are opposed to staff proposal for a number of reasons but, principally, our main reason is that it's just flat out in violation of the lease that we've entered into and we'll show that where it is inconsistent with that lease. We also believe it is inconsistent with the geothermal industry's standard for netback methodology. The only netback method that we're aware of that's used in the industry is the MMS method--not any kind of modified method, and, finally, we believe it is inconsistent with the netback or the concept of the netback method as I mentioned before, and that's the two major principles of the netback method are recovery of

enhancement costs and a return on that investment and enhancement and staff has modified it in both situations to make it more onerous to the developer. With respect to the inconsistency with the terms of the State lease, number one, is a quote out of the lease that requires the valuation method to be reasonably similar to, reasonably equal to the gross proceeds being paid to other geothermal producers. Our calculations and, again, we dispute the numbers that staff are using as not necessarily being accurate. Certainly, there's a difference in the numbers we're using because we show that their method overvalues the steam by as much as 100% when compared to other amounts that are being paid to geothermal developers, and you have in your packets these numbers, figures similar to the numbers that we looked at yesterday. We've gone ahead and put in some comparisons to staff method and you see when you compare staff's proposal to what the Pacific Gas & Electric pays for steam, which is a pretty good standard since it's about 25-30% of the entire industry. Staff method would produce a valuation that's 126% of how PG&E values the steam."

In answer to a question from Mr. Yuen, Mr. Morris indicated that they arrived at 49% by calculating the royalties based on their project model based on staff methodology. "We compared that to the total revenue stream for the project; that it was a straight percentage." Mr. Yuen commented, "That's not a valid comparison with the other method because you really have to use the royalty stream and the income stream to present value. The staff method tends to have a higher percentage in the later years and so if you take that absolute figure, which is what you're doing and use that figure, you're going to get a higher percentage and get the 49% but if you take the present value of the State royalty against the present value of your income stream you're going to get a substantial more percentage."

Mr. Morris: "Fair enough, but let's just compare, all I can look at is what comes out of my pocket over the life of the project. Maybe percentages isn't the right way to compare it to other methodologies for steam evaluation. Let's look at the totals, what is the total amount the State gets compared to other established methodologies, and we're still, in the case of PGV, we're still 100% higher than what the State wants compared to any of the others. The closest one is MMS, and that's still 20% higher. Now how does that tie to the fact that the lease requires it to be reasonably equal. If you want to go to present values, the present values of those streams are even higher--the difference, and that's all present value."

Mr. Yuen: "If you take the present value calculation I think it's closer to--your 49% figure should be closer to 43 or 44%." Mr. Morris indicated, "That's why, I'll accept that. The point is that it's still 23 to 97% higher than what other people pay, and that's what we're objecting to. We think the methodology is onerous to us, and it's in fact outside of the terms of the lease. We did run the 23 years, by the way, because Mr. Ahue had asked about 23 years, and we're run the 23 years model to show what the differences are over 23 years, and this may actually put it in some kind of closer perspective to what you're talking about by the numbers. If you look at a shorter period, the numbers are a little bit lower and even during that 23 years period, we're still anywhere from 13 to 83 % over value under the State method. By the way, during the first 23 years, our return on our equity is zero. We have no return on our equity during the first 23 years so we don't get our return until those later years."

Mr. Nekoba asked Mr. Morris to comment on the quality of steam as compared to other developers. Mr. Morris indicated that Pacific Gas & Electric has the highest quality steam anywhere--100% dry steam. The quality is better but the price paid is "dramatically less than what staff is proposing." In the case of other areas, he indicated, that it would involve different technologies--water base, fluid base resources as opposed to steam. He said the PGV steam was "good steam." Mr. Morris stated that it is not easy to compare to geysers.

Mr. Morris stated that it was inconsistent with the geothermal industry standards to take the present situation and make it into a "hodge-podge methodology." He commented that the MMS method is used in 12 projects on the mainland, and the MMS concept has a lot of support with a minimum payment clause. Mr. Morris stated that DBED had earlier testified that they support that concept; the leadership of the Hawaii County Council also testified that they support it; Mayor Yamashiro also supports it, as well as the industry itself. He said except for OHA he has not heard from anyone supporting the State method.

He indicated that the proposed methods were "too complicated, too controversial, and we can't seem to get agreement on how to do that, we would be willing to go with straight percentage of revenue that get's locked in, then every year and that floats with the economy, too, because our prices are oil-based and go up and down, 30% of the revenues--there's no calculation, no audit necessary, we'll send you a statement from HELCO that we get every month. 30% is the valuation--there's your check, and there's no fuss or muss. You don't have to become experts in what the cost of generation and cost of transmission. This netback--it's gotten out of control; it's gotten too complicated. We've backed of it and go to a straight negotiated percent. We could do it either way."

In answer to a question from Mr. Ahue, Mr. Morris indicated that the 30% figure was derived as the number that was in the range of not being the highest or the lowest. He stated that it wasn't "scientifically derived." It was just a number that the present value of that number was comparable to the MMS system with the floor. "If the netback method was the distraction creating the problem, let's eliminate the netback problem but keep the same, essentially the same, at present value." Regarding the figures, he said they were "ball park" figures. Mr. Ahue commented that the staff was taking the industry average into consideration, and it seemed that there wasn't agreement on the industry average. According to the submittal, the staff proposal was in the middle of the average. According to PGV's numbers for MMS, it was significantly less. He commented that there appeared to be a 60% difference. Mr. Morris stated his figures were derived from different projects and the MMS would come from their 12 projects. He said he had no problem in deferring and obtaining the real numbers.

Ms. Swift indicated that the figures were from 1990. The federal method was adjusted in 1992. Mr. Morris stated, "My recommendation was real, real strong that the federal method be used because it does avoid all this discussion, and we don't have to try to become experts. . . . I don't know how many he has in his group, but he's got 10 people that have worked on this thing forever. Now, all of a sudden, and the public process they went through and now all of a sudden we're trying to become experts. We can't get that so we're being very arbitrary by changing what their public process has put together. And we object to that. We don't think it's fair. We're the pioneers; we were the ones who went out and spent all the money and took all the risks and now our project is completed, and we're asked to pay over

100% higher than other valuations." Mr. Morris went on to further explain, "You have to look--this is not a weighted average by any stretch. You've got by far the largest block of power in the industry--is at that 97%, which is PG&E. You've only got 2-4,000 megawatts, maybe 4,000 maximum so PG&E is at least 25% of the industry right there, and I don't know what the megawatts is on MMS but that would be 2-3 hundred." Mr. Charles stated it was 400. "So you've got 1,500--you got half the industry between those columns, which is the highest differentials. He's got 400, and they've got over 1,000."

Mr. Morris went on, "If you were trying to recruit somebody in here right now to develop your steam, what kind of message are you sending to him? What kind of message do you want to send to other developers? We're a captive audience. We have no recourse. If we get taken advantage of in this process, which these numbers would reflect, in my opinion, it would, what is my recourse? I can contest it. I can litigate it. I've already spent x-hundreds of millions of dollars on my project. If this had been resolved years ago, they would have taken the federal method because they'd say . . . 'The federal method makes sense. The feds have already done it, or they would have negotiated something up front. Now we're done. We've spent the money, and we have to come in here and try to justify what's reasonable. In effect, the staff proposal, we've been doing this for months. They've resubmitted the proposal with MMS in there, and then realized . . . better take that out because MMS wouldn't have the limits so that's why they had to make the modification today."

Mr. Nekoba stated that the issue should have been resolved when the lease was done. He commented that there were three different methods--the old MMS method, the new MMS method, percentage of revenues method. He stated the State was looking to get a fair share from the resource. He stated the MMS method was not only motivated by economics, possibly politics--encouragement of alternative development so it was not necessarily "God's holy word."

Mr. Ahue stated it appeared in reading the lease that they were attempting to get as close as possible to gross proceeds being paid to other geothermal producers. He asked whether the 1990 figures were characteristic and reflective of the industry average. Mr. Morris stated that he didn't honestly know what they did and believed a lot was taken out of context and that the PG&E numbers weren't reflected in the graph. He suggested that a more extensive survey could be done.

Mr. Alan Kawada from True Geothermal said he wanted to emphasize the importance of the issue to True Geothermal. He said the staff proposal fell short because it did not take into account some of the policies that have been articulated over the years. He said PGV and True are the only companies in the State. He said that other developers did not look to Hawaii with a lot of encouragement and hope. He asked that the Board look at things they can control; however, the Board could not control whether the resource was there, the price of oil, the market for the energy, and whether there is opposition and how strong it is but the Board could control the royalties issue by putting out an encouraging development scenario for those who might be contemplating spending money in Hawaii on geothermal energy. There are clear policies, he said--the energy plan, section 182-18, but did not believe there was a clear program for the implementation of the policies. He says they have recommended the MMS method with a floor, and he said the Board had the authority to change things over time to

reflect the development scenario. He asked that the Board also consider the impact because of a conservative, restrictive royalty calculation formula.

In response to a question from Mr. Ahue, Mr. Kawada stated that they would like to see the MMS but that the PGV was not really the ideal one for True but would be satisfied with that as opposed to the staff proposal. His point in making the comparison is that in areas like Imperial Valley there are a certain number of wells that would be successful in the exploration program. He stated that there was insufficient data to indicate what the success rate would be or the reservoir characteristics are so there were a number of uncertainties besides the restrictive royalty formula. He added that it doesn't make it look very attractive to come in and take all those risks. Mr. Kawada stated that the MMS formula is "tried and true."

Mr. Norman Olson, deputy planning director from the County of Hawaii, stated that he was asked by the Mayor to represent him and his administration. He said the staff position would be a "disincentive" not only with the development of geothermal energy but it would pass a message on to all development. He said development is now hard to obtain. He suggested that maybe more research was required to determine the fair percentage. Mr. Olson stated geothermal energy development is a high risk industry. He said the County disagreed "totally" with the staff method as being "completely out of line and would turn off a tremendous amount of development, not only in the geothermal area, but in other areas, too."

Mr. Nekoba stated that the MMS formula, showing a steam value percentage of revenue equal to 42%; then, option number two was negotiated percentage of revenue equal to steam value percentage of revenues--30%, based on the second option, Mr. Nekoba pointed to the graph indicating the industry average and suggested that instead of 30% of the electricity value that 42% be used, which would put the royalty in the blue area of the graph. It would eliminate the auditing, the necessity of checking transmission costs--it would be a simple formula.

**EXECUTIVE SESSION:** Mr. Nekoba asked for an executive session to confer with the deputy attorney general. The Board was in executive session from 2:07 to 2:22 p.m.

Mr. Yuen stated that the Board has dealt with the issue for a long time and has been thoroughly briefed. He said they could always obtain more information but a decision had to be made. He said he considered it a very important decision. He said it was an obligation to see that the people of Hawaii received a fair return for the use of the steam. He stated that the staff proposal did embody a compromise.

**ACTION** Mr. Yuen moved for approval of the staff proposal as amended by the submittal. He offered the option to PGV of choosing between the staff netback method with 1.5 multiplier, with the absolute generation and transmission deduction limits, or the steam valued at 42.5% of the electrical revenues. PGV was given a week to decide in writing. The motion was seconded by Mr. Nekoba and unanimously approved.

Mr. Ahue then noted that PGV had just submitted a written request for a contested case hearing.

**ITEM F-7 RESUBMITTAL--STAFF REQUEST TO CAUSE FORFEITURE OF GENERAL LEASE NO. S-3861 TO NOLAN B. GEORGE, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-27:16**

Mr. Young indicated that the lessee owed an amount of \$15,000 and had submitted a cashier's check on the previous day in the amount of \$7,200.

Mr. Nekoba noted that at the last meeting the agreement for deferral was that the amount owing be paid in full. Mr. Young also informed the Board that if the lessee didn't pay the property taxes it would mean a lien on State land. He also said there was an existing mortgage on the property.

Mr. Jeremiah stated he was the attorney for Mr. George, who had informed him that at the last meeting the Board had indicated that he had two weeks to pay the amount owing and was asked to contact the City regarding a variance. He said Mr. George did go to the City and also informed him that he had paid \$7,200. Mr. Ahue stated he received a letter from the City saying the use was prohibited; Mr. Jeremiah suggested that the change could be made in the lease.

Mr. Nekoba stated that the staff had been working with Mr. George for a number of months and this was the third time the matter was before the Board and that the understanding was that the lessee would clear everything up and then the Board might consider the lease extension. The problem of the use was partly cleared but the big problem was that he hasn't paid his rent.

**ACTION** Mr. Nekoba moved for approval of staff's recommendation. Mr. Young suggested an amendment to terminate Mr. George's interest in the general lease, subject to granting Western Farm Credit 60 days from the date of the Board action in which to file a complaint for foreclosure. He said should Western Farm file they would assume responsibility for delinquent payments on the lease. Mr. Apaka seconded the motion.

Mr. Jeremiah asked for an opportunity to return with the balance as it was his understanding that he was required to pay the \$7,200 in two weeks. Mr. Nekoba said he thought the amount was clear to the lessee and his attorney.

Item F-7 was unanimously approved as amended.

Rep. Beirne spoke in support of the lessee.

Mr. George's certified check was given to Mr. Jeremiah.

**ITEM C-1 PERMISSION TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH BISHOP ESTATE**

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

ITEM D-1 See page 30.

ITEM F-1 DOCUMENTS FOR BOARD CONSIDERATION:

ITEM F-1a See page 24.

ITEM F-1b ISSUANCE OF LAND LICENSE TO SONNY VICK'S PAVING CO., INC., GOVERNMENT LAND AT WAKIU, HANA, MAUI, TAX MAP KEY 1-3-04:POR. 12

ACTION Unanimously approved as submitted (Kennison/Apaka).

ITEM F-1c See page 24.

ITEM F-1d ASSIGNMENT OF GENERAL LEASE NO. S-3836 FROM ODA ORCHIDS, INC., AS ASSIGNOR, TO KEMPEI TANAKA HAWAII, INC., AS ASSIGNEE, COVERING STATE LAND AT WAIAKEA, SOUTH HILO, HAWAII, TAX MAP KEY (3)2-2-48:1

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-2 WITHDRAWAL OF LAND FROM EXECUTIVE ORDER NO. 257 (HAKALAU SCHOOL, DEPARTMENT OF EDUCATION) AND SET ASIDE TO THE COUNTY OF HAWAII FOR THE HAKALAU COMMUNITY CENTER, HAKALAU-IKI, SOUTH HILO, HAWAII, TAX MAP KEY 2-9-02:POR. 5

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-3 AMENDMENT TO DIRECT SALE OF EASEMENT AT WAIUAIA, WAIMEA, SOUTH KOHALA, HAWAII, TAX MAP KEY 6-5-02:POR. 5, POR. 31

Mr. Young asked to amend the TMK to read 6-5-01:POR. 5, POR. 31.

ACTION Unanimously approved as amended (Yuen/Nekoba).

ITEM F-4 DIRECT SALE OF UTILITY EASEMENT, GOVERNMENT LAND AT KEEKEE, PUNA, HAWAII, TAX MAP KEY 1-2-09:43

ACTION Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-5 REQUEST FOR PERMISSION TO CONSTRUCT A FARM LABOR DWELLING, LOT 10, LALAMILO FARM LOTS, LALAMILO, SOUTH KOHALA, HAWAII, TAX MAP KEY 6-6-05:3

ACTION Unanimously approved as submitted (Yuen/Nekoba).



**ITEM F-6** REQUEST FOR APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF MAUI, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF LAND AND ANATURAL RESOURCES AND THE TRUST FOR PUBLIC LAND RELATING TO THE ACQUISITION OF 1.31 ACRES OF LAND SITUATED AT MAKENA BEACH, MOOLOA, HONUULA, MAUI, TAX MAP KEY 2-1-06:102

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

**ITEM F-7** See page 31.

**ITEM F-8** See page 22.

**ITEM F-9** See page 2.

**ITEM H-1** See page 2.

**ITEM H-2** See page 2.

**ITEM H-3** See page 3.

**ITEM H-4** See page 3.

**ITEM J-1** ISSUANCE OF REVOCABLE PERMIT, KEEHI LAGOON, ISLAND OF OAHU, FOR RECREATIONAL WATER SKI CLUB ACTIVITIES (HAWAII WATER SKI ASSOCIATION)

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

**ITEM J-2** ISSUANCE OF REVOCABLE PERMIT, LAHAINA HARBOR, ISLAND OF MAUI, FOR RUBBISH BIN SITE (SEABIRD CHARTERS, INC.)

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

**ITEM J-3** ISSUANCE OF REVOCABLE PERMIT, HONOKOHAU BOAT HARBOR, ISLAND OF HAWAII, FOR OPEN, UNPAVED LAND FOR FISH PACKAGING CONTAINER (JOE DETTLING DBA KONA FISHERMANS CO-OP)

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

**ITEM J-4** APPROVAL OF GRANT OF RIGHT-OF-ENTRY AGREEMENT, ALA WAI BOAT HARBOR, ISLAND OF OAHU, FOR VARIOUS PIER AND DOCK REPAIRS IN EXCHANGE FOR USE OF PREMISES (KIEWIT PACIFIC COMPANY)

Mr. Parsons asked to amend the name of the applicant from Kiewit Pacific

**ITEM J-4 APPROVAL OF GRANT OF RIGHT-OF-ENTRY AGREEMENT, ALA WAI BOAT HARBOR, ISLAND OF OAHU, FOR VARIOUS PIER AND DOCK REPAIRS IN EXCHANGE FOR USE OF PREMISES (KIEWIT PACIFIC COMPANY)**

Mr. Parsons asked to amend the name of the applicant from Kiewit Pacific Company to Healy Tibbetts Builders, Inc. (??).

**ACTION** Unanimously approved as amended (Nekoba/Apaka).

**ITEM K-1 AUTOMOBILE PARKING FACILITIES CONCESSION, HONOLULU INTERNATIONAL AIRPORT, OAHU**

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

**ITEM K-2 AMENDMENT NO. 1 TO MEMORANDUM OF AGREEMENT AND LICENSES FOR USE OF REAL PROPERTY (NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION), HNL, LIH, OGG, ITO**

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

**ITEM K-3 DELEGATION OF AUTHORITY TO THE DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OF REVOCABLE PERMITS AT KAPALAMA MILITARY RESERVATION FOR INCONSISTENT PURPOSES**

Mr. Garcia indicated this was a follow-up to the last meeting.

Mr. Young stated that a letter was received from DOT regarding the Tri-Party Agreement and that DOT now wanted to return 38 acres instead of 60. He commented that they DOT has not called to set up a meeting to discuss making up the difference and resolving the problem. Mr. Young asked for deferral until the next Oahu meeting until they have time to show more progress on the issue.

Mr. Garcia stated both he and his Director have advised the Airports Division to meet with the Department of Land and Natural Resources to resolve the problem.


**ACTION** Mr. Nekoba moved for approval of the revocable permits but deferral of the delegation of authority subject to resolution of the Tri-Party Agreement in 30 days. The motion was seconded by Mr. Yuen and unanimously approved as amended.

**ITEM K-4 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 5086 AND 5087, KAPALAMA MILITARY RESERVATION, OAHU**

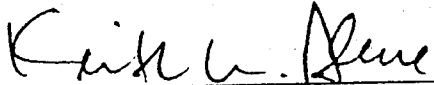
**ACTION** Unanimously approved as submitted (Apaka/Kennison).

**ADJOURN-  
MENT** There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

  
Geraldine M. Besse

APPROVED:

  
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KEITH W. AHUE, Chairperson  
Board of Land and Natural Resources