

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

DATE: FRIDAY, OCTOBER 22, 1993
TIME: 8:30 A.M.
PLACE: ROYAL WAIKOLOAN HOTEL
KAMUELA/WAIMEA CONFERENCE ROOM
QUEEN KAAHUMANU HIGHWAY
WAIKOLOA BEACH RESORT

**ROLL
CALL**

Chairperson Ahue called the meeting of the Board of Land and Natural Resources to order at 8:40 a.m. and the following were in attendance:

MEMBERS: Mr. Herbert Apaka
Ms. Sharon Himeno
Mr. Christopher Yuen
Mr. William Kennison
Mr. Michael Nekoba
Mr. Keith Ahue

STAFF: Mr. Roger Evans
Mr. W. Mason Young
Mr. Michael Buck
Mr. Linford Chang
Ms. Dorothy Chun

OTHER: Deputy Attorney General Johnson Wong
Mr. Peter Garcia, Department of Transportation
Mr. Clyde Nagata, Mr. Al Lyman (Item H-4)
Mr. Alan Hong (Item H-1)
Mr. Walton Hong (Item H-2)
Mr. Ken Melrose (Item F-3)
Ms. Nani Rapoza Lee. (Item F-1-c)
Mr. Ed Taira (Item F-5)
Mr. Jim Bell (Item H-5)
Mr. Tom Adams (Item F-10)
Mr. and Mrs. Grant Gerrish (Item H-6)

MINUTES Minutes of September 10, 1993 were approved as circulated.
(Apaka/Kennison)

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

ITEM H-4

REQUEST TO EXTEND THE PROCESSING PERIOD OF THE KEAHOLE GENERATOR STATION CDUP AMENDMENT, APPLICANT: HAWAII ELECTRIC LIGHT COMPANY; AGENT: CH2M HILL

Ms. Himeno asked to be recused because of possible conflict.

Mr. Evans made the presentation of Item H-4 with the staff recommendation that the Board approve the request of extension.

Mr. Clyde Nagata, Manager of the Hawaii Electric Light Company said that the request is for 180 days. Basically he said that HELCO is in a situation where they need to increase their generation margin and they find that the Keahole site is the only site that they can expand their generation needs. Their original forecast was for 1994 service date, but due to the processing time for an Environmental Impact Statement it is now moved to 1995.

He then gave the Board a little background of the conditions and studies since 1989 to the present time which is now a different situation.

Mr. Evans said that he respected the comments made by the applicant. However, he said that they are still in a contested case mode and while comment may be relevant, staff's concern here is that anything this Board hears or addresses, without the full benefit of all parties being present, may be interpreted as some who are not present as an ex parte communication from staff perspective. He would suggest that notwithstanding the comments being made on a public record that there be no response.

Mr. Yuen clarified that the only issue before the Board this morning is the two 90-day time extensions for 180 days.

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM H-1

CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR THE HANAUMA BAY NATURE PARK IMPROVEMENTS, OAHU, TAX MAP KEY 3-9-12:2, 12, 14, & 16; APPLICANT: CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PARKS AND RECREATION

Mr. Evans said that this was a request by the City and County of Honolulu at Hanauma Bay. They have come in with a master plan that envelopes their perceived improvements there. He explained that there has been a public hearing on the suggested improvements.

Mr. Evans said that he would like to point out two conditions that were listed in the submittal. Condition No. 3 which recommends that the applicant delete the caretaker's dwelling from the Master Plan or choose

a site within the General subzone, staff notes that the current location that they propose is in the Limited subzone. He said that the Board has had a relative firm policy on residences in the Limited subzone. In this case they noted that the General subzone is about a 100 feet away. Staff feels while they can approve the plan, that the caretaker's cottage should be located outside the Limited subzone and that way they would locate it in the General subzone.

Condition No. 4 suggests that the applicant delete the beach promenade in the lower park from the Master Plan. Staff does not feel comfortable with the relative purposes of the lower area, meaning the beach area currently where the food stand, the rental stand and the comfort station are located.

Mr. Alan Hong, manager of Hanauma Bay with the City and County Parks Department of Honolulu said that they had some of the same concerns as the Land Board. He addressed the Board and began by commending Sam Lemmo in his thorough report. Mr. Hong mentioned that one point was missed, that they were going to provide a lifeguard office in one of the buildings on the beach which should have been included in the report. He said that they were aware of the objective of the Limited subzone. He said that the proposed caretaker's residence would be 100 feet above sea level at the top of the cliff. He asked for a deviation from this restriction and referred to page 14 of staff's report. He then went over point by point on their concerns. He said that the caretaker's residence is currently right on the beach and they feel it is not appropriate. It was placed there to take care of emergencies that occur after hours when there are no other staff available and to monitor activities to prevent poaching, vandalism, etc.

Mr. Hong said that they want to relocate the caretaker residence to the top of the park area on fairly level ground that is not being used and is not appropriate for recreation or visitor type of activities. However, it is close to the proximity of the cliff so that the caretaker would be able to hear something down below at night and they could walk over to the scenic viewing area and view the beach. People on the beach would not be able to view the house so it would not interfere with the view plane. From in the house, the caretaker should be able to see some areas on the points of the bay to tell if there were poaching or fishermen in the bay at night. He said that the new caretaker's house would have no adverse effect on the environment. They feel that the new location would increase health and safety for the area.

He said that he had the same concerns for the promenade as Mr. Evans stated, that it would not be in keeping with the nature park. The reason the promenade is included in their Master Plan is that they are presently in the process of moving ahead with the renovation of the comfort

stations that are located at the end of the beach. These comfort stations will be renovated in such a way that they will meet with the American Disabilities Act requirements. They have to make them handicap accessible, add in more restroom stalls and make it more airy and improve the lighting. To make the restroom more accessible for the handicapped, there is a need for a firm surface leading to these restrooms for wheelchairs.

Mr. Hong addressed Condition No. 6, saying that they did a carrying capacity of the beach area in 1989 using the Army Corps of Engineers' formula and they came up with the number of no more than 1600 on the lower beach area at any one time. They are trying to find a formula or number that would pertain to what is the carrying capacity of the reef itself, however the reef and the water falls under the jurisdiction of the State's Division of Aquatic Resources. Thus, the City would prefer that the Aquatic Resources determine the carrying capacity for the reef and when they convey that number to them, the City will help them hold it to that limit.

Mr. Hong said that their Master Plan is divided into four phases. To complete the Master Plan they would probably take four budgetary years.

Another concern is Condition No. 9, routine grading and grubbing during the months of April through October. The next increment in their Master Plan would be to put in the Visitor's Center at the top of the access road that goes down to the beach. The Visitor's Center would be the main entrance to the beach area and they would be exposed to the signage and interpreted displays, the information office, etc. The months that are outlined in which they would be restricted to tends to be their busiest period of the year, the summer months. They would like to have a variance from this so that they can construct the Visitor's Center at some other time so that it would not interfere with the busy summer months.

Discussion followed with questions from the Board regarding carrying capacity of the park, the caretaker's house, caretaker's duties and the promenade.

Mr. Evans responding to the Board on the question of the residence and request for deviation, staff feels a deviation is not allowed. He said that DLNR'S Public Policy does not allow for deviation from an objective. It does allow deviation from a standard condition of which this is not. Staff felt they had no alternative but to recommend that this be placed outside the Limited subzone. On the question of the beach promenade on the lower portion, staff is not convinced that there needs to have a promenade in order to accommodate the handicapped or disabled people.

Relative to Condition No. 6, Mr. Evans said that it could be modified by the Board based upon the request of the City and County. That the Division of Aquatic Resources to determine the carrying capacity and the City said that they would try to hold it to the limit and submit a report to the Division of Aquatic Resources.

On Condition No. 8, Mr. Evans said that request for change seems reasonable. Staff feels the completion date could be changed, but the applicant should begin work within a year's time.

On Condition No. 9, relative to the grubbing and grading, Mr. Evans said that it could be modified.

Mr. Nekoba commented that he looked at the move of the caretaker's quarters from the much used beach area to the upper area as a functional use. The caretaker acts as security at night and is there in case of emergencies after hours. He then questioned the width of the proposed promenade.

Mr. Hong said that the promenade that they are proposing will be just wide enough to contain their pick-up truck that they use for maintenance of the park, about 8 feet. Right now the present road does experience some erosion especially after heavy rains.

Several Board members expressed their concerns regarding the moving of the caretaker's house. Question was brought up if staff had the opportunity to make the distinction between a residence and a government facility being the building is owned by the City.

Mr. Evans said that that has not been addressed by the staff and it had not been considered as a government facility.

Mr. Evans suggested modification on condition no. 4, delete using the term "promenade," and limit the lower beach paving area for the existing comfort station and trash disposal area. Mr. Hong was agreeable.

MOTION Mr. Nekoba made a motion for approval with the following amendments/modifications to the Recommended Conditions:

- 1) Condition No. 3, be deleted;
- 2) Condition No. 4, delete the use of the word 'promenade'. Applicant shall be allowed to construct the roadway to service the comfort station, provide for trash removal and meet the American Disabled Association's requirements;
- 3) Delete Condition No. 6, as the applicant has already monitored the

capacity for the lower park and they can work with the Division of Aquatic Resources to get a number for the reef;

4) Condition No. 8, the construction period to be initiated within one year of date of approval of the use and completed within six years.

5) Condition No. 9, Grubbing and grading activities shall be conducted during the low rainfall months except the work on the Visitor Center in the upper area.

Motion was seconded by Mr. Yuen and carried unanimously.

ITEM H-2 CDUA FOR A SLOPING ROCK SEAWALL AT HAENA, KAUAI, TAX MAP KEY 5-9-2:35; APPLICANT: MURCIA-TORO, INC.;
CONSULTANT: WALTON D.Y. HONG

Mr. Evans informed the Board that this item was a request for a sloping rock seawall on private land. Staff's recommendation is for denial and two reasons listed are 1) The County of Kauai has not approved a Special Management Area (SMA) permit for the project and 2) The case for beach erosion as a justification for the proposed sloping rock seawall has not been made.

Mr. Walton Hong, representing the applicant said that he agreed with Mr. Evans that an SMA permit must be issued first if required, before a CDUA permit can be approved in the Conservation District. He is asking for extension of time this morning as they do not have a county SMA permit at this time. They applied for the County SMA permit within a matter of weeks after applying for the CDUA on June 9. He informed the Board that the normal processing time for the County of Kauai is approximately four months and to date they still have not acted upon their application.

There was much discussion regarding the 180-day processing period, options for the applicant should the application be denied and possibility of refiling immediately or applicant withdrawing his application.

WITHDRAWN Mr. Hong requested to withdraw this application. Mr. Apaka made a motion to allow applicant's request to withdraw his application, seconded by Mr. Kennison, motion carried.

ITEM F-3 REQUEST TO AMEND PRIOR BOARD ACTION OF JUNE 26, 1992 (AGENDA ITEM F-2) RELATIVE TO REAL ESTATE TRANSACTION AGREEMENT WITH WAIKOLOA DEVELOPMENT COMPANY FOR CONSTRUCTION AND CONVEYANCE OF WAIKOLOA ELEMENTARY SCHOOL, WAIKOLOA, SO. KOHALA, HAWAII, TAX MAP KEY 6-8-02:PORTIONS OF 26 AND 31

Mr. Young informed the Board that this was a first of a kind as the developer wanted to build the Waikoloa Elementary School on Hawaii, whereby the Waikoloa Development Corporation conveyed the land to the State at no charge. The development corporation would build the facility at an agreed amount of \$8.5 million dollars and the Department of Education would pay for the improvements. The developer is asking that the agreement be amended to include one additional building and 24 parking stalls.

Mr. Ken Melrose of Waikoloa Development Company informed the Board that he did not have anything specific to add except that they would appreciate favorable consideration of their request. They are ahead of schedule and under budget. As of this date they are approximately 44% complete. The completion date is June 1994.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

Item F-1-c **Assignment of Grant of Easement (Land Office Deed No. S-27,750) Situate at Puuwaawaa, No. Kona, Hawaii, Tax Map Key 7-1-02:Por. 1 and 8**

Ms. Nani Rapoza Lee appeared on behalf of the applicants.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM F-5 **WITHDRAWAL OF LAND FROM EXECUTIVE ORDER NO. 1331 (QUARRY SITE TO THE COUNTY OF HAWAII), HONALO, NO. KONA, HAWAII, TAX MAP KEY 7-9-17:22**

Mr. Ed Taira of the County of Hawaii was present. He did not have anything to add after Mr. Young's presentation.

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM F-10 **AMENDMENT OF LAND LICENSE NO. 264 TO HAWAIIAN CEMENT CO. FOR INCREASE OF PRICE OF CINDER AT THE OLOWALU CINDER PIT, OLOWALU, LAHAINA, MAUI, TAX MAP KEY 4-8-03:7**

Mr. Tom Adams, applicant did not have anything to add after Mr. Young's presentation and did not have any problems with the recommendations.

ACTION Unanimously approved as submitted. (Kennison/Apaka)

CDUA FOR AFTER-THE-FACT CLEARING AND TO CONSTRUCT A DRIVEWAY AND INSTALL DRAINAGE IMPROVEMENTS AT TANTALUS, HONOLULU, OAHU, TAX MAP KEY 2-5-15:5; APPLICANT: MR. HAROLD DILLINGHAM, JR.; AGENT: MS. KATHLEEN A. DADEY, BELT COLLINS & ASSOCIATES

ITEM H-5

Mr. Jim Bell of Belt Collins & Associates representing First Hawaiian Bank, Trustee for Harold Dillingham and also Harold Dillingham, the applicant, said that he had nothing to add. The applicant is agreeable to the conditions and to the fine for the violation.

ACTION Unanimously approved as submitted. (Nekoba/Kennison)

RECESS 10:15a.m. - 10:20 a.m.

REQUEST FOR BOARD APPROVAL TO A THIRD AMENDMENT TO THE EXISTING CONTRACT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) TO PROVIDE RESEARCH ASSISTANCE AND TECHNICAL SUPPORT IN THE IMPLEMENTATION OF THE STATEWIDE TRAIL AND ACCESS SYSTEM

ITEM C-1

ACTION Unanimously approved as submitted. (Apaka/Kennison)

APPROVAL OF ACTION PLAN FOR PUUWAAWAA, NORTH KONA, HAWAII

ITEM C-2

ACTION Unanimously approved as submitted. (Yuen/Himeno)

APPROVAL OF COOPERATIVE AGREEMENT BETWEEN THE BOARD, THE U.S. FISH AND WILDLIFE SERVICE, NATIONAL BIOLOGICAL SURVEY AND THE NATURE CONSERVANCY OF HAWAII FOR THE PURPOSE OF CONDUCTING FIELD STUDIES OF ENDANGERED FOREST BIRDS ON MAUI

ITEM C-3

ACTION Unanimously approved as submitted. (Himeno/Kennison)

APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - JOB NO. 31-OL-J, WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU

ITEM D-1

Mr. Chang presented an amendment to Item D-1. He explained to the Board that the low bidder's base bid of \$3,288,800.00 minus the Alternate No. 3 - \$430,000.00 exceeded the available funds of \$2,500,000.00. Staff negotiated with the low bidder to reduce the work and as a result their recommendation is that the Board award the project to the low bidder again to Ganzer Brothers, Inc. for the negotiated

amount of \$2,408,654.00 and authorize the Chairperson to sign the necessary documents pertaining to the project.

ACTION Unanimously approved as amended by staff. (Nekoba/Himeno)

ITEM D-2 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 49600, REPLACEMENT OF MOORING PILES AT NAWILIWILI SMALL BOAT HARBOR, KAUAI**

It was confirmed that Items D-2 to D-7 all related to damage repair jobs on the island of Kauai due to Hurricane Iniki.

ACTION Mr. Apaka made a motion to approve Items D-2 through D-7. Motion was seconded by Ms. Himeno and carried unanimously.

ITEM D-3 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 73671, RECONSTRUCTION OF UNPAVED ACCESS ROADS AT NAWILIWILI SMALL BOAT HARBOR, KAUAI**

See Action under Item D-2.

ITEM D-4 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 94855, RECONSTRUCTION OF COMFORT STATION AT NAWILIWILI SMALL BOAT HARBOR, KAUAI**

See Action under Item D-2.

ITEM D-5 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 73656, REPAIR BREAKWALLS AT KIKIAOLA SMALL BOAT HARBOR, KAUAI**

See Action under Item D-2.

ITEM D-6 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 94849, REPAIR HARBOR FACILITIES AT KIAIAOLA SMALL BOAT HARBOR, KAUAI**

See Action under Item D-2.

ITEM D-7 **APPROVAL FOR AWARD OF CONSTRUCTION CONTRACT - DSR NO. 73660, REPAIR HARBOR FACILITIES AT PORT ALLEN SMALL BOAT HARBOR, KAUAI**

See Action under Item D-2.

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

Item F-1-a Assignment of General Lease No. S-3601, Lot 33, Kanoelehua Industrial Lots, Waiakea, So. Hilo, Hawaii, Tax Map Key 2-2-49:7

Item F-1-b Assignment of General Lease No. S-3170, Lot 37, Ocean View Lease Lots, Waiakea, So. Hilo, Hawaii, Tax Map Key 2-1-07:36

Item F-1-c See Page 7 for Action.

Item F-1-d Issuance of Revocable Permit to Honokaa Farmers Cooperative, on Behalf of Paauhau Community Association, for Community Garden Purposes, State Land at Paauhau, Hamakua, Hawaii, Tax Map Key 4-4-05:2

Mr. Young called upon Mr. Yuen for the name of the successor. Mr. Yuen said that amendment to F-1-d would be that the permit would be issued to either Honokaa Farmers Cooperative or to their successor, provided that it becomes registered as a non-profit corporation, the North Hilo-Hamakua Agricultural Cooperative.

ACTION Mr. Yuen made a motion to approve Items F-1-a, F-1-b as submitted and F-1-d as amended; seconded by Mr. Kennison, motion carried unanimously.

AMENDMENT TO PRIOR BOARD ACTION OF MAY 24, 1990 (AGENDA ITEM F-14), DIRECT SALE OF REMNANTS, PUU ANAHULU HOMESTEADS, NO. KONA, HAWAII, TAX MAP KEY 7-1-05:PAPER ROADS

ITEM F-2

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-3 See Page 7 for Action.

AMENDMENT TO PRIOR BOARD ACTION OF APRIL 23, 1993 (AGENDA ITEM F-2) RELATIVE TO DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO MARIA F. AND NELLIE J. CARVALHO AT PAALAEA 1 AND 2, HAMAKUA, HAWAII, TAX MAP KEY 4-5-03:POR. OF 20 AND ROADWAY

ITEM F-4

ACTION Unanimously approved as submitted. (Yuen/Apaka)

ITEM F-5 See Page 7 for Action.

ITEM F-6 **DEPARTMENT OF TRANSPORTATION REQUEST SET ASIDE FOR DRAINAGE PURPOSES, STATE LAND AT KAALAALA MAKAI, KAU, HAWAII, TAX MAP KEY 9-6-12:POR. 4 AND 9-6-13:POR. 2**

ACTION Unanimously approved as submitted. (Yuen/Nekoba)

PARTIAL ASSIGNMENT OF SUBLESSEE'S INTEREST IN SUBLEASE AND OF SUB-SUBLESSOR'S INTEREST IN SUB-SUBLEASE, GENERAL LEASE NO. S-3592, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-32:67

ITEM F-7

Mr. Young requested that Items F-7, F-8 and F-9 be taken up together because it deals with one applicant, the Hawaii Planing Mill.

ACTION Mr. Yuen moved for approval as submitted, seconded by Mr. Kennison, motion carried unanimously.

PARTIAL ASSIGNMENT OF SUBLESSEE'S INTEREST IN SUBLEASE AND OF SUB-SUBLESSOR'S INTEREST IN SUB-SUBLEASE, GENERAL LEASE NO. S-3609, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-32:70

ITEM F-8

See above Item F-7 for action.

PARTIAL ASSIGNMENT OF LESSEE'S INTEREST IN GENERAL LEASE NO. S-3611 AND OF SUBLESSOR'S INTEREST IN SUBLEASE, WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-2-32:21

ITEM F-9

See above Item F-7 for action.

ITEM F-10 See Page 7 for Action.

AUTHORIZATION FOR DIRECT AWARD OF NON-EXCLUSIVE TERM EASEMENT OVER AND ACROSS GOVERNMENT RECLAIMED (FILLED) LAND FOR SEAWALL AND LANDSCAPE PURPOSES LOCATED AT KAHALUU, KOOLAUPOKO, OAHU, TAX MAP KEY 4-7-19:SEAWARD OF 48

ITEM F-11

ACTION Unanimously approved as submitted. (Kennison/Apaka)

AMENDMENT TO PRIOR BOARD ACTION OF JULY 23, 1993 (AGENDA ITEM F-1-G), ISSUANCE OF REVOCABLE PERMIT TO DIAMOND PARKING SERVICES, FORMER OR&L AND IWILEI PRODUCE CENTER SITE, IWILEI, HONOLULU, HAWAII, TAX MAP KEY 1-5-07:POR. 14

ITEM F-12

ACTION Unanimously approved as submitted. (Nekoba/Himeno)

PROPOSED LAND EXCHANGE BETWEEN STATE OF HAWAII AND ROGER AND ELLEN WATSON, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:PORTIONS OF 62 AND 79

ITEM F-13

WITHDRAWN Mr. Young requested that Item F-13 be withdrawn till the next meeting.

Unanimously approved request to withdraw item. (Kennison/Apaka)

**PETITION TO AMEND TITLE 13, CHAPTER 2, HAWAII
ADMINISTRATIVE RULES, IN ORDER TO RECLASSIFY A PARCEL
FROM THE LIMITED SUBZONE TO THE RESOURCE AT
LAUPAHOEHOE, NORTH HILO, HAWAII, TAX MAP KEY 3-6-02:11;
PETITIONERS: GRANT AND SHARON GERRISH**

ITEM H-6

Mr. Evans said that this was primarily a policy question by the board at this point. Previously the Board deferred this item. Subsequent to that, the board had a public briefing a few weeks ago and as a result, staff listened to what they perceived to be the sentiment of the board and thus the recommendation in this morning's submittal.

During the discussion that followed, Mr. Evans pointed to Exhibit 9 and next to Exhibit 16. Exhibit 9 shows the only Resource on that inset, that's the proposal to take any inset and to rezone this land to R which is current Limited. He said that spot zoning in this fashion has generally been deemed illegal by the court. He pointed to two things, the first is what is done by the zoning authority, basically created an island within a larger zoned area. The second thing is that the island benefits a single individual, rather than a community. He said that the Office of State Planning is currently reviewing the subzones. They're looking at things like the tax map keys relative to what should be in what areas.

Exhibit 16 shows their specific parcel. On the left hand side of the property is Bedrock Island. To the left are flood plains, at the right hand side of the property, you see flooding again. The problem we have, is within a 1.3 acre parcel, here comes a landowner who says I have this little piece here, although flooding occurs on my parcel, I have this little area in the parcel where there's no flooding, therefore it should be rezoned. To rezone the area and if the request is to rezone the whole parcel, not simply the area that doesn't flood, this puts a dilemma that we're in because the Board is going to be faced in the future with rezoning because of many concerns of the community.

Mr. Nekoba said that he foresees that this might be setting a precedence. There are other landowners out there, big landowners too that are in a limited subzone. For example, they might have a thousand acres and fifty of the thousand acres are in an area that really doesn't meet the criteria of the limited subzone. They might come in and make a similar request if they have a flat plateau area or there's no river nearby or there's no waterfalls or endangered plants. He felt they may see a lot of these types of request coming through.

Ms. Himeno asked, "In addressing Mike's concerns, is there any way that just the area that is not in the flood zone could be redesignated and

they still could have the house there? Is there a reason why they need the full parcel redesignated?"

Mr. Evans said, "I presume they can live there, they can speak for themselves. I presume because there was one parcel of land and they apply for one parcel of land."

Mr. Yuen had a question on the arrows on the map drawing. He said, "I wouldn't recommend any kind of action to bail somebody out for their mistake, but if they can justify a change, then I would support that."

Mr. Grant Gerrish explained that where the heavy arrows are on his map, some water backed up and water crossed that point. Some water collects on the road and goes across anyone's property. They consulted a hydrologist and they do not look at their area being a potential flood zone. He also described the drainage in the area.

Ms. Himeno addressed Mr. Evans, "Is what they're saying, that the light arrows are not to designate a flood zone but routine drainage direction. Is there any reason why this property should be in the limited subzone in your opinion, just on the geographical and topography issues, like the precedent in policy?"

Mr. Evans replied, "That would be the same reason like all the surrounding property are in a limited subzone. If the surround properties, presumption is that the government, seems to me that there's a little bit of a presumption here, if the government acted with a degree of integrity when the subzones were made in 1978."

Ms. Himeno commented, "But the government can make mistakes."

Mr. Evans said, "And we feel that's true and the government then should be brought to the task. If it is the desire of the Board to have us go back and review our subzones, we'd be more than happy to go back to the legislature, otherwise we're going to be considering it on a case by case basis."

Ms. Himeno asked, "But in this particular case for this particular parcel, is there any concern from the perspective of being in the limited subzone, in other words, from the criteria here, is it not susceptible to flood or whatever?"

Mr. Evans responded, "Yes, I thought we had brought that out, that the probability of destructive flooding is as low or lower than nearby parcels. This parcel is not within the tsunami evacuation zone, however lies within the limited subzone. The line is drawn as a straight line between here and the resource subzone. These parcels in the resource subzone."

Mr. Yuen said, "I think the question was, 'Is there any physical reason, on the ground type reason why the property should be in the limited subzone?'"

Mr. Evans said, "I have not personally walked the property nor have our staff to my knowledge. What we did, when the rezoning of the map was done, the way it was done, we sent all the maps out to the various divisions. They're the ones that got the DLNR, the government hydrologist, the government marine biologist, the government forester, people in the scientific discipline, those people in the department, in the scientific discipline, took the criteria and said this is the criteria that applied on these lands. The scientific disciplines. Subsequent to that we took the matter out to public. The public reviewed it. I cannot sit here and represent to you in all fairness on 2 million acres of land that I know the exact reason why this 1.3 parcel was designated."

Mr. Yuen said, "At any rate, in connection with this application, it's been recirculated to all agencies and as far as I know, nobody has come up with any physical reason on the ground type reason why it should be in the limited subzone."

Mr. Evans said that he was not aware of any agency that had come back and said that it was misappropriately designated.

Mr. Nekoba again stated that his biggest concern was the fact that there will be many requests for different zoning in a limited subzone if the physical characteristic of the specific property or parcel, for example if a large estate having many acres in the limited subzone were to make a similar request. He felt that this action would seem like spot zoning or spot use.

Ms. Himeno said that she could understand Mr. Nekoba's concern and felt that the Board would have to be very honest about this and that they are making a policy decision today whichever way the Board decides to go. Her personal feeling was that the lands were designated by the government back in 1978 and she did not feel that government is infallible. They could have made some mistakes or generalizations and there is a mechanism for someone to petition the Board to change the subzone if they meet certain criteria and if they can establish their case. If that petitioner can do so than she felt that as a policy matter the Board should seriously look at changing the subzone and if they'd met the criteria perhaps the designation should change on a case by case basis.

Mr. Yuen said that he felt the same way as Ms. Himeno. Supposing they were to deny the Gerrishes today, it doesn't prevent somebody else the right to apply for a rule change as the rules permit that and someday, someone might take it to court and the reason, we may be in a situation

where we may say, "We have no reason why this person should be in the limited subzone, we have no reason why this person should build a house there. We denied this because we don't want the administrative burden of people coming in with these kinds of applications. That's not going to hold up."

Mr. Evans said that Ms. Himeno was correct and staff tried to distinguish through the rule a month and a half ago, this was a big issue. He said that on his part there was a responsibility regarding a policy issue that needed to be brought forward. He still felt that this was spot zoning.

Mr. Yuen mentioned that in this particular case, this property is only about 100 feet from the resource subzone and apparently the applicant had come in at one time and asked if they should apply on behalf of their neighbors as well and was not told to do that.

Chairperson Ahue added that the ultimate solution to this is a review of all the subzones and all the areas in question. There is a committee that has just started that but unfortunately it is a huge undertaking and it may not happen in our lifetime depending on funding and resources that are available. Ideally properties in a particular subzone meet the criteria for that subzone. In the case of the large landowners, if there are sections of their property that are improperly classified, maybe they should have the right to reclassify a large portion of their land if it doesn't meet the criteria for the subzone. That's what is being referred to now as a big fix.

Chairman Ahue said that it is a bit uncomfortable to issue a change in subzone based only on a particular lot and it couldn't be at all possible subsequent to this or even in coordination with whatever action that's going to be taken if it's appropriate that we look at areas as opposed to TMK's and this is a relative small area compared to the two million acres that we have. That if we could determine, for example, in this area, what is appropriate in the limited subzone and the resource subzone and make those changes based on the topography of the area, that might be more defensible than simply saying that it was for one person or for one lot. He did not know how pragmatically it could be done but if we see problems as indicated with granting redesignation of a subzone for one individual, for one lot, maybe the Board should go beyond that and look at the entire area.

Mr. Yuen said, "I think I would agree in principal and in general that we should be looking at areas when we resubzone and maybe this is something that people should be encouraged to do in the future. I wouldn't want to impose that on this applicant though because they've gone through a very long process for a subzone change."

MOTION Mr. Yuen entertained a motion to approve the subzone change.

DISCUSSION Mr. Nekoba asked of the applicant, "When you purchased this piece, was it your understanding at the time that you could build a house on this property?"

Mr. Gerrish answered, "Yes."

Mr. Nekoba continued, "So really, your realtor or whoever, really misrepresented to you with what you could do with this piece."

Mr. Gerrish said that he was shown the county zoning, the disclosure form and thought it was zoned ag.

Mr. Nekoba said that he felt that their realtor should be liable and responsible for selling them something like this and to make them come before the board to attain the use.

Mr. Gerrish said that regarding their realtor, they have investigated on what legal recourse they had and it did look very promising. They were told by an attorney that it might take a couple of years and they would accept it on a contingency basis and they could probably get their purchase price back. He said that they liked the land and would like to keep it. He said, "I would also like to if I may say a little bit about the relationship to the resource subzone, now this is your map, exhibit two, the tax map, showing our property outlined here. In fact, this property owned by Branco's is mostly in the resource subzone, they have a home on it. We are contiguous with this property here. Again there's the Hongwangi or churches down there, it's partially in each subzone and it has a house down there. These property owners would have nothing to benefit by coming to you asking for a subzone designation. In fact down there, there's one parcel where designation might well be the same thing, ..."

Mr. Gerrish said that they had attempted to consult with DLNR on how they could go about putting together an application and they came up with couple possibilities. He then passed out a color coded map to the board and continued to explain his lengthy process in request for change in subzone.

Mr. Yuen commented that they were suggesting or asking whether they should apply for a larger area which would include the neighboring properties.

Chairperson Ahue informed the board that there was a motion on the table.

ACTION Ms. Himeno seconded the motion that the Board accept staff's recommendation and motion carried. Mr. Nekoba voted no.

ITEM H-1 See Pages 5 and 6 for Action.

ITEM H-2 See Page 2 for withdrawal.

ITEM H-3 **CDUA FOR THE RENOVATION OF NUUANU NO. 3A TUNNEL OFF PALI HIGHWAY IN UPPER NUUANU VALLEY, HONOLULU, OAHU, TAX MAP KEY 1-9-07:1; APPLICANT: CITY & COUNTY OF HONOLULU BOARD OF WATER SUPPLY**

ACTION Unanimously approved as submitted. (Apaka/Nekoba)

ITEM H-4 See Page 2 for Action.

ITEM H-5 See Page 8 for Action.

ITEM H-6 See Pages 16 and 17 for Action.

ITEM K-1 **REQUEST FOR EXTENSION OF DELEGATION OF AUTHORITY TO THE DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OF REVOCABLE PERMITS AT KAPALAMA MILITARY RESERVATION FOR INCONSISTENT PURPOSES, OAHU**

ACTION Unanimously approved as submitted. (Himeno/Nekoba)

ITEM K-2 **CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (DFS GROUP L.P. - AIRPORTS ELECTRONICS, INC.)**

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ADJOURNMENT Chairman Ahue adjourned the meeting at 11:15 a.m.

Respectfully submitted by,


Dorothy Chun

APPROVED BY:



KEITH W. AHUE, Chairperson

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