

Inasmuch as we're not going ahead with the entire package, just reaching a point where we can have the in-coming administration look at it and decide whatever course of action they want to take. The agreement is really to spell out intent and let the other city administration take a look at it.

Mr. Yagi asked if this transfer would become null and void should the present administration not go along with this.

Mr. Nagata thought it would.

Mr. Ing asked whether the transfer storage area adjacent to the park which was suspected of contamination came under the jurisdiction of the City.

Ms. Emiko Kudo said that she wasn't sure whether there was a contamination storage there now. She asked Mr. Matsuno of their Facilities Branch and he confirmed that any contamination that was in the area had been cleared out.

ACTION

Upon motion by Mr. Ing and a second by Mr. Higashi, the board unanimously:

1. Approved the exchange whereby the properties mentioned above would be transferred by appropriate legal instrument to be executed as necessary by the Chairperson and another Board member; recognizing that this transfer is subject to a Memorandum of Agreement between the Governor and the Mayor.
2. Recommended that the Memorandum of Agreement include Conditions a) through j) as listed in the submittal.

Dec 28, 1984

Mr. Ono thanked Mrs. Kudo and her staff for working so closely with the staff of DLNR to put this package together.

RECESS: 10:15 A. M. - for posting of maps on the blackboard

RECONVENE: 10:20 A. M.

ITEM D-2

DESIGNATION OF GEOTHERMAL RESOURCE SUBZONE, KILAUEA UPPER EAST RIFT ZONE, ISLAND OF HAWAII.

Mr. Ono explained that he would deviate from the normal procedure by reading the Decision and Order of the Board and, subsequent to that, will take the formal action and distribute the Decision and Order to the parties concerned.

For the records, Mr. Ono stated that Messrs. Ing and Zalopany would not be participating on this item.

Mr. Ono presented the Decision and Order of the Board of Land and Natural Resources on the Proposed Geothermal Resources Subzone at Kahauale'a, Hawaii as follows:

"Pursuant to Act 296, SLH 1982, Act 151, SLH 1984 and Title 13, Chapter 184 of the administrative rules of the Department of Land and Natural Resources, the Board of Land and Natural Resources has been assessing potential geothermal resource areas throughout the State. Under Act 151, SLH 1984, two areas in lower Puna, Hawaii, with existing wells were grandfathered as geothermal resource subzones. On November 16, 1984, this Board designated two additional subzone areas in lower Puna on the Island of Hawaii and one on the southwest rift of Haleakala, Maui.

"Today the Board is acting upon a proposal to designate a portion of land at Kahauale'a, Hawaii. In consideration of the widespread interest which this proposal generated, the Board in its discretion conducted a contested case

this past Monday, December 24, 1984.

(as set forth in its Master Plan), which the State will not...
"Under Act 151, SLH 1984, the Board must make a determination by December 31, 1984 regarding the designation of all or any portion of the land which the Board approved in its Conservation District Use Permit of February 25, 1984. That decision allowed Campbell Estate to conduct limited exploration on approximately 800 acres of land in Kahauale'a. The Board has reviewed and considered the proposed findings of fact and conclusions of law submitted by the parties. In view of the statutory deadline and the brief time available to the Board since it received the proposed findings, the decision today will be rendered orally. A full written decision and order will follow at a later date.

- I. The Board of Land and Natural Resources approves the designation of the area described in the Board's Decision and Order of February 25, 1983 containing approximately 800 acres of surface areas as a geothermal resource subzone upon the occurrence of the following events and upon the following conditions:
 1. The cessation of volcanic activity in, around, and near the area permitted by the Board's February 25, 1983 Decision and Order. The determination that eruptive activity constituting a geologic hazard has ceased shall be made by the Board upon evidence and testimony from professional geologists from the Hawaii Volcanoes Observatory and the U. S. Geological Survey. Other professional geologists with special experience in this particular geographic area may be heard at the Board's discretion.
 2. No new activity associated with the permitted area shall be considered until after the determination is made that geologically hazardous and eruptive activity in, near, and around the permitted area has ceased as provided for above.
- II. The State of Hawaii formally requests the Estate of James Campbell to investigate and consider a land exchange involving State owned land in Kilauea middle east rift zone and Campbell Estate's lands at Kahauale'a (excluding Tract 22).

If the State of Hawaii and Campbell Estate should later consummate a land exchange involving lands at Kahauale'a for State or other lands upon which geothermal activity may take place, then the geothermal subzone designation in this Decision and Order shall cease to exist and shall have no force or effect in law, notwithstanding any further requirement for a contested case hearing in HRS 205-5.2(3) or any other provision of law to the contrary.
- III. The Board of Land and Natural Resources on its own motion hereby directs the Division of Water and Land Development (DOWALD) of the Department of Land and Natural Resources (DLNR) to immediately undertake and conduct an assessment of the Kilauea middle east rift zone in and adjacent to the Natural Area Reserve beginning on the western boundary of the Kamaili geothermal subzone as a potential geothermal resource subzone. Although this area had not previously been evaluated due to its classification as a Natural Area Reserve, the Board now believes that the area should be reviewed.
- IV. If a) the assessment of the Kilauea middle east rift zone does not result in a designation as a geothermal resource subzone in this area; or b) a land exchange between the State of Hawaii and the Estate of James Campbell is not consummated then the remainder of the 5300 acres proposed by DOWALD as a geothermal resource subzone in Kahauale'a heretofore not designated by this Decision and Order shall be and is hereby ordered to be so designated as a geothermal resource subzone.

National Park Service to immediately seek to acquire Tract 22 (as described in its Master Plan), which the State will not itself seek.

VI. If the exchange described above does occur, the entire 5300 acres within the proposed subzone (exclusive of Tract 22) shall be included within the lands acquired by the State of Hawaii from Campbell Estate and shall be eliminated from the proposed subzone.

It is so ordered by the Board of Land and Natural Resources, with four members of the Board concurring, signatures affixed by Messrs. Yagi, Higashi, Kealoha and Ono.

ACTION Mr. Higashi moved to adopt the above Decision and Order. Mr. Yagi seconded, motion carried.

Messrs. Zalopany and Ing were excused from participating.

Mr. Tam asked that the last line of page 2 of the order be corrected from HRS 205-5.2(e) instead of (3).

RECESS: 10:30 -- for distribution of the Decision and Order

RECONVENE: 10:35

Using the maps on the blackboard, Mr. Ono pointed out those areas affected by the Decision and Order. He showed the area which was previously approved by the Board under the CDUA and explained that today's Order says that this area is to be designated as a subzone with, however, conditions attached. As long as volcanic activity continues, there is to be no activity on the part of the applicant.

The other major point is asking the staff of DLNR to look at the State-owned lands around the area, which is a natural area reserve. This area was not originally considered by staff because it is already reserved under the Natural Area Reserve Commission. However, the Board is saying to look at this area as a potential subzone and also consider the possibility of swapping Campbell Estate lands, which would allow some benefits hopefully for both sides. If, for whatever reasons the exchange does not take place, then in addition to a tiny strip which he pointed out on the map, Mr. Ono said that the entire 5300 acres will be designated subzone. Should an exchange take place, staff is asking the Federal government to acquire a portion that they had indicated interest in acquiring a few years back. These were the highlights of today's decision.

AFTER-THE-FACT CDUA FOR THE LOADING AND UNLOADING OF PASSENGERS ON THE STATE-OWNED BEACH NORTH OF HANAIEI PIER AT HANAIEI BAY, KAUAI (MR. RICHARD MARVIN).

Mr. Marvin said that in June 1983 he was hired as a Licensed Captain by a sail charter business, Blue Water Sailing. The company began operation in 1980. Mr. Marvin said that he had the opportunity to acquire this business in March of 1984. The actual sailing from Hanalei could not begin until May 1984 due to unfavorable high surf conditions. Inquiring of established operators in this area, there seemed to be a consensus that at that time no permit was known to be required or ever being obtained. However, one charter captain claimed that he had a permit that was good for ten years.

Mr. Marvin said that he met with the DLNR Kauai representative March, 1984 to inquire about a Use Permit to shuttle his passengers to the sailing vessel anchored offshore. Mr. Lee said that he was not certain weather or

V. If the land exchange described above is consummated, the Board of Land and Natural Resources strongly urges the federal government and the

ITEM H-5

Mr. Keala said that he would like to have the board give them the opportunity to look at another area within the perimeter of West Beach to allow them to test wells to see if they can get water of another quality.

"So the answer is yes", said Mr. Ono?

Mr. Keala said yes, no problem, but with the condition that they can cap this and move some place else.

ACTION

Mr. Ing moved for approval with the following amendment that in the event the chloride content is less than 250 ppm chloride that the well water not be used for irrigation purposes and that the applicant seek another source. Seconded by Mr. Kealoha, motion carried unanimously.

Mr. Tagomori said that they would like to review where the new location would be because they may be drilling close to another well.

Mr. Keala said that their experience with the Board of Water Supply is that 250 is not acceptable. Makakilo well is at 259 and they require us to blend with the existing Board of Water Supply water to the extent that above 160 is not a potable system so we would have to either buy water from the Board of Water Supply or dig another well.

AMENDMENT TO THE BOARD'S 12/28/84 DECISION AND ORDER ON THE PROPOSED KILAUEA UPPER RIFT ZONE (KAHAUALEA), ISLAND OF HAWAII.

ITEM H-5

Mr. Detor said that Item H-5 is the first of a five part series of submittals, all dealing with the proposed exchange with Campbell Estate.

Mr. Detor said that after the contested case hearings last year in December the board rendered a decision and order on the proposed geothermal subzone and, as part of that decision and order asked the Campbell Estate to propose an exchange of lands whereby the State lands that are closer to the National Parks would be exchanged for similar state lands. The Board opted to exclude "Tract 22" in the land exchange to allow the National Park Service to acquire "Tract 22" from Campbell Estate. However, Campbell Estate has asked that "Tract 22" be included in the exchange.

ACTION

Mr. Higashi moved for approval with the amendment that 1) this be subject to other terms and conditions as prescribed by the Chairman; and 2) all standard conditions with regard to land dispositions also to be included.

For clarification, Mr. Ing asked if the amendment was that this is to be reviewed by the Chairman and the Attorney General's Office for consistency.

Mr. Ono said yes.

Seconded by Mr. Kealoha, motion carried unanimously.

PROPOSAL FOR EXCHANGE OF LANDS BETWEEN THE STATE OF HAWAII AND THE ESTATE OF JAMES F. CAMPBELL, PUNA, HAWAII.

ITEM H-6

Mr. Detor said that under this proposed exchange the Campbell Estate would be conveying some 25,461.311 acres to the State and the State would convey to the Estate some 27,644.166 acres.

10/25/85
Kahala

...the difference, up to 120% of the value of the Campbell lands, then they will have to pay the difference.

ACTION

Mr. Higashi moved for approval with the same amendments listed under "ACTION" of Item H-5. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM H-7

REQUEST TO AUTHORIZE PUBLIC HEARING FOR PROPOSED WITHDRAWAL OF LAND FROM PUNA FOREST RESERVE, PUNA, HAWAII.

In connection with this process, because some 8,890.275 acres of State land are presently in forest reserve it will be necessary to withdraw these lands. In connection with this, statutes require a public hearing so this particular submittal is a recommendation that the board recommend to the Governor that he authorize a public hearing and at the same time appoint State Forester, Libert Landgraf, as the Master for the hearing.

Mr. Detor asked to amend the submittal to add Ron Walker's name in the event Mr. Landgraf is not available.

Because the Governor had already approved the appointment of Mr. Landgraf, Mr. Walker's name could not be included without again having to get the Governor's approval.

Mr. Higashi moved for approval with the same amendments listed under "ACTION" of Item H-5. Seconded by Mr. Kealoha, motion carried unanimously.

ISSUANCE OF EXECUTIVE ORDER SETTING ASIDE LAND ACQUIRED FOR NATURAL AREA RESERVE, KAHAUALEA, PUNA, HAWAII.

Mr. Detor said that this item deals with the Natural Area Reserve that is within the present State lands which are to be conveyed. The first thing is that when we acquire the Campbell lands we set up a natural area reserve within the lands to be acquired from Campbell. We will not be able to do this until the exchange is final and the Legislature adjourns, assuming that the exchange is not disapproved.

Mr. Kealoha asked Mr. Detor if he was saying that all the lands to be acquired through the exchange are to be set aside for a natural area reserve.

Mr. Detor said that it would exclude Tract 22 and some agricultural lands. Approximately 16,293 acres of the 25,461 acres are to be set aside for the Natural Area Reserve.

Mr. Kealoha felt that to be a generous amount of land and asked what would be preserved at Kahaualea.

Mr. Ing asked if it would be necessary for people to have to go to NARS for permission if they wanted to go into the area for study purposes.

Mr. Tagomori said that all NARS rules would prevail.

Mr. Ing said that would be "humbug".

In answer to Mr. Higashi's question, Mr. Detor said that they did not do the agreement in house but got an independent opinion. The agreement has been completed but not yet been reviewed and accepted. Staff is in the process of long that Mr. Detor said that the exchange is subject to disapproval of the

Mr. Ing asked if the 16,293 acres could be amended later.

Mr. Detor said that staff could come back to the board with an amendment to the board's action which will not have been finalized until after the session anyway.

Mr. Higashi asked if it was necessary to take action on Items H-8 and H-9 at this time.

Mr. Tam said that the designation of Kahaualea is critical at this point insofar as the withdrawal is concerned. It may be that the board could add an amendment specifically saying that they want certain rights retained such as the rights of the public and the right of research in order to go into the area and that this transfer is approved subject to these rights.

Mr. Kealoha was agreeable to the above suggestion by Mr. Tam.

Mr. Ono said that the board intends to act on Item H-9 but making reference to the substance of H-9 with some clarifying language as to why H-8 needs to be looked at further.

Mr. Tam asked what specifically was the board interested in doing with regards to H-8.

Mr. Ing said, "access for research and testing in the Puu O'o eruption area and hiking through the area."

Mr. Tam said, "then you want these rights retained in this particular NARS area?"

Mr. Ono said that he would like a statement in there saying that it is the board's intent is to adopt a new NARS area. Just putting in reservations may lead people to think that we may not establish a new natural area reserve.

Mr. Allan Kawada, representing one of the developers in Kahaualea, said that as he understands it from talking to Mr. Stender there may be an existing agreement with the National Park Service, although he doesn't know whether this agreement is in writing, to allow NPS people onto Kahaualea to monitor and watch the volcano and part of that involves the package. Although Puu O'o is on federal land the size of it now requires the volcanologists to stay off the main vent.

Mr. Tam asked whether the NARS designation would be subject to any existing agreements with the National Parks Service.

Mr. Ono said that we do not know what the existing agreements are so we cannot pass judgment. Personally, he did not want to commit the board.

Mr. Higashi moved for approval with the same amendments as listed under "ACTION" of Item H-5 and also more specifically with regards to this item, that the Attorney General's Office work out the wording on the uses not covered by NARS. Seconded by Mr. Kealoha, motion carried unanimously.

Being that NARS makes it very hard to get into some of other areas, Mr. Kealoha wondered whether some of the rules within the exchange here that the public was could be set aside from NARS. Mr. Detor said that the set aside cannot take place until after the

CANCELLATION OF EXECUTIVE ORDER 3103, WAO KELE O PUNA NATURAL AREA RESERVE, PUNA, HAWAII

Mr. Deter said that H-9 is the final action in this process and this particular submitted is to carry the Highways Executive order covering the present natural area reserve. Mr. Deter said that the Campbell Estate had applied for a CDUA back in 1982. Mr. Kawada said that the Campbell Estate had applied for a CDUA back in 1982.

and designate the areas as a natural area reserve or a forest reserve, before the faith of the permittee at the Puna Forest Reserve and the Ookele natural area reserve is prudent, then they have a question as to whether it would extinguish the rights that Campbell Estate has to develop Kahaualea before it has any rights to develop the new areas that were exchanged. They would like to retain their rights at Kahaualea until there is a specific decision by the land board to grant rights to develop the new area.

Mr. Ono asked Mr. Tam if he had any comments to make to the above question.

Mr. Tam felt that we were in some kind of a double bind in that the land exchange has to be signed and submitted to the legislature as a complete act subject only to legislative disapproval by December 27th and to add further conditions to that would mean that the exchange would not be complete only to their disapproval. The problem the board is going to have to face is that they are going to have to actually execute the document for exchange by December 27, 1985. He understood also that presently there is a schedule to consider a CDUA application as expeditiously as possible on the approval of a subzone but he didn't know if it would be illegal but it would be very difficult to have a land exchange subject to a subsequent CDUA application the nature of which we don't even know yet. It would leave everything contingent upon a whole series of events so he would be reluctant to advise the board to condition the land exchange on some unknown subsequent event. The Legislature might have trouble understanding what those conditions might be.

Mr. Ono asked Mr. Kawada, "based on what Mr. Tam has indicated what would be your clients and Campbells preference -- put conditions on with the possibility of endangering the package from being considered as intended or let it go through as another CDUA, making it a separate process without any strings attached to the land exchange subzone designation package?"

Mr. Kawada said that the question he has on behalf of himself and he would assume also Campbell Estate and Mid Pacific Geothermal has been that the CDUA process wouldn't take place until the Legislature has taken final action. He wasn't sure about the process insofar as having the final land exchange concluded, but he would assume that the final action of the land exchange would not be concluded until the last day of the session and perhaps the Land Board would be able to take final action on the CDUA before that time so that if there is no CDUA granted or no subzone granted for the exchange areas then perhaps the package can be withdrawn from the Legislature before that time. Mr. Kawada stated that this is merely his suggestion.

Mr. Deter said to bear in mind that the exchange documents are executed before they are posted to the Legislature. The only proviso, is that should the Legislature veto it, then the whole deal is off.

Mr. Higashi said that it is recommended that once the land exchange takes place then the designation would take place.

Mr. Tam said that one of the problems that might arise as to the passage of the CDUA that might be approved in one form or another is not a final decision by the board or if there are two of them of the arguments that are not approved by the Legislature. Then we have an interim condition to be satisfied and the Legislature will know what is final and what is not. My concern is that there may not be a final resolution by the conclusion of the Legislature.

Mr. Detor said that this set-aside would not be concluded until the end of the 1987 session. If the Legislature takes no action in 1986, then it is approved. The way the submittal is worded, we then ask the Governor to issue an executive order to set this area aside as a natural area reserve. That set-aside itself is subject to Legislative disapproval and could not be submitted until the 1987 session.

Mr. Tam said that he was under the impression that those documents would actually be executed with the condition that they would be subject to the land exchange not being disapproved so they would come into effect this session.

Mr. Detor said no. Their recommendation is that the board approve and recommend to the Governor issuance of an executive order cancelling the present one subsequent to the consummation of the proposed land exchange with Campbell Estate, including legislative consideration.

Mr. Ono said then that the language would have to be modified.

Mr. Tam recommended that the board approve these actions not subject to the consummation but only subject to the disapproval of the legislature.

In other words, said Mr. Detor, strike "upon completion of the acquisition" as far as H-8 is concerned and strike "subsequent to the consummation of the proposed land exchange" as far as H-9 is concerned?

Mr. Tam said yes. So each of the actions would be conditioned upon legislative disapproval. This would apply to both H-8 and H-9.

Mr. Higashi moved to approve with the same amendments listed under "ACTION" of Item H-5. Seconded by Mr. Kealoha, motion carried unanimously.

CDUA FOR A SUBDIVISION, PRIVATE PARK, AND PASSIVE RECREATIONAL USES AT KALAUAO, OAHU (HENRY ALVES).

Mr. Kealoha asked if the applicant had a chance to review the submittal.

Mr. Alves said that he had reviewed the conditions and had no questions.

Mr. Ing asked Mr. Alves if he realized that construction plans would have to be submitted for review and approval before construction begins.

Mr. Alves said he was aware of this.

Mr. Ing moved for approval with the added condition that this approval be recorded in the Bureau of Conveyances. Seconded by Mr. Kealoha, motion carried unanimously.

OUT-OF-STATE TRAVEL REQUEST FOR HENRY M. SAKUDA AND MEMBER OF THE BOARD TO ATTEND THE WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL MEETING IN AMERICAN SAMOA.

Mr. Ing moved to approve the out-of-state travel to American Samoa by Henry Sakuda and a member of the Board. Seconded by Mr. Kealoha, motion carried unanimously.

middle of the Puna, Hawaii, as a geothermal resource subzone is only the first step. The identification of which land will have on-site geothermal activity will undergo greater refinement in subsequent permitting processes. For example, any use of conservation land will require a CDU permit.

Mr. Ono said the above are the main factors which were considered in arriving at the geothermal subzone as depicted on the map on the wall. Mr. Ono asked the board if they had any additional comments.

There were none so the decision and order was executed.

Mr. Ono said that the Division of Water and Land's original recommendation was to cover an area of 11,745 acres. The designated subzone covers an area of 8,447 acres or a reduction of 3,298 acres from what was proposed.

MASTER'S REPORT ON PUBLIC HEARING TO WITHDRAW STATE-OWNED LAND FROM THE PUNA FOREST RESERVE FOR EXCHANGE WITH CAMPBELL ESTATE FOR CAMPBELL'S KAHAULEA LAND.

Mr. Landgraf said that as evidenced by the minutes of the hearing (which were attached to the submittal) there were more strong negative feelings against the withdrawal per se. There was one request for contested case hearing but was denied on the basis that he did not have standing.

Mr. Landgraf recommended that the Board accept his Master's Report and approve the withdrawal of 8,890.275 acres from the Puna Forest Reserve, District of Puna, and identified as portion of TMK 1-2-10:02.

At Mr. Zalopany's request, the area affected was pointed out to the board from a map on the wall.

Mr. Higashi asked to amend the submittal by adding the words "more or less" after the acreage shown in the submittal.

12/20/85
Ked
Hi
ITEM C-1

ACTION

Unanimously approved as recommended by Mr. Landgraf and as amended by Mr. Higashi. (Higashi/Arisumi)

RECESS:

9:20 A.M. in order for the audience to review the boundaries of the geothermal subzone.

RECONVENE:

9:25 A.M.

ITEM D-1

RESUBMITTAL - ADOPTION OF NEW IRRIGATION WATER RATES FOR THE STATE OPERATED WAIMEA, MOLOKAI, AND WAIMANALO IRRIGATION SYSTEMS.

Mr. Tagomori said that at the December 6, 1985 meeting, the Board moved to defer this item to today's meeting to allow the Waimea farmers to address the board directly and also that the decision making on this matter be further deferred to the January 10, 1985 meeting in Honolulu to allow the Waimanalo farmers and other farmers from Molokai to again address the board directly.

A fact sheet was presented to the board showing the number of farmers in the various areas. This sheet was prepared at the request of Mr. Ing at the last board meeting.

Mr. Tagomori then went on to point out the Waimea Irrigation System from a map on the wall. Mr. Tagomori also briefed the board on staff's proposed programs for the area.

Mr. Ono asked if there were any representatives from the farming community.