

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

DATE: September 25, 1981

TIME: 9:00 A. M.

PLACE: Kona Surf Hotel

Kohala Conference Room

Keauhou, Kona, Hawaii

ROLL
CALL

Chairman Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:00 A. M. The following were in attendance:

MEMBERS

Mr. Stanley Hong
Mr. Takeo Yamamoto
Mr. Roland Higashi
Mr. Douglas Ing
Mr. Susumu Ono

(Mr. Thomas Yagi was absent and excused.)

STAFF

Mr. James Detor
Mr. Roger Evans
Mr. Kenji Ego
Mr. Ronald Walker
Mr. Robert T. Chuck
Mr. Roy Sue
Mrs. Joan K. Moriyama

OTHERS

Dep. A. G. Johnson Wong
Mr. Ellsworth Bush (Item H-2)
Rep. of South Pacific Christian
Camps, Inc. (Item F-7)
Rep. of the developer (Item F-12)
Mr. Robert Carlsmith (Item H-1)
Mr. Matt Dottson (Item H-1)
Mr. Robert D. Triantos (Item H-8)

MINUTES

The minutes of August 14, 1981 were unanimously approved as circulated.
(Hong/Yamamoto)

Mr. Hong said he had a chance to review the minutes of August 28, 1981, which were distributed earlier, and asked to make one amendment on the top of page 8, regarding the Hawaii State Parks Foundation. He said when he spoke to Mr. Bob Masuda, City Parks Director, he tried to explain to him that we were instituting a Hawaii State Parks Foundation and it would be counter-productive to duplicate that on the county level. Mr. Masuda seemed sympathetic to that.

The minutes of August 28, 1981 were unanimously approved as amended.
(Hong/Yamamoto)

Added
Items

The board, on Mr. Hong's motion and seconded by Mr. Ing, unanimously voted to add the following items to the board agenda:

Water & Land Development

Item D-1 -- Permission to Advertise for Bids, Job No. 44-HA-3, Ke-ahole Agricultural Park, Phase II, North Kona, Hawaii

State Parks

Item E-4 -- Request for Out-of-State travel for Ralston Nagata, Historic Sites Program Director, to Washington, D. C.

Land Management

Item F-27 -- DSS&H (HHA) request for consent to assignment of lease covering office space at 1164 Bishop Street, Honolulu, Oahu

The board unanimously agreed to take up Items F-7 and H-2 first to accommodate the people in the audience.

ITEM F-7

STAFF RECOMMENDATION FOR SERVICE OF NOTICE OF DEFAULT AND CANCELLATION OF G.L. NO. S-4514, MAKAPALA, N. KOHALA, HAWAII

Mr. Detor said there were people in the audience to answer any question which the board may have on this matter. However, Mr. Percy Mirikitani, the attorney representing the lessee, has asked him to have this item deferred to the next meeting in Honolulu since he was unable to be present today.

Insofar as the time limit is concerned, Mr. Detor said the Notice of Default has already been served, and the time won't run out until next month. The Notice of Default was dated August 12, 1981 but Mr. Detor did not know exactly when they received the notice.

Mr. Higashi asked whether they were notified of this meeting.

Mr. Detor said they were notified. However, in fairness to Mr. Mirikitani he did not receive the notice until just recently.

Mr. Higashi pointed out that we have had numerous communications with them on their violations.

Mr. Detor explained that there has been a change of ownership. The person who was head of the camp died and other people have come in. This is one of the problems.

Mr. Higashi said he didn't mind deferring this matter until the October meeting. However, he emphasized that we should resolve this matter at the next meeting.

ACTION

The board had no objection to defer this matter until the October 9, 1981 meeting, with the understanding that this matter be resolved at that time.

Mr. Ono said as the day comes closer to the 60th day and something comes up, they may ask for an extension. He said this action by the board in effect is their notice of the date, time and place of the next Honolulu meeting. He didn't want the attorney to come back and say that he did not get a written notice. He asked the representative to convey that message to their attorney.

ITEM H-2

RESUBMITTAL - AFTER-THE-FACT CDUA FOR NONEXCLUSIVE ACCESS ROADWAY AT HAMAKUA, HAWAII (DAVIES HAMAKUA SUGAR CO.)

Mr. Hong informed the board that he was not participating in any action

taken by the board on this item involving a subsidiary of the parent company (Theo. H. Davies) and excused himself from the room.

This was an after-the-fact application by Davies Hamakua Sugar Co. The purpose for the proposed use is nonexclusive road easement in the Hamakua Forest Reserve.

At the last meeting, the board specifically requested deferral to allow an opportunity for representatives of the firm involved, as well as the state, to make a field inspection on the site. Mr. Evans said no report has come in from the Division of Forestry so he had no supplementary information to consider any change in their previous recommendation.

Mr. Higashi said Condition No. B under Recommendation should be deleted since the \$500 fine levied at a previous meeting was paid by the company.

Mr. Evans said Mr. Higashi is correct, and asked that Condition B be deleted.

Mr. Higashi asked Mr. Ellsworth Bush, representing Theo. H. Davies, to give a brief run-down on how this came about.

Mr. Bush gave a brief run-down as follows:

In November of 1979, Honokaa Sugar Company was attempting to conclude harvesting and taking off its crop. During that particular year there was considerable amount of rain, and there was speculation whether the crop could come off. Mr. Bush explained in a plantation situation, there is a deadline for getting the crop off, not only from the accounting standpoint, but a significant amount of work needs to be performed on the mill each year so if the crop is delayed, the whole mill repairs, etc., do not get accomplished timely. Therefore, they don't start the next crop and a series of delays can result, if it is a significant delay.

Mr. Bush said the mauka fields that had to be harvested in the last two weeks had been raining so they were waiting for a situation where harvesting could be done without being impeded by mud, etc. The particular field is normally harvested through the plantation's own road system. However, this particular field has a mauka-makai bound access and because it is on sloped land, this roadway becomes difficult to traverse during heavy rains, especially with the heavy cane trucks. They were concerned that their own roadway system would not support the harvesting operation. So the operating people gave instructions to the road people to secure another route. Adjoining this field is a state forest, which in effect is landlocked on three sides by plantation lands.

Mr. Bush went on to say that earlier in the year, there has been some wood chipping operation in that particular forest area by another party, with permission. The road people, therefore, assumed that it was okay to do this and they began preparing a road, graded it and placed gravel on the road to support cane trucks. They were almost through with the grading, but no hauling yet, when the forestry people became aware of it and told them to cease and desist, which they did. As it turned out, he said the weather broke and the cane was taken out on the company road.

Mr. Bush said when he became aware of it, he contacted the forestry division and sent in a letter of explanation and asked for a permit for after-the-fact or for future use.

Mr. Higashi asked Mr. Evans whether this area is zoned conservation. Mr. Evans said it is zoned conservation.

Mr. Higashi said he went out there to view the road and the surrounding lands yesterday. He said the subject road is in the middle of agricultural activity, and the three sides are bordered by sugar plantation agricultural lands and Hawaiian Homes pasture land on the other side. In the back it was also in the harvesting of the trees.

He said at one time Capitol Chip was in there. He was informed that the value of the forest reserve is not the same as the mauka land. Through the development of time, agricultural activities took place in that area.

Mr. Higashi took some pictures of the road as it is today. He said the board members have seen them and presented those pictures to Mr. Evans for the record.

In speaking to the plantation people, Mr. Higashi said they indicated that Davies has committed in excess of \$1.3 million for repairing of the old road again. In essence, even though this request is approved, they probably would not use this road. He indicated that the way the water runs down that area it doesn't wash out this road. It may wash out the old road because of the terrain.

Mr. Bush said that is correct. Their feeling was that it was this unusual weather condition that caused that. It was their feeling that if they are placed in that situation again that they would like to be able to have the opportunity to request its use again in order that their crop may be protected. He said should there be an occasion that they might need it again, it is there to support the kind of traffic which would be strictly for harvesting operations.

Mr. Ono said if this area was harvested for logging activities and heavy equipment traverse this area, he questioned whether the use has already been determined because of such activities taking place.

Mr. Evans said no use was determined prior to the applicant cutting the road. There may have been harvesting activities, however, the request is for an easement for a road.

Mr. Ono said he is talking about the use of the land in the conservation district, not the disposition portion. He was trying to determine whether some prior determination was made on the use. Mr. Ono asked Mr. Evans to check that out.

ACTION

Mr. Higashi moved to approve the after-the-fact CDUA, with the understanding that the area is to be secured from the public and available only in emergency situation. The terms and conditions for the gate, keys and whatever way of securing the area is to be determined by the staff.

Mr. Yamamoto seconded the motion.

Mr. Ono asked whether that would mean that if and when the plantation needs to use the road that they would have to come in and make a specific request.

Mr. Higashi said that is correct. They would have to work it out with the Land Management staff. It isn't a standard road where they will be going in to use it on an on-going basis.

Mr. Ono said if any rental or consideration is going to be paid to the state, they will also have to work that out with the Land Management Division.

On the call of the question, the motion was carried.

(The record showed that Mr. Hong returned to the meeting room.)

ITEM B-1 AMENDMENT TO BOARD RESOLUTION NO. 33 - RELATING TO APPOINTMENT OF MASTERS TO HOLD PUBLIC HEARINGS

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM B-2 REQUEST FOR APPROVAL TO CONDUCT PUBLIC HEARING ON AMENDMENTS TO ADMINISTRATIVE RULES

ACTION Unanimously approved as submitted. (Ing/Higashi)

ITEM B-3 FILLING OF POSITION NO. 30849, AQUATIC BIOLOGIST IV, MARINE FISHERIES SECTION

ACTION The board, on Mr. Hong's motion and seconded by Mr. Yamamoto, unanimously approved the appointment of Henry Y. Okamoto to Position No. 30849, Aquatic Biologist IV.

ITEM B-4 FILLING OF POSITION NO. 27074, AQUATIC BIOLOGIST III, IN THE DIVISION OF AQUATIC RESOURCES

ACTION The board, on Mr. Hong's motion and seconded by Mr. Yamamoto, unanimously approved the appointment of Margo Stahl to Position No. 27074, Aquatic Biologist III.

Mr. Ing commented that he knows Ms. Stahl and that she is a fine person.

ITEM C-1 MASTER'S REPORT ON PUBLIC HEARING

This was a master's report on public hearing which was held on September 3, 1981, relative to the adding of approximately 411 acres of state land at Wai-lua, Kauai, to Lihue-Koloa Forest Reserve.

Mr. Ono asked what effect, if any, this will have on the hunters. Mr. Ronald Walker said it would add portions to their already existing hunting area and also serve as access to that area.

ACTION Unanimously approved as submitted. (Yamamoto/Hong)

ITEM C-2 OFFICIAL TRAVEL WITHIN CALIFORNIA, NOVEMBER 2 - 6, 1981, FOR ROBERT A. MERRIAM, DIVISION OF FORESTRY AND WILDLIFE

Mr. Ing noticed that Mr. Merriam was not asking for transportation funds.

Mr. Walker said Mr. Merriam is only requesting duty status so he can collect per diem and other traveling expenses while on official status. He will be visiting the U. S. Forest Service people in charge of energy coordination and also the energy coordinator with the California Division of Forestry.

ACTION Unanimously approved as submitted. (Ing/Higashi)

ITEM C-3 REQUEST FOR APPOINTMENT OF MATTHEW S. HIGASHIDA TO POSITION NO. 8526, WILDLIFE MANAGEMENT ASSISTANT IV, ISLAND OF OAHU

ACTION The board, on Mr. Ing's motion and seconded by Mr. Higashi, unanimously approved the hiring of Matthew S. Higashida to fill Position No. 8526, Wildlife Management Assistant IV for the Oahu District.

- - -

Mr. Higashi said the CETA position assigned to the Wildlife Office in Hilo will be cut off. With the mouflon season coming up, he asked Mr. Walker whether there is any way they can have someone there to assist them.

Mr. Walker said he has already checked into this and reported that CETA funds will be available until the spring months so that should allow them to cover this period.

ADDED PERMISSION TO ADVERTISE FOR BIDS, JOB NO. 44-HA-3, KE-AHOLE
ITEM D-1 AGRICULTURAL PARK, PHASE II, NORTH KONA, HAWAII

Mr. Chuck said Phase I is already in operation and they are ready to proceed with Phase II.

Staff asked for board's permission to advertise for bids for this project. Governor's approval has been obtained to call for bids on this project.

Mr. Higashi asked Mr. Chuck whether we are sure that we have enough water when we open up this subdivision.

Mr. Chuck said yes. It comes from the Kahaluu shaft where the state completed the construction and developed the Kahaluu sources. They have been assured by the Department of Water Supply that they will have water for these phases from the county water system.

Mr. Higashi told Mr. Chuck in his negotiation with them to indicate to them that we want to make sure that the farmers have sufficient water. They had complained the last time with Phase I that the size of the pipes were too small.

Mr. Chuck assured Mr. Higashi that there will be adequate water. He said they will make sure that there is no miscommunication.

Mr. Higashi asked whether all of the planning, zoning, etc. have been taken care of. He didn't want the same kind of problem with the last one.

Mr. Chuck said it was his understanding that the Department of Agriculture which has been obtaining approvals, has received zoning approval.

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM E-1 FILLING OF GENERAL LABORER I POSITION, WEST KAUAI UNIT, KAUAI PARKS SECTION

ACTION The board, on Mr. Yamamoto's motion and seconded by Mr. Hong, unanimously approved the appointment of Donald Smythe to Position No. 12553, General Laborer I.

ITEM E-2 FILLING OF GENERAL LABORER I POSITION, WAIANAPANAPA STATE PARK,
MAUI PARKS SECTION

ACTION The board, on Mr. Ing's motion and seconded by Mr. Higashi, unanimously approved the appointment of Anthony M. Perry to Position No. 27061, General Laborer I, assigned to Waianapanapa State Park.

ITEM E-3 PERMISSION TO ADVERTISE FOR BIDS, JOB NO. 23-HP-23, HANDRAILS,
AKAKA FALLS STATE PARK, HONOLULU, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Ing)

ITEM E-4 ADDED REQUEST FOR OUT-OF-STATE TRAVEL FOR RALSTON NAGATA, HISTORIC
SITES PROGRAM DIRECTOR, TO WASHINGTON, D. C.

ACTION Unanimously approved as submitted. (Ing/Hong)

- - -

Mr. Hong asked Mr. Sue how we are doing on the Hawaii State Parks Foundation, and when is it expected to be finalized.

Mr. Sue said subsequent to the board approval on the by-laws, they have worked with the Attorney General's Office in developing incorporation of the foundation. However, they found out that there are several steps that they must take to incorporate the foundation. One of them is that they have to appoint an interim board to constitute themselves and have three officers for the incorporation of the foundation. It will take thirty days for the incorporation, and subsequent to that sixty days for submission of the by-laws.

Mr. Ono said there are certain steps that need to be taken which involves the Governor. He said Mr. Sue gave him a list of things that he needs to check out.

Mr. Sue said he will get this list of procedures for the board.

- - -

Mr. Higashi said a group of people in Hilo is forming a council and to help develop the trail and access system. He attended one of their meetings. He said last night the board had the privilege of seeing a slide presentation where Debbie Abreu highlighted the trail system on the Kona coast.

Mr. Higashi said he would like to have Mr. Sue check out two things as soon as possible. One is on the availability of the report that was published in 1978. Secondly, there was an inquiry on the funds. How much did we spend? Did the money lapse? He said he would like to get back to them and explain how those funds were expended.

Mr. Sue said the trail and access report was developed by the Planning Department and it was printed in 1978. He didn't know whether copies were available. He said he will check on this and the funds.

- - -

ITEM F-1 DOCUMENTS FOR CONSIDERATION

KAUAI

Item F-1-a ASSIGNMENT

LARRY L. HAMAN and MABEL L. HAMAN, husband and wife, as tenants by the entirety, assignors, to FRANCIS JAMES SEXTON and JACQUELINE DAVIS SEXTON, husband and wife, as tenants by the entirety, assignees - Lot 29, Kokee Camp Site Lots, Waimea (Kona) - G.L. No. S-4716

MAUI

Item F-1-b PARTIAL ASSIGNMENT

KIPAHULU INVESTMENT COMPANY, a Hawaii general partnership, assignor, and ROUNDS & PORTER LUMBER COMPANY and HANA RANCH, INC., a Hawaii Corporation, assignees - portion of the government lands of Kalena, Halemano-Kakalahale, Halemano, Iliilipoko, Popoloa and Kaehoeho, situate at Kipahulu, Hana - G.L. No. S-4529

This was a request for two partial assignments of a lease on Maui. This particular lease was originally bid in at public auction by William F. Mowry in 1976. It was subsequently transferred to Kipahulu Investment Company. Kipahulu Investment sold the bulk of its land holdings on Maui in 1980. Included were lands covered by this particular lease containing 76.888 acres. Access to the lease is through Hana Ranch lands and lands now owned by Rounds & Porter Lumber Company.

Kipahulu Investment is out of business insofar as this particular lease is concerned. They want to assign two parcels, which are surrounded by Rounds & Porter Lumber land, to that particular company, and four other parcels to Hana Ranch. This will be a partial assignment--four of the parcels going to one party, and two parcels going to the other. Kipahulu would then be out of it completely.

What we are doing here in essence is to split this lease into two separate areas so that we would then be billing Hana Ranch and the lumber company.

Mr. Ono said from a practical standpoint, more assignments create a bigger administrative burden on the staff.

Mr. Detor agreed. However, once it is set up, as far as our fiscal office is concerned, he said billing would be automatic. But to set it up would take time.

Mr. Ono said theoretically you could have a number of assignments on one lease. He said we should look into it whether there should be some control how many times they can split the lease.

Mr. Detor said it is worth looking into it.

Mr. Ing asked whether we assess them a fee and whether that is by statutes.

Mr. Detor said under the board's regulations, the consent fee was \$20. It was raised to \$30.

Mr. Ing said in a case like this we have to obtain new legal descriptions and develop new leases when you split the land.

Mr. Detor said we don't have to have new descriptions. We already have them. The same lease document will remain in effect, but there will be a consent document that goes along with it. We have a standard one that we can use or the party can prepare their own, to which we attach our consent form.

Mr. Ing's concern was if the consent fee is to be meaningful that it ought to reflect the administrative costs.

Insofar as the consent fee is concerned, Mr. Detor said it is set by the board after holding a public hearing, etc. Mr. Detor said in the latest go around we wanted to go much higher. However, staff found out that they were precluded from going as high as they wanted to. Under the law they could go only so much. He could not recall what the percentage was.

Mr. Higashi asked whether the board has an opportunity to review the fees on an annual basis.

Mr. Detor didn't think there was any time limitation.

KAUAI

Item F-1-c REVOCABLE PERMIT

THE LIHUE PLANTATION COMPANY, LIMITED - abandoned water storage reservoir site at Nawiliwili, Lihue - for storage of molasses - \$150.00

Mr. Hong recalled this matter coming before the board. Mr. Detor said yes, it did come before the board once when there was a strike several years ago. In essence, he said it is a repeat of the previous permit.

Mr. Ono said in that regard, working together with DOT, we should start looking around for sugar storage areas.

OAHU

Item F-1-d REVOCABLE PERMIT

MOVERS, INC. - Lots 423, 424 and 427, Sand Island, Honolulu - for baseyard for operation of trucking business - \$966 per month

This was an application for a permit on Sand Island. Movers, Inc. had a permit which was cancelled at the end of May for not paying the rent. What they are asking for is reinstatement, but since we have cancelled the permit we have to issue a new one. What happened is that they did make a telephone contact with the staff during the 60-day period in which to pay up and they asked us to put on a time payment plan. They have since cleared up the rent and is currently up to date.

Mr. Hong asked Mr. Detor to repeat for him the distinction between this party and the other permittees that we cancelled for being delinquent.

Mr. Detor said the board has a rule that if they are sixty days' delinquent, the permit is cancelled. That is automatic. During that sixty days, Movers Inc. did contact us and tried to work out a payment plan.

Mr. Hong asked why it wasn't worked out within the sixty-day period. Mr. Detor said staff wasn't able to get to them. So in fairness to them, staff was partly responsible.

Mr. Ono said in cases like this where there is a spotty track record, we should cancel it the next time they fall behind. He suggested that we insert a condition that the next instance of delinquency would mean automatic cancellation.

Mr. Detor said for this particular permit they can put a condition that if there is another delinquency, that in addition to the sixty-day period there is an automatic cancellation.

Mr. Ono said this is not in addition to the sixty days. It should be in the first instance of delinquency. The others would have sixty days to work it out.

Mr. Detor said our permits are payable in advance. So technically if the October rent is not paid prior to October 1, he is delinquent. He didn't know whether the board wanted the condition to be that tight.

It was the general consensus of the board that it should be that tight. The board also directed the staff to inform those permittees with past delinquencies of the board's position.

ACTION Item F-1 was unanimously approved as amended. (Hong/Higashi)

ITEM F-2 PHILIP C. MEYER REQUEST FOR AMENDMENT OF PREVIOUS BOARD ACTION (10/24/80, AGENDA ITEM F-1-A) CONSENTING TO SUBLEASE OF AREA COVERED BY G.L. NO. S-4473, KAOHE VI, HAMAKUA, HAWAII

This was a request for consent to an amendment to a previous action of the board. This involved a pasture lease on Hawaii held by Philip C. Meyer. In October 24, 1980, the board consented to a sublease to Carl C. Meyer Ranch Corporation. The sublease covered the entire acreage of the lease. When the board consented to that sublease it was based on allergy problems suffered by the sublessor's wife and for estate tax payments on the part of the prospective sublessee.

What they would like to do is to amend the terms of that sublease by (1) extending the sublease to cover the full term of the general lease itself. The original sublease was three years short of the actual term. (2) The annual rent of the sublease was \$20.00. The sublessor wants to increase that to \$100. (3) Sublessor would also like to put in a condition that the sublessee (Carl C. Meyer Ranch Corporation) agrees not to transfer the property for at least three years after the date of the amended sublease.

Mr. Ono asked whether state was going to get any portion of that increase.

Mr. Detor said the lease rental is \$26,100 a year. Carl Meyer pays Philip Meyer \$20.00 and Philip Meyer wants to bring it up to \$100. So there isn't that much of an increase in the sublease to warrant bringing up the \$26,100 year basic rent.

Mr. Higashi said he would like to check to see whether there is a manipulation of taxes in which the state may be a part of. He said he would like to refer this matter to the Attorney General's Office that what we are doing is not condoning an illegal or legal action.

Mr. Detor didn't think it is an illegal action, but he was sure that it's aimed at saving in the payment of taxes. He said he would be happy to refer this

matter to the Attorney General's Office. Mr. Detor reminded the board that the sublease is in existence. This is a request for change in some of the terms of the sublease.

Mr. Higashi said he understands that but the board didn't understand that in the first go around, and we should check it out.

ACTION This matter was deferred and referred to the Attorney General's Office.

ITEM F-3 TOM HOOTA, ET AL REQUEST FOR AMENDMENT OF PREVIOUS BOARD ACTION (3/27/81, AGENDA ITEM F-8) AUTHORIZING SALE OF ACCESS EASEMENT AT NANAWALE, PUNA, HAWAII

This was a recommendation for amendment to a previous board action. In March of this year, the board authorized a sale of the subject easement over and across two homestead roads which abut the applicant's private property. The purpose of the easement was to provide ingress and egress to the private property. The reason for that is the applicants were going to subdivide their property and they needed to cross this homestead road.

Staff suggested that the board rescind its earlier action and instead authorize a right of entry because this is a designated road. So rather than making them pay for an easement, we give them permission to use the road, to improve and use it to whatever standards the county might request, because ultimately the county will take over.

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-4 STAFF RECOMMENDATION FOR SALE OF 33 LEASES IN THE PAHOA AGRICULTURAL PARK, PHASE II, KEONEPOKO-IKI, PUNA, HAWAII

This was a recommendation for approval of the letting of thirty-three leases. Last year we let a number of leases covering the first phase. This is the second phase and it will bring to sixty the number of agricultural park leases we will have in this particular agricultural park. The size of the lots at the previous offering were between 10 and 30 acres in size. These thirty-three lots will range between 5 and 6-1/3 acres. This is in response to requests that we have received.

For the board's information, Mr. Detor said they are advertising for applications now for the Panaewa Ag Park and the awards of those leases will be made on November 19, 1981, day before the November 20 board meeting in Kona.

Mr. Higashi asked whether we finally accepted the road and the improvements.

Mr. Chuck said they are ready with the final inspection. The county will be accepting the maintenance and operation of that. He said they worked it out with County Engineer Edward Harada.

Land Agent Glenn Taguchi stated that there is a temporary barricade across the road. They will be making a final inspection on Wednesday. After that inspection they will open up the road and remove all the barricades.

Mr. Chuck added that the Chief Engineer urged that we get the deed as soon as possible because it is their policy not to accept the maintenance until the deeds are in their hands.

Mr. Taguchi said they have sent out 165 notices to interested parties on the Panaewa Ag Park. As of Wednesday morning about 60 people came in to pick up the applications and the notices.

Mr. Higashi congratulated the Divisions of Land Management and the Water and Land Development for their outstanding work in this agricultural park.

Mr. Ing asked what kind of improvements were we requiring for such a long term lease--55 years.

Mr. Detor said we are not putting it in terms of a dollar figure. He explained that under Recommendation E on page 4, they are required "...within five years of the lease term to utilize not less than 50% of the land area for agricultural and related purposes in accordance with a plan of development and conservation which shall be submitted to the chairman within six months of the commencement of lease."

Mr. Ing asked how that is going to be enforced. Mr. Detor said it has to be by inspection.

Mr. Ing also asked whether we allow assignments to the lease.

Mr. Detor said with consent. The lease can be assigned with the consent of the board, and the person to whom this would be assigned has to qualify under the same requirements as the original lessee. This is not an auction situation. You have to qualify first and there are numerous requirements.

Mr. Ing asked whether we maintain or thought about maintaining some type of a waiting list for these lots, some kind of control over who is the most qualified and the next qualified, some type of priority. He is concerned that we maintain control over that priority so that the lands continue to be utilized for the purpose for which it is intended.

Mr. Detor said they maintained a list but not for 15 years. He said what they have done is insisted that the transferee is qualified. He doesn't necessarily have to come from the list of people who were not awarded the lots initially.

Mr. Higashi said that it should be based only on undeveloped lands because if there is an inventory, you have to make an appraisal of the inventory and it is going to be very expensive.

Mr. Hong said the only possible exception that he may see is if the original applicant is ill and wants to pass it on to his family.

Mr. Detor said they haven't really been faced with this situation yet.

Mr. Ing said if the demand is high it can be a problem.

Mr. Higashi said an assignment to the next highest guy may not be an equitable way of doing it because in the original process they qualify and they draw. It is not automatic that the highest man gets it.

Mr. Detor said that is correct.

Mr. Taguchi said if the lot is vacant, instead of the staff coming to the board for an assignment, staff can recommend taking the land back. But once they

put in the improvements, then it becomes very difficult because the cost becomes too great.

Mr. Ing said the problem has to be addressed in the lease document itself. So it should be referred to the Attorney General's Office. It has to be flexible enough.

Mr. Ono said the land classification is listed as "conservation district" according to the submittal. He asked Mr. Detor whether this is going to create a problem.

Mr. Detor wasn't sure that was a correct designation and asked for deferral.

Mr. Ono suggested that this matter be deferred until the next meeting and asked the staff to check it out. He said if in fact the area is in conservation district, he asked the staff to give top priority on this.

(See page 15 for further action on this item.)

ITEM F-5 COUNTY OF HAWAII REQUEST FOR CONVEYANCE OF KAWILI STREET EXTENSION, WAIAKEA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-6 U. H. REQUEST FOR RIGHT OF ENTRY TO CONDUCT TOPOGRAPHIC SURVEYS, WAIAKEA, SOUTH HILO, HAWAII

This was a request from the U. H. for right of entry to the area mauka of the present Hilo Campus to conduct topographic surveys on state land. If this survey turns out okay, they are going to request the land for research use and related purposes.

Mr. Detor said about fifteen years ago the U. H. had asked for that whole area. The board at that time said no, that we don't want to turn it over now, but that it would reserve for them and as they needed it we will turn it over to them. So this was a follow-up action.

ACTION Unanimously approved as submitted. (Ing/Higashi)

Mr. Ono said he would like to know what the University is going to do with the Waimea land. He asked Mr. Detor to contact them on this.

(See page 2 for Item F-7.)

ITEM F-8 STAFF RECOMMENDATION FOR EXERCISE OF REPURCHASE OPTION, LOT 59, UNIVERSITY HEIGHTS, 3RD INCREMENT, WAIAKEA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-9 U. S. ARMY REQUEST FOR RIGHT OF ENTRY TO REPAIR MUD LANE, WAIKOEKOE, HAMAKUA, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-10 GILBERT P. MOTTA, JR. APPLICATION FOR ACCESS AND UTILITY EASEMENT,
AHUALOA, HAMAKUA, HAWAII

Mr. Detor said this is similar to Item F-3 on page 11. This is a request from a private party to put in a road (which is a paper road) in order to subdivide. The submittal shows that this is a direct sale of easement. Mr. Detor said to make it consistent with Item F-3, he asked that this submittal be changed to a right of entry under the same terms and conditions as Item F-3.

ACTION Unanimously approved as amended. (Higashi/Hong)

ITEM F-11 C. BREWER & CO., LTD. REQUEST FOR ACCEPTANCE OF SURRENDER OF
G. L. NO. S-4237, KIOLAKAA, KA'U, HAWAII

This was a request of Brewer and Company that they be allowed to surrender a lease in Ka'u which was originally sold in 1969. It was an agriculture-residential lease. A house was built. That house burned down a few years' back. One of the terms of the lease is "...provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the lessor to retain the balance of said proceeds."

Mr. Detor said if they are allowed to surrender the lease, the state is to receive \$4800 of the insurance proceeds with the balance going to C. Brewer.

Mr. Higashi asked whether this is a landlocked parcel. Mr. Detor said there is access so it can be leased out again.

ACTION Unanimously approved as submitted. (Higashi/Ing)

ITEM F-12 RESUBMITTAL - COUNTY OF HAWAII REQUEST FOR CONVEYANCE OF ROAD
PARCEL AT PONAHAHAWAI, SOUTH HILO, HAWAII

This was an application for road parcel in Hilo to furnish second access to a private subdivision. The county is requiring that the second access be furnished in order to approve the subdivision. Mr. Detor said we cannot sell it directly to a private party so the applicant is the County of Hawaii. The subdivider will pay a fair market value for the land. He will pay the county and the county will pay us.

Mr. Ono had some serious reservations because this area is zoned agriculture.

A representative for the developer said the area is zoned Ag-1. What they are doing is to put in improvements so that the land can be utilized. Right now the land is not being utilized at all. He said by creating access it would be generating more agricultural uses.

Mr. Higashi asked what the plans are for the back area which is a real large parcel.

The representative said right now it is in cattle. Eventually they might put in some road and maybe cut into 10-acre parcels.

Mr. Higashi asked how long will it be before the front parcel is developed. The representative said it should be completed within the next year and half or two years.

Mr. Ono said he would like to spend more time getting background information on the entire subdivision because that is the very issue that is being addressed right now. He said we have done this before on Kauai where a similar kind of a situation arose. He asked the representative for the timetable.

The representative said the county has indicated that they can do the top portion, off Kaumana access. He said right now with financing not available he is trying to get his homework done. He said as far as the second increment, they would need the second access. He said this may be couple of years down the road.

Mr. Higashi asked the representative whether they have a master plan. He asked whether his engineer can check to see what would be the best way and the most economical thing to do, and set it according to the present zoning so the board can see the whole layout. Not saying that they are going to do that, or a commitment that they are going to get approval.

The representative said he can get something prepared for the board.

ACTION The board had no objection to deferring this matter.

Continuation of Item F-4 from pages 11 to 13

Mr. Detor asked the board to take up Item F-4 now since he has the answer. With much relief, he informed the board that the area is zoned agriculture and not conservation, so we can proceed as proposed.

Mr. Ing said he would like the Attorney General's Office to investigate the lease provisions under the provisions in the staff's recommendation so that we are allowed flexibility to establish some type of priority system in the event the original lessee decides to give it up.

ACTION Unanimously approved as amended. (Higashi/Ing)

ITEM F-13 NARS REQUEST FOR RIGHT OF ENTRY TO CONSTRUCT NATURE TRAIL IN THE MAUKA SECTION OF THE MANUKA NATURAL AREA RESERVE, MANUKA, KA'U, HAWAII

Mr. Higashi asked for clarification on Condition 1 ("That all work contracts to be awarded to private parties shall include hold-harmless and indemnifying clause in favor of the State of Hawaii.").

Mr. Detor said this is something that you put in a contract anyway so he didn't know why this condition was included.

ACTION Unanimously approved as submitted. (Higashi/Yamamoto)

ITEM F-14 DOT REQUEST FOR RIGHT OF ENTRY AND E. O. FOR BOAT LAUNCHING RAMP FACILITY, KIHEI, MAUI

ACTION Unanimously approved as submitted. (Ing/Yamamoto)

ITEM F-15 DOD REQUEST FOR RIGHT OF ENTRY FOR GRADING OF PARCEL AT KAHULUI, MAUI

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-16 STANLEY WILLIAMS REQUEST FOR APPROVAL OF INSTALLATION OF FENCE,
R. P. NO. S-4075, WAIMANALO, OAHU

This involved some fencing work that was done in Waimanalo by one of our permittees. Fencing has been completed without the prior approval of the board. The permit reads, "The Permittee shall obtain the prior written consent of the Board before making any major improvements, including but not limited to buildings and fences...." and fencing is categorized as a major improvement. The permittee claimed that he didn't know he actually had to come in for approval. This is an after-the-fact situation.

Mr. Ing asked how big is this area and what it is used for.

Mr. Detor said the area is about 100 acres and it is being used for pasture.

Mr. Ono asked whether the fence is built according to the specified boundaries of the parcel.

Mr. Detor said Herbert Yanamura of his staff checked this out and he has asked for some changes, as follows:

1. That the plantations of eucalyptus tree be fenced to keep livestock out; and
2. That the new fence be redone to comply with the permit requirement that prohibits any fences within wt feet of the Maunawili Ditch.

Mr. Ono asked about the inquiry we received from the neighbors around there.

Mr. Detor said they are within their rights. The guy who came in actually had made some trails there. He was riding horses through there. His complaint was that his fence cut off some of his trails.

Mr. Ing questioned the large acreage under a permit.

Mr. Detor said this section is being considered as part of the ag park so it's under planning. He said they wouldn't recommend leasing it right now.

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-17 RONALD CHUN APPLICATION TO PURCHASE REMNANT K-75-A OF THE LUNA-
LILO FREEWAY, PELE STREET TO KEEAUMOKU STREET, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-18 STAFF RECOMMENDATION FOR PUBLIC AUCTION SALE OF LEASE COVERING
LAND AT HANAPEPE, KAUAI

Mr. Higashi asked whether we have to go through a CDUA process on this since it is zoned conservation.

Mr. Detor said no. This is a grandfathered use. It has been used as pasture.

ACTION Unanimously approved as submitted. (Yamamoto/Higashi)

EXECUTIVE OFFICE ON AGING REQUEST FOR ACQUISITION OF LEASE COVERING
ITEM F-19 ROOMS 303, 305, 307, 309, 311 AND 313 OF THE BETHEL-PAUAAHI BUILDING,
HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

DEPARTMENT OF THE ATTORNEY GENERAL REQUEST FOR APPROVAL OF
ITEM F-20 RENEWAL OF LEASE COVERING SUITES 906 AND 908, 1000 BISHOP STREET,
HONOLULU, OAHU

Mr. Higashi questioned the additional rental--"fair share" of the building operating expenses.

Mr. Detor said there were two items that were deferred at the last meeting when that question came up and they were listed on today's agenda (Items F-23 and F-24).

Deputy A. G. Johnson Wong explained that at the end of the year they make an adjustment of whatever the actual utility assessments are for the common areas.

Mr. Hong said the other question that arises is why certain government units have to be located right in the downtown area where the rent is premium. He asked what procedure one must take when a department wants office space.

Mr. Detor said they go to DAGS and get okay from the comptroller that there is money to pay the rent, and that there is no government space available to accommodate them. Those are the only two requirements that they review. Then they come to the land board for approval because this board is responsible for acquisition.

Mr. Ing asked whether the board is to decide whether or not rent is reasonable.

Mr. Hong added, "or rubber stamp everything they send us."

Mr. Ono said the board should meet with the comptroller. We have come across this so often, so long.

Mr. Hong agreed and said the request for lease of office space is getting out of hand.

ACTION Mr. Hong moved to approve this request since this lease commenced on June 15, 1981. Mr. Yamamoto seconded and the motion was unanimously carried.

DOH REQUEST FOR ACQUISITION OF LEASE COVERING A COTTAGE AT
ITEM F-21 91-1841-A FORT WEAVER ROAD, EWA, OAHU

ACTION Unanimously approved as submitted. (Hong/Ing)

DOH REQUEST FOR ACQUISITION OF LEASE COVERING A DWELLING AT 455-A
ITEM F-22 PIILANI STREET, HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-23 RESUBMITTAL - DLIR REQUEST FOR APPROVAL OF AMENDMENT OF LEASE COVERING OFFICE SPACE AT 1164 BISHOP STREET, HONOLULU, OAHU

ITEM F-24 RESUBMITTAL - PUC REQUEST FOR APPROVAL OF AMENDMENT OF LEASE COVERING OFFICE SPACE AT 1164 BISHOP STREET, HONOLULU, OAHU

Mr. Detor said these are the two deferred items which he referred to earlier.

Under Item F-23, DLIR is asking for an amendment to an existing lease. The board deferred action because there was a question on the base operating expense. What happened in this particular one is that they are decreasing the floor area from 5,094 square feet to 2,499 square feet. So they are saying if they are going to decrease the space they will amend the sublease, however, we are going to bump up the base operating expense.

Mr. Detor explained the way the base operating expense is worked out. It costs \$4.83 per square foot to maintain the building per year. You multiply that figure by the percentage of the building space. The total space occupied by this office is 1.537142%. Then you apply this factor to come up with what their share of the operating expenses are going to be. Mr. Detor said this was the question that came up at the last meeting.

Mr. Hong said they are increasing the rental rate with less office space. He said these are the kinds of things that they expect DAGS to look at. He said this is one of the things that they would like to talk to the comptroller about.

ACTION Mr. Hong asked for deferral on Items F-23 and F-24. There was no objection by the board.

Mr. Detor said we have had complaints by the landlords that they are not getting paid fast enough. He said they tried to iron that out by saying the minute the board approves the lease, can the comptroller make payment? The initial answer was yes. But then DAGS came back and said no. They cannot make payment until the sublease or lease is actually executed and recorded in the Bureau of Conveyances. So in the meantime you have people renting space to the state and rent not being paid.

Mr. Ono said he cannot believe that the landlords weren't paid for two years. Some of those documents that were coming in were two years' late.

Mr. Detor agreed, but he said they are holding on to some that are several months' late.

Mr. Ono said this is another area that the board should discuss with the comptroller.

ITEM F-25 PUC REQUEST FOR APPROVAL OF AMENDMENT OF LEASE COVERING OFFICE SPACE ON THE 9TH FLOOR OF THE 1164 BISHOP STREET, HON., OAHU

ACTION Item F-25 was also deferred.

Mr. Ono sked Mr. Detor to have Mr. Hamasu arrange for a meeting with the comptroller and the board on Thursday, the day before the next Oahu meeting which is scheduled for October 8, 1981.

ITEM F-26 HAITSUKA BROTHERS, LTD. APPLICATION FOR LAND LICENSE, MOKULEIA, OAHU (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

This was a request for a land license by Haitsuka Brothers covering the Kaena Quarry site. Haitsuka Brothers was the low bidder on the DOT's Dillingham Field Project and they need some 16,000 cubic yards of material from the quarry site.

Mr. Detor said there is in existence a land license to Ken's Stone Masonry for 1,000 cubic yards of boulder rock from this site. He didn't think this is going to interfere with Haitsuka's operations.

This would be at the same royalty rate of 50¢ per cubic yard.

ACTION Unanimously approved as submitted. (Hong/Ing)

ADDED DSS&H (HHA) REQUEST FOR CONSENT TO ASSIGNMENT OF LEASE COVER-
ITEM F-27 ING OFFICE SPACE AT 1164 BISHOP STREET, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Hong/Yamamoto)

ITEM H-1 RESUBMITTAL - REVOCATION OF PERMITS AT KIHOLE BAY, NORTH KONA, HAWAII (ROBERT CARLSMITH ON BEHALF OF EDDY FURUICHI AND DORIS DUNNIGAN)

This matter was deferred at the August 28, 1981 Hilo meeting to provide the attorney representing the clients an opportunity to review the matter and prepare themselves for this morning.

Mr. Evans said he received a letter dated September 23, 1981 from the counsel representing the applicant in which they request withdrawal of the permit. Mr. Evans said the letter states that the application was "tentatively" approved by the board on December 19, 1980, for which staff is recommending revocation. Mr. Evans said "tentatively" is incorrect. The board did come to a decision for approval. As a result, in their letter of withdrawal, the primary purpose expressed by counsel is that they do not wish to have any future land owners prejudiced by the board action.

Staff was generally in agreement with what they are suggesting. However, staff was concerned over the terms that are used in there, particularly as it relates to withdrawal. The reason for staff's concern was that when the request for reconsideration came in, there was in existence an approved CDUA. Based upon the request for reconsideration, there were a number of new types of information that were presented to us. It's that new information which resulted in staff's recommendation for revocation.

Mr. Evans asked to make one change in staff's recommendation on page 9 of the submittal. Change the word to cancel instead of revoke. With that change, he felt that they have satisfied the primary concern of the applicant's counsel that any future land owners would not be prejudiced by this board action.

Mr. Robert Carlsmith, representing the two applicants, stated that the board by letter dated December 29, 1980 approved the application. They had some questions with respect to the conditions appearing in the letter, which they raised back to the board on February 23, 1981. The board responded with the action that is currently under consideration, which is a request for revocation of the permit of May 29, 1981.

Mr. Carlsmith said they have had some discussions with the staff and they disagree with the statements made in the May 29 staff's recommendation. However, since the time of the original letter, and their letter to DLNR, circumstances have changed. The present owners have entered into a contract to sell to the new owners. After the sale is closed, the new owners would like to make a completely new proposal to the board with respect to the plans they have for the property.

Previous to this meeting, Mr. Carlsmith said he met with Mr. Evans and Mr. Johnson Wong. They advised him that withdrawal would not be proper because action has already been taken. The proper mode of doing away the permit would be a mutual cancellation. He said his client would be happy with the mutual cancellation because that would result in the situation that they want, which is to basically wipe the slate clean.

It was Mr. Carlsmith's understanding that if they entered into a mutual cancellation of the permit that there would not be any particular findings of facts with respect to the revocation. You would simply have a situation where a CDUA is cancelled and there is no item on the record indicating that there was a revocation. The new buyers could then approach the land board with whatever proposal they have for use of the land.

Mr. Hong asked Mr. Carlsmith whether it was his representation then that his clients will not reapply for the same use permit.

Mr. Carlsmith said his client will not because they won't be owning the property. The only thing that could change that representation would be for some reason the sale did not close and his clients retain ownership of the property. Then, of course, they would be owners of the property and they may reapply for a CDUA, but chances are that it would be put in a different form. They would probably be applying under nonconforming use. They anticipated that the sale will close and the new property owners will decide exactly what structures they want on the property and will apply for a CDUA.

Mr. Ono asked whether it is their intention to at least inform the prospective buyer what has transpired so far.

Mr. Carlsmith said the reason they are going in for mutual cancellation is because the buyers have expressed a desire to do it their own way with respect to their own improvements. So he believed that they are fully aware.

He said Mr. Matt Dotson, who is the realtor for the buyers and who has been keeping in touch with them, was in the audience. He said the sale of this particular property is in no way conditioned on the permit. That is not a part of the condition of the sale.

Mr. Ono said one of the concerns that he has is that the new owner may come in later and say that they didn't know about this.

Mr. Carlsmith said he understands that potential problem. He said the only alternative they have is to request the board to leave the permit exactly in the status that it is right now after the sale closes, then have the new purchasers contest the revocation action. He said that is another viable approach.

Mr. Higashi said he would rather see it being cancelled and they start from scratch.

Mr. Carlsmith said perhaps Mr. Dotsan can confirm that that was the attitude of the prospective buyers, that they would prefer to have a clean slate and start over with a new CDUA.

Mr. Dotson said that is correct.

Mr. Ono asked that the record show that Mr. Dotson was present at the meeting, representing the prospective buyers, and any necessary information was revealed to all parties.

Mr. Carlsmith said it is very critical that the board understand that they consider the mutual cancellation not to be any admission to any of the statements made in the May 29 staff review.

Mr. Higashi said the prior approval does not represent any plans for future approval.

Mr. Carlsmith said as far as he can understand the prior approval presented evidence that was presented at that time. He said one of the difficulties in this particular approval, and the reason they have this language "tentative" approval, is that they did not get findings of fact from the board. They were considering appealing under the Administrative Procedures Act but they didn't have the order that would give them the time for starting their appeal. They were not certain that the letter that they got was a final order which could be appealed from this board under the procedures of contested hearings before the board as Administrative Procedures Act hearings apply.

ACTION Unanimously approved as amended. (Higashi/Ing)

(See pages 2 to 5 for Item H-2.)

ITEM H-3 CDUA FOR RADIO RELAY SITE USE AT NORTH HILO, HAWAII (U. S. ARMY CORPS OF ENGINEERS)

ACTION Mr. Higashi moved for approval and Mr. Hong seconded the motion.

Mr. Ono said subsequent to the submission of this application, there was a request for use of state land, including Hawaiian Homes Lands for a big exercise on the Big Island. At the time of the public hearing for this application, it was stated that there was no connection between those two. In order to assure that the military would come in on time and adhere to the procedures that we have, Mr. Ono said he would like to add one more condition to this application, that this should tie in with any other requirements that the military might have to use any part of the Pohakuloa Training Area for training exercises.

He said he would like to make sure that they come in for proper approval like anybody else. He said we had a hard time trying to clear all the necessary hurdle for the maneuver that is going on now.

Mr. Higashi amended his motion to include the added condition suggested by the chairman.

On the call of the question, the amended motion was unanimously carried.

ITEM H-4 CDUA FOR BUNKER DEMOLITION AND BACKFILL FOR COMMERCIAL CONDOMINIUM DEVELOPMENT USE AT HANAMAULU, KAUAI (WALTON D. Y. HONG ON BEHALF OF GRAHAM BEACH PARTNERS)

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM H-5 REQUEST FOR PUBLIC HEARINGS ON APPLICATIONS FOR USE OF LAND WITHIN THE PROTECTIVE SUBZONE OF THE CONSERVATION DISTRICT AND FOR COMMERCIAL LAND USE

ACTION Unanimously approved as submitted. (Higashi/Ing)

ITEM H-6 REQUEST FOR APPOINTMENT OF SECRETARY II, POSITION NO. 13044, PLANNING OFFICE

ACTION On Mr. Yamamoto's motion and seconded by Mr. Higashi, the board unanimously approved the appointment of Mr. Jean M. King to Secretary II, Position No. 13044, in the Planning Office.

ITEM H-7 CDUA FOR CONSOLIDATION AND RESUBDIVISION OF PREVIOUSLY APPROVED CDUA AT OPIHALE, SOUTH KONA, HAWAII (BARRY K. MACHADO/JAN POSPISIL) (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

The submittal was distributed at the meeting. This was an application by Mr. Barry Machado and Mr. Jan Pospisil for consolidation and resubdivision of the property in South Kona. This matter was taken up at a public hearing last night.

Mr. Evans said for Items H-7 and H-8, today is the last regularly scheduled meeting before the 180-day deadline. He said staff tries to provide wherever possible a maximum amount of time in-between the time they hold the public hearing (where public hearing is required) and the 180-day expiration date (the time in which the board must act as required by statutes). However, Mr. Evans said they have a large number of public hearings that they are going through at any given time. So they try to be a little more efficient and piggyback wherever they can.

Mr. Hong asked whether it is necessary to have hearings scheduled back to back with the board meetings. He asked whether hearings can be scheduled any other time which would give the staff more time prior to having to act on it.

Mr. Evans said there is no particular legal requirement that says you have to have a hearing before the board meeting the next day.

Mr. Higashi said that maybe the answer. The board may need more time in-between hearings, the board meeting and the expiration date.

Mr. Evans said that is something that they will certainly consider in the future.

Mr. Ono said another possibility is to prepare a short synopsis and publicize it if no hearing date is set yet. At least the public would be made aware of a pending case. If there is any interest on it, they can start their research and they will be prepared.

Mr. Evans said they will certainly consider that.

At the public hearing last night staff brought forth their concern about the discrepancies in the acreage. The applicant had an opportunity to clarify that but they were not really clarified to the staff's satisfaction.

It was also brought to our attention last night, and photographs were entered into the record, about a jeep road which presently exists on some part of the property. However, staff simply didn't know whose properties in the subdivision it crosses or the route of the jeep trail.

At the public hearing a question was brought up by a board member relating to a water waiver. In this aspect, the application was referred to the County of Hawaii Department of Water. They had reviewed it and had no objection.

Lastly, one of the things they looked at in terms of the subdivision application is the purpose and the intent of the subdivision. Staff had a question as to the purpose and the intent of this subdivision as it is for resale. Staff questioned whether that really is not in keeping with the purpose and intent of the conservation district.

Based upon the analysis presented and upon the representation made last night, staff recommended denial for the following reasons:

1. Discrepancies in acreage;
2. The question about the jeep road;
3. The question about the purpose and the intent of the subdivision as opposed to the purpose and intent of the conservation district.

Mr. Higashi asked whether the applicants were present today. Mr. Evans said he did not see them in the audience.

Mr. Ing asked what is the problem with the jeep trail.

Mr. Evans said at last night's public hearing, following staff's presentation, certain individual members of the public testified that there is a jeep trail there. Subsequent testimony from the public was to the effect that the jeep trail "runs mostly through my property but I don't know whether it runs all the way through the property." So Mr. Evans said staff didn't know at this time whether it's a private jeep trail or a public jeep trail.

Mr. Ing asked how this relates to the conditional use permit.

Mr. Evans said in the departmental review, the Aquatic Resources and the Division of Water and Land Development indicated that there may be some jeep trail. If so, any public access that exists should be protected. If we were to have a jeep trail that goes through several different parcels in the subdivision, staff didn't know who to put the condition on.

Mr. Ing asked whether the public was concerned about the right of access for the use of the jeep trail.

Mr. Evans said an individual who testified last night made representation that he represented one of the owners. The representation was that public access as it exists would be allowed to continue. He said that is one owner with one piece of property. Mr. Evans didn't know about the rest of them because he didn't know the extent of the jeep trail.

Mr. Ono asked Mr. Evans whether he recalled in any previous applications where the primary reason for the application was to subdivide for resale purposes.

Mr. Evans said we have had cases but could not recall in previous applications recommending approval where that was the reasoning.

Mr. Ing said with regard to the resale, it's a practical matter. Once they subdivide, they are going to resell it. He asked what does resale have to do with the use. It is what they are going to make of the property.

Mr. Higashi said as far as the conservation lands are concerned, we have not been recommending approval of conservation lands for purposes of just disposing. Most of our consideration have been family benefits, historic sites, cultural activities, etc.

Mr. Evans said board has a policy of one single family house on a parcel of land. If we are still going to be consistent with that, when we get involved with subdivision and allow a single family house per lot, we are actually increasing the density of housing in the conservation district.

Mr. Ing said his only concern was just because they are going to resell the units, that necessarily prohibits the subdivision or our approval of subdivision in conservation district.

Mr. Higashi said his concern was that the applicant did not testify to present his case even though he had an opportunity to do so.

ACTION The board, on Mr. Higashi's motion and seconded by Mr. Yamamoto, unanimously approved staff's recommendation to deny the application.

(The board recessed for a few minutes and resumed its meeting again.)

ITEM H-8 CDUA FOR CONSOLIDATION AND RESUBDIVISION USE AT SOUTH KONA, HAWAII (ROBERT D. TRIANTOS ON BEHALF OF DILLINGHAM INVESTMENT CORP. AND YUKIO NAITO, TRUSTEES OF KEELIKIKULI, ET AL) (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

A public hearing was held last night for this application. As explained under Item H-7, today is the last regularly scheduled meeting before the 180-day deadline.

Mr. Evans briefly discussed the procedural matter which came up last night.

Mr. Ing asked whether Dillingham Investment is a subsidiary of Dillingham Corporation.

A representative of Dillingham Investment said it is not. He distributed a written statement, which was prepared as a result of the request from the staff, in response to a testimony from Attorney Shirley Mesher.

Mr. Evans said a question was raised last night about the public hearing notice. The law requires that each abutting land owner must be given written notice, which is sent by certified mail, about the public hearing. The purpose of the written notice is to allow the abutting land owners to be informed and to come in and present any views they may have on the matter.

Mr. Evans said he recalled reviewing the letters that went out to the abutting owners. In this case they have sent out in the neighborhood of seventy letters. Staff is satisfied that all property owners and necessary procedural aspects in this matter have been followed.

Regarding the notice, Mr. Hong asked whether we are only required to give notice to abutting land owners as versus abutting residents on the lands affected.

Mr. Evans could not recall anywhere in our statutes where residents are included in the requirements.

Mr. Hong said so the point that Ms. Mesher made last night about 100 other residents not having received notice would not be required under the statutes.

Mr. Evans said staff presumed that it would be covered through the requirement of a newspaper of general circulation.

Mr. Evans said he had an opportunity to consider the testimonies at the public hearing and analyzed them and made some suggestions.

The application is for a land use. It is a subdivision. It was the staff's feeling that under Regulation 4, land owner is defined basically as the fee owner, lease owner, person with an estate, or a person with an interest therein. Staff felt that under interest therein, the counsel for the applicant is a legitimate land owner and has applied, and staff was processing this under that nature.

Mr. Evans pointed out that under the particular Judgment and Decree under which the applicant came in (Civil No. 3007 and Civil No. 4617) that certain individuals who testified last night were represented on page 15 of that Decree. He said when the matter was taken up by the proper authorities, in terms of the judiciary, that these people were notified. They were represented. Staff also noted that the Decree referred to any other interested persons who may be involved or appeared to have an interest. As such Mr. Evans said he agreed with the written statement by the applicant on paragraph 3 that Attorney Mesher did not only had an opportunity to appear before the judicial proceedings, but that actually she was an attorney representing certain specific claimants.

Staff further agreed with the written statement on page 3, paragraph 6, that the clients represented by Attorney Mesher had their day in court.

Mr. Higashi said we are not here to decide who has the legal title to the property. Mr. Evans said that is correct.

Mr. Evans said based upon the comments from the agencies and based upon the input from the public last night, that they do have a recommendation this morning.

Staff recommended that the application for consolidation and resubdivision be approved, subject to the three standard conditions and a fourth condition that he would like to add. That this approval will not result in any increase in the number of houses in the conservation district over what presently exists. Mr. Evans said part of that recommendation was taken out from the statements made by the applicant.

Mr. Evans said he discussed this matter with the applicant and they found this to be satisfactory.

Mr. Higashi said there are two tax map keys and we are coming up with two lots called Lots A and B. He asked whether 11 would be assigned to one lot and 73 assigned to another lot.

Mr. Evans said no. Lot 73 is entirely within the agricultural district. Lot 11 is in both agricultural and conservation district. As such, the subdivision request before us in the conservation district would be from one lot into two lots.

Mr. Evans said should the subdivision be approved, it will be one parcel with agriculture and conservation zonings. So staff recommended not to increase the density in housing on the conservation side.

Mr. Ono asked Mr. Evans whether Condition No. 4 is an absolute condition. He asked whether that is the understanding.

Mr. Evans said no, that is not his understanding. Generally on CDUA's where staff recommends approval with a number of conditions, whoever has the CDUA has to comply with the conditions or come back to the board and ask for amendment to that specific condition for whatever purpose. He said staff would like to make it clear that while it is not an absolute condition, it is something that they hope would not be considered lightly by the applicant.

Mr. Ono said the application is for subdivision purposes, and yet staff is tacking on a condition that relates to use. He said we should be very careful that we don't mix up the two. If you put in this condition about houses, it may be misinterpreted in the future that for anything other than houses you can use the land.

Mr. Ono suggested leaving the three conditions as specific conditions and the board's intent spelled out.

Mr. Robert Triantos, representing the applicant, said they concur with the staff's report and briefly commented on the last condition. He informed the board that whether it is intent or condition, his client doesn't want anybody to consider this an automatic approval of any extra housing. They do agree that for any use of this property they would come in, or any applicant in this area, for another CDUA. All they are doing now is trying to comply with the Third Circuit Court Order.

Mr. Higashi asked whether Lot 73 would be awarded to Dillingham and Lot 11 to the Keeliikuli family.

Mr. Triantos said he didn't want to put those numbers on it because they may change. He said Lot A will be going to the Keeliikuli family and Lot B to Dillingham.

Mr. Higashi asked what happens to the tax map keys.

Mr. Triantos surmised that No. 11 might be kept and the other would be designated the next available number in the area. He said they will be coming up with two tax map keys, not more than two.

ACTION Mr. Higashi moved to approve staff's recommendations with the standard Conditions 1, 2 and 3. Condition No. 4 was deleted. Mr. Hong seconded and the motion was unanimously carried.

- - -

A man who identified himself as Larry Halquist appeared before the board, without permission, and stated that he lives at a place called Waikaku, just near Pebble Beach. He said his house was entered by someone who works for the state and issued him an order to vacate. He said he would protect himself with firearms, any means possible to protect himself, on the entire property which he said is privately owned, and no one has the right to issue an order that he vacate.

Mr. Ono informed the man that he considered his statement to be a threat and that it is so noted in the records.

- - -

In the absence of Mr. Peter Garcia, who normally makes the presentation for DOT, Mr. Detor made the presentation on their behalf.

ITEM J-1 ADDENDUM NO. 1 TO LEASE NO. DOT-A-81-26, HONOLULU INTERNATIONAL AIRPORT, OAHU (VICTOR BACIGALUPI & ASSOCIATES, INC.)

Mr. Detor said someone recently tried to call on one of these lines at the airport and he could not get through because the phones were not connected. Mr. Detor said when he asked DOT about this, he was informed that this submittal should take care of it.

Mr. Ono asked Mr. Detor to inform DOT not to put the names of the company in front of the telephone if it isn't connected. Leave it blank.

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM J-2 USE OF HARBORS DIVISION FACILITIES, PIER 9 PASSENGER TERMINAL, HONOLULU, OAHU (BANK OF HAWAII)

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM J-3 CONTINUANCE OF REVOCABLE PERMITS, HARBORS DIVISION

ACTION Mr. Higashi moved to approve Permits H-75-536 to Davies Marine Agencies, Inc. and H-74-480 to Kawaihae Terminals, Inc. Mr. Ing seconded and the motion was carried.

The record showed that Mr. Hong did not participate in any action taken by the board on the above.

Mr. Higashi moved to approve the rest of the permits under Item J-3. Mr. Hong seconded and the motion was carried.


The record showed that Mr. Ing did not participate in any action taken by the board on the following permits:

Permits H-295, H-76-602 and H-78-724, all issued to Dillingham
Tug & Barge Corporation

Permits H-297 and H-312 to Young Brothers, Ltd.

ADJOURNMENT: There was no further business and the meeting was adjourned at 12:30
P. M.

Respectfully submitted,



JOAN K. MORIYAMA
Secretary

APPROVED



SUSUMU ONO
Chairman

jkm