

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

DATE: January 8, 1982
TIME: 10:00 A. M.
PLACE: DLNR Board Room
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii

ROLL
CALL

The meeting of the Board of Land and Natural Resources was called to order by Chairman Susumu Ono at 10:05 A. M. The following were in attendance:

MEMBERS

Mr. Stanley W. Hong
Mr. Takeo Yamamoto
Mr. Roland Higashi
Mr. Thomas S. Yagi
Mr. J. Douglas Ing
Mr. Susumu Ono

STAFF

Mr. Roger Evans
Mr. James Detor
Mr. Mike Shimabukuro
Mr. Henry Sakuda
Mr. Roy Sue
Mr. Maurice Matsuzaki
Mrs. Joan K. Moriyama

OTHERS

Mr. Edwin P. Watson
Mr. Herbert Tateishi (Item H-4)
Mr. Mark Morita, et al (Item F-8)
Ms. Sharon Petersen (Item F-10)
Mr. Gerald A. Sumida, Attorney
Mr. Peter Garcia

MINUTES

Mr. Hong moved to defer the minutes of December 4, 1981 since the board members did not have a chance to review them. Mr. Higashi seconded and the motion was unanimously carried.

Added
Item

Mr. Hong moved to add Item H-6 to the agenda. This was a Conservation District Use Application for Construction of a Permanent Artificial Aeration System at Wahiawa Public Fishing Area, Wahiawa, Oahu. Mr. Yagi seconded and the motion was unanimously carried.

In order to accommodate the people in the audience, the chairman announced that the board will deviate from the printed agenda and take up the agenda in the following order:

ITEM H-4

CDUA FOR AN AMENDMENT TO AN APPROVED CONSERVATION DISTRICT USE APPLICATION FOR CONSTRUCTION OF THE INTERSTATE ROUTE H-3 AT EWA AND KOOLAUPOKO, OAHU, CITY & COUNTY OF HONOLULU (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

For the benefit of the many people who were in the audience, Mr. Ono announced that this is a formal Land Board meeting and the format which

the board will follow is to have the staff make its presentation and recommendation first, followed by questions from the board members, the applicant to make additional comments, followed by decision making by the board.

This was an amendment to a previously approved CDUA which was approved by the board in 1975 for Interstate Highway use. The Department of Transportation, as applicant, has requested a change in the alignment.

Staff went through a normal processing, and a public hearing was held in Kaneohe. Mr. Evans said there were many questions and different types of input that were placed into the record before the board, and the board granted the public an additional fifteen days for additional public input.

With that background, Mr. Evans picked up where they left off from the public hearing, and read his 44-page board submittal starting from page 11, beginning with the Summary of Public Hearing.

A public hearing was held at Castle High School, at Kaneohe, on December 17, 1981 at 7:00 P. M. attended by approximately 100 citizens. Testimonies were provided both for and against the proposal. Input to the board encompassed the following:

Staff specifically identified three pro issues:

1. That H-3 provides a vital link between the Kailua/Kaneohe urban areas and Central and Leeward Oahu.
2. That H-3 will provide a direct link to Aloha Stadium.
3. That H-3 is needed stimulus to Hawaii's economy and the construction industry. Construction of H-3 means employment of several thousand unemployed construction workers.

On the con issues, staff was able to identify thirty-three issues:

1. H-3 is inconsistent with the state's commitment to control population growth, preserve environment, and develop a preferred future.
2. H-3 will encourage urban growth in Windward Oahu.
3. H-3 will encourage urban encroachment of agricultural lands.
4. Construction of the proposed highway could also adversely affect the supply and quality of freshwater, the protection of which is an important objective of the proper management of conservation lands.
5. Neither the statutory scheme nor the DLNR administrative rules governing use of conservation district protective and resource sub-zones, which encompass the North Halawa Valley, permit granting of a Conservation District Use Permit for such a use. This issue should properly be before the Land Use Commission, the entity empowered to determine whether or not reclassification of this conservation district shall be permitted.
6. The proposed land use is clearly detrimental to the conservation of necessary forest growth.

29. Proper procedure, witnesses giving testimony have not been sworn in at this public hearing.
30. Constitutionality of measures considered by Hawaii's Legislature and its administrative agencies to curtail population growth in the islands, specifically those measures relating to land use controls and automobile limitation.
31. H-3 is planned to serve commuters to jobs in Halawa, Pearl City, Pearl Harbor and Ewa; yet redevelopment of Kakaako, the construction of a World Trade Center at Aloha Tower and development of Ewa indicate that Central Honolulu will remain a major sources of employment for Windward residents.
32. Transit through the area of the Omega Station, a source of electromagnetic radiation, will endanger public health and especially the health of H-3 construction workers.
33. Regulation 4 (Title 13, Chapter 2) has been changed since the issuance of the 1975 approval for H-3. There are now four, instead of two, categories of subzones with corresponding differences in permitted and conditional uses for each subzone.

Following the public hearing, staff received correspondence and a form memorandum dated December 25, 1981 signed by approximately 856 people urging the board to vote in favor of the proposal, as well as written correspondence urging the board to deny the proposal.

The staff's analysis consisted of several different specific parts, as follows:

1. Staff approached the matter in terms of general analysis.
2. In terms of permitted use as opposed to conditional use aspect.
3. An analysis of a public hearing.
4. Analysis of the issue which indicate subzones and other aspects.
5. An analysis in terms of consistency.
6. Summary.

In terms of the general analysis, Mr. Evans said they would like to note that this amendment to the approved CDUA for construction of the Interstate H-3 was submitted by the applicant as an application for permitted use of the conservation district. They state at the onset that the original CDUA No. 648 for highways and accessory facilities/electric transmission lines and support facilities, and CDUA No. 654 for highways and accessory facilities were approved by the board on May 9, 1975. Mr. Evans said this decision was reached in accordance with all applicable federal, state and local statutes, ordinances, regulations, memoranda, directives and policies, then in effect.

They also noted that the existing approved CDUA's provide for an alignment which passes through our present protective subzone.

Mr. Evans said under the present definition that would be the staff's conclusion.

Mr. Higashi said, or, would it be at the beginning of the application in which you must classify it as permitted or conditional use, not knowing the facts before having the EIS completed. You would be treating it as a conditional use.

Mr. Evans said that is correct.

On the public hearing analysis, Mr. Evans said staff is cognizant that this is a controversial issue. Many of our citizens have opposed it. They have their reasons and their reasons must be respected. By the same token, Mr. Evans said many of our citizens support the project. In their view, staff felt that their expressions of support must be equally respected.

As to the questions and concerns raised at the public hearing, the scope of our analysis is limited. By that they meant that while they invited public input, their analysis centered primarily on the land use issues as they relate to the state's conservation district, its administration, and the subzones and past judgments by the board, while taking into consideration the secondary issues raised, which relate to housing outside the conservation district or employment opportunities in downtown Honolulu.

It was staff's thinking that the determination of need for the highway lies outside our functional area of responsibility. The need for the facility, for that matter any government facility, must be determined by those government agencies that have the functional responsibility, and they must seek appropriate legislative and administrative approvals. In this case, the Department of Transportation has this mandate and has established the need.

On the proponent issues listed in the summary of public hearing, staff was of the opinion that only the first two are valid in terms of a land use analysis. They felt that the applicant has demonstrated the need through its successful efforts at obtaining the state and federal agencies and previous board approval of the original CDUA's.

On the contrary issues, Mr. Evans said they note that there is an existing Federal Court case in which many of those issues have been decided for our purposes, or in which many of those issues are still before the court.

Specifically, the plaintiffs argued, and in some instances the same organizations provided testimonies before the board, that the state failed to comply with the requirements of the National Environmental Policy Act in eight specific particulars which were listed in the submittal on pages 20 and 21.

The argument also related to public hearings, the transportation planning process, the City Charter and the relationship of transportation to the general plan, the preservation of city park lands, including the Pali Golf course, a public recreation area, in which 4.09 acres were to be taken for highway use and the National Preservation Act, among others.

Mr. Evans also stated that there remains judicial decision making on forty-nine separate issues yet to occur on an amended complaint. As such, where these issues have been either (1) decided by the courts, or (2) are in the process of being decided by the court, staff was of the opinion that it would be inappropriate to either re-analyze a court decision, or act in

the form of an analysis on a matter presently before the courts, unless applicable on the CDUA itself.

The issues that are presently before the court in the amended complaint were listed in the submittal on pages 21 to 24.

Consequently, while the following issues require our specific analysis: PRO 1, 2, 3; CON 5, 6, 7, 8, 9, 10, 12, 13, 14, 19, 21, 23, 24, 26, 27, 29, 30 and 33, all of the issues which are applicable were addressed by the staff.

Staff categorized the remaining issues into three categories: administrative, non-land use and land use.

As to the administrative questions 5, 7, 13, 14, 29, 30 and 33 raised at the public hearing, staff offered the following:

On Question No. 5 (Neither the statutory scheme nor the DLNR administrative rules governing the use of conservation protective and resource subzones, which encompass North Halawa Valley, permit granting of a conservation district use permit for such a use. This issue properly should be before the Land Use Commission to determine whether or not reclassification of this conservation district shall be permitted.), staff felt that question relating to the responsibilities and power of the board, if applicable, should have been raised and pursued on the original CDUA which was approved in 1975. Staff said there has been no change in Chapter 183-42, Hawaii Revised Statutes, as amended.

With respect to this issue, Mr. Ing asked, "Hasn't the definition of subzone been changed since that time?" Mr. Evans said yes.

Mr. Ing said despite the fact that this may not have been considered in the original CDUA process, are we now looking at a different set of definitions in terms of what we are able to use as the basis for the board's decision?

Mr. Evans said we are partially looking at that.

Mr. Ing was concerned that we just don't slip that issue aside, and it may be that staff may consider that in other areas. But if we have a new set of regulations governing the subzones, he said we ought to address the issues, whether or not the board has the power within the confines of those definitions to make a determination as to whether or not that falls within or without the definition.

In responding to Mr. Ing's question, Mr. Evans said from the staff's prospective what they have practiced in the past is under our current administrative rule, we do have a series of uses categorized as permitted uses. When applied for, they are treated a certain way. He said staff has been practicing a concept under the administrative rule that any use not specifically listed as a permitted use, occasional use or accessory use, were that land use to be presented to the department with the signature of the landowner and proper application forms filled out, staff would process that and come to the board eventually on a conditional-use basis.

Mr. Ing asked whether that is limited to the landowner.

in the islands, specifically those measures relating to land use controls of automobile limitations.), staff questioned why a constitutional issue relating to growth management would be raised at our December 17, 1981 public hearing, relating to the building of a highway, when the basic highway was approved in 1975. Staff felt that it is inappropriate to address this question in any depth as a part of our analysis.

On Question No. 33 (Regulation No. 4, Title 13, Chapter 2, has been changed since the issuance of the 1975 approval for H-3. There are now four instead of two categories of subzones.), Mr. Evans said the conservation district establishes the guidelines for applications for use within a conservation district and listed those guidelines in the submittal on pages 26 and 26a.

The public testimony also brought forth argument relating to Section 13-2-21 of the administrative regulation. The specific section refers to standards, guidelines and the compliance with laws, specifically relating to deviation. Staff was of the opinion that the enactment by any deviation occurs after the use is approved and conditions set by that approval. As a result, staff felt that to consider the deviation section as a vehicle to discuss the alternative of "no build" would not be proper.

As to the non-land use issues on Pro 3, and Con 23 and 24 listed below, staff offered the following:

3. H-3 is needed stimulus to Hawaii's economy and the construction industry. Construction of H-3 means employment of several thousand unemployed construction workers.
23. H-3 represents an irresponsible expenditure of public funds.
24. Construction of H-3 will result in higher taxes.

Although staff acknowledged these inputs to be valid input to our department through the public hearing process, they felt that economic considerations on land use matters in the conservation district should not become a matter for consideration by the staff in its actions. As such, staff's analysis of land use matters does not consider economic costs.

As to the land use issues Pro 1 and 2, and Con 6, 8, 9, 10, 12, 19, 21, 26 and 27 listed below, staff offered the following:

1. H-3 provides a vital link between the Kailua/Kaneohe urban areas and Central and Leeward Oahu.
2. H-3 will provide a direct link to Aloha Stadium.

Mr. Evans said although both of these issues may be considered land use issues by staff, they have been or presently are before the courts. In acknowledging these issues in terms of both the positive and negative public benefit aspect which they suggest, staff was of the opinion that they lie outside our scope of analysis. However, staff felt that it would be presumptuous on their part to attempt to define the role of the decision makers in this issue.

On Question No. 6. The proposed land use is clearly detrimental to the conservation of necessary forest growth.

Staff said any degree of development within the conservation district is considered to be an intrusion detrimental to the resources present. The question on a conditional use aspect is to what degree and how it could be mitigated.

Our Division of Forestry and Wildlife commented on this issue and concluded that the proposed alignment of H-3 would affect the existing native forest tree cover found in the upper valley by the grading of the road and the building of the viaducts. It would affect the valley bottom as an avian habitat and would definitely reduce the native bird population in North Halawa.

On Question No. 8. Vegetation will be removed and avian habitat destroyed.

Staff reported that the Division of Forestry and Wildlife commented that the proposed alignment of H-3 would affect the existing native forest tree cover found in the upper valley by the grading of the road and the building of the viaducts. It would affect the valley bottom as an avian habitat and would definitely reduce the native bird population in North Halawa.

On Question No. 9. Native forest trees will be directly impacted by H-3 construction cut and fill.

Staff said the proposed alignment of H-3 would affect the existing native forest tree cover found in the upper valley by the grading of the road and the building of the viaducts.

On Question No. 10. Highway will facilitate the spread of exotic plants.

Mr. Evans said H-3 will facilitate the spread of exotic plants into the upper forested areas and increase the risk and hazard of forest fires.

On Question No. 12. Pre-contact grove of 'awa plants is known to exist in North Halawa Valley. These medicinal plants will be destroyed.

Mr. Evans said testimony on the presence and significance of 'awa was given at recent court hearings on H-3.

On Question No. 19. Halawa Valley is historically significant.

Mr. Evans said archaeological surveys of the entire alignment were conducted by the Bishop Museum. Based upon these surveys, the DLNR has recommended that construction in the vicinity of Site G5-71 be monitored by an archaeologist. Further, the existing conservation district permit requires that the Department of Transportation have an archaeologist present on the project during construction to undertake the removal and salvage of any archaeological findings which may be excavated.

Additional comments from the Historic Sites section of the Division of State Parks indicated that they have no objection for the project to proceed as planned, with a condition that the State Historic Preservation Officer (SHPO) be notified when archaeological discoveries are made in the future.

On Question No. 21. Construction and use of H-3 would introduce poisonous substances into the valley water system thereby destroying vegetation growth.

Mr. Evans said an assessment of highway impact on water resources is contained in the Final Supplement to the EIS. Any additional runoff that does occur will carry automobile-related pollutants with it. The chief concern here is lead from gasoline which is toxic to humans and animals. Since the intermittent North Halawa Stream is not a water supply source, there is no possibility of degradation of drinking water. In addition, the current requirement that all new cars be designed to use lead-free gasoline will, over the next decade, remove the threat of lead pollution in highway runoff. Impact on vegetation is not mentioned in the Final Supplement to the EIS. However, it is noted in the appendix that exhaust fumes from vehicles may have an adverse effect on the vegetation.

On Question 26. Construction of H-3 will increase siltation in Kaneohe Bay and destroy fishing grounds.

Mr. Evans said it is recognized that the proposed highway construction can result in erosion and sedimentation if realistic preventive measures are not followed. No specific discussion of increased siltation in Kaneohe Bay and consequent destruction of fishing ground is contained in review and comments or the Final Supplement to the EIS on North Halawa Valley. However, Mr. Evans pointed out to the board that the general Kaneohe Bay question was considered by the court in earlier argument.

On Question 27. Pig Hunting areas of North Halawa Valley will be eliminated.

The valley trail used for access to pig hunting areas would be eliminated during the H-3 construction phase and would cease to function as a recreational trail after construction due to highway proximity. It is also stated that valley is too narrow to mitigate these losses with attempts to provide recreational opportunities along the highway route.

Mr. Evans said the EIS does not specifically address the location and movement of feral pigs, nor the impact the construction of H-3 will have on the pig habitat. However, on the Big Island, situation exists where highways go through hunting areas. To avoid any dangers, such situations are controlled by appropriate hunting regulations, not elimination of hunting.

Further, due to the topography of North Halawa Valley, for a distance of approximately one mile from the North Halawa Tunnel portal, H-3 will be on a viaduct, which is expected to be located an average of 80 feet above the stream bed elevation. Hence, interferences with hunting should not be substantial.

Mr. Ing said with regard to deviation section of the regulations, he noted that staff did not consider this use deviation from the regulations or from the permitted uses as set forth in the regulations. He said the reason for that is because staff felt a deviation can only occur after a CDUA has been granted.

Mr. Evans said that is correct.

Mr. Ing said staff didn't read that section of the regulation to imply a deviation from a permitted use or the enumeration of permitted uses?

Mr. Evans said they have not in the past read that section in that fashion.

So in terms of the analysis, Mr. Ing said staff would not consider the question as to whether or not any practical alternative was available, which is a requirement under the deviation section.

Mr. Evans said they would not.

Mr. Ing said as opposed to practical alternatives to the use itself.

Mr. Evans said they have not been dealing that section in that light.

Mr. Ono said on page 31, 3d paragraph, of Mr. Evans' testimony regarding 'awa plant, he was not clear what the conclusion was or the response to the testimony that was presented at the public hearing. He recalled the person testifying expressing concern and giving the board background information. He said most of the other points raised at the hearing, there was some response. On this particular one, he was not sure whether he can pick up the gist of the response.

Mr. Evans said staff met with the DOT staff and this question was specifically brought to their attention. The indication that the staff received from the applicant was that none of the plants identified fell along the proposed alignment itself.

Mr. Ono said this is a theoretical question but what if during the construction period there is a finding of a patch of these plants. He said the person testifying had indicated that it may adversely affect the patch of these plants.

Mr. Evans said should the board approve staff's recommendation, they would recommend that a condition be included that the plant be protected or that the alignment go ground it.

Mr. Ono asked whether staff's recommendation contain that provision.

Mr. Evans said his recommendation doesn't contain that specific provision.

Mr. Ono said Item 19 on page 31, reference is made to archaeologist monitoring the construction phase on a specific site. He said question has come up on previous occasions about the qualifications or background on certain types of archaeologist. He asked whether there was any effort made to describe the minimum qualifications of the archaeologist.

Mr. Evans said in terms of minimum qualifications for an archaeologist doing the work for DOT, he was unaware of any minimum qualifications that they would place on any professional doing a report for us. Generally when a report is done, it is given to our department and analyzed, and the question of competency would be forthcoming at that stage.

Continuing on to the H-3 Public Hearing Follow Up, reading out of Mr. Evans' testimony on page 31, Mr. Ono said it reads that, "with the condition that the SHPO be notified when archaeological discoveries are made in the future." He noted that on certain portions of the project they are requiring an archaeologist on site, and other places they are saying as discoveries are made

they are to call in the archaeologist. He asked Mr. Evans what his understanding was on this.

Mr. Evans said his understanding is, as a part of the originally approved permit in 1975, an archaeologist is supposed to be on site and go along with the movement of construction. He said he has seen no representation that they would make any change in that requirement. He said he would view that to mean that should an approval come for the project, that condition would remain with an added stipulation to this effect, that throughout the construction period an archaeologist would be on site. However, he said he would like to take a look at what the exact archaeological condition was on the original approval and submit that to the board.

Mr. Ono said at least get that clarified.

On the analysis of the issues, staff considered the proposed use a conditional use of conservation district lands in the protective limited, resource and general subzones of the conservation district.

Although the objectives of the subzone must be and are being given primary consideration, under our guidelines, there are other considerations which may be addressed. In this instance, staff pointed out that the applicant has submitted a proposed amendment to an existing board approved CDUA and in the staff's view this changes the complexion dramatically of this case.

On consistency, staff agrees with Federal Judge Samuel P. King when he stated that "administrative effectiveness requires continuity of decisions reached unless changed by affirmative action." Mr. Evans said they know of no affirmative action, on behalf of the applicant, which would tend to be inconsistent with the proposal before us at this time.

They feel that this aspect is an extremely important one and one in which the public testimony and our own credibility requires we grapple with. Mr. Evans said along these lines, there appear to be four differing sets of circumstances:

1. An application for approval where the prior use was nonconforming.
2. An application where no previous application or board decision existed.
3. An application where the same land use once existed yet ceased for some reason.
4. An application where changes were sought different from that approved by the board.

In staff's view the present proposal by the Department of Transportation as an amendment to previously approved CDUAs clearly falls within the fourth instance. As such, and considering the past approval by the board, staff felt that the "planning decision" has already been made.

Further, Mr. Evans said that should the staff approach this "change in alignment" of a previously approved board decision totally within the context of the current administrative rules, he felt that the staff would in effect be inconsistent in its actions, thus negating a previous "planning decision" made by the board.

Mr. Ing asked what Mr. Evans was referring to when he said, "planning decision." He asked, "Are you suggesting that the board has already made a planning decision in 1975 and the board is now bound by that prior planning decision?"

Mr. Evans said he was not representing to the board that a previous CDUA was a planning decision and that prior CDUA resulted in a planning decision, or that this action before the board today results in a planning decision.

Mr. Evans said they are unaware of any case where an applicant, private or public, who had approval for a project, returned to have some change considered as a part of that approval, to have the staff recommend and the board uphold the negation of that original approval altogether. In this case, they note that the applicant is still conforming with original conditions imposed by the regulations and the board.

On page 36, Item No. 5, reference is made to an archaeologist being present during construction. Mr. Ono asked Mr. Evans what the staff's interpretation was on this. Was it only in reference to Historic Site G5-71, or is it throughout the entire project.

Mr. Evans said it was his understanding that they are going to have an archaeologist present during the construction to undertake the remains and salvage of any archaeological findings which may be excavated. That would mean during the construction.

Mr. Ono said Item No. 5 specifically refers to Historic Site G5-71. He asked whether it is only in reference to this particular site or the entire project.

Mr. Evans said his understanding was that it means the entire project.

Mr. Ing made reference to the last statement made on page 41 and asked Mr. Evans whether he is saying that there is a different set of considerations to be given if reviewing the application for the very first time.

Mr. Evans said there are a different set of considerations given when an application comes in and has had a previous board action on it, and one that comes in and has had no previous board action.

Mr. Ing asked whether staff is suggesting that we don't give primary consideration to the objectives of the subzones.

Mr. Evans said no, he is not representing that at all. He said that is still applicable no matter what happened in the past.

Mr. Evans summarized staff's analysis and made the following recommendations:

- A. That the board incorporate all records of the prior CDUA approvals in addition to the records of the herein application.
- B. That the board find that the staff has acknowledged, considered and, through its analysis and recommendations, taken prudent measures to minimize the impacts on the conservation district to the extent possible.

- C. That the board approve the application as a conditional use under Title 13, Chapter 2.
- D. That the board approve CDUA 1405 as an amendment to the board's previous CDUA approved on May 12, 1975, subject to the conditions listed in the submittal.
- E. That the board allow the applicant a reasonable time, as determined by the chairman to complete the highway under Section 13-2-21 relating to deviations from conditions or board conditions, subject to change at the discretion of the chairman.
- F. That all mitigation measures suggested by the applicant, as they relate to this CDUA, be made a part of the board's conditional approval.
- G. That in the event that any archaeological discoveries are made, the applicant shall stop and notify the SHPO for further direction.

Mr. Ing said he was a little confused, with regard to staff's summary, as to how Mr. Evans construed the prior action of the board might be different had this board considered the application entirely under the new administrative rules.

Mr. Evans said in terms of the analysis and issue, they consisted basically of two parts--the analysis of the protective subzone itself and another aspect. Basically, these were two factors in their analysis. He said if an application did not have this particular other aspects category, what they would have done is to analyze the objectives of the protective subzone, and based primarily on the objective of the protective subzone they would formulate their recommendation on that.

Mr. Ing asked Mr. Evans whether he feels that staff is bound by representations made by the staff itself during the course of the original CDUA proceeding. In particular he asked whether the staff recommend approval of the prior CDUA.

Mr. Evans said the staff did.

Mr. Ing said the reason he was concerned about that is because we are now operating under a different set of subzones and a different set of permitted uses within the subzones; and that whereas originally it was a permitted use, as the staff says, it is not a permitted use now. So if you follow that reasoning, he said the new application or the present application, although it is an amendment, should be reviewed entirely in the light of the present rules and regulations regarding the subzones.

Mr. Evans said were we to view this application entirely in the light of the new regulation, then they would feel, as in the Rothenberg case, that they would be acting in an inconsistent basis.

Mr. Ing asked whether staff feels that the Rothenberg case is similar enough to this situation that we are constrained by what we did in that case.

Mr. Evans said in terms of process, he would like to feel that they have been acting on consistent basis. He said there certainly is a wide difference of substance. He would like to draw distinction between the process of an issue and the substance. He said the substance is clearly different, but

the process should be consistent and he does feel administratively that they have been acting consistently.

Mr. Ing said as he understood it, staff is recommending approval as a conditional use despite the fact that the freeway passes through a protective subzone. Mr. Evans said that is correct.

Mr. Ing asked Mr. Evans whether he sees any practical limitation to the type of uses that can be permitted in a protective subzone if the board allows this freeway to go through.

Mr. Evans said he would like to think that they would review each and every case on its merits. Along that line of thought, he would still want to draw a distinction between someone who has had board action before, and someone who has never had a board action. Distinction to the degree where we would suggest that if an applicant comes in, and it is a new and fresh application, that we would view our analysis in terms of the objective of the subzone being primary. If they thought the application was inconsistent, then they would recommend accordingly.

On the other hand, were an applicant to come before us in the future and where there has been a previous application and board decision made, they would consider that on its merits at that time.

Mr. Ing said but in making that decision, on behalf of the staff, he is in fact giving credence to the prior decision, although it was under a different subzone.

Mr. Evans said yes. He acknowledged the prior decision and that he was giving credence.

Mr. Ing said in terms of philosophy, he asked whether from the staff's point of view, should there be some rationale relationship between the conditional uses that are to be allowed in the subzone and the permitted uses in the subzone.

Mr. Evans said yes, specifically as it relates to government-type uses. For example, if someone would want to build a fire tower in a protective subzone, they would view that as a government use. That's a public benefit. There is public benefit. The public benefit is generally within the conservation district. He said staff would recommend that it be approved as a permitted use within a conservation district.

On the other hand, when public benefit cannot be demonstrated to occur in the protective subzone, although it may occur outside, staff would take a position that that would be a conditional use.

Mr. Ing asked, in the alternative, whether or not that conditional use should be allowed, whether they would make any distinction between the types of use or uses that are permitted within the subzone regulations.

Mr. Evans said regulations provide for types of uses as generally permitted uses within the regulation and they are provided for in each subzone.

Mr. Ing asked whether he makes any distinction between the type of conditional use that should be allowed in the general subzone as opposed to the type of conditional use that should be allowed in the protective subzone.

Mr. Evans said yes. The difference is that we are required under the regulation to provide for the objectives of the subzone as our primary consideration. As such, a conditional use, when it is being evaluated in the general subzone, one of the measures of its potential approval is the objective of the general subzone. He said they have found that is far less stringent than a conditional use which is proposed for the protective subzone.

Mr. Ing said as he understands the recommendation, even giving the objectives of the protective subzone primary consideration, staff feel that the passage of the freeway through that subzone will not be inconsistent with those objectives.

Mr. Evans said they feel that the previous board action is of such a magnitude to outweigh the consideration of using the objective of the subzone as primary.

ACTION

Mr. Hong said we have gone through a long and arduous process. The board has listened to the testimony that has been presented and reviewed all of the information that have been submitted. He believed that the record and the information gathered and submitted reflect that there will be various impacts on the conservation district as a result of this project. However, it appeared to him, and perhaps to the other members of this board, that with proposed conditions imposed on the project, the various impacts on the conservation district will be minimized to the point that the public benefit derived from the H-3 outweighs any impact on the conservation district. For this reason and for the reasons set out in the staff's recommendation, he moved for approval of staff's recommendation as submitted.

Before the motion was seconded, Mr. Ono asked the Department of Transportation representative whether he had additional comments, clarification or correction of information or facts that were presented.

Mr. Herbert Tateishi, representing the Department of Transportation, the applicant, said other than what they presented at the public hearing and a follow-up written testimony, they have no other comment to offer.

Mr. Ono asked whether they have no disagreement with the information presented as far as factual information being presented this morning.

Mr. Tateishi said they have no disagreement with the information presented.

In going back to the archaeological studies, Mr. Ono asked Mr. Tateishi what their understanding is as far as requiring an archaeologist on site. Is it throughout the project, or just on that particular historic site that has been identified through previous surveys?

Mr. Tateishi said their understanding of the requirement that was imposed when the initial CDUA was approved was that they would have an archaeologist on site during the construction for the entire project.

Mr. Ono said he was using the testimony that came up at the public hearing on the 'awa plant. Assuming the alignment that's being proposed goes through or does have an adverse effect on the 'awa patch or patches, he asked how they would react to that kind of a finding.

Mr. Tateishi said during the survey of the North Halawa Valley, the botanist hired by them identified two groves of 'awa plants. They were located 500

to 1,000 feet away from the area that would be under construction, if the board approves the application. Therefore, it would not affect the existing 'awa grove. However, if by remote chance they did encounter an 'awa grove in the right of way, then they would attempt to shift the alignment. However, he admitted that there are engineering considerations which may not allow them to do so. If that is the case, then they would transplant the 'awa plant, if encountered, to a secure location. At least they would take some kind of action.

Mr. Higashi said one of his concerns was the Omega operations and its possible effects to this, the employees working on the site and the people who would be passing there constantly. He asked whether they have some kind of a reserve to negate the potential danger.

Mr. Tateishi said, as explained during the public hearing, they do have studies conducted by experts in the field of low frequency radio waves. Their conclusion was that the highway can safely be constructed and also that the users would not be affected by the radio station or transmission. He said these studies are on record.

There was no further discussion.

Mr. Yagi seconded the motion. On the call of the question the motion was carried 5 to 1, with Mr. Ing casting the dissenting vote.

Mr. Ing stated his reasons for casting a negative vote. He felt that the staff was somewhat constrained by the prior CDUA approval in its recommendation, and felt that the board should consider this matter as new application not to be constrained by the prior CDUA approval. If the protective subzone objectives are to be given primary consideration, he felt that a freeway passing through here is incompatible with those objectives. He said this decision has a large impact on the future of the board's decision with regard to uses in protective subzone.

With this decision, he said the bottom line would be that there would be no limit to the type of uses that can be allowed in a protective subzone. He said this is more properly a Land Use decision.

Deputy Attorney General Edwin Watson asked the board to consider adding an additional finding by way of a motion. That finding to be the preliminary statement made by Mr. Hong, that the board finds the information presented to the board, and the record before the board, indicate that the H-3 project will have various impacts upon the conservation district. However, that the board finds that with conditions imposed the impact on the conservation district would be minimized to a point where the public benefit derived from the H-3 project outweighs any impact on the conservation district.

Mr. Ing said he would like to know in what capacity Mr. Watson was making that request.

Mr. Watson said he was making that request as counsel of the board.

Mr. Ing said as he understood it, Mr. Watson is asking that the board make a ruling that the public benefit outweighs any practical effect the freeway would have.

Mr. Watson said what he is saying is that if the board concurs with the remarks made by Mr. Hong, prior to making his motion, he would like the board to consider entering those remarks as particular findings by the board in the form of a motion.

Mr. Yagi moved and Mr. Yamamoto seconded that the board finds, with conditions attached to the approval, that the public benefit would outweigh whatever adverse impact the project might have on the conservation district.

Mr. Watson emphasized, in other words, the board realizes that there are impacts, but with conditions imposed, these impacts would be minimized to the point where the board finds that the public benefit derived from the H-3 project outweighs any of these impacts that may occur within the conservation district.

Mr. Ing asked Mr. Watson what was he referring to when he says, "public benefit."

Mr. Watson said in the board submittal and the staff's position did state or made remarks that they feel, and the record reflects that DOT has shown, that there is a need for the project and there is a public benefit derived from this project.

Mr. Ing said the problem that he has is that the public benefit has to be weighed to a large extent from what occurred in the course of the public hearing. At the public hearing, essentially the people in support of the freeway project fell in two categories. One was the applicant and others fell into the construction industry.

With regard to those who opposed the project, Mr. Ing said they were largely residents from the Windward side; they were people that utilized Halawa Valley for pig hunting or for excursions or scientific expeditions; and they were people who were concerned with conservation, water management and the future of our resources. He said if Mr. Watson is suggesting that the public benefit outweighs the practical impact, he suggested that he also consider all the testimonies that were given by those that were against the project at the time of the public hearing. He said in terms of the people that actually would be utilizing the freeway, that far outweighed the testimony presented by others with regard to beneficial use.

Mr. Ono asked Mr. Ing whether he was suggesting that decision be made reflect only those information picked up at the public hearing.

Mr. Ing said he is asking the board to make a decision based upon what the public benefit is. If we are to make that decision, then we also have to consider what went on at the time of the public hearing and what the actual testimony was from the public, and those who took the time to come to the meeting and present their testimony.

Mr. Ono said but not to the exclusion of other information that the board members may have. Mr. Ing said no.

Mr. Ono asked Mr. Watson whether he feels that the motion itself is not specific enough to spell out the intent of the motion that was carried.

Mr. Watson said there may be questions as to whether or not the board itself had these feelings on the remarks made by Mr. Hong prior to the motion, so he felt that it would support the board's position if such a motion was made.

The chairman said there is a motion on the floor which was moved and seconded. He called for the question. The motion was carried with a 5-1 vote, with Mr. Ing again casting the no vote.

There was a short recess at 12:30 P. M. and the meeting resumed at 12:45 P. M.

RESUBMITTAL - MARK M. MORITA, ET AL, REQUEST FOR CONFIRMATION OF ACCESS AND UTILITY EASEMENT OVER AND ACROSS KUNAWAI PARK, HONOLULU, OAHU

ITEM F-8

This was a recommendation for confirmation of an easement for access and utilities purposes over and across government land at Kunawai within the Kunawai Park.

Mr. Detor said an executive order was issued in 1938 setting aside the area to the City and County. In the executive order itself the description says that the area set aside is "subject to easements over such existing rights-of-way as may be appurtenant to the adjoining Land Commission Awards." At that time when this area was set aside to the city, there was a road (which is not shown on the map as a road) and which is part of the park itself.

The people who have houses there gain access to their property through the park over this road but, Mr. Detor said, technically speaking they are landlocked. So the problem for them is that if they are going to sell their property, or try to get financing to make alterations or build a house, they might have difficulties. Mr. Detor recommended that the easement be granted to each of these people through the park.

Mr. Hong asked whether these people are agreeable to the easement approach. Mr. Detor said yes.

Mr. Ono asked who maintains that road now.

Mr. Detor said what maintenance that has occurred over the years has been done by the city.

Mr. Detor said as he understood it, the city does not want to declare this as a road because it does not satisfy the minimum standards.

Mr. Watson said granting of the easement in the names of the numerous landowners seems to conflict with the land department's policy. He asked whether that road cannot be declared as a public roadway.

Mr. Watson cited a case in Waikiki where the city went in and claimed all of the small lanes in the back alleyways as a public roadway because it is opened and use by the public for a number of years. He said if it suits them there, they'll declare it to be a roadway. If it doesn't suit them here, then they won't declare it to be a public roadway. He suggested that this matter be sent over to the Department of Transportation attorney to declare it to be a public roadway. Then under the law the city has the responsibility of maintaining it.

It was suggested that this matter be deferred.

Mr. Ono asked the staff to talk to the city to see if they will accept it. If they say no, we will have to come back and try to work out something.

ACTION This matter was deferred. Staff was instructed to formally approach the city on this roadway.

Mr. Ono informed the residents, who were present at the meeting, that we may need their participation on this.

Mr. Watson reminded the residents that if they acquire the easement they will also accept the liability of the road.

ITEM H-3 CDUA FOR AHUPUA'A LAND USE RESEARCH PROJECT AT PELEKUNU VALLEY, MOLOKAI (WALTER L. RITTE, JR.) (SUBMITTAL WAS DISTRIBUTED AT THE BOARD MEETING)

This was an after-the-fact application by Mr. Walter L. Ritte.

The applicant indicated that he has established a long-term research project in Pelekunu Valley on Molokai. The objective of this research project is to establish a new, acceptable positive land use by integrating traditional ahupua'a land use concepts with modern land use concepts by taking the best from each.

As a part of the normal processing, Mr. Evans said our different divisions commented on the application. Staff had no basic objections. However, there are a number of conditions that the divisions would like to have placed in the document should the board consider to approve it.

Mr. Evans pointed out to the board that this application came about because of a complaint. Our enforcement staff inspected the site to see if there was any basis to substantiate the complaint. Based upon reports from them, there did exist twelve structures on the property--children houses, canoe houses, sleeping houses, eating houses and fishing houses.

The Maui County has approved the project, according to the Special Management Area (SMA) rule.

Staff recommended approval. However, Mr. Evans said the applicant who applied for the permit applied for it as an applicant, and that required the signature from the landowner before we can process the application. It was made clear to us that the landowner will sign the application as landowner to allow it to be processed, however, that this did not necessarily mean that they are ultimately going to agree with what goes on there should the board approve it. As a result of that, staff recommended that approval is contingent upon receipt of approval from the landowner to perform this.

Staff recommended:

- A. That the board find the construction and use of the twelve structures indicated at Sites A, B, C and D to be a violation; and that the applicant be assessed a fine of \$500 per structure, a total of \$6,000 to be paid within sixty days of the date of this meeting.

B. That this application for Ahupua'a Land Use Research Project in the Resource Subzone of the conservation district at TMK 5-9-06:11 at Pelekunu Valley, Molokai, be approved, subject to the conditions listed on pages 10 to 12 of the submittal.

Before going further, Mr. Hong said the landowners (Mr. Kenneth Brown, et al) are aware of the buildings on the property since they obviously allowed them to go on. He asked why we are imposing the fine on Mr. Ritte for the violation within the conservation district and not to the landowners.

Mr. Evans said that is a good point which he had not thought of.

Mr. Ing asked whether this will be a conditional use or nonconforming use.

Mr. Evans said this is a conditional use.

Mr. Ing said that valley was inhabited at one time. There used to be a school, a post office, and residents were living there at one time. In light of that he asked whether this will be a nonconforming use as opposed to a conditional use.

Mr. Evans said staff specifically treat nonconforming use aspect as a vehicle by which land use ultimately is brought into conformance. Under the nonconformance use aspect, it generally allows for farming or a house on a piece of property that was vacant before the law was brought into existence.

The other aspect of nonconforming use is to allow any use to continue that is going on when the regulation was brought into being. He said any existing use once it stops, to start up again would have to come in conformance with the regulation. So staff would treat this as a nonconforming use because although the use may have occurred at one time, it stopped. So to re-establish the uses, they would have to bring this into conformance with the regulation.

Mr. Evans said he was using the definition that is contained in Chapter 183-41 which was carried in both the old Regulation 4 and the new one.

Mr. Yagi asked if the applicant came in prior to the construction of the buildings, whether that would be in conformance with the conservation district.

Mr. Evans said in all probability, Section A which addresses the violation would not be applicable, that only Section B, which is for approval, would be applicable.

Mr. Ono asked whether the structures that are in place are to be kept intact according to the plan. He said the fact that staff is not recommending dismantling the structures is on the plus side for the applicant. There is no mention of that in the submittal. He noted that in other cases of after-the-fact applications, staff usually mentions whether to keep the structure intact, modify it, or tear it down, plus the monetary fine.

Mr. Evans said Condition No. 32 can be added to the recommendation to include this.

ACTION Mr. Yagi moved for approval with added Condition No. 32 as discussed above. Mr. Hong seconded and the motion was carried.

Mr. Ing did not vote. He said his law firm represents the landowner in other matters, so he would be disqualifying himself and withdrew from any participation.

ITEM H-1 CDUA FOR CONDITIONAL USE WATER TANK SITE AT WAILUKU, MAUI

ACTION Unanimously approved as submitted. (Yagi/Higashi)

ITEM F-20 FILLING OF POSITION NO. 2724, DISTRICT LAND AGENT (LAND AGENT V, SR-26), MAUI

ACTION The board, on Mr. Yagi's motion and seconded by Mr. Yamamoto, unanimously approved the appointment of Mr. Eddie Ansai to fill Position No. 2724, District Land Agent, effective January 16, 1981.

(Mr. Yagi was excused at this point and left the meeting.)

ITEM H-5 CDUA FOR PUBLIC PARK DEVELOPMENT AND WATER TRANSMISSION SYSTEM EASEMENTS AND IMPROVEMENTS AT WAIMALU, OAHU (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

A public hearing was held on this application at Castle High School in Kaneohe about three weeks ago. The land is currently vacant. The purpose of the project is to provide in perpetuity a public park. That park will be turned over to the city for dedication and also to provide water service for domestic use and fire protection for a neighboring non-conservation land, Royal Summit, a condominium.

The proposed work is to coincide with the grading and construction of street improvements, drainage system, sanitary sewer system, water system, and underground electric, telephone, and street light systems for the Royal Summit, Phase II, residential subdivision, and is expected to commence in the early part of 1982 and completed in about twelve months.

Mr. Evans said there were concerns expressed at the public hearing. An old reservoir near a property in Newton Estates, Unit IV, designated as TMK 9-8-64:79, being a health hazard in that it had no outlet; and the need to explore alternatives.

Mr. Evans said we incorporated these concerns as part of the analysis. Although many interests and concerns were expressed from the residents, staff found no basis in their argument to be related to the proposed land use within the conservation district. Staff felt that the fundamental problem of the Newton Estates, as indicated through the testimonies, rests with the landowner of the subject parcel. Staff was of the opinion that it is not in the board's best interest to be involved with disputes over private properties.

Staff in fact found the two proposed developments to be entirely consistent with the objectives of the General Subzone. As a result, staff found the first proposed use, the water transmission system, is a permitted use of the General Subzone. Staff has learned from the applicant that the owner of the property, who will be affected by the drainage system extension, has already been notified and consented.

The second aspect, the development of a public park site without physical facilities, is a conditional use of the General Subzone. Staff was of the opinion that the dedication of a public park is in keeping with the objective of designating open space and will cause minimal impact on the surrounding areas.

Staff recommended approval subject to the twelve conditions listed in the submittal.

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

Mr. Ono directed a question to the applicant. He asked whether they are aware of some of the concerns expressed by the community people. He said testimonies presented were not directly pertinent for consideration by the board.

The representative said they have referred it to the owners and they are aware of it. This has been an on-going thing, he said.

Mr. Ono said he would like to re-emphasize that these kinds of information were brought before the board and the board was referring this back to them. He didn't want them to just ignore it.

Mr. Hong asked Mr. Ono whether it was his hope to have more time to get a response from the owners. He said we do have time so we could defer and ask the owner to respond to the concerns that were raised. He said he would be in favor of that if that is the chairman's wish.

Mr. Ono said we are deviating from past practice of going little beyond the scope of the board's work. However, since the people came out to let us know how they felt, he felt that at least there should be some kind of response from the government agency, the developer, or somebody.

Mr. Evans said he was certain that by the next board meeting they could have an answer from the owner, as far as how they propose to and perhaps address the concerns that were expressed at the public hearing.

Mr. Ono didn't think the board has the authority to put any kind of a condition. However, he would like to get some indication of what is happening.

Mr. Ing withdrew his earlier motion and moved for approval, with additional condition that the landowner respond to the board concerning the complaints or concerns raised by the adjoining landowners with regard to the parcel in question.

Mr. Hong seconded the motion, and the amended motion was unanimously carried.

ITEM F-10 SHARON'S PLANTS, LTD. REQUEST FOR EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, G. L. NO. S-3777, COVERING LOT 39 OF THE WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, OAHU

This was a request by Sharon's Plants, Ltd., lessee, under General Lease No. S-3777, for an extension of the term of that lease, for the purpose of borrowing money from the Federal Land Bank to make improvements to the

premises. The Bank has indicated that it will lend the money, contingent on the extension. The terms and conditions were listed under the recommendation for the extension.

In addition to that they are asking for consent to mortgage to the Federal Land Bank Association for purposes of securing a mortgage. They are going to borrow some \$40,000 to be used as listed in the submittal.

Mr. Ing asked whether there is any problem to extend beyond the term in that in effect by so doing we are circumventing the public auction.

Mr. Detor said most of these leases in Waimanalo were originally sold for twenty years and a number of them have been extended. He said the law allows extensions on such leases for the purpose of acquiring a loan to make improvements to the property.

Mr. Watson said there are many lessees who have been selling their Waimanalo leases and the new buyers are coming in for extensions of the leases. He said that has been the trend over the years.

Mr. Detor said it all goes back to what Mr. Ing has brought up. Is this in effect circumvention of the public auction aspect?

Mr. Ing said he has some concern about the Waimanalo leases. The circumvention of the public auction aspect and the expiration of leases. He said staff should take a look at the total picture, not on individual basis.

Mrs. Petersen said she has the property adjoining this which is currently used for landscaping nursery, and she would like to extend her nursery. She asked whether the one-year period under Recommendation 1.D could be made longer because she felt that one year is too short to complete all the improvements.

Mr. Detor agreed that it does seem short. He said he has no qualms about making it for eighteen months.

Mr. Watson said you also have a standard provision where the applicant can come in and request an extension if the reason for the extension is justified.

ACTION Mr. Ing moved to approve staff's recommendation as submitted, with amended Recommendation 1.D requiring the completion of the improvements within eighteen months. Mr. Hong seconded and the motion was unanimously carried.

Mr. Ono informed Mr. Detor that we should get started with Mr. Ing's suggestion about reviewing the whole procedures affecting the Waimanalo leases.

ITEM F-21 MINN NURSERY & LANDSCAPING, LTD., REQUEST FOR CONSENT TO TRANSFER GENERAL LEASE NO. S-3761, WAIMANALO, OAHU (SUBMITTAL WAS DISTRIBUTED AT BOARD MEETING)

This was a request for consent to an assignment of one of the Waimanalo leases which is held by Minn Nursery & Landscaping, Ltd. Back in 1979,

the firm filed a bankruptcy petition in the Federal Court under Chapter 11, and we've since been enjoined from collecting back rent. The rent under this lease is \$360.00 a year. Currently they owe three years' rent, or \$1,080.00. Mr. Detor said this matter is still pending in court.

Mr. Detor said as he understood it, there is going to be a court action on this within the next week or two. In the meantime, Windward Plants has made an offer to acquire the company. What they are asking for is that the board consent to the assignment of the lease, contingent, however, upon approval of the Federal Bankruptcy Judge.

Mr Detor said all of the creditors, except one, including the Internal Revenue Service and the State Department of Taxation to whom money is owed, have agreed to the sale of the lease. So what they need is the board's consent to the assignment, subject to the (1) approval of the U. S. Bankruptcy Court; (2) payment of the delinquent rental; and (3) such other terms and conditions as may be prescribed by the chairman.

Mr. Watson said they have problems on bankruptcy matters. He said in our lease provision, it states that in the event of bankruptcy, the state can cancel the lease. He said in the past their position has always been that they will approve on the condition that we get paid for the delinquent rental. He suggested that we add a condition that in the event that the delinquent rental is not paid, that the board cancel the lease forthwith.

Mr. Detor said on this particular case he understands that escrow is prepared that rental will be paid. So we won't have that problem here.

ACTION Mr. Ing moved for approval, with the understanding that it should be clear that the payment of delinquent rental would be a condition preceding in the execution of the documents by the board.

Mr. Hong seconded and the motion was unanimously carried.

Mr. Watson said the new purchasers should be made clear that the board is now reviewing the policy of extending all leases. The board was in unanimous agreement that they should be so informed.

ITEM H-2 REQUEST FOR PUBLIC HEARING ON APPLICATION FOR USE OF THE PROTECTIVE SUBZONE IN THE CONSERVATION DISTRICT

Mr. Evans asked that the submittal be amended to include CDUA HA-1444 to the list. This was a request by our Forestry Division on the Big Island.

ACTION Unanimously approved as amended. (Higashi/Yamamoto)

ADDED CDUA FOR CONSTRUCTION OF A PERMANENT ARTIFICIAL AERATION
ITEM H-6 SYSTEM AT WAHIAWA PUBLIC FISHING AREA, WAHIAWA, OAHU

ACTION Unanimously approved as submitted. (Hong/Higashi)

Mr. Evans briefly discussed a non-agenda item. This was a request from Wind Farms for transmission lines in a conservation district. There was a public hearing on this. Wind Farms did a draft EIS and they have redone it in a final format.

Mr. Evans said we are required under the law to make some type of judgment on the request within sixty days. Staff reviewed it and informed them by letter that we have concerns in two areas. One had to do with allowing the public to review what was recently done. There were other concerns that related to substantive matter in the document. The document as presented was unacceptable at the time and we so indicated to them in the letter. Subsequent to that we have received from them a request for reconsideration. Mr. Evans said we want to provide every opportunity for Wind Farms to place the document in an acceptable format. Staff discussed this matter with the environmental counsel for Wind Farms. Their position is that they would like to keep the document alive, and we would like to have the entire thirty days to do it.

Based on that, Mr. Evans recommended that a public meeting be held in Wahiawa, due to the primary focus of concerns coming from the people of the area, to be attended by Mr. Hong and Mr. Ing.

Mr. Hong invited the rest of the board members to attend this meeting if they would like to do so.

Mr. Higashi asked Mr. Evans whether the meeting is to discuss answers to some of the questions at the public hearing.

Mr. Evans said the meeting is limited to the questions that were asked. He said the entire focus is to attempt to make the EIS an acceptable document. He said if we can do that, then staff could get into analyzing the CDUA and we will have an acceptable disclosure document.

Mr. Gerald Sumida, attorney for Wind Farms, said they are in agreement with this public meeting.

There was no formal action required on the part of the board. However, since a written request for reconsideration has come in, Mr. Evans said our response will be sent to them in the tone of today's discussion.

Mr. Ono informed the board, for the record, that he was disqualifying himself from this matter.

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The board recessed for lunch at 1:50 P. M. and reconvened at 2:30 P. M.

(Mr. Yamamoto was excused from the remaining portion of the meeting and he left the meeting.)

OUT-OF-STATE TRAVEL REQUEST FOR HENRY M. SAKUDA TO ATTEND WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL MEETING IN GUAM AND SAIPAN

ITEM B-1

ACTION Unanimously approved as submitted. (Hong/Higashi)

FILLING OF VACANT CLERK-TYPIST II POSITION, ADMINISTRATION OFFICE, STATE PARKS DIVISION, HONOLULU, HAWAII

ITEM E-1

ACTION The board, on Mr. Ing's motion and seconded by Mr. Hong, unanimously

approved the selection of Ellen Morimoto for Position No. 19007, Clerk-Typist II.

PERMISSION TO AMEND STATE OF HAWAII CONTRACT NO. 11763 WITH AOTANI AND ASSOCIATES, INCORPORATED, CONCERNING DESIGN FOR PHASE III, INCREMENT 2, SAND ISLAND STATE PARK, HONOLULU, HAWAII

ITEM E-2

ACTION Unanimously approved as submitted. (Hong/Ing)

ITEM F-1 DOCUMENTS FOR CONSIDERATION

HAWAII

Item F-1-a SUBLEASES

HILO SHEET METAL, INC., Sublessor, to WORLDWIDE DISTRIBUTORS, LTD., Sublessee - Lot 4, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo - GL No. S-4308

Item F-1-b HILO SHEET METAL, INC., Sublessor, to ISLAND FIRE & SAFETY, INC., Sublessee - Lot 4, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo - GL No. S-4308

KAUAI

Item F-1-c REVOCABLE PERMIT

FRANKLIN D. DUSENBERRY - Lot 62, Government Remnant, Ii of Neamo, Waimea Valley - for agricultural purposes only - \$20.00 per month

HAWAII

Item F-1-d REVOCABLE PERMIT

HILO COMMUNITY PLAYERS - covering portion of the Kulana Na'auao Building, Hilo

The submittal was distributed at the board meeting.

Mr. Higashi said he would like to amend Recommendation 1 by adding after February 16, 1982, "or two weeks prior to the initial construction for renovation." He said he would also like to add another condition that the permit does not give the community people the exclusive access to the premises, and that DAGS, or its representative, have access to the building if they need to go in to measure or inspect in regards to the renovation.

ACTION Mr. Higashi moved, seconded by Mr. Hong, and the board unanimously approved Item F-1, as amended.

ITEM F-2 STAFF RECOMMENDATION FOR CANCELLATION OF E. O. NO. 2799, COVERING THE FORMER NANUE (JOHN M. ROSS) SCHOOL LOT AT NANUE, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-3 RUSSELL HATADA REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO SATISFY BUILDING REQUIREMENT, LOT 3, UNIVERSITY HEIGHTS, 3RD INCREMENT, WAIAKEA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-4 COUNTY OF HAWAII REQUEST FOR RIGHT OF ENTRY TO CONSTRUCT DRAINAGE IMPROVEMENTS, WAIAKEA, SOUTH HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-5 STAFF RECOMMENDATION FOR SALE OF LEASE COVERING LOT 5, KEONEPOKO IKI FARM LOT SUBDIVISION (PAHOA AGRICULTURAL PARK), KEONEPOKI IKI, PUNA, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-6 HALE PAU HANA HOMEOWNERS ASSOCIATION FOR ADDENDUM TO REVOCABLE PERMIT NO. S-5835, KAMAOLE, MAUI

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM F-7 CITY AND COUNTY OF HONOLULU, BOARD OF WATER SUPPLY, REQUEST FOR RIGHT OF ENTRY TO DRILL EXPLORATORY WELL, AUWAIOLIMU, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

(See pages 20 and 21 for Item F-8.)

ITEM F-9 UNIVERSITY OF HAWAII REQUEST FOR EXTENSION OF TERM OF GENERAL LEASE NO. S-4579 AND CONSENT TO SUBLEASE, WAIMANALO, OAHU

Mr. Detor said the University of Hawaii has requested that this item be withdrawn so he asked that this item be withdrawn.

ACTION The board had no objection to the withdrawal.

(See pages 24 and 25 for Item F-10.)

ITEM F-11 STAFF RECOMMENDATION FOR TERMINATION OF HOMESTEAD LEASE NO. 7 HANAIEI, KAUAI

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-12 ELEANOR DECOSTA, ET AL, APPLICATION TO PURCHASE REMNANT AT KALAHEO, KAUAI

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM F-13 PRIDE COMPANY, INC. APPLICATION FOR LAND LICENSE FOR SOIL REMOVAL, KEKAHA, KAUAI

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM F-14 LIHUE PLANTATION CO., LTD. REQUEST FOR PERMISSION TO SELL WATER UNDER G. L. NO. S-3828, MOLOAA, KOOLAU, KAUAI

Mr. Ono said the correct name for the Counsel for Lihue Plantation is Mr. R. Brian Tsujimura, not Tsujima as noted in the submittal on page 1.

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM F-15 DSS&H REQUEST FOR ACQUISITION OF LEASE COVERING ROOM 219 OF THE U. S. POSTAL SERVICE BUILDING, WAILUKU, MAUI

ACTION Unanimously approved as submitted. (Hong/Ing)

ITEM F-16 RESUBMITTAL - OAHU METROPOLITAN PLANNING ORGANIZATION REQUEST FOR ACQUISITION OF LEASE COVERING SUITE 1509, 1164 BISHOP STREET, HONOLULU, OAHU

This was a resubmittal. It was deferred previously because the board questioned the rental. Mr. Detor said PUC is renting a 1,072 square-foot space at a base rent of \$1.42 per square foot, and a base operating cost at \$5.32 per year per square foot.

He said for this particular submittal it comes out to a basic rental of \$1.44, which is 2¢ higher than what PUC is paying.

Mr. Ono said if we combine the additional rental to that it comes closer to \$2.00 per square foot.

Mr. Watson said they are swamped with lease renewals and the deputies are questioning these leases because the rentals have really gone up this year. He said the Land Office staff is routinely sending these leases to them without seriously looking into this area.

Mr. Detor said to have his staff to actually get into negotiation, they can't handle it.

Mr. Ono suggested that we send it back to the requesting agency.

ACTION Mr. Hong moved for denial for the reason that the board felt that the rent is much too high for a governmental agency and that the board would prefer to have them look for an area where rent is more reasonable. Mr. Ing seconded and the motion was unanimously carried.

Mr. Detor said this subject lease won't begin until February 1, so if they want to come back they still have until the next board meeting.

Mr. Ono said to make sure that this request goes back on the agenda, whatever the recommendation is going to be.

ITEM F-17 DLIR REQUEST FOR APPROVAL OF RENEWAL OF LEASE COVERING ROOMS 101 THROUGH 105 AND 116, 547 HALEKAUWILA STREET, HONOLULU, OAHU

ACTION Mr. Detor asked for deferment because there were a number of changes to the submittal. The board had no objection.

ITEM F-18 DSS&H REQUEST FOR APPROVAL OF MODIFICATION OF LEASE COVERING ROOM 801 OF THE BETHEL-PAUAAHI BUILDING, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM F-19 DSS&H REQUEST FOR ACQUISITION OF LEASE COVERING ROOMS 614, 616 AND 618, 1149 BISHOP STREET, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Hong)

(See page 23 for Item F-20 and pages 25 and 26 for Item F-21.)

ITEM F-22 WM. BARLOW APPLICATION FOR EASEMENT, DIAMOND HEAD, KAPAHULU, HONOLULU, OAHU

ACTION Mr. Detor asked to withdraw this item. He said there are couple of things that need to be checked out.

The board had no objection to the withdrawal.

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Mr. Matsuzaki introduced and presented commissions to the twelve new enforcement officers. The new officers, who were congratulated by the board members, were:

Johnny Castillo (Oahu)
Patricia Edwards (Oahu)
Dean Yamashita (Oahu)
Sandy Sugiyama (Hawaii)
Charles Nahale (Hawaii)
Reginald Lee (Hawaii)
Kimo McTavish (Hawaii)
Randolph Manaba (Molokai)
Harold W. Doe (Maui)
Keith Keau (Maui)
Stanley Okamoto (Maui)
Georgiana Awo (Maui)

ITEM J-1 VENDING MACHINE CONCESSION, PASSENGER TERMINAL BUILDING, LANAI AIRPORT, LANAI (MAUI SODA AND ICE WORKS, LTD.)

ACTION Unanimously approved as submitted. (Higashi/Hong)

ITEM J-2 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAWAIHAE HARBOR, KAWAIHAE, HAWAII (YOUNG BROTHERS, LTD.)

ACTION This matter was deferred for lack of quorum since Mr. Ing excused himself because of a possible conflict.

ITEM J-3 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIERS 19 AND 20 HONOLULU HARBOR, OAHU (BREWER CHEMICAL CORPORATION)

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM J-4 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAHULUI HARBOR, MAUI (CHARLES S. OTA, DBA VALLEY ISLE ASSOCIATES)

ACTION Unanimously approved as submitted. (Ing/Hong)

ITEM J-5 USE OF HARBORS DIVISION FACILITIES, PIER 9, PASSENGER TERMINAL, HONOLULU, OAHU (ALPHA PHI ALUMNAE)

ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 11 GALLERY,
HONOLULU, OAHU (WILCO HAWAII, INC.)

ACTION Unanimously approved as submitted. (Hong/Ing)

ITEM J-7 MODIFICATION NO. 8 TO LEASE NO. A-62-13, HONOLULU INTERNATIONAL
AIRPORT, OAHU (CANADIAN PACIFIC AIR LINES, LTD.)

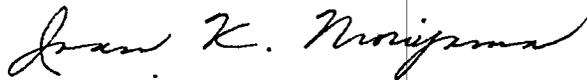
ACTION Unanimously approved as submitted. (Hong/Higashi)

ITEM J-8 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT NOS. 3581, 3582
AND 3583, AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Hong/Ing)

ADJOURNMENT: There was no further business and the meeting adjourned at 3:15 P. M.

Respectfully submitted,



JOAN K. MORIYAMA
Secretary

APPROVED



SUSUMU ONO
Chairman

jkm