

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

DATE: November 18, 1983

TIME: 9:00 A. M.

PLACE: DLNR Board Room

1151 Punchbowl Street

Honolulu, Hawaii

Roll
Call

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:10 AM., with the following in attendance:

Members

Mr. Takeo Yamamoto
Mr. Thomas S. Yagi
Mr. J. Douglas Ing
Mr. Moses W. Kealoha
Mr. Susumu Ono

(Mr. Roland Higashi was absent
and excused.)

Staff

Mr. James Detor
Mr. Roger Evans
Mr. Henry Sakuda
Mr. Libert Landgraf
Mr. Robert T. Chuck
Mr. John Corbin
Mrs. Joan K. Moriyama

Others

Dep. A. G. Edwin P. Watson
Mr. Leonard F. Alcantara (Items F-14
and F-15)
Mr. Bert Tokairin (Item H-1)
Mr. B. Martin Luna (Item H-2)
Mr. Sanford Granger (Item F-1-f)
Mr. James Mee (Item H-3)
Mr. Peter Garcia

Added
Item

The board, on Mr. Ing's motion and seconded by Mr. Yagi, unanimously approved to add the following item to the board agenda:

J. Other State Departments

17. Use of Harbors Division Facilities, Piers 10 and 11 shed, Irwin Park and surrounding areas under Harbors Division jurisdiction, Oahu (HONOLULU MARATHON ASSOCIATION)

ITEM F-14

STAFF RECOMMENDATION FOR DIRECT ISSUANCE TO NA PALI COAST BOAT CHARTER, GOVERNMENT LANDS (INCLUDING SUBMERGED AREA) AT HAENA POINT AND ON THE NA PALI COAST, KAUAI

ITEM F-15

STAFF RECOMMENDATION FOR DIRECT ISSUANCE OF LEASE TO NA PALI ZODIAC PRODUCTIONS, GOVERNMENT LANDS (INCLUDING SUBMERGED AREA) AT HAENA POINT AND ON THE NA PALI COAST, KAUAI

Mr. Detor recommended deferral of these two items since the department

has received requests from some Kauai residents for deferment of Items F-14 and F-15 until the next meeting, December 2, 1983, which is scheduled to be held on Kauai.

Mr. Leonard F. Alcantara, attorney representing Mr. Clancy Greff, one of the applicants, also requested deferment to give them more time to review this.

ACTION The board had no objection to deferring Items F-14 and F-15 until the December 2, 1983 meeting which is scheduled to be held on Kauai.

Item F-1-a HHA REQUEST FOR CONSENT TO ASSIGNMENT OF G. L. NO. S-4342, WAIMANALO APARTMENT PROJECT, WAIMANALO, KOOLAUPOKO, OAHU

This was a request from Hawaii Housing Authority (HHA) for consent to the assignment of G. L. No. S-4342, covering land in Waimanalo, on which are located housing units, to Waimanalo Associates, a Hawaii limited partnership. Under this arrangement, the partnership would take over the actual operation of the units from HHA.

ACTION Unanimously approved as presented. (Kealoha/Yagi)

Mr. Ing noted that according to the submittal, the partnership has not yet been approved by the Department of Commerce and Consumer Affairs. He asked the staff to be sure to follow up on this.

ITEM H-1 VIOLATION OF LAND USE IN THE STATE CONSERVATION DISTRICT, ADJACENT TO HANAKA OO BEACH PARK, TMK 4-4-06:33, LAHAINA, WEST MAUI

This was a violation of land use in the conservation district on beach lands adjacent to Hanakao Beach Park at Lahaina.

Mr. Evans said U International Corp. received a permit from the Department of Transportation for commercial filming at Lahaina Harbor and Mala Wharf area on West Maui. The permit was restricted to these areas for four days. However, a complaint was received by the Harbors Division on Maui, relating to the solicitation of business within the conservation district at the beach park.

Mr. Evans reported that our enforcement staff did observe offshore activities by a number of jet skis, which were being directed from the sandy beach area. It was confirmed that U International Corp. was responsible for the filming that was occurring.

Mr. Evans further stated that the sandy beach area from which the commercial beach filming was being directed does lie within the conservation district. They claimed that they did receive permission from the Department of Planning and Economic Development (DPED). However, staff's discussion with DPED indicated that there was no such permission ever given by them or by our department.

Staff recommended:

- A. That the board find that a violation of land use within the state conservation district has occurred through commercial filming at the sandy beach area of Hanakao Beach Park.

B. That the board impose a financial sanction in the amount of \$500 upon U International Corp., Honolulu, Hawaii.

C. That failure on the part of U International Corp. to comply with Section B, within sixty days after receipt of notice, the matter be turned over to the Department of Attorney General for disposition to include all administrative costs.

Mr. Ing asked what was the form of business that was being solicited.

Mr. Evans said staff didn't find any business being solicited. Staff found film commercial being made rather than finding someone soliciting. He said perhaps filming was interpreted by the complainant to be solicitation of business. That was the nature of the complaint.

Mr. Bert Tokairin, representing U International, said they don't deny there possible was a trespass. It was inadvertent. He said the President of U International, Mr. Takao Uno, an alien resident here, asked that if the board can see through that he be warned and reprimanded because of his good report, instead of a fine or citation.

Mr. Yagi said we have had people come before the board on violations. They also admitted that they have violated, and the board has cited them.

Mr. Ono said it is not that the industry itself did not know of the permit requirements. If this was something brand new and the industry wasn't aware of the requirements, the board can be more sympathetic.

ACTION

Mr. Yagi moved to approve staff's recommendation. Mr. Kealoha seconded and the motion was unanimously carried.

ITEM H-2

CDUA FOR NONCONFORMING SINGLE-FAMILY DWELLING USE ON PRIVATE PROPERTY AND UTILITY/ACCESS EASEMENTS OVER STATE-OWNED LANDS
WAIALA BAY, MAKENA, MAUI

Staff recommended approval of the use. Mr. Evans called the board's attention to Condition 5 on the requirement of a reconnaissance survey. This is a standard condition. However, our Historic Sites Section felt that in this particular instance a reconnaissance survey would not be necessary. Staff, therefore, recommended that Condition 5 be deleted.

Mr. B. Martin Luna, the attorney representing the applicant, said they have checked this area out and find that they may not have to do that.

Mr. Ono reminded Mr. Luna that they have to take appropriate measures in case they do run across sites or remains at the time of actual construction.

ACTION

The board, on Mr. Yagi's motion and seconded by Mr. Yamamoto, unanimously approved Item H-2, with the amendment deleting Condition 5.

Item F-1-f

STAFF RECOMMENDATION FOR THE CANCELLATION OF R. P. NO. S-5605 AND ISSUANCE OF NEW R. P. TO GRANGER PACIFIC, INC., PORTION OF LOT 120, SAND ISLAND, HONOLULU, OAHU

The board approved issuance of a permit in 1970 to Granger Pacific and

Revocable Permit No. 4451 was issued. Then in 1979, the board approved the cancellation of that permit and authorized issuance of Revocable Permit No. S-5605 to Granger Pacific with Charles Pankow & Associates sharing the space as co-tenants.

Mr. Detor said Charles Pankow & Associates is moving out day after tomorrow so Granger Pacific has asked that the space be turned over to them. The total area is 39,600 square feet, of which Granger Pacific actually occupies some 19,600 square feet. Mr. Detor said there are other people on the waiting list for space in Sand Island whose applications were made before Pankow people came. Staff suggested that a new permit be issued to Granger Pacific for some 19,600 square feet, rather than the total area.

Mr. Ing asked what has been our position with regard to expansion of existing lots in the Sand Island area.

Mr. Detor said they go to the waiting list. There are about six or seven people on that list. However, he said, you don't always have the one who is next on the list because the space may not coincide with what he wants.

Mr. Ing asked whether the staff had an opportunity to discuss this with the Attorney General's Office. He said when the permit was issued to Granger Pacific and Pankow as joint tenants, maybe each is legally entitled to the whole. If this were a lease, he said, you can draw that conclusion. But this is a revocable permit situation.

Mr. Detor agreed that that might hold true on a lease basis where you have a term of years, but this is a month-to-month permit, terminable with 30 days' notice. He didn't get a reading on that from the Attorney General's Office.

Mr. Sanford Granger said they originally had a permit for approximately one acre. When Pankow joined on this co-permit arrangement, Mr. Granger said, it fluctuated their time of use. When they initially had the property, they spent sizable sums putting some temporary structures, fencing, putting up gates, and clearing the property. There is no boundary between the two split parcels now. It's one fenced-in piece of property with one gate. They both use the same gate facility and their vehicles were able to go over their portion that they were using.

Mr. Granger said they had understood that when Pankow did leave, that they would get the entire parcel back. If they have to give up half of this and allow somebody else to come in, they would have to spend additional sums to put up security between the new tenant and themselves.

It is essential to their business, Mr. Granger said, to retain this property for the continued use of the area for their operation and asked for board approval.

Mr. Kealoha asked what prompted Granger Pacific to split the one-acre parcel in 1979.

Mr. Granger said they had inadvertently allowed Pankow to share the area.

ACTION

Mr. Kealoha moved for approval as recommended by staff. Mr. Ing seconded and the motion was unanimously carried.

ITEM H-3

CDUA FOR RECONSTRUCTION OF WAIKANE PIER AT WAIKANE, KANEOHE, OAHU

Staff recommended approval. Mr. Evans called the board's attention to Condition 11, "The applicant shall acknowledge unlimited public right to use the pier if accessed through public property, and shall post signs on the pier to that effect."

If the pier falls into disrepair and if it is to be demolished and cleared, Mr. Ing asked whether that would be done at the expense of the applicant.

Mr. Evans said if the pier is considered privately owned (and in this case it is), the private property owner would be expected to maintain it; and if the pier falls down, to remove it. On the other hand, if the private property owner disclaims any ownership of the pier, at that point we would have the problem in terms of the state liability.

Mr. Ono said that provision should be included in there to make it clear to all parties.

Mr. James Mee, attorney representing Mrs. Marks, said it was his understanding that they also have to apply for Department of Army permit. As part of the conditions of that permit, Mr. Mee said they have to maintain the pier up to standards acceptable to the Corps of Engineers, and they are also subject to liability if they do not maintain the standards.

On public access, Mr. Mee said, they have no problem with acknowledging unlimited public access from the seaward side. They would like to put restrictions on access from landward side because it is private property. They would also like to have some sort of control to prevent any vandalism and accident on the pier.

Mr. Ono asked should the county or the state acquire the beach access from the highway down to the beach, can the public come down there legally? Would the public be barred from using the pier from the land side?

Mr. Mee said it is not so much that they want to bar the public. They just want to make sure that nobody gets hurt. With a structure of that type, there is always that possibility. He said in the staff report it was mentioned that they should execute an indemnity agreement in favor of the state in case there is any accident. From the landowner's point of view, Mr. Mee said, they just want to make sure that there aren't people wandering down there without supervision. They might fall off and get hurt, or there is this other possibility of vandalism to the pier.

ACTION

Mr. Ing moved for approval with an amendment that in the event the pier falls into disrepair and becomes a hazard to the public, and in the event that it needs to be demolished, that it is to be done at the expense of the applicant. Mr. Kealoha seconded and the motion was unanimously carried.

- - -

Before taking up Item H-6, Mr. Ono asked for a short recess so the document pertaining to this application can be distributed to the board members. He said all parties to this case should also get a copy of the board's decision.

Meeting was called to order by Mr. Ono after a short recess.

ITEM H-6

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER ON THE
CONTESTED CASE HEARING FOR INTERSTATE ROUTE H-3 (DOCUMENT
WAS DISTRIBUTED AT THE BOARD MEETING)

Mr. Ono announced that the board will be acting on CDUA 7/27/81-1405 through its document, which was distributed to the board members and to all parties who were involved. The document was voluminous so Mr. Ono went over the highlights of the decision of the board and the signature page, as follows:

Based on the Findings of Fact and Conclusions of Law stated herein, it is the decision of the Board of Land and Natural Resources, as follows:

- A. *All records of the prior CDUA approvals (CDUA 648, 654) in addition to the records pertaining to CDUA OA-7/27/81-1405 on file with the Department of Land and Natural Resources, are hereby incorporated in the herein application.*
- B. *The Interstate Route H-3 Highway project proposed by applicant, Department of Transportation, under CDUA OA-7/27/81-1405, is a "governmental use" as stated in Title 13, Chapter 2.*
- C. *Substantial public benefit would result from the construction of the Interstate Route H-3 Highway project proposed by applicant, Department of Transportation, under CDUA OA-7/27/81-1405.*
- D. *The Land Board notes that impacts will result to the conservation district as a result of the Interstate Route H-3 Highway project; however, it is the decision of the Board of Land and Natural Resources that any impacts on the conservation district will be mitigated with the conditions imposed herein by the Land Board and, also, with the additional measures to be taken by the applicant to mitigate such impacts, to such an extent that the public benefits to be derived from the highway project far outweigh any impacts to the conservation district.*
- E. *The Land Board hereby approves the application (CDUA OA-7/27/81-1405) of the Department of Transportation as a Conditional Use under Title 13, Chapter 2.*
- F. *The issue of whether or not the Land Board may approve the Conservation District Use Application of the Department of Transportation as a "conditional use" has been raised in the contested case hearing on CDUA OA-7/27/81-1405.*

The position of the Land Board is that this Board does have the statutory authority and may properly approve a Conservation District Use Application as a "conditional use".

However, should the Land Board's approval of CDUA OA-7/27/81-1405 as a "conditional use" be successfully challenged and rendered null and void by a Court of law, it is the decision of the Board of Land and Natural Resources that the Interstate Route H-3 Highway project proposed under CDUA OA-7/27/81-1405, having also met the standards

and criteria of a "permitted use", is a "permitted use" and, therefore, hereby approves, in such a event, CDUA OA-7/27/81-1405 as a "permitted use".

- G. The Land Board hereby approves CDUA 1405 as an amendment to the Board's previous CDUA (CDUA 648, 654) approved on May 12, 1975, subject to the following conditions:
1. All conditions in CDUA 648/654 approved on May 12, 1975; and
 2. All conditions set forth in Title 13, Chapter 2, Subchapter 21.
- H. The Land Board hereby allows the applicant, Department of Transportation, a reasonable time, as determined by the chairman, to complete the highway project under the Section 13-2-21 relating to deviations from conditions or board conditions, subject to change at the direction of the Chairman.
- I. All mitigation measures suggested by the applicant, as they relate to this CDUA, are made a part of this Land Board's approval. These measures include, but are not limited to the following: (Mr. Ono stated that these conditions were listed 1 to 23 in the document and did not read them into the record.)
- J. In the event that any archaeological discoveries are made, the applicant shall immediately stop work and notify the State Historic Preservation Officer for further direction.
- K. Other terms and conditions as prescribed by the chairman.

The following was the final section of the document, the signature page:

Part V. ORDER OF BOARD OF LAND AND NATURAL RESOURCES

The herein Findings of Fact, Conclusions of Law and Decision of the Board of Land and Natural Resources are hereby APPROVED AND SO ORDERED.

Dated: Honolulu, Hawaii, November 18, 1983.

Signed by Susumu Ono, as Chairperson and Member; Roland H. Higashi, Member; Takeo Yamamoto, Member; Thomas S. Yagi, Member; and Moses W. Kealoha, as Member-at-Large, with a notation that J. Douglas Ing, Vice-Chairperson, having acknowledged looking at this particular page, but followed by dissenting opinion signed by J. Douglas Ing.

The board's decision on Item H-6 (CDUA No. 7/27/81-1405) was 5 in favor of approving this CDUA and 1 no. It was a 5-1 decision and the motion did carry.

Someone from the audience spoke out and requested that all of the transcripts in the record be kept available in the DLNR Planning Office. Mr. Ono assured him that they will be kept available.

Mr. Ono said we had tremendous cooperation from everyone and thanked the members of the board, staff, and the parties to this contested case hearing.

The board recessed at 10:05 A. M. for a short break before going to the next item and resumed its meeting at 10:15 A. M.

ITEM F-21

RESUBMITTAL - LEASE OF OFFICE SPACE FOR DSSH (HGEA BUILDING),
WAILUKU, MAUI

This was a resubmittal. It was deferred at the October 21, 1983 meeting because there was a question on the rental. The board felt that it was too high for Maui.

Mr. Detor reported that \$1.54 covers janitorial services and utility which makes it comparable to other rentals in that area.

Mr. Ing said the other question was whether there was other space available.

Mr. Ono said that is the responsibility of the Department of Accounting and General Services (DAGS). By the time it comes to us it is assumed that DAGS checked it out.

Staff said DSSH has been occupying this space for about a year and they haven't paid the rent.

ACTION Unanimously approved as submitted. (Yagi/Ing)

ITEM F-12

USA (U. S. MARINE CORPS) REQUEST EXTENSION TO LICENSE AGREEMENT
FOR MILITARY TRAINING AT KEKAHA, KAUAI (LAND UNDER LEASE TO
KEKAHA SUGAR CO., LTD., G.L. NO. S-4222)

The U. S. Marine Corps, with the approval of the board, has a license agreement for military training within the Kekaha Sugar Plantation area that it leases from the state. This particular license agreement runs to the end of this year. The Marine Corps is asking for an extension of that particular license agreement till the end of 1986.

Staff recommended approval with an administrative fee of \$250 for processing the license agreement. There is no rental charge now, either by the plantation or by the state.

Mr. Yamamoto moved for approval and Mr. Yagi seconded the motion.

Mr. Ing wanted to know why there was no rental charge.

Mr. Detor said there hasn't been in the past, but staff is recommending an administrative fee of \$250 so we can get some money out of it.

Mr. Ono said this particular request covers three years, and if you break the \$250 down into three years would be about \$80 a year. He asked whether that is reasonable.

Mr. Detor said that wasn't intended for rental, per se, but rather as a processing fee. He said they are using the same fee that we charged at Puunene Airport and also for the tank trail that goes down to Kawaihae from Waimea. He said for the tank trail, however, there is a term of years on it. The Puunene was for one-time operation.

Mr. Ono said we are not being consistent.

Mr. Kealoha said rather than one time charge for three years for administrative fee, he would prefer to go on an annual basis so we can get \$250 every year.

Mr. Detor suggested that the board defer this so the staff can take a look at it again.

Mr. Ono said the board is not opposed to the use. But, first of all, he said, we should be consistent throughout. Secondly, fee or rental should be assessed.

ACTION Mr. Yamamoto withdrew his earlier motion. The board unanimously agreed to defer this item for further review by the staff.

Mr. Ono reminded the staff that action has to be taken before the end of December since the current license expires the end of this year.

ITEM H-4 CDUA FOR A THREE-LOT SUBDIVISION AND CONSTRUCTION OF A TWO-BEDROOM DUPLEX AT TANTALUS, OAHU

Mr. Evans said the applicant has asked for deferral of this application until the meeting following the Kauai meeting. That meeting is scheduled to be held in Honolulu on December 16.

ACTION The board had no objection to deferring this item to December 16, 1983.

ITEM B-1 FILLING OF POSITION NO. 07647, RESEARCH STATISTICIAN III IN THE DIVISION OF AQUATIC RESOURCES (OAHU)

ACTION The board, on Mr. Ing's motion and seconded by Mr. Kealoha, unanimously approved the appointment of Ms. June Shimana to Position 07647, Research Statistician III.

ITEM C-1 REQUEST FOR APPROVAL TO NEGOTIATE AND EXECUTE A CONTRACT FOR VETERINARIAN SERVICES AT THE ENDANGERED SPECIES FACILITY AT POHAKULOA, HAWAII

ACTION Unanimously approved as submitted. (Yagi/Ing)

ITEM C-2 REQUEST FOR LEAVE WITHOUT PAY (EDUCATIONAL LEAVE)

ACTION The board unanimously approved the one-year leave without pay (educational leave) for Michael Buck for the period April 30, 1984 to April 29, 1985. (Yagi/Ing)

ITEM D-1 APPROVAL OF RETAINAGE SUBSTITUTION AGREEMENT - JOB NO. 41-OL-31, WAIMANALO AGRICULTURAL PARK, PHASE I, WAIMANALO, KOOLAUPOKO, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM D-2 PROJECT FOR PROTECTION OF INSTREAM USES OF WATER

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ADOPTION OF CHAPTER 167 OF TITLE 13, ADMINISTRATIVE RULES,
"PROTECTION OF INSTREAM USES OF WATER, WINDWARD OAHU"

Staff recommended the adoption of these rules and regulations by the board as presented.

Mr. Ono asked Mr. Chuck what kind of reaction the staff got from the public hearing.

Mr. Chuck said it was noncontroversial. It was two-sided. The environmentalists wanted the rules and regulations strengthened to take care the environmental concerns. The developers who need water say the law says this program should be implemented where practicable. They wanted to make sure that the use of water from streams can be safeguarded in the rules and regulations. Mr. Chuck said to date we have not received any objections to the final document.

Mr. Ing said the regulation sets two different types of controls: One, on the water (the stream itself). The other, on the modification and alterations on the stream channel. He said the water in the stream is going to be controlled through the minimum instream flow certifications when they are done. He asked whether the channel modification permits apply to stream that has not been certified.

Mr. Chuck said the law mandates that this board controls all the windward streams regardless if those streams have had standards adopted for them or not.

Mr. Ing said the permit is required for alterations in the stream channel. He said "stream channel" is defined as, "...The channel referred to is that which exists at the present time," He asked what was meant by present time. (page 167-3)

This language was taken from the law, Mr. Chuck said, and they interpreted that to mean that when these rules and regulations take effect, as of that date that will determine the configuration of stream channels on the windward side of the island.

Mr. Ing said "at the present time" means at the time of enactment. If someone reads that, it may mean to him ten years from now as opposed to when the rules are enacted. He said that might cause some confusion.

Deputy Attorney General Edwin Watson suggested using, "at the time of enactment of these rules and regulations."

Mr. Kealoha said there is a typo on page 167-6 under Item (c), second to the last sentence. It should correctly read, "and effort."

Mr. Ing questioned second to the last sentence on page 167-7, Section 13-167-14: "The board shall cause a notice of its decision to be published in a newspaper of general circulation, and when so published its decision shall be final, unless judicially appealed pursuant to law." He said there is no provision in Chapter 91 for publication in the newspaper. He asked whether in this case it is thirty days after publication or after the decision. He said the concern here was that the decision may be rendered but people

may not know about it. If we are going to publish notice in the newspaper, it's a little bit different from how Chapter 91 is worded. So it might be better, he said, just to say thirty days from the date of publication unless appealed to the circuit court.

Mr. Kealoha said by adopting this rule the board will be required to make public notice after every decision, and we will be incurring unnecessary expenses to notify the public of this decision.

Mr. Chuck asked the board to defer this matter until the latter part of this meeting so he can check the act to see if this is a requirement.

The board agreed to defer this item until Mr. Chuck can check the law. The board continued with the rest of the items on the agenda. (See page 19 for continuation of Item D-3.)

ITEM F-1 DOCUMENTS FOR BOARD'S CONSIDERATION

(See page 2 for Item F-1-a.)

MAUI

Item F-1-b REVOCABLE PERMIT

J. G. VANNOY & MARILYN M. VANNOY - strip of government land seaward of applicant's property, bearing TMK 4-5-13:05, situate at Lahaina - for maintenance of existing seawall and landscaped area - \$10 per month

Staff recommended that a permit be granted covering the subject parcel as an interim measure so a shoreline certification can be given to him. Mr. Detor said at a later date we can go into one of the following alternatives:

1. Require the landowner to purchase the encroached area in fee; or
2. Require the landowner to purchase an easement covering the encroached area; or
3. Require the landowner to remove the existing seawall and restore the area to a condition acceptable to this department.

Mr. Detor felt the best thing would be to sell an easement and cover not only this area but other areas as well. He said this situation runs all the way from one end of Lahaina town to the other end.

Mr. Kealoha said if we go through this permit route as an interim, we'll never get it finalized. He said we have to devise a plan of action or some strategy to cover the whole strip.

Mr. Ono said unless you assign somebody to work on this, nothing would be done if you go through this permit route as Mr. Kealoha had indicated.

Mr. Detor said the Maui Land Agent can take care that.

Mr. Ono suggested that Option No. 2 be taken and the Maui Land Agent be assigned to go on the site with the State Surveyor.

Mr. Detor recommended that the board authorize an easement, rather than a permit, and staff to proceed with the whole area at one time. Staff can come back to the board with a list of these people, he said.

Mr. Ing brought up the question of maintenance, liability, etc.

Mr. Watson said if you sell them an easement, they are responsible for liability insurance, maintenance, etc. This is covered in the regular easement document with the standard terms and conditions.

ACTION The board took separate action on Item F-1-b by approving it as amended above, on Mr. Yagi's motion and seconded by Mr. Yamamoto.

HAWAII

Item F-1-c REVOCABLE PERMIT
REEDS BAY DEVELOPERS, INC. - Government lands at Waiakea, South Hilo - for parking (nineteen stalls) at a monthly rental of \$190 based on \$10 per stall per month

The applicant has been using part of the area for parking. The board authorized issuance of a permit in 1968 to the developers of this condominium, Reeds Bay Developers, Inc. for landscaping purposes. They subsequently paved about 5,500 square feet of the area (without board approval) and started using it for parking.

In September of 1969, the board approved cancelling that permit and authorized issuance of a new permit for landscaping and parking purposes. Subsequently, they vacated the premises in 1972 and the permit was cancelled. They started using it again without authorization.

Mr. Detor said we have been having lots of problems with the condo people, and Mr. George Hacker, who is the President of Reeds Bay Developers, has agreed to step in and pay back rent covering this area.

Staff recommended that a permit be given to them, retroactive to January of 1973 and charge them the then rental of \$50 per month. The new permit will go into effect at \$190.00 per month, based at \$10 per stall per month.

Mr. Ono said he would like to have the staff check what kind of rental increase there was in the Hilo area since 1973. He felt that we should calculate the retroactive rental by adding whatever rate increase there might have been during the ten-year period. He said if we do it this way they are getting a break on the rental and he didn't feel we should give them a break on the rental. There has been a violation.

Mr. Detor said we can do that. However, he wanted the board to know that Mr. Hacker stepped in and he is willing to pay based on this. He is really not obligated to do this. It's the condo people themselves. They have been very uncooperative so far. So the alternative would be to fence it off. But we wouldn't collect anything.

Mr. Ing said we are going from \$50 per month to \$190 so that is a four-fold increase. He didn't think permits in the Hilo area went up that much. He said it may turn out that this is a better arrangement.

Mr. Kealoha said no doubt that \$190 is a lot better than \$50. However, he said we are talking about the \$50 retroactive rent, which is a separate issue. There may have been a percentage incremental increase on permits in the Hilo area. He said that should be settled first. He suggested that this matter be deferred when Mr. Higashi is present at the meeting.

ACTION The board was in unanimous agreement to defer Item F-1-c, as suggested by Mr. Kealoha.

HAWAII

Item F-1-d ASSIGNMENT OF LEASE

MARGARET McKEEN, widow, assignor, to MARGARET McKEEN, widow, and ROBERT C. McKEEN, JR., husband of Natalie McKeen, as joint tenants with right of survivorship, as assignees - Lot 24, Ocean View Lease Lots (Second Series), Waiakea, South Hilo - GL No. 3157

KAUAI

Item F-1-e ASSIGNMENT

DONALD L. BODINE, whose wife is Carolyn H. Bodine, Assignor, to VERN WARD BISHOP and LAVERNE SHOOK BISHOP, husband and wife, Assignees, as Tenants by the Entirety - Easement A, Kalaheo, Koloa - Grant of Easement (Land Office Deed No. S-27347)

(See pages 3 and 4 for Item F-1-f.)

HAWAII

Item F-1-g REVOCABLE PERMIT

WILBUR J. HENSLER and ILA M. HENSLER, husband and wife - Niupea and Manowaialee, Hamakua

Mr. Ing disqualified himself from voting on this item.

Mr. Kealoha asked whether we can lease this instead of issuing a permit.

Mr. Detor said there may be an access problem over the neighboring private land. He said staff can check it out.

ACTION The board took separate action and approved Item F-1-g, on Mr. Kealoha's motion, seconded by Mr. Yagi, with the understanding that efforts be made to lease the two separate parcels.

Mr. Ing was excused from voting on this item.

OAHU

Item F-1-h REVOCABLE PERMIT

DYNAMIC INDUSTRIES CORPORATION - state lands at Kapalama, Honolulu, for storage of construction equipment, materials and maintenance work of same - monthly rental to be determined by staff appraisal, same subject to review and approval by the chairperson

This was an application for a permit which covers the incinerator site at Kapalama, part of which is currently under an executive order to the City and County of Honolulu. The other part is under a right of entry to the U. H. Mr. Detor said this whole area is being turned over to the University by previous action of this board.

According to Mr. Detor, the University was approached initially for a permit, and the University and the city are both agreeable to the arrangement.

Mr. Kealoha said the city has no right being there. They have no voice.

Mr. Detor said the area is technically still under them since the executive order has not been cancelled. There was board action on it but the paper work has not been completed.

Mr. Kealoha said as he understood it, the city is subletting and not paying the University anything. They are running their own business there, using it for free, and they have their own tenants.

Mr. Ono asked the staff to check on the status of the cancellation of the executive order.

MAUI

Item F-1-i ASSIGNMENT OF GRANT OF EASEMENT

CENTRAL KEOKEA ASSOCIATES, a Hawaii registered limited partnership, Assignor, to PDI-VII, Inc., a Hawaii Corporation, Assignee - Grant of Easement (Land Office Deed No. S-27321) - Waiohuli, Wailuku

Item F-1-j NOTICE OF ASSIGNMENT OF LEASE

HANA RANCH, INC., Assignor, to KIPAHULU WAI HUI, a nonprofit Hawaii Corporation, Assignee - portion of the government lands of Kaumakani and Puaaluu (watershed area) situate at Kaumakani, Puaaluu, Kipahulu, Hana

ACTION The board, on Mr. Yagi's motion and seconded by Mr. Kealoha, unanimously approved Items F-1-d, e, h, i and j.

ITEM F-2 COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY REQUEST FOR SET ASIDE OF LAND AND EASEMENTS AT LALAMILO, SOUTH KOHALA, HAWAII

ACTION Unanimously approved as submitted. (Yagi/Ing)

ITEM F-3 HHA REQUEST FOR RIGHT OF ENTRY FOR TOPOGRAPHY, SOIL TEST, DESIGNING AND ENGINEERING PURPOSES, STATE PARCEL AT WAIAKEA, SOUTH HILO, HAWAII - TMK 2-4-03:25

ACTION Unanimously approved as submitted. (Yagi/Kealoha)

ITEM F-4 STAFF RECOMMENDATION TO CANCEL GL NO. S-4380 TO TAIZEN AND CHIEKO SUGIMOTO, KANIAHIKU, PUNA, HAWAII

ACTION Unanimously approved as submitted. (Yagi/Kealoha)

ITEM F-5 HAJIME OZAKI REQUEST FOR DELETION OF RESERVATIONS CONTAINED IN LAND PATENT (GRANT) NO. 4942, OLAA, PUNA, HAWAII

ACTION Unanimously approved as submitted. (Yagi/Kealoha)

ITEM F-6 TONY R. CHAPMAN REQUEST TO HOLD WEDDING CEREMONY ON PORTION OF BEACH AT WAIALAE, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-7 HILTON HAWAIIAN VILLAGE REQUEST FOR PERMIT TO HOLD ATHLETIC EVENTS AT FT. DERUSSY BEACH, WAIKIKI, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-8 REQUEST FOR EXTENSION OF G. L. NO. S-3769 TO MUN ON CHANG AND ROSALINE K. CHANG AND CONSENT TO MORTGAGE, LOT 29, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU

ITEM F-9 REQUEST FOR EXTENSION OF G.L. NO. S-3762 TO CLYDE H. MIYAMOTO AND HENRY H. MIYAMOTO AND CONSENT TO MORTGAGE, LOT 14, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU

Items F-8 and F-9 were requests for extensions of the Waimanalo leases and also for consent to mortgage to get financing for purposes stated in the submittals. The terms and conditions listed in the conditions were standard conditions that have been used on other extensions at Waimanalo. It calls for the immediate reopening of the lease rental, and also that there be no assignment for a period of five years following the date of this particular action.

Mr. Detor said after the fifth year they can come to the board and request consent to an assignment. They don't have the automatic right to transfer it.

Mr. Ing asked whether we need to have a condition here that construction be done within a certain period of time.

Mr. Detor said we have a condition that the lease extension shall be considered null and void in the event the mortgage loan has not been finalized within six months from the date of this board approval. However, there is no provision for construction period. He said that provision can be included.

Mr. Watson pointed out that there have been a rash of second and third mortgages on state leases. He has been aware that mortgage moneys were not being used to put improvements on the land, but were being used for other investment purposes. He suggested a condition of a time period in which to construct the improvements, that the funds from the mortgage be used specifically for the lease premises.

Mr. Kealoha said another concern that he has is the staff has no information on the lessee's productivity on the farm. The Land Bank tells him what percentage of the loan has to be for the construction, etc., so they do it, and nothing is done on the farm.

Mr. Detor said the lease says that it can only be used for such and such purpose, for cultivation of crops. But it doesn't say that you have to put in so many acres within so much time. These leases don't have that provision. So technically, as long as he doesn't use it for prohibitive use, he can just sit there and not farm.

Mr. Watson said you can incorporate all of the new terms and conditions of our current ag leases when the extension is granted.

ACTION The board, on Mr. Ing's motion and seconded by Mr. Kealoha, unanimously approved Items F-8 and F-9 with an amendment to incorporate all the standard terms and conditions of today's ag leases.

ITEM F-10 DIRECT SALE OF PERPETUAL NON-EXCLUSIVE EASEMENT TO MANOA SHOPPING CENTER, INC., MANOA, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-11 U.S. ARMY REQUEST FOR EXTENSION OF LICENSES AT WAIANAE, OAHU

Mr. Detor amended this submittal to include the rental.

ACTION Unanimously approved as amended above. (Yagi/Ing)

(See pages 8 and 9 for Item F-12.)

ITEM F-13 CITIZENS UTILITIES CO. AND HAWAIIAN TELEPHONE CO. REQUEST FOR STUB POLE AND ANCHOR EASEMENTS, KAPAA, KAWAIHAU, KAUAI

ACTION Unanimously approved as submitted. (Yagi/Ing)

(See pages 1 and 2 for Items F-14 and F-15.)

ITEM F-16 AMENDMENT AND EXTENSION OF LEASE OF OFFICE SPACE FOR THE DEPT. OF LABOR & INDUSTRIAL RELATIONS, KANEOHE, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-17 LEASE OF OFFICE SPACE FOR THE DSSH, WAILUKU, MAUI

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM F-18 CONVEYANCE OF ARMY STREET AT WAIANAE-KAI TO THE CITY AND COUNTY OF HONOLULU, WAIANAE-KAI, OAHU

ITEM F-19 CONVEYANCE OF ROADWAYS WITHIN WAIALAE-KAHALA NEIGHBORHOOD AREA TO THE CITY AND COUNTY OF HONOLULU, OAHU

ACTION Items F-18 and F-29 were unanimously approved as submitted. (Ing/Yagi)

ITEM F-20 AMENDMENT OF LEASE, OFFICE SPACE FOR DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Yagi/Ing)

(See page 8 for Item F-21.)

(See pages 2 and 3 for Item H-1, page 3 for Item H-2, page 5 for Item H-3 and page 9 for Item H-4.)

ITEM H-5 CDUA FOR SUBZONE BOUNDARY AMENDMENT AND A SINGLE-FAMILY RESIDENCE AT LANIKAI, OAHU (SUBMITTAL TO BE DISTRIBUTED AT THE BOARD MEETING)

Mr. Ono informed the board that he had some questions on this CDUA so he held up the submittal.

Mr. Evans said we do have time until the next meeting in December.

ACTION This item was deferred until the next board meeting.

(See pages 6 and 7 and page 20 for Item H-6.)

<u>ITEM H-7</u>	<u>PERMISSION TO CONTRACT WITH THE U. H., COLLEGE OF TROPICAL AGRICULTURE AND HUMAN RESOURCES FOR CONTINUATION OF THE HAWAIIAN PRAWN AQUACULTURE RESEARCH PROGRAM</u>
<u>ITEM H-8</u>	<u>PERMISSION TO CONTRACT WITH THE U. H. TO CARRY OUT A STUDY OF BENTHIC AND WATER COLUMN MICROBIAL ACTIVITIES IN HAWAIIAN AQUACULTURE PONDS</u>
<u>ITEM H-9</u>	<u>PERMISSION TO CONTRACT WITH THE RCUH TO CARRY OUT A PROGRAM OF AQUACULTURE EXTENSION</u>
ACTION	Items H-7, H-8 and H-9 were unanimously approved as presented. (Kealoha/Yagi)
<u>ITEM J-1</u>	<u>CONSENT TO SUBLEASE, LEASE NO. DOT-A-78-9, OAHU (AIR MOLOKAI, LTD. TO HAWAII AIR AMBULANCE)</u>
ACTION	Unanimously approved as submitted. (Yagi/Ing)
<u>ITEM J-2</u>	<u>CONSENT TO MORTGAGE - LEASE NO. DOT-A-79-18, HONOLULU INTERNATIONAL AIRPORT, OAHU (PARADISE HELICOPTERS, LTD. - LIBERTY BANK)</u>
ACTION	Unanimously approved as submitted. (Yagi/Ing)
<u>ITEM J-3</u>	<u>CONSENT TO AMENDMENT OF SUBLEASE, HONOLULU INTERNATIONAL AIRPORT, OAHU (CONTINENTAL AIRLINES - BURLINGTON NORTHERN FREIGHT, INC.)</u>
	Mr. Ono asked Mr. Garcia whether the rental that Continental Airlines pay the state changes.
	Mr. Garcia said there is no change in the rental. He said they pay on the lease premises. He said if they are charging excessive amount, they can increase the sublease rental. However, in this case Continental Airlines constructed the building and they are paying the rental that DOT felt to be equitable.
	Mr. Ono said that should be noted somewhere in the submittal. Otherwise the board can get criticized if it approves this and doesn't know what the arrangement is between parties.
	Mr. Garcia said he will so inform the DOT staff to show some type of cost breakdown in the submittal.
ACTION	Unanimously approved as submitted. (Ing/Yagi)
<u>ITEM J-4</u>	<u>RENEWAL OF REVOCABLE PERMIT NOS. 1950, ETC., CONFORMING USE, AIRPORTS DIVISION</u>
ACTION	Unanimously approved as submitted. (Ing/Kealoha)

- ITEM J-5 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT NOS. 3805, ETC., AIRPORTS DIVISION
- ACTION Unanimously approved as submitted. (Yagi/Yamamoto)
- ITEM J-6 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT NOS. 3631 AND 3810, AIRPORTS DIVISION
- ACTION Unanimously approved as submitted. (Ing/Yagi)
- ITEM J-7 USE OF HARBORS DIVISION FACILITIES, PIERS 9 AND 10, PASSENGER TERMINAL, HONOLULU, OAHU (BUILDING INDUSTRY ASSOCIATION OF HAWAII)
- ACTION Unanimously approved as submitted. (Ing/Yagi)
- ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 35, HONOLULU HARBOR, OAHU (FLYNN-LEARNER, INC.)
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-9 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NEAR KEEHI LAGOON, HONOLULU, OAHU (THE RMT CORP.)
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-10 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 19, HONOLULU, OAHU (HAWAIIAN SHRIMP CO.)
- ACTION Unanimously approved as submitted. (Yagi/Yamamoto)
- ITEM J-11 USE OF HARBORS DIVISION FACILITIES, PIERS 9 AND 10, PASSENGER TERMINAL, HONOLULU, OAHU (HONOLULU MARATHON ASSOC.)
- ADDED
ITEM J-17 USE OF HARBORS DIVISION FACILITIES, PIERS 10 & 11 SHED, IRWIN PARK AND SURROUNDING AREAS UNDER HARBORS DIVISION JURISDICTION, OAHU (HONOLULU MARATHON ASSOCIATION)
- Items J-11 and Added Item J-17 were related so they were taken up together.
- ACTION Items J-11 and Added Item J-17 were unanimously approved as presented. (Kealoha/Ing)
- ITEM J-12 USE OF HARBORS DIVISION FACILITIES, PIER 10 PASSENGER TERMINAL OAHU (HAWAII RIGHT TO LIFE, INC.)
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-13 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 39, BACKUP AREA, HONOLULU HARBOR, OAHU (B & E, INC. DBA POLYGLYCOAT A-1 APPLICATORS)
- ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-14 LEASE - INSTALLATION, OPERATION AND MAINTENANCE OF A 4-BOX VISUAL APPROACH SLOPE INDICATOR (VASI) FACILITY FOR RUNWAY 22L, HONOLULU INTERNATIONAL AIRPORT, OAHU (FAA)

ITEM J-15 LEASE - INSTALLATION, OPERATION, AND MAINTENANCE OF A VISUAL APPROACH SLOPE INDICATOR (VASI) FACILITY FOR RUNWAY 26L, HONOLULU INTERNATIONAL AIRPORT, OAHU (FAA)

ACTION Items J-14 and J-15 were unanimously approved as submitted. (Ing/Kealoha)

ITEM J-16 AMENDMENT NO. 1 TO LEASE NO. DOT-A-83-10, LIHUE AIRPORT, KAUAI (FAA)

ACTION Unanimously approved as submitted. (Yamamoto/Yagi)

(See page 18 for Added Item J-17.)

Continuation of Item D-3 from page 11.

Mr. Chuck said during the earlier discussion the question of publishing the notice of decision came up. He said the law does not require that this notice be published. He also reviewed the comments that had come in on this matter of publishing the decision, and there was none.

Mr. Chuck said staff has put this in as a means of notifying the people that might be affected since lots of people are affected by the stream, as compared to an applicant that is applying for something from this board, and gets notified by a letter.

Mr. Chuck further pointed out that the same provision is in our rules and regulations for the groundwater use control, that it shall cause a notice of its decision to be published in a newspaper after the board decides to designate an area.

The above was the background as to how this wording of publishing a notice of its decision is in there, Mr. Chuck said.

Mr. Ono suggested deleting the publication portion. He said the critical day is when the board makes its decision.

Mr. Chuck said then the last sentence in Section 13-167-14 on page 167-7 should read, "The board shall cause a notice of its decision concerning the adoption of instream flow standards to be published in a newspaper of general circulation." Delete "unless judicially appealed pursuant to law." The last sentence stands.

Mr. Chuck recommended the adoption of the rules as amended above, also the amendment on page 3 on "Stream channel" to read "at the time of enactment of this chapter," and delete "at the present time"; also typo on page 6 under Item c, second to the last sentence. It should correctly read, "and effort."

ACTION Mr. Ing moved for approval, Mr. Kealoha seconded, and the board unanimously approved Item D-3 as amended above."

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Mr. Watson said a question was raised by the media as to why there was no voice vote by the board on Item H-6 on the Interstate Route H-3 decision. Mr. Watson said he would like to advise the board of its requirements under the law and suggested that the board go into executive session.

Mr. Kealoha moved, Mr. Yagi seconded, and the board unanimously voted to go into executive session at 12:32 P. M.

At the executive session were all of the board members who were present at the meeting, also Deputy Attorney General Edwin P. Watson, Roger Evans and Joan K. Moriyama, secretary, and Mr. Watson explained to the board of its requirements under the law.

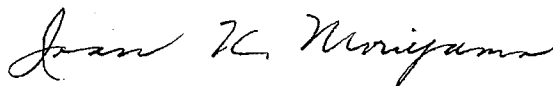
The board then concluded its executive session and reconvened its regular meeting again, with Mr. Ono calling the meeting to order at 12:45 P. M.

The board was in unanimous agreement with the method of voting reported in the earlier discussion (see pages 6 and 7) by Mr. Ono, and authorized by Mr. Watson to so inform the media.

Mr. Watson said he will explain to the media that the board chose to have the votes of the individual board members read into the record (which was done) by the chairperson as they have signed the document, rather than to go on roll call voice vote. He said he will also inform the press that a further legal research into the matter will be made, and if there are still questions on it, the board, at its subsequent Land Board meeting, can re-affirm the decision by voice vote.

ADJOURNMENT: There was no further business and the meeting was adjourned at 12:40 P. M.

Respectfully submitted,



JOAN K. MORIYAMA
Secretary

APPROVED



SUSUMU ONO
Chairperson

jkm