

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

DATE: April 27, 1984
TIME: 9:00 A.M.
PLACE: State Building, Section B
Conference Room, 3rd Floor
54 High Street
Wailuku, Maui

ROLL
CALL

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

MEMBERS Mr. Takeo Yamamoto
Mr. Thomas Yagi
Mr. Roland Higashi
Mr. Moses W. Kealoha
Mr. Susumu Ono

Absent & Excused

Mr. J. Douglas Ing

STAFF Mr. James Detor
Mr. Roger Evans
Mr. Ronald Walker
Mr. Henry Sakuda
Mr. Fred Ball
Mr. Ralston Nagata
Mr. Allan Tokunaga
Mrs. LaVerne Tirrell

OTHERS Dep. Atty. Gen. Johnson Wong
Mr. Peter Garcia, DOT
Mr. Bill Chang (Items F-1-a to g)
Mr. Luna (Item F-10)
Mr. Breezer Bush (Item H-3)

ADDED
ITEMS

Upon motion by Mr. Higashi and a second by Mr. Kealoha, the board voted unanimously to add the following items to the agenda:

Division of Water & Land Development

Item D-1 -- Approval to Attend a Desalting Meeting

Administration

Item H-7 -- Filling of Position No. 2727, Private Secretary II, and Position No. 6645, Private Secretary I, Office of the Chairman and Approval of Leave -- without-pay Period.

Land Management

Item F-24 -- Consent to Mortgage

Item F-25 -- Right-of-Entry to Kohala Corporation

To accommodate those applicants present at the meeting, items on the agenda were considered in the following order:

- ITEM F-1-a COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO MAUI ECONOMIC OPPORTUNITY, INC., HANA, MAUI.
- ITEM F-1-b COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO MAI KALANI FOUNDATION, HANA, MAUI.
- ITEM F-1-c COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO LOKAHI PACIFIC, HANA, MAUI.
- ITEM F-1-d COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO HANA COMMUNITY ASSOCIATION, HANA, MAUI.
- ITEM F-1-e COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO HANA CANOE CLUB, HANA, MAUI.
- ITEM F-1-f COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO HANA DAY CARE CENTER, INC., HANA, MAUI.
- ITEM F-1-g COUNTY OF MAUI REQUEST FOR CONSENT TO LEASE OUT PORTION OF THE OLD HANA SCHOOL TO HANA DISTRICT POHAKU NON-PROFIT CORP., HANA, MAUI.

Mr. Detor explained that Items F-1-a through F-1-g are requests for a series of subleases involving the old Hana School. The land is set aside to the County of Maui for community center purposes and the county wishes to sublease to various organizations listed in the submittal for purposes that are consistent with the executive order.

Mr. Yagi moved for approval of Items F-1-a through F-1-g as submitted. Mr. Ing seconded.

Before voting on Mr. Yagi's motion, Mr. Ono called to the board's attention that when the executive order was being considered, the Hana Community people showed a lot of interest as to how the old Hana School building was to be utilized, who was to manage it, etc. Since Mr. Bill Chang of the Hana Community was present at this morning's meeting, Mr. Ono asked for Mr. Chang's assessment as to how things have progressed thus far.

Mr. Chang, President of the Hana Community Association, stated that back in 1979, short of about a year before the DOE was to vacate the premises of the old Hana School the community requested of the Governor, with a copy of the request to Mayor Hannibal Tavares, that the old school be considered for use as a community center. He said that they have communicated with all parties involved over the years in trying to set this center up in such a manner that it would best service the community.

He explained that Hana's unique needs are a result of their isolation from the rest of the Maui Community so they have needs that are not necessarily answered by standard community centers in other locations because small organizations have difficulty obtaining space in the private sector.

Mr. Chang said that the question was as to whether or not management under the county would be overly restrictive on the kinds of uses that the community had in mind when they made this proposal. To date, under the executive order to the county, the community has been able to satisfy the needs of the organizations which are mentioned in the submittal. However, the needs of the smaller organizations, which are too small to incorporate as non-profit tax exempt organizations in order to qualify for leasing space, are left in a predicament where the management of the excess space

would impinge on their ability to utilize the facility to the extent that they would like to. Use by a permit basis -- on a day-to-day kind of schedule -- would be their only access to the facility. Although the county has said that they would allow nominal storage space in the facility, it makes it kind of difficult for any kind of continuity in the programs that they run.

Mr. Chang explained that his reason for testifying this morning was to make the board aware that there is this gray area that they would like to be addressed that may require some kind of compromise both on county level and state level in order to make it possible.

Their original proposal was a pilot project that would sort of drop the barriers for a period of time to give them time to work out a means to put the total program into operation -- to work out the bugs -- to see where they could then draw the perimeters of what could happen in the center. They are still hesitant to totally agree with the set-up as it is although they have no objections to the lease program that is set up right now.

Mr. Yagi asked who the County contact person was.

Under the program set up in the community center, said Mr. Chang, a Mr. Clyde Kahula is Director of the Center under the Department of Parks and Recreation. The Center has been assigned to Maui County's Department of Parks & Recreation for administration.

Mr. Yagi asked if it wouldn't be better for the State and County people to sit down with the Community group to iron out the gray areas.

Mr. Chang answered yes. He explained that the original concept that they had proposed was for the center to be totally self-sufficient so that it would not be a financial burden either to the State or the County. Being government property, however, puts it into kind of a strange position, unique from the State.

Mr. Chang said that they had in mind economic development programs that would service the community in a manner that would also cover the overhead cost of running the center. In other words, any kind of commercial or profit making activity would be to the benefit of the center itself. If by some miracle it got to the point where it got to be a very big money-making project, then the funds would have to be worked out with the State and the County.

Mr. Yagi asked if any organizations had been left out of this center.

Mr. Chang explained that under their original occupancy with the DOE, there were about fifteen occupants. But today only about six or seven are being approved. The balance of the occupants may be coming in under another category for leasing. However, smaller groups like the 4-H club, baseball teams, etc. would have to come in for a permit on a day-to-day basis.

Mr. Yagi asked that Mr. Detor arrange a meeting between the County, State and the Hana Community group to iron out these gray areas and report back to the board the result of said meeting.

ACTION

The board unanimously approved Mr. Yagi's motion which was seconded by Mr. Ing, to approve Items F-1-a through F-1-g as submitted.

At Mr. Yagi's request, staff is to set up a meeting with the County, State and Hana Community group and report back to the board the results of said meeting.

STAFF RECOMMENDATION FOR WAIVER OF REPURCHASE OPTION, LOT 42, WAHIKULI HOUSE LOTS, 5TH SERIES, WAHIKULI, LAHAINA, MAUI.

Mr. Detor explained that this particular lot was originally sold back in 1977 at public auction, and the lady who bid it in at the time has since died. In the interim, she had turned it over to her parents by deed which the board did not consent to. Her parents now have the house and they are occupying and using it. What her parents would like now is for the board to waive the repurchase option in order that they may legally own the premises.

Mr. Yagi said that he understood that Ms. Helgelien died in an automobile accident and her daughter is living in this residence with her grandparents who, he understood, also put up the mortgage money for the house.

ACTION

Mr. Yagi moved for approval of staff's recommendation that the board waive its option to repurchase the subject Lot 42 of the Wahikuli House Lots, 5th Series in this instance only, all other applicable terms and conditions of SSA No. S-5497 and Land Patent No. S-15,548 including the (10)-year repurchase option of the State to remain unchanged and in full force and effect. Motion carried unanimously with a second by Mr. Higashi.

Mr. Ono said that the unusual circumstances of this case should be included in the submittal and it should be interpreted as a precedence setting policy that the board has adhered to in the immediate past.

Mr. Kealoha said that he understood that the grandfather had gone to legal proceedings to get custody of his granddaughter.

Mr. Luna, attorney, said that there was a court proceeding where the grandfather and the natural father were trying to get custody of the child from guardians appointed by the court. The grandparents and the natural father now have the child.

Mr. Ono said that all these factors should be included in the minutes to show that this is not an ordinary option to repurchase type of a case.

Mr. Ono asked Mr. Luna if he had any further remarks to make in order for the board to really justify the board deviating from it's normal policy.

Mr. Luna said that he spoke at length to Mr. Wilson Keahi, who is the natural father of the child and a good friend of the young lady who had purchased the property and he had informed me that in fact Jacqueline Helgelien had approached him and asked him about the auction at the time they were being placed for purchase -- which was early 1976 -- and he had referred her to his brother who, subsequently, was also a successful purchaser of one of the lots.

After she had the lot, she had asked her parents to help her put up the house and that is how the parents got involved subsequent to the purchase. Because of the relationship she had with her parents, she wanted to make sure that that they would be covered for the loan that they made to her. Unfortunately, the auto accident did occur so, on their behalf, Mr. Luna, asked that the repurchase option be waived.

Mr. Kealoha said that he would like to see the court proceedings for the legal custody of the child placed on record at Mr. Detor's office.

Mr. Ono wanted it clearly understood by Mr. Luna that the 10-year repurchase option still holds even though the property is going to her parents.

CDUA FOR NONCONFORMING SINGLE DWELLING AT LAUPAHOEHOE GULCH, NORTH HILO, HAWAII, TMK: PORTION OF 3-6-04:1 (THEO. H. DAVIES HAMAKUA SUGAR CO.)

The subject parcel is comprised of portions of three Grants. They are: Grant 1060, Grant 1062 and Grant 1066. Since the entire parcel is larger than the ten acre maximum allowed in DLNR's regulations and, therefore, cannot qualify as a nonconforming use parcel, the applicant contends, said Mr. Evans, that the 8.8 acre portion of Grant 1062 within TMK 3-6-04:01 can qualify as a separate nonconforming use parcel.

Accordingly, staff requested clarification from the Department of the Attorney General who stated that the tax map parcel is, indeed, a parcel. Although the grant itself is less than 10 acres, the difficulty staff had was that the parcel was greater than 10 acres and as such this particular non-conforming use provision would not apply.

Mr. Evans said that staff reviewed it as a conditional use in the Limited Subzone and, in keeping with the established guidelines for that and past guidance from the board, have not been recommending approval for single family in a Limited Subzone.

Mr. Higashi asked whether staff's inquiry to the Attorney General's Office was just to determine whether the parcel was a grant or not or did they review the entire case.

Mr. Evans said that the only question was: "does the grant qualify as a parcel under nonconforming use?" This was staff's only concern.

Mr. Evans explained that there were three grants on the property -- some of which were under ten acres. Under the Administrative Rule a parcel refers to something that has to be ten acres.

Mr. Higashi asked how Mr. Detor's division recognized a grant.

Mr. Detor said that normally you don't have a conflict like that. Say, for instance, if a piece of land sold years ago was covered by a grant, it is usually a parcel of record. However, if there was a subdivision somewhere along the line but they didn't go through the county to get the proper clearances, then you may have a situation where the parcels are really not parcels of record. He could not see where a grant would be issued and subdivided out prior to the grant being issued if a subdivision was necessary. What I'm trying to say is that it should be a parcel of record.

What I'm trying to determine is whether this is a non-conforming use, said Mr. Higashi. The basic application was filed under the non-conforming use so if he qualifies he will automatically be allowed to have a dwelling. The complicating question, however, is whether he qualified under nonconforming or not.

Mr. Evans said that staff went to the AG to have this clarified because they were also confused and, once the AG's office makes its determination, staff feels bound by their guidance.

Mr. Higashi felt somewhat handicapped at this point because the submittal will expire before the next meeting and he would have liked to see the letter that was sent to the AG's and their entire reply.

Mr. Breezer Bush said that he filed the application on behalf of Theo. H. Davies, who were owners at the time of filing. However, in the interim Francis Morgan had acquired the plantation so this activity really is going on in Mr. Morgan's plantation.

Mr. Bush said that last spring they discovered that a parcel of land, which Davies' had been renting from a mainland family, had been passed on to the children and that they had subsequently sold a three acre parcel in the middle of about a 400-acre cane field. The person who had acquired the parcel knew nothing of the circumstances, appeared on the scene and said show me my lot.

Mr. Bush explained further that this lot was a kuleana located about 3500 feet makai of the road with no access. Recognizing that you can't have "no access", the plantation felt that if this guy comes to live here you're not only going to take away the acreage in cane but it's going to create a problem of production with somebody living in there. So we approached this person and offered that if we could find you another place would you go for a land exchange and he agreed. Mr. Bush said that he was informed of this by the plantation and so began proceedings to find out which was the way to accomplish this. After meeting with Messrs. Ono and Evans, application was made based on the nonconforming use and then their procedure was that if that wasn't considered then we would go into the "Limited Zone" application.

For the record, said Mr. Ono, did your meeting with the staff and/or myself indicate that this legal question was to be granted in your favor?

Mr. Bush said definitely not. He did not mean to indicate that this was the case.

After Mr. Bush's explanation to the board as to how this problem came about, Mr. Higashi said that the one problem he could see was that there was an intent to exchange and asked Mr. Bush if he understood that this was conservation land and yet some permission was granted to this person to occupy the land.

That's true, said Mr. Bush. But he had just learned about this from Roger last week. He said that he had been notified by the plantation that this person was there and had temporarily put a tarpaulin over an existing quarry structure. However, when he saw the pictures of that activity, it was obvious that the person that told me of this tarpaulin thing was not aware of what was actually going on. It's not the right thing but it has happened.

In answer to Mr. Higashi's question, Mr. Bush said that the exchange had not been consummated.

Mr. Higashi asked who would be responsible for paying the fine.

Mr. Bush felt that the applicant would be the person to pay the fine.

Mr. Higashi said that in light of an opinion rendered by the Attorney General's Office, he finds it very hard to find some avenue to approve this and go against an opinion saying that it is not legal.

Mr. Bush said that what he got was that the Attorney General said that "it is not clear." He felt that an argument could be made to say that a parcel is this size. In other words, there is some clarity and he tried to describe that so that an argument could also be made for calling it a tax parcel.

Mr. Higashi said that he was inclined to deny this request without prejudice in order not to go against the ruling of the Attorney General and also so the applicant may reapply again.

Mr. Higashi stated that the issue of the parcel is a serious one because it affects other conservation lands. He felt that there was a true gray area and needed to be discussed further with the Attorney General's office and the other departments involved in order to clarify this point.

Mr. Higashi moved to consider staff's recommendation in two parts:

1. \$500.00 fine for improperly starting construction on conservation property.
2. Denial of this application, without prejudice, with the understanding that the applicant may reapply again.

Mr. Kealoha seconded.

Mr. Kealoha said that his attitude is such that it is unfortunate that the expiration date is listed as May 8th, which occurs before the board's next meeting date so it is not possible to defer this.

Mr. Higashi asked whether the comments from the various agencies would remain the same should Davies' reapply.

Mr. Evans said yes. The only major question is whether the parcel is a tax map parcel or parcel being a grant. This will require a study on behalf of the AG's office and a review of their opinion.

Mr. Yagi had concerns regarding the violation. He said that in this case he could understand the first violation which was use of the crusher plant as a residence; and the second violation which was the clearing of a portion of the property for the construction of the proposed single family residential dwelling. However, the third violation, which was the installation of a gate and cement driveway on the property, bothered him inasmuch as this was a concrete thing and a serious violation. He could not see combining these three violations and assessing the applicant's as though there was only one violation.

Mr. Ono said that he also was voting against this motion based on similar concerns. A guy puts in a cement driveway, without permission, to me that is a serious violation no matter what the circumstances. Same thing with clearing areas -- all other comments made previously -- I would agree with, but not on the reduction of the fine.

Before moving further into the fine, Mr. Higashi felt that Roger should get together with the Enforcement Division because they have different ways of reporting the violation. He said that if their methods of reporting were consistent then he would have no problem and the reason for his motion was so they would be consistent.

ACTION

An earlier motion by Mr. Higashi, seconded by Mr. Kealoha and approved by the board was to amend staff's recommendation and divide the question into two parts.

- A. Denial of this application, without prejudice, with the understanding that they may reapply again; and
- B. \$500.00 fine for improperly starting construction on conservation property.

Mr. Kealoha moved for approval of staff's recommendation A. That the board deny this application, without prejudice, for a single family residential dwelling on TMK: 3-6-04:1 at Laupahoehoe Gulch, No. Hilo, Hawaii.

Motion carried with a second by Mr. Higashi.

Mr. Higashi moved for approval of Recommendation B, that the Board assess a fine of \$500100 for illegally starting construction on the premises.

Motion died for lack of a second.

Mr. Kealoha then moved to accept staff's recommendation that the board assess a fine of \$500.00 per violation with the total of three (3) violations being equal to a sum of \$1,500.00 to be paid within sixty (60) days of the date of this meeting -- this date being being April 27, 1984.

Mr. Yagi seconded with instruction to staff that we assure ourselves that the application of what constitutes a violation be carried on as uniformly as possible -- statewide.

Motion carried.

Mr. Higashi voted no.

Mr. Ono suggested that Mr. Bush, from a practical standpoint, have staff work with the Attorney General's office before reapplying to see what comes out of staff's discussion. He did not want to see Mr. Bush apply again before a review has been conducted and then wind up in the same situation again.

Mr. Bush said that he understood what the Chairman was saying but yet wondered if there was some way to leave this where it is, get another look at it, and it would still be the same application.

Mr. Ono said that there is no way that this application can be kept open inasmuch as the 180 days comes before the next board meeting and there is no way that the board can extend this.

Assuming that the applicant stops all activity, asked Mr. Kealoha, what do you do with the gate and the cement driveway?

Denial by the board means that staff would be directed to have it torn down, said Mr. Evans.

In answer to Mr. Ono's question, Mr. Evans said that he had no plans for dealing with these violations.

ADDED
ITEM D-1

APPROVAL TO ATTEND A DESALTING MEETING IN ORLANDO, FLORIDA.

ACTION

The board unanimously granted approval for Mr. Manabu Tagomori to attend the desalting meeting in Orlando, Florida for the period May 12-19, 1984. (Higashi/Yagi)

ITEM B-1

ADOPTION OF CHAPTER 13-53, ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, REGULATING FISHING ACTIVITIES AT MANELE HARBOR, LANAI.

Have you resolved the problem between the throw-net fishermen and the fishing pole people, asked Mr. Kealoha?

Mr. Sakuda answered yes. Their recommendation is to draw a line down the center of the Harbor connecting the buoys within the harbor waters and to have the throw net fishing area along the shoreline and the pole fishermen to fish the rest of the harbor primarily in the breakwater.

ACTION

Unanimously approved as submitted. (Yagi/Kealoha)

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO REGULATE FISHING ACTIVITIES AT PUAKO, HAWAII, AND TO ESTABLISH A MARINE LIFE CONSERVATION DISTRICT AT WAIALEA BAY, HAWAII.

ITEM B-2

ACTION

Unanimously approved as submitted, subject to approval from the Office of the Governor and Department of the Attorney General. (Higashi/Kealoha)

ITEM C-1

LICENSE FOR WAIAKEA-OLAA TIMBER SALE.

Mr. Walker explained that Mr. Douglas Merchant, Merchant Air, Inc., was the only responsible party to submit a proposal to the offer to negotiate on or before the March 7, 1984 deadline.

Mr. Higashi called to Mr. Walker's attention that Mr. Merchant was the successful bidder in the first auction held and he forfeited his performance bond for non-performance -- in other words, he walked away from the lease. My question is, have we checked it out whether legally we can deal with this guy again.

Mr. Walker said that he is a legal entity now -- a registered corporation in Hawaii. Staff also made investigations of his bank credit here in Hawaii with the Bank of Hawaii and with his bank in Michigan and they have indicated that he has revenue.

Under whose name did he bid the last time, asked Mr. Higashi?

Mr. Walker did not know.

Mr. Higashi said that it wouldn't matter that he's a corporation doing business in Hawaii. The fact remains that he walked away from the deal the last time. There was competitive bidding held in Hilo and the price was much more than \$1.80 and he was the successful bidder who did not perform. Under the statutes, does a person who has not performed eligible to bid again and are we eligible to negotiate with the same party?

Mr. Walker said that he couldn't answer because it's a legal question.

Mr. Higashi stated that the submittal does not show that he walked away before, he just happened to remember the name.

Mr. Walker explained that this submittal was made on his present situation and no consideration was made of his previous record.

Mr. Ono said that that kind of information should have been included for the board's consideration. Mr. Ono said that if this had not been brought up by Mr. Higashi he would not have know.

ACTION

Mr. Higashi asked that this item be deferred and referred to the Attorney General's Office to clarify whether or not the department can negotiate with someone that may be in violation.

ITEM E-1

PERMISSION TO ADVERTISE FOR BIDS, JOB NO. 54-KP-14, FURNISHING PRE-FABRICATED SANITARY FACILITY, NA PALI COAST, STATE PARK, HAENA, KAUAI.

ACTION

Unanimously approved as submitted, subject to approval of the Governor. (Yamamoto/Yagi)

ITEM E-2

REQUEST BY AHAHUI KAPUNA KA-NANI O'HILO FOR A FUND RAISING PERMIT FOR WAILOA RIVER STATE RECREATION AREA.

ACTION

Mr. Higashi moved to deny staff's recommendation, which was for denial of this application, and approve the request of Ahahui Kapuna Ka-Nani O'Hilo's for a fund raising permit for Wailoa River State Recreation Area.

Mr. Kealoha seconded the motion.

Mr. Yagi asked whether we have ever allowed sale of hard liquor within our parks.

Mr. Nagata said that customarily they have not allowed sale of hard liquor on the premises. The board has, at times, allowed fund raising presale kind of situation, but not the exchange of cash money.

More recently, said Mr. Nagata, there has been heightened concern about public liability based on recent court decisions.

In answer to Mr. Higashi's question, Mr. Nagata said that liquor consumption was allowed in the pavillion area.

Also in answer to a question by Mr. Ono, Mr. Nagata said that to his knowledge no actual sale of alcoholic beverages were ever permitted.

Mr. Higashi said that prior to Mr. Nagata's being in his position, St. Joseph School was allowed to sell liquor at Wailoa River State Recreation Area provided they had security and liability insurance.

Mr. Kealoha withdrew his second to Mr. Higashi's motion because of the liability question, and not because alcohol is permitted or not. He said that he was just reminded that there was a case on Maui where someone was intoxicated and there was a disaster and the bar owner was suing in excess of \$1,000,000.00. He, therefore, felt that the \$500,000 liability amount should be higher.

Mr. Yamamoto then seconded Mr. Higashi's motion.

At Mr. Yagi's request, Mr. Higashi moved to amend his motion to change the Liability Insurance amount from \$500,000 to \$1,000,000.

Mr. Kealoha seconded the amendment.

Mr. Ono called for a vote and motion carried.

Mr. Ono voted no.

Mr. Ono asked whether the board in the future or as a policy would want to consider to have no sale of alcoholic beverages so that everybody would know before hand, before they even apply, that we would not permit sale of alcohol. On the other hand, if the policy is to allow sale, then let everybody know before hand.

Mr. Higashi felt that the question of liability was of more concern. Are we liable for allowing the consumption? To what degree? He felt that there was a need to address the legal basis because from what he understood there are cases where certain degrees of liability are allowed. Even if we allow the sale of alcohol we may be only 1% liable. Different degrees of liability may exist.

My concern is not only the liability part. It's just the practice of selling liquor when we have taken the position that liquor consumption be clamped down by our Parks personnel. We're going one way in that sense and we go the other way when it comes to the pavillion. We seem to be inconsistent in that regard. The other thing is a State Parks should be more for recreation type activities. However, if the board would like to address this as a policy matter, then the board can ask staff to come in with the pros and cons.

Mr. Yagi said that he would like to see them come in so that a policy can be set.

ITEM E-3

APPROVAL OF PROPOSED FUNDING OF PROJECTS UNDER THE LAND AND WATER CONSERVATION FUND PROGRAM.

Mr. Ono suggested to the board that this be made subject to Governor's approval since he was not sure whether we can directly allocate general funds to counties.

ACTION

Mr. Yagi moved for approval of the proposed funding for those projects listed in the submittal, subject to the availability of federal funds and matching funds of the participating recreation agencies, and to authorize the Chairperson to enter into contracts with the agencies including adjustment of cost estimates for this project and, subject to Governor's approval. Motion carried unanimously with a second by Mr. Yamamoto.

ITEM E-4

DELEGATION OF RICHARDSON MARINE CENTER PROJECT TO THE COUNTY OF HAWAII, ACT 263, ITEM I-C-3, SLH 1982.

ACTION

Unanimously approved, subject to Governor's approval of fund release. (Yagi/Yamamoto)

ITEM F-1

DOCUMENTS FOR CONSIDERATION

Item F-1-a

Leasing of Old Hana School to Maui Economic Opportunity, Inc.

Item F-1-b

Leasing of Old Hana School to Mai Kalani Foundation.

Item F-1-c

Leasing of Old Hana School to Lokahi Pacific, Hana, Maui.

Item F-1-d

Leasing of Old Hana School to Hana Community Association.

Item F-1-e

Leasing of Old Hana School to Hana Canoe Club

Item F-1-f

Leasing of Old Hana School to Hana Day Care Center, Inc.

Item F-1-g

Leasing of Old Hana School to Hana District Pohaku Non-Profit Corp.

Items F-1-a through F-1-g were unanimously approved as submitted. See Pages 2 and 3 for details.

Item F-1-h

REVOCABLE PERMIT - MARY BOOTH APPLICATION FOR R.P. COVERING CAMPSITES 9 AND 9A, WAIAKEA HOMESTEADS, 2ND SERIES, WAIAKEA, SO. HILO, HAWAII. AREA: 1.740 acres+ PURPOSE: Diversified Agriculture RENTAL: \$20.00 per mo.

Item F-1-i

REVOCABLE PERMIT - ALEX DELEGAN APPLICATION FOR R.P. COVERING PORTION OF THE NAWILIWILI HARBOR DISPOSAL AREA, NAWILIWILI, KAUAI. AREA: 41,000 sq. ft. PURPOSE: Open Storage RENTAL: \$291.00 per mo.

- Item F-1-j REVOCABLE PERMIT - SERRA KAUAI LUMBER CO. APPLICATION FOR R.P. COVERING PORTION OF THE NAWILIWILI HARBOR DISPOSAL AREA, NAWILIWILI, KAUAI. AREA: 40,000 sq. ft. PURPOSE: Lumber and building material storage RENTAL: \$277.00 per mo.
- Item F-1-k REVOCABLE PERMIT - RICHARD B. L. CHOCK APPLICATION FOR R.P., UALAPUE, MOLOKAI, BEING TMK 5-6-02:por. 34. AREA: 2,100 sq.ft. PURPOSE: Electrical transmission line and pole purposes to applicant's leased property identified as TMK 5-7-11:19. RENTAL: \$10.00 per mo.
- Item F-1-l ASSIGNMENT - RICHARD W. CLARK REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4691 COVERING LOT 12, KEAHOLE AG PARK, NO. KONA, HAWAII TO KEAHOLE NURSERY, INC. AREA: 5.047 acres CONSIDERATION: \$1.00
- Item F-1-m MORTGAGE - ITSUE OKAMOTO REQUEST FOR CONSENT TO MORTGAGE, G. L. NO. S-4691 COVERING LOT 20 KEONEPOKO IKI FARM LOT SUBDIVISION (PAHOA AGRICULTURAL PARK), PUNA, HAWAII TMK: 1-5-116:20 AREA: 10.0 acres PURPOSE: Construction of shadehouse AMOUNT OF LOAN: \$34,000.00
- Item F-1-n ASSIGNMENT - GEORGE SANTANA REQUEST FOR CONSENT TO ASSIGN G. L. S-4910, LOT 27, MAUNALAHA HOMESITES, HONOLULU, OAHU TO GEORGE H. AND ALICE M. SANTANA. AREA: 0.24 ACRES RENTAL: \$125.00 per annum for first 25 years.
- Item F-1-o ASSIGNMENT - WINONA MAKI REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4887, LOT 4, MAUNALAHA HOMESITES, HONOLULU, OAHU TO WINONA B. MAKI AND SIMEON KANILA MAKI. AREA: 0.59 acres RENTAL \$120.00 per annum or first 25 years.
- Item F-1-p ASSIGNMENT - JULIA POLELIA REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4907, LOT 24, MAUNALAHA HOMESITES, HONOLULU, OAHU TO ROBERTAJEAN LEILANI KEINATH. AREA: 0.52 acres RENTAL: \$120.00 per annum for first 25 years.

Pertaining to Items F-1-n, o and p, Mr. Ono said that we just concluded the negotiation of the lease, just signed the whole batch and right after that we get requests for assignment. Why weren't these things discussed at the time the leases were being negotiated?

Mr. Detor said that these situations were not brought to staff's attention at the time.

Then why does staff feel that we have to start approving these assignment requests, asked Mr. Ono?

In the case of Santana, there was apparently a slip up, said Mr. Detor. But the other two are bringing off-springs in for financing purposes.

Mr. Detor said that he expects more of these to come in since a lot of the Maunalaha residents are old and would want to be putting the property in their children's names.

Mr. Kealoha said that for the last six years, they have made it clear that we are putting in a timetable with respect to generation. The successor will probably not go out for another 100 years. Secondly, at the time these were the kinds of questions that the board raised. If they are going to convey or assign the board should have been made aware at that time. Now we just get through finalizing everything and it appears that the counsel for the Maunalaha people is coming in bit pieces at a time.

Mr. Detor thought that the best way to handle this would be to ask them to attend the next Honolulu meeting to go over this thing and, in the meantime, staff can see if they can arrive at some kind of solution.

Mr. Ono asked that Mr. Detor discuss this with the residents and let all the questions and the concerns surface. I hate to have the board just pick up bits and pieces as we go along.

Item F-1-q

ASSIGNMENT - FUJIYAMA DEVELOPMENT CORP. REQUEST FOR CONSENT TO TRANSFER GRANT OF EASEMENT NO. S-4553, WAIAKEA, SO. HILO, HAWAII TO WAIAKEA VILLAS ASSOCIATION OF APARTMENT OWNERS and WAIAKEA VILLAGE ASSOCIATION OF APARTMENT OWNERS

Mr. Detor asked that the word assignee, shown after Fujiyama Development Corp. be changed to assignor and the word assignor, shown after the apartment owners, be changed to "assignees".

ACTION

Mr. Kealoha moved for approval of Items F-1-h through F-1-m, as submitted; Item F-1-q, as amended; and deferral of Items F-1-n, F-1-o and F-1-p. Motion carried unanimously with a second by Mr. Higashi.

ITEM F-2

HAWAII ELECTRIC LIGHT CO., INC. AND HAWAIIAN TELEPHONE CO. APPLICATION FOR EASEMENT AT KANIAHIKU, PUNA, HAWAII.

ACTION

The board, upon motion by Mr. Higashi and a second by Mr. Kealoha, unanimously approved the direct grant of a perpetual, non-exclusive easement to the applicants covering subject easement area, subject to the terms and conditions listed in the submittal and also granted an immediate construction right of entry to the applicants to the area in question, subject to the standard indemnity and hold-harmless clause and other terms and conditions as may be imposed by the Chairperson.

ITEM F-3

HAWAII ELECTRIC LIGHT CO., INC. AND HAWAIIAN TELEPHONE CO. APPLICATION EASEMENT AT KEALAKEHE, NO. KONA, HAWAII.

ACTION

Upon motion by Mr. Higashi and a second by Mr. Kealoha, the board unanimously approved the direct grant of a perpetual, non-exclusive easement to the applicants covering subject easement areas, subject to the terms and conditions listed in the submittal and also granted an immediate construction right of entry to the applicants to the area in question, subject to the standard indemnity and hold-harmless clause and other terms and conditions as may be imposed by the Chairperson.

ITEM F-4

HAWAII ELECTRIC LIGHT CO., INC. APPLICATION FOR EASEMENT AT KAMOAUAU, HAMAKUA, HAWAII.

ACTION

Upon motion by Mr. Higashi and a second by Mr. Kealoha, the board unanimously approved the direct grant of a perpetual, non-exclusive easement to the applicants covering the anchor easement area, subject to the terms and conditions listed in the submittal and also granted an immediate construction right of entry to the applicants to the area in question, subject to the standard indemnity and hold-harmless clause and other terms and conditions as may be imposed by the Chairman.

ITEM F-5

RESUBMITTAL - HAWAIIAN TELEPHONE CO. APPLICATION FOR EASEMENT AT KEEKEE, PUNA, HAWAII.

ACTION

The board unanimously authorized the direct sale of the above-described easement to the applicant subject to the terms and conditions listed in the submittal and also authorized the issuance of an immediate construction right-of-entry to the applicant subject to the standard indemnity and hold-harmless clause. (Higashi/Kealoha)

ITEM F-6

HAWAIIAN TELEPHONE CO. AND MAUI ELECTRIC CO., LTD. APPLICATION FOR TRANSMISSION LINE AND POLE EASEMENT, MAKAWAO, MAUI.

ACTION

Finding the area in question to be an economic unit in terms of the intended use and finding also that Hawaiian Telephone Company and Maui Electric Company, Ltd. has no suitable land of their own for the proposed use, the board, upon motion by Mr. Yagi and a second by Mr. Higashi, unanimously authorized the direct sale of the subject easement to the applicants under the terms and conditions listed in the submittal and also approved granting an immediate right-of-entry to the applicants covering the subject easement area, subject to the terms and conditions listed in the submittal.

ITEM F-7

ROY BODNAR REQUEST FOR HOLDOVER TENANCY, G. L. NO. S-3820, MAKAWAO, MAUI.

Mr. Detor asked that the holdover month listed under Recommendation be changed from August to April.

ACTION

Mr. Yagi moved for approval as amended, subject to the terms and conditions listed in the submittal. Motion carried unanimously with a second by Mr. Higashi.

ITEM F-8

FROCTOSO HUFALAR, ET AL, APPLICATION TO PURCHASE REMNANTS AT HONOKOWAI, LAHAINA, MAUI.

Mr. Detor explained that when these lots were originally sold many years ago, a mistake was made on the survey. As a result these people have been encroaching on government land -- unknown, however, to them. Staff has had the attorney general's office review this matter and the recommendation is to sell those particular areas to the abutting owners.

ACTION

Finding the subject areas to be physically unsuitable for development as separate units and by definition are remnants, the board unanimously approved the direct sale of the subject remnants to the applicants, subject to the terms and conditions listed in the submittal. (Yagi/Yamamoto)

ITEM F-9

COUNTY OF MAUI REQUEST FOR CANCELLATION OF EXECUTIVE ORDER NO. 235 AND ISSUANCE OF EXECUTIVE ORDER SETTING ASIDE LAND FOR WELL SITE PURPOSES, WAILUA HOMESTEADS, KOOLAU, MAUI.

ACTION

Upon motion by Mr. Yagi and a second by Mr. Yamamoto, the board unanimously voted to:

- A. Approve of and recommend to the Governor issuance of an Executive Order cancelling Governor's Executive Order No. 235 subject to the disapproval by the Legislature in any regular or special session next following the date of the executive order.
- B. Approve of and recommend to the Governor issuance of an Executive Order resetting aside parcel Tax Map Key 1-1-04:43 to the County of Maui for well site purposes subject to the disapproval by the Legislature in any regular or special session next following the date of the executive order.

ITEM F-10

STAFF RECOMMENDATION FOR WAIVER OF REPURCHASE OPTION, LOT 42, WAHIKULI HOUSE LOTS, 5TH SERIES, WAHIKULI, LAHAINA, MAUI.

ACTION

Approved as recommended by staff. See Page 4 for details.

ITEM F-11

HERBERT SUZUKI REQUEST FOR HOLDOVER TENANCY, G. L. NO. S-3772, LOT 32, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, OAHU.

Just as a matter of information, Mr. Detor called to the board's attention that back in 1978 the board deferred action on the applicant's request for a lease extension in order to get financing to make improvements on the premises. There were some questions as to how the loan would be used.

Mr. Kealoha said that the question now is moot because if this lease expired December, 1983, then it's expired.

Mr. Detor said that it has expired, but this particular submittal is to allow a one-year holdover from 1983 to December, 1984.

Mr. Kealoha said that Mr. Suzuki does not farm the place and he also understood that Mr. Suzuki still owes DOWALD \$619.49 for the water charges.

Mr. Detor said that had he known this he would not have come before the board with this request.

ACTION

Mr. Kealoha moved for denial. Motion carried unanimously with a second by Mr. Higashi.

ITEM F-12

EDWARD D. SULTAN, JR. REQUEST FOR HOLDOVER TENANCY, G. L. NO. S-3784, LOT 22, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, OAHU.

ITEM F-13

JAMES KUROIWA, JR. REQUEST FOR HOLDOVER TENANCY, G. L. NO. S-3765, LOT 25, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, OAHU.

Mr. Ono asked that staff check with all State and County agencies to ensure that the above applicants have no delinquencies.

ACTION

Items F-12 and F-13 were deferred for further check to make sure that there are no delinquencies.

ITEM F-14

DEPARTMENT OF TRANSPORTATION REQUEST FOR RIGHT OF ENTRY TO CONDUCT SUBSTRATA INVESTIGATIONS, INTERSTATE ROUTE H-3, HALAWA INTERCHANGE PROJECT, EWA, OAHU.

ACTION

Unanimously approved as submitted, subject to those terms and conditions listed in the submittal. (Kealoha/Higashi)

ITEM F-15

HAWAIIAN ELECTRIC CO., INC. REQUEST FOR AMENDMENT TO EASEMENT COVERING ELECTRIC TRANSMISSION LINES AT WAIMANALO, OAHU.

ACTION

The board unanimously authorized amending Condition 11 of the subject Grant of Easement document (Land office Deed No. S-24660) revising the date of the construction time limit from December 31, 1987 to December 31, 2001. (Kealoha/Higashi)

ITEM F-16

CITY & COUNTY OF HONOLULU REQUEST FOR RIGHT OF ENTRY TO INSTALL FENCING SAND ISLAND, HONOLULU, OAHU.

ACTION

Unanimously approved as submitted, subject to those terms and conditions listed in the submittal. (Kealoha/Higashi)

ITEM F-17

DEPARTMENT OF TRANSPORTATION REQUEST FOR AUTHORIZATION TO DISPOSE OF HIGHWAY REMNANT PARCELS 43-A, 46-A AND 47-A, AIEA, OAHU.

ACTION

Unanimously approved as submitted, subject to those terms and conditions listed in the submittal. (Kealoha/Higashi)

- ITEM F-18 STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NO. S-3939, KAPAA, KAUAI.
- ACTION Unanimously approved as submitted, subject to those terms and conditions listed in the submittal. (Yamamoto/Kealoha)
- ITEM F-19 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS REQUEST FOR ACQUISITION OF LEASE COVERING OFFICE SPACE IN THE OTANI BUILDING, HONOLULU, OAHU.
- ITEM F-20 DEPARTMENT OF HEALTH REQUEST FOR APPROVAL OF AMENDMENT OF LEASE COVERING OFFICE SPACE AT 54-010 KUKANA ROAD, HAUULA, OAHU.
- ITEM F-21 OFFICE OF THE GOVERNOR REQUEST FOR ACQUISITION OF LEASE COVERING SUITE 304, FIRST INTERSTATE PLAZA, HONOLULU, OAHU.
- ACTION Mr. Kealoha moved for approval of Items F-19, F-20 and F-21 as submitted, subject to the review and approval of the lease agreement by the Office of the Attorney General. Mr. Yamamoto seconded and motion carried unanimously.
- ITEM F-22 DEPARTMENT OF HEALTH REQUEST FOR ACQUISITION OF LEASE COVERING APARTMENT BUILDING 8, PRINCEVILLE, HANAIEI, KAUAI.
- ACTION Unanimously approved as submitted, subject to the review and approval of the lease agreement by the Office of the Attorney General. (Yamamoto/Higashi)
- ITEM F-23 BUDGET & FINANCE REQUEST FOR ACQUISITION OF LEASE COVERING OFFICE SPACE IN MAUI AID OFFICE BUILDING, WAILUKU, MAUI.
- ACTION Unanimously approved as submitted, subject to the review and approval of the lease agreement by the office of the Attorney General. (Kealoha/Yamamoto)
- ADDED
ITEM F-24 CONSENT TO MORTGAGE
- Mr. Detor explained that in this particular case the State is leasing from Amelco Corporation. Amelco would like to mortgage their property but need the State's consent. The State's position will be protected by a Subordination, Nondisturbance and Attorney Agreement in connection with this. Even though they are mortgaging the lease, the State's occupancy will not be disturbed.
- ACTION The board unanimously consented to the mortgage as requested by AMELCO CORPORATION through its attorneys, Case, Kay & Lynch. (Kealoha/Yamamoto)
- ADDED
ITEM F-25 RIGHT-OF-ENTRY, KOHALA CORPORATION, KOHALA, HAWAII, TMK 5-5-03:04.
- The board at its meeting of January 27, 1984 authorized a 3-month extension to the subject right-of-entry to complete a pipeline repair job. Kohala Corporation is requesting another extension of three months to complete the job.
- Mr. Detor said that staff forgot to notify Kohala Corporation of the first extension so they would now like to give them a further extension so that they can go ahead and finish the job. They did not do anything since their request for an extension the first time.
- ACTION The board unanimously voted to amend its earlier action of January 27, 1984, Agenda Item F-2, by extending the termination date of the subject right-of-entry from March 31, 1984 to June 30, 1984. (Higashi/Yamamoto)

ITEM G-1

FILLING OF ABTRACTOR VI, POSITION NO. 3735, OAHU.

ACTION

The board unanimously approved the appointment of Yoshiko Takeuchi to Position No. 3735 effective May 1, 1984.

ITEM H-1

CDUA FOR POLE AND LINE EASEMENT AT KALAPANA, PUNA, HAWAII, TMK: 1-2-3; 6, 8 & 9 (HAWAII ELECTRIC LIGHT CO., AND HAWAIIAN TELEPHONE CO.).

Mr. Evans said that thirty days prior to coming to the board the applicant was unable to provide staff with an SMA application. As such, staff's recommendation was for denial. In the interim, however, the applicant was notified by letter dated April 26, 1987 that the Planning Commission at its public hearing held on April 25, 1984, voted to approve their SMA Application No. 204, Kalapana, Puna, Hawaii subject to certain conditions.

Inasmuch as the SMA has now been approved, Mr. Evans asked that staff's recommendation be changed to that of approval subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The State of Hawaii shall not be responsible for any loss, liability, claim or demand for property damage, property loss, or personal injury including death caused by or resulting from any act or omission of the applicant or its contract in connection with its exercise of the privileges herein granted;
4. Other terms and conditions as prescribed by the Chairperson;
5. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
6. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
7. The applicant shall comply with all applicable Public Health Regulations;
8. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairperson, or his authorized representative, for approval of which three (3) copies will be returned;

9. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and construction must be completed within three (3) years of the approval of such use; and
10. That the application comply with all applicable conditions imposed under the Special Management Area permit.

In answer to Mr. Ono's question, Mr. Evans said that he did not think that the applicant had a chance to review the above comments.

ACTION

Mr. Higashi moved for approval of staff's recommendation for approval, subject to those ten (10) conditions listed above. Mr. Yagi seconded and motion carried unanimously.

ITEM H-2

CDUA FOR PERMITTING OF COMMERCIAL ACTIVITIES CONSISTING OF SCUBA DIVINGS, SNORKELING, AND FILMING ACTIVITIES AT VARIOUS BEACH PARKS ON OAHU.

Mr. Evans asked that the last sentence on page 1 be amended to read as follows:

"All of the parks are provided with or accessible to water, showers and comfort facilities; with the exception of Diamond Head Beach Park, and all of the parks have direct access from a major highway."

Mr. Evans felt that water conditions at both Koko Head Beach Park and Makapuu Beach Park are not conducive to commercial snorkeling or scuba diving activities because of the wave action there. Barring that, staff is recommending approval for use of all of the other beach parks as listed in the submittal.

I'm not clear, said Mr. Kealoha. You are saying that you are permitting the City to have the same authority to permit filming as DPED?

For instance, the last case at Waimea, those people can go to the City and say I want to do filming, asked Mr. Kealoha?

No, said Mr. Evans. What we're saying is that if it is in a conservation district or on state lands it goes through the film office. That is what our original CDUA allowed for. The City's position was that they are not clear that they have authority to allow, even if goes to the film office, people to film on our land. So what this would do is to reaffirm the original CDUA.

I'm still not clear. So now you'll have two arms issuing permits for filming, said Mr. Kealoha. It appears to me, the way this submittal is written, we are giving two agencies authority.

I don't think that's what we want to do, said Mr. Evans. In our original board approved CDUA we still maintain the applicant has to get the signature of the land owner. The city was unclear on that and that is why they also wanted to have this clarified. They, in fact, could give their signature as landowner to allow the filming activities that take place. DPED would have to get permission from the City before they can allow that activity to occur in their park.

Mr. Kealoha moved for approval of staff's request to amend their earlier recommendation.

With regard to the amended number of parks that would be subjected to the conditions, Mr. Ono asked Mr. Evans whether the City had been notified that the submittal was to be amended.

Mr. Evans stated that he didn't think so.

The problem with that, said Mr. Ono, is that the City had called to apologize for not having anyone at the meeting because of their travel restrictions. However, they looked at the staff recommendation and the conditions and indicated that the conditions were acceptable. But because you have changed the recommendations it would be desirable to go back to the City to see how they would react to your amendments because just a couple of days ago they were under the impression that this is what was going to be presented to the board.

What was the reasons for this morning's change, asked Mr. Ono?

The reason for the change, said Mr. Evans, is that it goes into our basic process that we have on all applications.

Mr. Evans said that in October this application was sent to all divisions for their review and comment. No comments were received from the Division of State Parks at that time.

On December 15, 1983 a public hearing on this matter was held and again there was no comment from State Parks. However, on December 29, 1983, State Parks did respond and their comments were: 1) there were no objections; 2) they did not see a conflict of interest; 3) that they were aware that several parks were involved in the City and State exchange plan.

Mr. Evans explained further that the April 13, 1984 agenda list was sent to the Divisions in order to allow them to review what is coming up on the agenda if they have a concern. Subsequent to April 13, a question was asked if State Parks had reviewed this matter and the response as I understood it was no. As a result, in the last 48 hours State Parks did review the submittal and made these recommendations to us.

Mr. Evans, if you follow the process you just did, said Mr. Ono, then what good is the public hearing and soliciting comments from affected agencies and individuals within their allotted time frame and at the last second you can switch your recommendation? When does the public get to react to that last minute change, or the affected agencies?

They don't, said Mr. Evans.

I think this is real unfair to the people who are affected by the change in the recommendation. My question to you is why did you feel obligated to consider the last minute request coming from anybody -- State Parks or any private citizen or anybody else?

Mr. Evans said that he considered the last minuted request from State Parks because he wanted to respect their feelings as much as he could. My error perhaps was that I should have been somewhat more forceful in requiring the comments be gotten back to us in October when we sent them out.

So you would stick to your amended recommendation, asked Mr. Ono?

Mr. Evans said that he would stick to the amended recommendation with a further modification -- that it be subject to the concurrence of the City and County Parks and Recreation.

In that light, said Mr. Kealoha, then my question before you is -- and your reply was "no, we're not duplicating or we're not adding another agency to authorize filming on conservation areas." Is that correct?

Mr. Evans replied that they are authorizing the filming because of the fact that they are the landowners -- not through a regulatory process.

My question to you was that we already have DPED, which we extended the authority to issue filming to commercial people. Are we doing the same thing if we approve this? You said no.

Then you would have no objection if I deleted the last sentence of the first paragraph shown on page 10 which reads: "Therefore, this current proposal would be similar in scope to the existing permit system at Hanauma Bay and allow the City to permit commercial filming activities in Conservation Zoned City beach parks."

Mr. Ono asked if Mr. Kealoha would also impose the staff's recommendation with the proviso "with the concurrence of the City & County Department of Parks and Recreation."

ACTION

Mr. Kealoha moved to amend his earlier motion for approval of staff's recommendation by also deleting the last sentence of the first paragraph shown on page 10 and adding a proviso that this approval is with the concurrence of the City and County Department of Parks and Recreation. Mr. Yagi seconded and motion carried unanimously.

Just as a precautionary note, Mr. Ono asked that Mr. Evans hereafter give a lot of thought to avoid last minute changes based on someone requesting a change.

ITEM H-3

CDUA FOR NONCONFORMING SINGLE FAMILY DWELLING AT LAUPAHOEHOE GULCH, NORTH HILO, HAWAII, TMK: PORTION OF 3-6-04:1.

(See Pages 7 & 8 for Action)

ITEM H-4

ALLEGED VIOLATION OF LAND USE WITHIN THE CONSERVATION DISTRICT AT KALUAKOI, WEST MOLOKAI, COUNTY OF MAUI.

Mr. Evans explained that this is a resubmittal. Staff had come to the board earlier recommending that the board find that there was insufficient evidence for a violation on the property and that the matter be closed. The board felt at that time that they may have some questions and also that they might like to see a little more detail as to why the staff arrived at this conclusion.

Mr. Evans said that a complaint was received in 1981 that alleged that that there were bulldozers and sand being taken from the beach over at Kaluakoi. Subsequent to the complaint, as a part of the process, DOCARE went out to take some pictures. Staff also took a look at what DOCARE had to say and had some difficulty, so staff also asked the state surveyor to find the conservation district boundary. The state surveyor said that the boundary parallels the shoreline and is 300 feet inland from the vegetation line. So in the specific area staff was able to locate three specific sand pits.

The area between the vegetation line and the 300 feet is within the state conservation district. The area mauka is within the ag district. Staff's analysis made no attempt to analyze what occurred or what did not occur in the agricultural district. With this information, staff went and got a number of agreements that had been anchored into by the landowner and various entities that had been taking sand and, at one point and time, gravel away from the general area.

Mr. Evans stated that the general area he was referring to is a sand area comprised of approximately 397 acres. On September 1, 1961, Molokai Ranch, Ltd. entered into a contract of sale relating to 65,000 cubic yards of sand at Kaluakoi.

In answer to Mr Ono's question, Mr. Evans said that the Lessor of the 1961 Agreement was Molokai Ranch, Ltd. and the Lessee was Molokai Aggregates.

Mr. Evans said that on August 6, 1985, Molokai Ranch, Ltd. entered into a sand royalty license with Walker-Moody Construction Co. which allowed the removal of sand within a "new sand area". This new sand area comprised 17 acres and was split zoned -- conservation and agriculture.

A 1982 agreement, said Mr. Evans, referred to only 13 acres being allowed for mining and that 13 acres was entirely within the agricultural district. It says that anything that might have been used before is now cut down to 13 acres.

Staff took a look at two questions:

1. Whether or not there was any nonconforming use involved.

Staff came up with a judging that the 1965 agreement -- if there was any nonconforming use, of the total 17 acres, only four acres would have been in the conservation district.

Subsequent to the 1965 agreement, the 1982 agreement reduced the acreage to 13 acres and it is all in the agricultural district so as of 1982 it is staff's feeling that there is no nonconforming use in the conservation district.

2. What work, if any, was done subsequent to 1982?

Staff was informed that in 1982 all work had stopped on the site so they went back to see what happened between 1981 when the complaint was filed and 1982 when all work stopped. It was found that Pit 1 was in ag and that Pit 3 was no longer in use. That left only Pit 2.

Staff also had as a part of their evidence, a picture of a Pali loader that was on the site. However, there was no measurement from the vegetation line to the Pali loader so staff could not prove that the Pali loader was within 300 feet of the vegetation line or greater than 300 feet of the vegetation line. Had they been able to have a measurement showing that the Pali loader was 275 feet, than they felt that they would have had a picture and a measurement that showed the Pali loader within the conservation district. Barring that measurement -- if they had a measurement that showed the Pali loader 350 feet from the shoreline then clearly it was in the agricultural district. Barring that measurement to the Pali loader, staff didn't feel that they had the evidence to argue that out of this entire portion that the Pali loader was located right there -- and this became the crux of the problem. Because of this, staff did not feel that they had sufficient evidence to warrant the finding of a violation of land use within the conservation area, and thus their recommendation to the board.

So in addition to where the heavy equipment was located at the time of inspection, we don't know whether the area that might have been mined was in or out of the conservation district, said Mr. Ono?

That's right, said Mr. Evans.

Do you know for what reason Pit 2 extends over and into the conservation district, asked Mr. kealoha?

Mr. Evans said that he could only surmise that in 1961 that particular area was an easy area where the sand was readily available.

Between 1961 and 1982 the size of Pit 2 still overlapped the conservation district, said Mr. Kealoha. If they had stopped mining sometime ago, then they would have shrunk the pit. They would have made the pit smaller to only be on the side of the ag boundary and not the conservation side.

That's right, said Mr. Evans.

I don't really understand what you mean, by shrunk the pit, said Mr. Evans.

They would have filled it up so that it's not in use, said Mr. Kealoha.

Mr. Ono asked if any attempt was made to interview either the Lessee or the Lessor to get answers to the kinds of questions that are coming up now.

Mr. Evans answered no.

Mr. Ono found it rather difficult to close a case without having any words from either the lessee or the lessor and asked staff if it wasn't their normal practice to check with these people.

Mr. Evans said that because this was private land he would have needed permission to get on the property. He did obtain permission to go down and take a look. As to the interview, he could not say that those he spoke to represented either the lessee or the lessor. It was entirely possible that the individuals at that time did not even know who they were.

In order for you to conclude your analysis didn't you think it necessary to nail down some of the factual kinds of questions, asked Mr. Ono?

Realistically speaking, said Mr. Evans, my thinking on the matter was that if I were to get a hold of the people who were on the site, I felt that their indication to me would be that they didn't know where the conservation line actually was.

But you don't know that for sure, said Mr. Ono?

ACTION

Deferred for further work and study . Report to be presented to the board at a later date.

IEM H-5

REQUEST FOR PUBLIC HEARING FOR USE OF LAND WITHIN CONSERVATION DISTRICT.

Mr. Evans asked that the location of the third item, HA-1680, be corrected to read North Kohala instead of Kahala.

ACTION

With the inclusion of the above amendment, Mr. Higashi moved to authorize the Chairperson to schedule those public hearings listed in the submittal; and also authorized the Chairperson to prepare and forward the hearing notice to the applicant and other affected persons. Mr. Kealoha seconded and motion carried unanimously.

ITEM H-6

RESUBMITTAL - Cдуа FOR AN AFTER-THE-FACT BOAT PIER AT KANEOHE BAY, OAHU (DR. ROY F. KUBOYAMA).

If the board will recall, said Mr. Evans, the applicant was present at the last board meeting and raised several questions. His basic concern was whether or not he wanted to even have the pier remain.

The applicant has now come to the conclusion that he does want the pier to remain and would like to proceed such that his pier is in compliance with the law.

Mr. Evans said that in discussions with the applicant, the applicant had requested that his \$500.00 be reduced. He wanted the records to show that he did convey Dr. Kuboyama's request to the board.

Another area of concern to the applicant, said Mr. Evans, was the question of the sign. The applicant recognizes and is willing to put up the sign that says "Public Access". However, the applicant would like to have on the sign some kind of statement "enter at your own risk." The reasoning behind this is to reduce his liability and, on this issue, we indicated that should the board go along with the submittal we would be willing to work with him toward that end. He seemed satisfied.

Mr. Kealoha said that he was all in favor of a reduced fine. However, if the applicant wants the pier then he goes along with everything else that goes with the pier -- so he takes the fine that the staff had recommended originally. As far as the sign, I think we should consider the liability on the part of the owners when they are forced to make that public notice. I think some consideration should be honored.

ACTION

Mr. Kealoha moved that the recommendation by the staff be approved. Mr. Higashi seconded and motion carried unanimously.

Mr. Ono asked that staff and the attorney general's office review the wording of the sign that is legally required to go on the pier.

ADDED
ITEM H-7

FILLING OF POSITION NO. 2727, PRIVATE SECRETARY II, AND POSITION NO. 6645, PRIVATE SECRETARY I, OFFICE OF THE CHAIRMAN; AND APPROVAL OF LWOP.

ACTION

Mr. Yagi moved to approve the appointment of Mrs. LaVerne U. Tirrell to Private Secretary II Position No. 2727, and Mrs. Dorothy C. Chun to Private Secretary I Position No. 6645, effective May 16, 1984 and approval also of leave-without-pay period, NTE December 31, 1986, for both employees. Mr. Higashi seconded and motion carried unanimously.

ITEM J-1

REQUEST FOR SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION, 1667 ALA MOANA BLVD., ALA WAI BOAT HARBOR, HONOLULU, OAHU.

ACTION

Unanimously approved as submitted. (Kealoha/Yagi)

ITEM J-2

CONSENT TO MORTGAGE AND CONSENT TO SHORT FORM OF LEASE (HARBOR LEASE NO. H-82-4), HARBORS DIVISION, HONOKOHAU BOAT HARBOR, HAWAII (GENTRY PACIFIC, LTD.).

ACTION

Unanimously approved as submitted. (Higashi/Yamamoto)

ITEM J-3

ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NAWILIWILI HARBOR, KAUAI MIAMI MARINE TEST STATION).

Mr. Garcia stated that this site would be used to conduct comparative evaluation of U. S. Navy ship bottom coatings.

Mr. Ono said that ship bottom coatings would involve the use of different chemicals which may or may not be toxic. He asked Mr. Garcia what, if any, precautions would be taken to protect the immediate surrounding areas.

Mr. Garcia said that at this particular time he was not sure as to how they would conduct this test. However, in order to conduct the test they must assure DOT that there will be no toxic reaction or spill into the harbor.

Because of the possible contamination of the water, Mr. Ono asked if there would be any objection if the plan of operation was made subject to review by the DLNR since it may have an affect on aquatic life.

Mr. Garcia said that he had no objection.

ACTION

Mr. Yamamoto moved for the board to approve the issuance of a permit to Miami Marine Test Station subject to the terms and conditions listed in the submittal with the added condition that the applicant's plan of operation, insofar as contamination of the water is concerned, be subject to review by the board. Mr. Yagi seconded and motion carried unanimously.

ITEM J-4

ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 12, HONOLULU HARBOR, OAHU (HAWAIIAN CRUISES, LTD.).

Mr. Garcia said that this request is for the operation of a small passenger carrying service which shall include inter-island yacht cruises, daily offshore cruises, diving trips and small boat sailing.

Mr. Ono said that the question had come up -- why or how the submerged land is to be used in this particular instance?

Mr. Garcia said that the submerged land is not going to be used. The water area or the column of water that is above the submerged land is what is really going to be used. They will not be using the ocean bottom at all. As far as the submerged land, it is more a method of calculating the rental than anything else. If any intrusion into the ocean bottom is made then a CUA would have to be applied for.

The question came up because a couple of weeks ago this board heard at a public hearing on a CUA to subdivide and consolidate Honolulu Harbor submerged land. If you're going to do that and you start leasing or issuing permits in this fashion it may conflict with what you're attempting to do for the whole harbor, said Mr. Ono.

Mr. Ono said that there is another request for a CUA to actually start straightening out DOT's various executive orders that are in effect. You're trying to clear that up, then you start issuing permits for this particular submerged land. What does it do to the other efforts where you're trying to subdivide and consolidate?

Mr. Garcia said that he understood the request to be for their own (DOT) construction.

Mr. Ing suggested that the recommendation be amended to say "immediate surface water and water column above the submerged lands as defined by this certain area on the map, or as designated on a particular map".

As long as some distinction is made between the actual submerged lands and the water column, said Mr. Ono. Because the board and staff will one day change, Mr. Ono felt that one of these days the question may come up and the applicant may say, well, I'm paying rent for the submerged land so -- . Mr. Ono wanted it made very clear that this approval is not for use of the submerged lands.

- ACTION Mr. Kealoha moved that the Board approve the issuance of this permit subject to the terms listed in the submittal with an added condition defining the location as the immediate surface water and water column above submerged land as delineated in red, or whatever. Mr. Higashi seconded and motion carried unanimously.
- ITEM J-5 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU - STORAGE SPACE OR SUPPLIES FOR COREENE-C III (ELEANOR M. L. CHOY).
- ACTION Unanimously approved as submitted. (Kealoha/Higashi)
- ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU OAHU (7A, INC.)
- ACTION Unanimously approved as submitted. (Kealoha/Higashi)
- ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAWAIHAE HARBOR, KAWAIHAE, HAWAII (TAKEO NAGAMINE, DBA TAKE'S TRANSPORTATION.
- ACTION Unanimously approved as submitted. (Higashi/Kealoha)
- ITEM J-8 ISSUANCE O REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU OAHU (TUNA BOATOWNERS' CO-OP, INC.).
- This request is for use of 6,374 sq. ft. of land for office and fish cold storage facility.
- ACTION Unanimously approved as submitted. (Kealoha/Yamamoto)
- Mr. Ono asked if the applicant would build an office and a cold storage facility on a site covered by revocable permit.
- Mr. Garcia said that he understood the office to be trailer type but was not sure about the cold storage facility.
- Mr. Garcia explained that the Tuna Boat Owners's Coop is presently located on Hawaiian Tuna Packers Facility and they are moving over to this area because they have to get out. But he understood that DOT is also processing a lease for this same area.
- ITEM J-9 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40, HONOLULU, OAHU (MOTOR IMPORTS INTERNATIONAL).
- ACTION Mr. Higashi moved for approval as submitted. Motion carried with a second by Mr. Yamamoto.
- Mr. Kealoha was disqualified from voting on this item.
- ITEM J-10 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU - SITE FOR TICKET BOOTH (ELEANOR M. L. CHOY).
- ACTION Unanimously approved as submitted. (Yagi/Yamamoto)
- ITEM J-11 ISSUANCE OF REVOCABLE PERMIT'S 3865, ETC., AIRPORTS DIVISION.
- ACTION Unanimously approved as submitted. (Higashi/Yamamoto)
- ITEM J-12 APPROVAL OF CONSENT TO SUBLEASE A PORTION OF THE PREMISES OF HARBOR LEASE NO. H-70-14 (KEEHI MARINE CENTER).
- ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM J-13

PUBLIC AUCTION OF LAND, GROUND TRANSPORTATION BASEYARD AREA, KAHULUI AIRPORT, MAUI.

ACTION

Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM J-14

ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 8, HONOLULU HARBOR, OAHU (THE WEBE CORP., LTD.).

ACTION

Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM J-15

RENEWAL OF REVOCABLE PERMIT'S 1305, ETC., CONFORMING USE, AIRPORTS DIVISION.

Mr. Kealoha asked whether the Permittees of R.P. Nos. 3355, 3451 and 3733 had satisfied all of their obligations to the State.

As Papillion has done, Mr. Evans said that Kenai also has signed an agreement for payment of their fines.

ACTION

With the exception of Revocable Permit Nos. 3355, 3451 and 3733, Mr. Kealoha moved for approval of all those permits listed in Item J-15 as submitted. Mr. Kealoha moved also for approval of R.P. Nos. 3355, 3451 and 3733 subject, however, to receipt of any monies due the State. Motion carried unanimously with a second by Mr. Higashi.

RESOLUTION

The board unanimously adopted a Resolution honoring Mrs. Joan Moriyama for her over forty years of loyal and efficient service to the State. Mrs. Moriyama will be retiring on May 15, 1984 and will leave a legacy of a truly dedicated public service.

ADJOURNMENT: There being no further business, the meeting adjourned at 12:35 p.m.

Respectfully submitted,

LaVerne Tirrell

Mrs. LaVerne Tirrell
Secretary

APPROVED:

S. Ono
SUSUMU ONO
Chairperson

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