

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

DATE: November 22, 1985
TIME: 9:00 A.M.
PLACE: County Council Chambers
22 Aupuni Street
Hilo, Hawaii

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. J. Douglas Ing
Mr. Roland Higashi
Mr. Moses W. Kealoha
Mr. John Arisumi
Mr. Leonard Zalopany
Mr. Susumu Ono

STAFF

Mr. James Detor
Mr. Libert Landgraf
Mr. Ralston Nagata
Mr. Roger Evans
Mr. Glenn Taguchi
Mr. Duane Kanuha
Mrs. LaVerne Tirrell

OTHERS

Mr. Johnson Wong, Deputy A.G.
Mr. Peter Garcia, DOT
Messrs. Tom Sahara & Harold Matsumoto (Item F-5)
Mr. Jeff Watanabe (Items H-1 and H-2)
Mr. Bill Thompason (Item H-7)
Messrs. Frank Doyle, Larry Van Hunnick and
John Knorek (Item H-4)

MINUTES

Mr. Ing moved to approve the minutes of August 9, 1985 and October 25, 1985 as circulated. Seconded by Mr. Arisumi, motion carried unanimously.

ADDED
ITEMS

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

Item E-9 -- Filling of Position No. 30241, Groundskeeper I, at the Waianapanapa State Park, Maui Parks Section.

Item H-8 -- Request for Approval to Enter into Three Contracts During Fiscal Year 1985-1986 with the University of Hawaii (UH) to Continue Three Research Projects.

ITEM H-4

CDUA FOR A SUBDIVISION FOR THE KALAHEO LANDFILL, AND ACCESSORY USES AT KAILUA, OAHU (C&C OF HONOLULU, DEPT. OF PUBLIC WORKS).

Mr. Evans informed the Board that they were in receipt of two separate requests for contested case hearings. Staff had reviewed the matter verbally with the attorney general's office and it seemed appropriate for staff to suggest that the board take some action on these contested case hearing requests before beginning the portion on the CDUA itself.

Mr. Ono asked Mr. Evans what he was recommending.

Mr. Evans said that staff's recommendation provides that when we have a public hearing, the request for a contested case hearing is normally to be made by the close of the hearing. In this particular case, what has

happened is that staff had received the request 84 days after the close of the public hearing. Staff's recommendation perhaps upon consultation with the A.G. was to let the board make whatever recommendation they want. So if the board wants a recommendation from staff then they will make one.

Mr. Ono asked if it wasn't a normal course for staff to make a recommendation.

Mr. Evans said yes. Staff's recommendation is that on each request for a contested case hearing it be denied because of the fact that we did have a public hearing on this. Although this request was presented in a proper form, it was not not filed on a timely basis.

Mr. John Knorek, Attorney for Pohai Nani, asked that the board hear their testimony before making a decision on the request for a contested case hearing.

Mr. Ono asked that they make their presentation now and address the reasons why they should have the contested case hearing.

Mr. Knorek said that the reason they were unable to request for a contested case hearing on a timely manner is because of the late notice of the subject land fill. The August 22nd public hearing that was held was only made know to them the night before the hearing. Pohai Nani was not aware of their rights to prepare any arguments against the land fill.

Mr. Ono said that all that was required at the public hearing was a verbal statement.

Mr. Knorek said that the Pohai Nani people were only made aware of the hearing 24-hours before so had no opportunity to review the submittal. They could not respond at the hearing in a meaningful way.

Mr. Ing asked whether or not Pohai Nani had been sent a notice of the hearing.

Mr. Evans said that he was not sure. They may have found out about the hearing through the community grapevine or the neighborhood board.

"In other words," said Mr. Ing, "they would have had to learn of the hearing through the grapevine or through a published notice?"

Mr. Evans said, "that's correct." He said also that at the public hearing, if he wasn't mistaken, representatives of Pohai Nani were in the audience and did not testify on the issue.

Mr. Knorek said, "that is correct." However, the published notice did not inform concerned citizens that they had to write to legal representation at that hearing as required by HRS and the Hawaii Administrative Procedures Act and due to the short notice that they did receive they were unable to fully understand their legal rights and ramifications of not presenting all the evidence that could have been presented at that hearing and that is the reason they are requesting this contested case hearing.

Mr. Ing asked if it was their position that the public notice must include a statement that his clients must be entitled to legal representation.

Mr. Knorek said, yes.

Mr. Ing asked, why.

Mr. Knorek said because the Administrative Procedures Act 91-9 B.5 80 requires that for any public hearing.

Mr. Ing said, "that is a requirement for a contested case hearing."

Mr. Knorek said that the 91-9 5 definition of contested case hearing might very well include the kind of hearing that was held on August 22nd.

Mr. Ing asked if the notice requirement advising the public that they are entitled to representation specifically refers to contested cases.

Mr. Knorek checked and then said, "that is correct."

Mr. Knorek said that he understood that the DLNR's rules and regulations define public hearings and contested case hearings as separate kinds of proceedings. The Hawaii Administrative Procedures Act does not recognize a difference in those two in terms of notice.

Deputy A.G. Johnson Wong said that the distinction should be made between the contested case hearing and the hearing that the board conducts which is pursuant to a different chapter. He did not feel it correct to say that the contested case hearing would apply to all the hearings. It would only be applicable to contested case hearings.

Mr. Knorek did not deny what Mr. Wong stated.

Mr. Wong then went on to say that what the board is trying to say is that the last hearing was just conducted as a usual hearing and not a contested case hearing and therefore the question is not resolved as to whether you are entitled to a contested case hearing.

Mr. Knorek said, "that is correct."

Mr. Wong felt that Mr. Knorek was trying to give the board the impression that in August the parties thereto were entitled to counsel which is not necessarily so only if it were a contested case hearing, which it was not.

Mr. Knorek believed that it was a contested case subject to definition of the Hawaii Administrative Procedures Act.

Mr. Wong referred to Chapter 183-41 dealing with the usual public hearings for conservation districts.

Mr. Knorek said that he was referring to 91.9.

Mr. Johnson again referred to 183-41. He advised the Chairman that in this particular case the precise issue before the board is whether they want to waive the time for this particular request.

Mr. Ono suggested that we defer this request for a contested case hearing and go into the substance of the application then pick this item up at the tail-end of today's agenda. In the meantime everyone can research the different sections of the law and rules.

This was o.k. with Pohai Nani's counsel. He asked then if they could proceed with their testimony on the substance.

Mr. Ono said yes but that he would have staff lead off.

Mr. Evans asked that the bottom of page 8, paragraph 3, the very last line, be changed from "Department of Land Utilization" to "Mayor of the City and County of Honolulu."

Mr. Evans stated that this is a proposal by the Department of Public Works to develop a sanitary landfill at Kalaheo to dispose of a portion of the 700,000 tons of refuse produced on Oahu.

Mr. Evans said also that a total of fifteen people presented testimony at the August 22, 1985 hearing on this application including the applicant. Thirteen were against the proposal and two were in favor of it. In addition, the Board allowed for additional public testimony to be submitted within fifteen days of the hearing and during that time period they received 55 letters from concerned citizens opposed to the project; 1,254 form letters requesting denial of this application; and, 5 form letters objecting to the landfill for various reasons. Listed in the submittal are 21 concerns raised both at the hearing and in the written testimony.

After discussing these concerns with the applicant, Mr. Evans said that staff then began their analysis process. As a part of this process, they came across one area of substance which they felt needed to be pointed out to the board that they had a lot of difficulty with in reviewing the project and that area of substance is listed in the submittal. As a result of their analysis and discussions with the Department of Public Works they received a revised proposal which lowered the height of the fill from a ridgeline down to 500 feet and then there was a subsequent review again in which case the department lowered again their height from 500 to 300 feet. Staff, in analyzing these, their difficulty was, while there was a picture and an EIS, that there was no narrative to tell them how high this proposed site went up the ridgeline. What they did was ask Forestry if, from looking at the picture, how high this landfill purports to go. Forestry took a look at it and said that it is roughly from 200 to 250 feet in terms of the maximum elevation.

Mr. Evans said that after analyzing all comments and concerns of those involved, staff is recommending approval of this application subject to those conditions listed in the submittal.

Mr. Ing asked if the 250 feet height referred to applied to the height of the cut or the height of the fill.

Mr. Knorek said that it would be the height of the fill.

Mr. Kealoha asked if the second portion of Condition No. 9 was necessary. He felt that a new EIS should be required if they go higher instead of a supplemental EIS.

Condition No. 9 reads as follows:

9. That the landfill be limited to a maximum height of 250 feet and prior to any expansion beyond this height, the applicant complete a supplemental EIS and obtain approval from this Department.

Mr. Evans said that their reading of the environmental rule is that you can take an action and then you do your action. If you want, at a later time, do something else, and you have a basic EIS they don't really require you to go into a whole brand new EIS. You have your basic and you add on if you will a supplemental to that basic. This is where staff got the term supplemental from.

Mr. Ono said that no matter what you call it if the magnitude of the proposed project is going to have an impact that is going to be so great, it almost amounts to a new EIS.

Mr. Evans agreed.

Mr. Kealoha said that in his mind Condition No. 9 only addresses a portion of the supplemental EIS. The point is that it appears to him that a whole new EIS would be needed. The face is much broader, going from the 250 level on up so the impact is four times greater, so a new EIS should be prepared.

Mr. Ono asked if there were any photographs of the area indicating what the 250 feet level would look like. Mr. Ono said that when they went out into the field they had asked that some photographs be taken with some sketches drawn in to indicate what the visual impact would look like.

Mr. Evans said that staff had not projected any photographs but the applicant, who is present at the meeting, may have.

Mr. Ono asked Mr. Evans if he had looked at the photographs.

Mr. Evans said no.

Mr. Ono remarked, "if you did not look at the photographs, how will you be able to relate staff's analysis from the applicant's presentation?"

Mr. Evans said that what they worked with was what was presented in the EIS since that is what the public had.

Mr. Frank Doyle of the Division of Refuse Disposal distributed to the board members for their review photographs of the area and went on to explain the proposed project and how they had arrived at the reduced height.

Mr. Ono said, "Mr. Doyle, you had some additional meetings with the community people after they had made a field visit." He asked, "what were the results of those meetings?"

Mr. Doyle said that those meetings did not conclude in any type of agreement. He said that a number of meetings were held. One with Pohai Nani which was more of an informational meeting and neither party expected much more than that. He said that basically that was the case with most of the meetings that were held. They met with the Kaneohe Neighborhood Board, Kiwani's Club and then had two meetings with community representatives. He could not say that these people were ready to accept their proposal. He could only say that they attempted to get all of the input from all of the meetings that they had and put them into what they could live with in developing the plan presented to the board today.

Much discussion continued between the board and Mr. Doyle with reference to the photographs.

Mr. Ono asked that Mr. Knorek make his presentation.

Mr. Knorek said that he was here today with Larry Van Hunnick to represent Pohai Nani on this CDUA. He first requested that the board deny the CDUA for a number of reasons. He said that it would be very difficult for them to be very precise with a lot of the arguments in that the project has changed day-to-day, week-to-week as they have come down to this final hearing. He said that his understanding as presented today is that the project proposed is only 47 acres in size, will be no higher than 250 feet and at all times be at least 150 feet below the ridge line.

Mr. Evans said that that was staff's recommendation.

Mr. Knorek said then that the project proposal is for 300 but staff's recommendation is 250.

Mr. Evans agreed.

Mr. Knorek said that his concern is that the elevation of the landfill at all times along the ridge line is at least 150 feet below the ridge line. Based on the above assumptions Mr. Knorek believed that the CDUA should be denied for quite a few reasons.

First, the existing EIS on the project is inadequate. As our regulations require it they have to comply with all environmental regulations. Also, the land has not been purchased as he understands it, so the City & County does not own the property and did not make a proper application to DLNR.

Within the EIS the project was proposed to be in duration of only five years. As he understands it now the project may last 20 years. Surely the effects of a 20-year project on the community will be much greater than a project of 5 years duration. Again the project as proposed is 300 feet as opposed to their understanding and the Office of Environmental Control's understanding of 200 feet. 300 feet is 50% higher than 200 feet. To him that is a significant change that would require a supplemental EIS right now, before the project even being approved. The original EIS did not address the stockpile area. He believes that the EIS is inadequate on that ground. The effect on residences at Kaneohe was not addressed at all in the original EIS. The EIS stated that the area west of the project was simply conservation district use land and had no residences in it. He said however that one resident does live in that area and Pohai Nani is within 600 feet of the project boundary so he differs with the representations on the photographs presented by Mr. Doyle.

They do not believe that there has been an adequate wind study to show what effect the prevailing trades are going to have blowing garbage and odor and debris across that ridgeline into Pohai Nani and the Kahanaola Convalescent Center. The only wind study in the EIS was taken at Kaneohe Marine Base and they don't know how that is going to affect all the residences on the other side of the ridge which were totally ignored in the original EIS. In addition he believed that there has been substantial change in the conditions prevailing that justify this massive landfill on the windward side in that H-Power has now been approved which will drastically reduce the need for a huge landfill. As he indicated earlier, he believed that there was improper notice of the August 22nd hearing in that parties were not informed of their right to have attorney representation and a notice was not given all affected landowners by mail as required by 183-41.

Mr. Ono thought that 183-41 said "all adjoining owners."

Mr. Knorek said that it says "all affected", as he understands it.

Mr. Evans said, "that is correct." It says "all affected landowners". When they had a review by the Office of the Attorney General that clause was generally interpreted by their attorneys to mean "adjacent property owners" and that is the reason that they have been using "adjacent property owners."

Mr. Knorek said that not all affected landowners were notified. He believed that the inspection of the Kapaa site was improperly noticed and that the parties had not been given an adequate opportunity to report those facts that were noticed by the Board members who attended the DPW showing. He believed that there was a failure in the CDUA process in that this CDUA request says subdivision. It seems that it may change the subzone boundaries or change permitted use in this area and therefore it should be reduced from the proposed amendments required by 183-42(d) of our administrative rules. In addition, there are several severe problems in that this area is in a flood plain area although it is not designated as a 100 year flood plain. The U. S. Army Corps of Engineers response to the original EIS stated that the City and County should look at the EPA regulations which defines this area. The Army Corps indicated that the designation given by the Federal Flood Insurance Authority simply means that they have not made a study to determine what the flooding impact on this area would be. If the project is approved as it presently stands without a study to determine whether the area where the landfill will go in could be inundated by floods, the project may not qualify under Federal Law as a sanitary landfill and be classified as an open dump and

be prohibited directly by the resource conservation recovery act. So until there is information to determine whether the area where the landfill is supposed to be could be flooded out it is subject to challenge as an open dump. In addition, the Highway Beautification Act, both the Federal Law and the State Law prohibits any sanitary landfill that is viewable from a Federal or State Highway. The EIS admits that this whole project will be viewable from H-3. Not only that, it is their belief that the different points along Mokapu Blvd. and Dump Road you will be able to see the elevation of the landfill above the lower ends of that amphitheatre-like ridge. In any event, if the project is viewable from H-3, the State could lose 10% of its Federal funding for H-3. He feels that this is a serious impact on the project which the Board should take into consideration. Finally, he believes that the Board of Health permit that was issued to DPW may have been improperly issued in that at the time the permit was requested, they did not have all zoning approvals as required by the Department of Health and the project proposed to them was not the project that actually was proposed to the Board. He believed that there is a way out of this -- an opportunity for everyone to present their views and, since a contested case hearing has been requested, DPW and themselves might request a ninety day extension on this matter be granted so that a contested case hearing could be held and full presentation of all the community concerns could be given to the Board.

In conclusion, he added that Pohai Nani and the Convalescent Center located just across the ridgeline has 300 residents whose average age is 82 and these people suffer from respiratory diseases, etc. The admitted construction phase of this project is going to generate an uncontrollable amount of dust and debris in the air and for at least this period of time the residents of Pohai Nani are going to be severely affected and they hope not fatally. It's a danger that is admitted in the EIS and he feels that these concerns are things that the board should take under consideration. Mr. Knorek then asked that Mr. Larry Van Hunnick explain a little bit about the Pohai Nani problems.

Mr. Ono said that this is not a public hearing so he would like to keep this as short as possible so he would just like to have the main points presented to the board.

Mr. Knorek said that he understood. But he wanted Mr. Van Hunnick to speak inasmuch as he is not aware of the actual medical condition of the residents of Pohai Nani.

Mr. Van Hunnick said that their main concern is their older people. It is a known fact in the medical community that older people or people who are chronically ill are more susceptible when things are in the air. You will not find any of the health care facilities in the islands near any of the landfill. Normally, there are local laws to prohibit something like a landfill to be near a health care facility. That is why he is coming before the board. He feels that they are the only ones that can protect the rights of the people from this type of thing.

Mr. Ing said that he understood that the landfill was there before Pohai Nani existed. He said that he may be in error, but he doesn't remember Pohai Nani and wondered why it was built on the other side of the ridge of a quarry and landfill.

Mr. Van Hunnick said that Pohai Nani has been there now for 22 years. He said also that if the board cannot deny the application that they at least seriously consider a contested hearing so that at least the medical community also can have their input.

Mr. Ing felt that it would be rather difficult to take action on this right now and suggested that this matter be deferred to the next meeting of the board. He thought it would be beneficial for the City and the Attorney General's office to respond to the request for a contested case hearing before the board acts.

Mr. Evans said that staff was up against the last deadline. He said that what the Attorney General's Office may want to consider is that as a part of this process they did not have a contested case. However, they did have an EIS involved. Under 183-41 there is a statement which says that whenever an EIS is required the 180 day date may be extended at the request of the applicant. So the question which staff may need to pose to the Attorney would be that there was an EIS involved. However, that EIS was done in 1983. Considering that, we would then allow the applicant to request a 90-day extension should he so desire. Another alternative is to defer this to the end of today's meeting.

Referring to Mr. Evan's suggestion of possibly using the EIS justification to extend the 180 days, Mr. Ono's personal opinion was that the board should not be expected to approve these kinds of extensions, especially when the EIS was completed way ahead of schedule. If there is a delay because the EIS was incomplete then that is a different situation.

Mr. Knorek said that he believed that provision also provides for an extension when a contested case hearing is requested. He said that a contested case hearing has been requested but has not yet been granted.

Mr. Ono suggested that Mr. Wong get together with staff to see what kind of options the board may have, bearing in mind that there is still a decision to be made on this request for a contested case hearing.

The board agreed to defer the requests for both the CDUA and the contested case hearing to the end of today's Agenda.

Mr. Doyle said that they would not agree to allow the applicant to have a contested case hearing. The reason being the urgency of the matter. He felt that they were fully prepared to address and sustain any challenges that may be made to this project e.g. improper EIS, improper Department of Health permit, etc. They really would like to get on with the project. They are running out of space. He felt that there were a number of inaccuracies made by Pohai Nani's Counselor.

(See Pages 19 and 20 for Action.)

ITEM H-7

CDUA FOR A SINGLE-FAMILY RESIDENTIAL USE AT KIPAHULU, MAUI (WILLIAM THOMPSON).

Mr. Evans asked that the word "non" be added in front of the word "commercial" as shown in the last line of paragraph 2., which is shown on the top of page 5. This property will be used for residential purposes which is non-commercial.

ACTION

Mr. Arisumi moved to approve this application for a single-family residential dwelling with driveway on TMK 1-6-5:7 and 28 at Kipahulu, Maui, subject to the conditions listed in the submittal and also with the above amendment. Seconded by Mr. Zalopany, motion carried unanimously.

ITEM F-5

UNIVERSITY OF HAWAII REQUEST FOR AUTHORIZATION TO ISSUE REVOCABLE PERMIT COVERING PORTION OF G. L. NO. S-4488, SNUG HARBOR, HONOLULU, OAHU.

ACTION

Mr. Ing moved to authorize the University of Hawaii permission to issue a revocable permit to Sail America Foundation for International Understanding to use dock space and shore space within Snug Harbor at Mokauea, Kalihi,

Honolulu, Oahu, encumbered under General Lease No. S-4488, for the purpose of training and preparing for the America Cup Competition covering the period October 1, 1985 through July 31, 1986 at a nominal monthly rent of \$11.00. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-3

UNIVERSITY OF HAWAII REQUEST FOR RIGHT OF ENTRY FOR SUB-SOIL INVESTIGATION AND CONSTRUCTION OF POWER AND COMMUNICATION SUBSTATION, MAUNA KEA, HAMAKUA, HAWAII.

Mr. Detor asked that this item be withdrawn. He said that when the CDDA was acted upon sometime ago the right of entry was approved at that time so this submittal is not necessary.

ACTION

Withdrawn.

ITEM H-1

REQUEST FOR EXTENSION OF CDDA FOR A SUBDIVISION, COMMERCIAL GOLF COURSE, BEACH PARK, ARCHAEOLOGICAL PARK, AND AGRICULTURAL USES AT SOUTH KOHALA, HAWAII (MAUNA LANI RESORT, INC.).

Mr. Ing asked to be excused from participating on this item.

Mr. Evans said that what happened on this case is that just before they had the 180-day expiration they had a time problem. There was a legitimate EIS involved on this project and the problem that the staff had was one that reflected itself in the failure of the applicant to get an SMA permit which the County of Hawaii required. The applicant requested an initial 90-day extension in order for them to meet all the concerns from the County. They were scheduled for a hearing to get their SMA permit but, unfortunately, there was no quorum so they could not even hear the case so they did not get their SMA permit. This is the reason the applicant has requested a second extension. The statute reads that when an applicant comes in the first time he gets an extension at his request. Any further 90-day extension needs to be approved by the board and staff is recommending approval of this 90-day extension.

Mr. Watanabe, in response to Mr. Higashi's question, said that the SMA determination on the Big Island runs all the way to the highway so the entire area is covered by the SMA.

ACTION

Mr. Higashi moved to approve the request for a second 90-day extension for CDDA No. HA-1/18/85-1751 with the deadline extended to January 13, 1986. Motion carried with a second by Mr. Kealoha.

Mr. Ing was excused from acting on this item.

ITEM H-2

CDDA FOR A SUBDIVISION, COMMERCIAL GOLF COURSE, BEACH PARK, ARCHAEOLOGICAL PARK, AND AGRICULTURAL USES AT SOUTH KOHALA, HAWAII (MAUNA LANI RESORT, INC.).

Mr. Evans said that five people testified at the public hearing and one concern was the proposed forty acres set aside for apiary use. Residents of the nearby Puako Community were concerned with infiltration of bees into their gardens for pollen and water and the hazards of the bee stings are considered serious.

A second concern, said Mr. Evans, is the design of the public beach park and availability of public access and parking. The public's expectations from the developer are adequate parking, conveniently located, without having to walk a great distance. The beach park should provide opportunities for recreation in and outside the ocean.

Mr. Evans said that both of the above concerns were taken up in staff's analysis of the project and they are therefore recommending approval of the project. However their recommendation is split in two parts. They recommend that the board deny the application for the apiary, or bee, use on the 40-acre parcel which is to be surrendered to the State and secondarily they would recommend approval of the three lot subdivision, golf course, public beach park and its access road, the archaeological park and the ag uses, subject to the recommendations listed in the submittal.

Referring to the apiary use, Mr. Higashi suggested making an amendment that no apiary use be conducted anywhere within the State parcels and not only related to the 40 acres. The public did not want the activity in the area at all.

Mr. Evans said that staff's analysis was that apiary use was not really appropriate so staff would be happy to incorporate Mr. Higashi's suggestion.

Mr. Watanabe said that they have the same concerns about the bees as the Puako residents.

Mr. Ono asked the applicant whether he had a chance to take a look at the conditions listed in the submittal.

Mr. Watanabe said yes. First of all he said that they would have no difficulty at all with the State imposing as part of the granting of this a general prohibition of apiary use of the subject lands or the entire State parcel.

Secondly, in relationship to staff's Recommendation A., which is to deny the application for the apiary use, some background might be in order.

Mr. Watanabe said that the reason Mauna Lani considered the surrender initially of the 40 acres was because of some expressed interest on the part of people who were involved in the economic development of the island being interested in apiary use. They would ask that in the event that that property is not going to be used for that purpose that Mauna Lani be given an opportunity to reconsider its surrender of that 40 acres as well as its subdivision from the larger parcel. Since the basis for the initial request may now be void, he asked that they be given that opportunity.

Pointing the board's attention to Condition No. 8, he said that that condition requires the applicant to undertake a data recovery program for the six sites in the general vicinity of the archaeological district. Mr. Watanabe asked that that amendment stand with one modification and that modification be that the applicant be required to undertake a data recovery program for the six sites in the event that these sites are either removed or disturbed in anyway so that if they are not disturbed then they be allowed not to have that recovery program study.

Mr. Watanabe said that Condition No. 13, at present, require that construction be initiated within a one year period of approval and construction be completed within three years of approval. Mr. Watanabe asked that the board consider changing those dates from one to two years and from three to five years. The reason for their request is that following this board's action the applicant will then have to go before the County for a subdivision approval and then following that go through DLNR for purposes of getting a public auction of the subject lands. That process may very well take them far beyond the time periods that the board has designated in Condition 13 so they would ask at least that they be given a two year period to commence construction, five years in which to complete and, perhaps, if he might suggest, the opportunity to come back to this board. This would only be

because they don't have any control over a good deal of that time frame. So they would like to be able to come back to the Chairman or the board as a whole particularly if the completion date was unavoidably stretched out. Other than that they have no objections to the conditions.

Mr. Higashi asked in what priority would construction be started.

Mr. Watanabe said that in some respects some of the construction has already begun. For instance, on the archaeological park, they have been working with the members of the Waimea Hawaiian Civic Club in restoring some of the areas. Insofar as hard construction, he would guess that it would all be done at one time. That is, the golf course, the archaeological and the beach park functions.

Mr. Higashi's concern was that the beach park function might be put into less priority.

Mr. Watanabe said that they would do everything at one time but did not think that they would have any objection to a condition that if they were to go in and build the golf course that they build the others at the same time. He said that if the board would like, they could send communication to the board indicating the intent that when they do that portion all of it will be done at the same time.

Referring to Recommendation No. 8 and Mr. Watanabe's proposed amendment, Mr. Higashi asked Mr. Evans if this wasn't the original intent anyway? That if the area is not going to be disturbed, then a data recovery program would not be necessary.

Mr. Evans said that the intent of Condition 8 is really a protective measure.

Mr. Higashi asked Mr. Evans if he had any problems with the proposed amendments to Condition No. 13.

Mr. Evans said no.

Mr. Ono asked Mr. Evans how he felt about changing the one to two years and the three years to five years.

Mr. Evans felt that it would be more consistent to take a route that says that following a government approval, you then get one and three years.

Mr. Ono asked, "if the board goes that route, who would be monitoring the in-between years? What if they take five years to obtain the government approvals?"

Mr. Evans said that he is not suggesting that the language of their standard Condition 13 be altered, to reflect that in all cases. Based upon representation from this applicant, they would recommend that in this case following government approvals, the one and three become implemented. So this is recommended for this case only.

Mr. Watanabe said that their primary purpose is to be able to do what they say they can do -- either one would do it. Either the three and five or to have the existing time periods run after they obtain government approvals.

Mr. Kealoha said that if we use Recommendation A. as one of the conditions then we could delete this and just work with Recommendation B.

ACTION

Mr. Higashi moved to:

- A. Delete Recommendation A., which is to become Condition No. 15.
- B. Amend Condition No. 8 by adding that if the area is not going to be disturbed, then a data recovery program will not be necessary.
- C. Amend Condition No. 13 as follows:
 1. in place of one year it be two years; and
 2. in place of three years it be five years.

Motion carried with a second by Mr. Zalopany.

Mr. Ing was excused from voting on this item.

ITEM H-6

CDUA FOR TRANSITING PUBLIC BEACH RESERVE FOR COMMERCIAL PURPOSES AT HANAKOO, KAA NAPALI, MAUI (HYATT REGENCY MAUI).

Mr. Evans said that this proposed area is located immediately in front of the Hyatt Regency Maui Hotel and is a part of the public beach reserve.

Mr. Evans said that several issues are involved. The first issue is the question of transiting and staff has been engaged in an analysis of the issue of transiting as a land use under Chapter 183-41. Basically, the statute says that if there is a new use, change of use, or an extension of use, then a CDUA must be done. Other than that a CDUA is not required.

In the issue of transiting, staff did at one time get an opinion from the Attorney General's office and that opinion indicated that in each and every case of transiting a CDUA was required. Subsequent to that opinion they have asked the attorney general for clarification of CDUA requirements for transiting and they have gone through a series of clarification, the last one being September of this year and what staff has been able to ascertain is that the decision on the requirement of a CDUA for the purpose of transiting across the beach is an administrative decision. It's a discretionary thing in terms of interpreting our statute and staff has developed in this case a position whereby when someone, even a commercial operator, wants to engage in the act of transiting across the beach into the water, no CDUA would be required. They do not feel that to be a land use per se.

What staff is asking the board to do this morning in Recommendation A is to ratify the staff's position that beach transiting as they just defined it on a very narrow basis does not constitute a land use and as such does not require a CDUA. What staff hopes to gain, should the board ratify this this morning, is to be able to plug in to the board's request for a report to come back to the board in December on the issue of transiting and the temporary revocable permits that we have been giving out in the Hanalei area. They would like to incorporate this into their report to the board in December on that bigger issue. Staff would appreciate it if the board would ratify their position there.

Secondarily, should the board do that then all staff is talking about this morning is a request by the hotel for a commercial mooring in the water that sits there now. This is an after-the-fact request in that the mooring is already in the water and they really don't know how long it has been there and they would recommend approval of it. This would be Recommendation B. Staff would like at this time to defer that section. The reason they would like to defer that section is because DOT is writing some rules for the use of the waters in the Kaanapali area because of problems that these folks have

been having with jet skis and the fishermen. Before coming in with a final action, Mr. Evans said that they would like an input from DOT as to how they feel about this mooring. This is not to say that staff is opposed or for it.

Mr. Ing asked if they hadn't already been given a chance to respond to this application.

Mr. Evans said that they are aware of this application. Staff specifically talked to them about this application and about this specific mooring. The response they got back from the staff people that our people talked with is yes, they would get something over to us but no we don't have that today.

Mr. Ono asked, "when was this contact made?"

Mr. Evans said, "about two weeks ago and also this week as a follow up."

Mr. Ono said, "wasn't the hearing held more than two weeks ago?"

Mr. Evans said yes.

Mr. Ono asked Mr. Evans if he was aware of the fact that DOT did not appear at the hearing.

Mr. Evans said yes.

Mr. Ono did not want it to seem that DOT was only aware of this about a week or two ago. He could not understand what Mr. Evans was asking.

Mr. Evans said that they are asking the board to ratify the staff's action on "A" and to defer "B" which relates to the potential approval of the conservation application until they can get some input from DOT.

Mr. Kealoha asked why the whole item couldn't be deferred.

Mr. Evans said that it would affect the December report on the Hanalei situation.

Mr. Ono said if you are to dispose "B" then you would also dispose of "C".

Mr. Evans said, that's correct -- they would like to defer "B" and "C".

Mr. Higashi asked about the interim use of the mooring.

Mr. Evans said that from staff's prospective, the mooring is there and it would seem that because staff is making the request for the deferral that the applicant should in no way be penalized for that request. He said that in staff's recommendation "B" there is a potential fine of \$500.00 involved because of the unauthorized use. They feel that when they come back to the board that would not change.

Mr. Higashi asked if this would depart from DOT substantiating that this is an unauthorized use.

Mr. Evans said that what they expect the DOT report to tell them is how this mooring fits into our overall rules that were developed for Kaanapali. Either this mooring is consistent with what the rules are or we feel that this mooring, although it is there, should be moved. That is what staff is expecting to come from DOT.

Mr. Higashi asked if this wasn't an overall plan that they are developing.

Mr. Evans said that along with the rules is a narrative and also a plan of Kaanapali as they develop the issue and the map is in a sense the master plan for the water use of the area.

Mr. Higashi asked, "then the Master Plan already exists?"

Mr. Evans said a draft does.

Mr. Ing asked when DOT would be acting on the proposed rules.

Mr. Evans said that their time table has changed considerably several times in the past year.

Mr. Evans said that the only question before the board right now is the question of mooring. He said that should the board feel that they would want to sustain the staff's recommendation, there could be an added condition that it be subject to the approval of the mooring by DOT as well, or some language to that effect.

Mr. Ono asked, "should the board defer Recommendations "A" and "B, what effect would that have on DOT's position?"

Mr. Evans said they may feel that they would be in a stronger position should they so desire to have the existing mooring relocated.

Mr. Arisumi said that during the hearing on this matter Mr. Nishiki talked about the Zodiac. He asked Mr. Sano to give him some idea as to why the Zodiac makes a little more noise than ordinary.

Mr. George Sano, representing the Hyatt Hotel, said that he would like to reiterate his point again that as a first class hotel they are concerned about the safety factor and at times the ocean gets kind of choppy and he expects that when Mr. Nishiki was out at Kaanapali making his observations the ocean was rough and in order to have their guests come to shore, they have to bring the Zodiac to the shoreline. They do not take the Zodiac in all the time, only on special occasions when the ocean is choppy.

Mr. Ing asked, "your request is for two moorings?"

Mr. Sano said, yes.

Mr. Ing asked if these moorings were presently in place.

Mr. Sano said no. They now have a temporary mooring but what they would like to do is that as soon as they have approval on this then they would like to have a permanent mooring set 200 yards off shore.

Mr. Sano asked if it would be possible to leave their temporary mooring until such time as they receive their permanent mooring.

Mr. Ono informed Mr. Sano that the board has not yet decided if he can receive any kind of mooring.

Mr. Ing said that at the time of the hearing, Mr. Arisumi indicated that the operators of the Zodiac were gunning the engine and running the Zodiac up along the beach and he did ask specifically that an investigation be made of that and that it be included in the submittal. In particular, Mr. Nishiki said that our enforcement officers were fully aware of this but he does not see this in the submittal.

Mr. Evans apologized for this not being in the submittal.

Mr. Ing said that he did ask the enforcement officer that was there at the time of the hearing if what Mr. Nishiki said was correct or not and they said that it was correct. Mr. Ing said that he would like, in connection with what the representative from the Hyatt said, to know whether the enforcement officers agreed that that was done only during times of rough seas or surf at the shoreline.

Mr. Evans said that he will take this back to Honolulu and follow up on it.

Mr. Arisumi asked Mr. Evans to repeat his recommendation.

Mr. Evans said that they would like the board to ratify Recommendation "A" and secondly, in relation to "B" and "C" they would ask that the board defer this to give them an opportunity to hear from DOT. What this means is that there would be no action until staff comes back to the board with something from DOT.

Mr. Higashi said that he was somewhat confused in what the analysis says and what is being recommended in the conditions. He assumed that this was really to support staff's position but it really does not.

Mr. Wong said that he didn't think the opinion stated that beach transiting is not a land use. They are saying that it is a use but when a CDUA is required then it's at the discretion of the board. Whereas staff's recommendation says that it is not a land use which is contrary to the A.G.'s opinion.

Mr. Evans said that if it is a land use then a CDUA is required, from staff's perspective. This is why they tried to get together with the AG because the statute is clear. If you have a land use, establish a use, increase a use or change a use, a CDUA is required. This is why DLNR staff sat down with the AG's staff and came to the conclusion that transiting per se is not a use.

Mr. Wong said that the opinion was sent to the Planning Office unbeknown to them that staff was making a recommendation that is not necessarily consistent with their opinion. There was no discussion as to staff's recommendation.

Mr. Ing thought that the requirement was for a commercial use. If the public is going to walk on the beach in the AG's definition that is a use, but we don't require a CDUA for that. The difference is whether that is a commercial use.

Mr. Wong said that the decision resting with the board is whether a CDUA is required or not. The statement here saying that this is not a land use, he disagrees with. It is a land use but the determination of whether a CDUA is required is up to the board.

Mr. Evans said that they do feel, along with what the AG says, that there may come a time when, for example on the Zodiac situation, that you do need to regulate. However, as in the case which is presently going on now in Kaanapali, there is regulation being done. It is being done by the DOT. If, for example, at Hanalei, there are a lot of people with boats in the water and they have a situation which needs to be regulated and they feel that the proper agency to do that regulation is the DOT through its rules -- not to use the CDUA, where a guy crosses the beach, to regulate what is going on in the marine waters.

Mr. Ono asked on what basis can you say whether to require a CDUA or not -- that it can be left up to the discretion of the board? He thought that if a CDUA is required, it's required. There is no way you can waive that requirement. But the AG's opinion says that the board can waive that requirement. He just wanted to know, without getting too technical, on what basis this CDUA can be waived.

Mr. Wong said that they were well aware that we did not want to get involved in this paper processing procedure requiring a CDUA for transiting on the beaches. He could see where a CDUA would not be required for a one shot deal of transiting. But if you know that it's going to be a continuing commercial occurrence then you may have to make that decision.

Mr. Arisumi moved to defer this item in its entirety.

Mr. Ono asked for how long.

Mr. Arisumi asked whether a decision would be needed from the DOT before the board could make its decision.

Mr. Evans said that would be entirely up to the board. Staff feels that the board would be better advised to have in hand as much information as possible before they made a decision.

Mr. Higashi asked if they could divide the question.

Mr. Evans said yes.

ACTION

Mr. Arisumi withdrew his earlier motion then moved to:

1. Defer action on Recommendation A to the next meeting of the board.
2. Defer action on Recommendations B and C no longer than two meetings from now.

If there is no response from DOT within that time, staff would still have to come back to the board.

Mr. Zalopany seconded, motion carried unanimously.

ITEM C-1

APPLICATION FOR F. Y. 1986 RURAL COMMUNITY FIRE PROTECTION FUNDS (MAUI COUNTY).

ACTION

Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM C-2

RESUBMITTAL: TERMINATION OF TIMBER (LAND) LICENSE OF BIO POWER CORP. DUE TO NON-PAYMENT OF FEES FOR HARVESTED FOREST PRODUCTS AND OTHER VIOLATIONS OF THE TERMS OF THE LICENSE.

Mr. Landgraf said that at the November 8th meeting in Honolulu the Attorney for Bio-Power had requested that this item be deferred until this meeting and at that time, the license holder agreed to stop all harvesting activities in the Waiakea area and to leave the State premises. Also he would be involved in removal of merchantable material on the ground and a clean up of such previously harvested areas as the Division of Forestry and Wildlife desired. Mr. Landgraf reported that they in fact did not do what they said they would do. They did not stop their harvesting activities and, in fact, entered into another previously uncut block.

Also, the license requires that if they are going into these new areas, a logging plan would be required. They had not submitted this nor did they initiate a systematic cleanup as they said they would do. Mr. Landgraf said that the week after the November 8, 1985 meeting he personally made an inspection with the District Forester and they had not complied with what they said they would do in their letter of November 8th.

On the basis of the above, Mr. Landgraf said that they are recommending termination. Mr. Landgraf said that they have owed us a substantial sum of money and on July 25, 1985 they submitted a petition to reorganize under the

Federal Bankruptcy laws. Prior to July 25, 1985 they owed the State \$3,520.00 for stumpage. They also owed DLNR \$7,397.50 for fines and damages that were imposed upon them for trespass in the Puna Natural Area Reserve. So prior to them filing the petition on July 25, 1985, they owed the State approximately \$10,917.50. Subsequent to that, they continued to harvest in the Waiakea area. Since July 25, 1985 they have run up a tab of \$29,989.34.

Besides the funds that are owed us, Mr. Landgraf said that their clean-up, their utilization, the logging plan and a number of other items as required by the license, they have not complied with. On the basis of the above, Mr. Landgraf recommended that the board authorize the termination of the timber, (land) license issued to Bio-Power Corporation as of March, 1985. That is the date of the license, as provided in II.C.2 of the License and that section refers to suspension and termination of that license.

Mr. Landgraf said also that upon recommendation from the Attorney General's Office he would like to amend the first paragraph of the recommendation by by adding at the end of the paragraph the words, "for the post petition violations, breaches or defaults."

Mr. Wong asked what was wrong with saying "defaults prior thereto?"

Mr. Landgraf said he did not know, it would be a board recommendation.

Mr. Wong said that with the change in language here you are saying that we are terminating for the post violations so what I am saying here is that we have a right to terminate for violations prior thereto.

Regarding the second paragraph of the recommendation, Mr. Higashi did not think it necessary to make it "subject to". He said, "if the court doesn't allow it, the court doesn't allow it?"

Mr. Wong said that whether the condition is included or not the court's action will take priority. So he goes along with Mr. Higashi's suggestion to delete any condition to the termination.

Mr. Landgraf said then that he understood the second recommendation to be that we strike "subject to" and effective only upon the lifting of the bankruptcy law.

Mr. Wong said that it would be effective immediately upon approval of the board.

Mr. Ing said, "wasn't a bond posted and do we need to take action on the bond?"

Mr. Landgraf said, "yes, they have a \$15,000 bond posted."

Mr. Ono said that when this item was brought up at the last board meeting he thought that the response to the question about any outstanding moneys owed the State -- there was nothing.

Mr. Landgraf said that at the last board meeting they did owe us and the figures that appear in this board submittal is the same that appeared at the last board meeting. The amount owed us is the biggest violation.

Mr. Ono said that the representation made at the last board meeting is that they had paid off whatever was owing.

Mr. Landgraf said that was in regards to the violations in the natural area reserve. They did pay that total amount and the check they sent to the department to pay that \$8,000 somewhat dollars was not good and it was returned for lack of sufficient funds. They then paid the State \$1,000 for the fine and their position was that the remaining \$7,000 somewhat dollars was for damages. Also, Mr. Landgraf said that should the board accept staff's recommendation to terminate the license that he be allowed to initiate negotiation of another license for harvesting the remaining planted timber resources covered by the aforementioned license to Bio-Power. In other words, staff would have to come back to the board. But, should the court agree with their action here and the license be terminated, that he be allowed to at least initiate or attempt to get another license issued.

ACTION

Mr. Higashi moved to authorize the termination of the Timber (Land) License issued to Bio Power Corporation on March 19, 1985 as provided in Section II C.2 of the License for the post petition violations, breaches or defaults and that the termination be effective immediately upon approval of the board. Mr. Zalopany seconded, motion carried unanimously.

ITEM H-4

CDUA FOR A SUBDIVISION FOR THE KALAHEO LANDFILL, AND ACCESSORY USES AT KAILUA, OAHU (C&C HONOLULU, DEPT. OF PUBLIC WORKS.).

(See Pages 1 through 8 for earlier discussion.)

Mr. Evans said that this matter was deferred earlier in order that staff would have an opportunity to discuss with our legal counsel the request that came in for a contested case hearing and what options are available to the board. As things stand right now, they do have a 180 day expiration date that requires some action by the board at this meeting. Because of concerns that were raised staff did have an opportunity to discuss with the A.G. alternatives. He pointed out to the board that the statute is clear that the 180 days may be extended to an additional 180 days which may occur when a contested case hearing is requested. Mr. Evans said that the board could take an action today based upon the request that came in. The statute does allow this board to consider an extension to an additional 90 days.

Mr. Ono said, on a request for a contested case hearing, did you review the matter with this in mind -- assuming that the request is not legitimate but is made anyway, would that be a reason to grant an extension?

Mr. Evans said the statutory language simply says "request". It does not say whether the request is legitimate or not.

Mr. Ono said that his question is, "what happens if the board's position is that because the request came 80 days after the date it was supposed to have been filed that this would have been an illegitimate basis to require an extension?"

Mr. Evans felt that the request itself would be a basis for doing it.

Mr. Wong said that in his discussions with Pohai Nani's counsel, they have two issues before the board:

1. Whether a waiver should be granted allowing the request for a contested case hearing and, if so, the board should grant an extension and set up the mechanics for a contested case hearing. If the board disapproves the waiver on the basis that they have not complied with the rules, the board may still grant an extension for a limited purpose, not necessarily for a contested case hearing but for the reason that the board has denied a waiver.

2. By denying the waiver, the board has indicated that they do not want the contested case hearing. However, the board may still grant an extension i.e. to submit medical statements for the board's consideration or the board may even deny the request for extension based on the request for contested case hearing.

Mr. Ono said that he understood that an extension of the 180 days for whatever reason was not possible, now the board is being told that for certain reasons you can extend the 180 days deadline.

Mr. Wong said yes, based on a request for a contested case hearing. In the absence of that request, there would be no basis to grant an extension.

Mr. Ono said, "then if the board says that the request for contested case hearing is denied for whatever reasons, then you are saying that it is still possible to extend the 180 days?"

Mr. Wong said the board may grant an extension.

Mr. Ono said that he could see all kinds of ridiculous situations coming up where anybody could request for a contested case.

Mr. Wong said that the board does not have to grant the extension.

Mr. Knorek said that as he understands it, the board can either grant the waiver or grant an extension to either consider the waiver or to consider written evidence.

Mr. Ing said that there are other options and that is to either deny the CDUA or deny the contested case and grant the CDUA.

Mr. Ing said, "the public hearing was held on August 22nd, when was the request for contested case submitted?"

Mr. Evans said 84 days later, or November 14, 1985.

After testimony by Mr. Doyle, Mr. Knorek remarked that it is the the board's authority and responsibility to make sure that environmental concerns are met and that any permitted use of the conservation district be in accordance with the public interest.

Mr. Ing said that it is his understanding that during the time that the project went through the environmental process, the Pohai Nani people did not participate. He asked why.

Mr. Knorek said that they did not have knowledge. Pohai Nani was never contacted when the environmental impact statement was being conducted. They had no knowledge of the project until the hearings. They were never made aware that it was coming before the Neighborhood Board.

ACTION 1 Mr. Ing moved that the contested case hearing request be denied.

Seconded by Mr. Arisumi, motion carried unanimously.

ACTION 2 Mr. Arisumi moved to approve staff's recommendation as amended. The amendments being:

A. Addition of the following conditions:

1. That the applicant include an additional monitor well at a location to be determined by this department; and,

2. That the applicant install a perimeter drainage system around the landfill.

B. Correction of Page 8, last line -- change "Department of Land Utilization" to "Mayor of the City and County of Honolulu".

ITEM E-1

FILLING OF POSITION NO. 14936, GROUNDSKEEPER I, ASSIGNED TO THE MAUI PARKS DISTRICT.

ACTION

Mr. Arisumi moved to approve the appointment of Mr. Edward A. Smith to Position No. 14936, subject to Mr. Smith passing the pre-employment physical required for the position. Seconded by Mr. Zalopany, motion carried unanimously.

ITEM E-2

FILLING OF POSITION NO. 24578, GROUNDSKEEPER I, AINA MOANA STATE RECREATION, PARK SECTION.

ACTION

Mr. Ing moved to approve the selection of Mr. John Y. Tamashiro to Position No. 24578. Seconded by Mr. Zalopany, motion carried unanimously.

ITEM E-3

FILLING OF POSITION NO. 02948, GROUNDSKEEPER I, ASSIGNED TO THE HAWAII PARKS SECTION.

ACTION

Mr. Higashi moved to approve the appointment of Mr. Milton K. Kai to Position No. 02984, subject to Mr. Kai passing the pre-employment physical required for the position. Seconded by Mr. Zalopany, motion carried unanimously.

ITEM E-4

PERMISSION TO ADVERTISE FOR BIDS, JOB NO. 89A, CONCESSION BUILDING, HAPUNA BEACH STATE RECREATION AREA, HAWAII.

ACTION

Mr. Higashi moved to approve subject to the approval of the Governor. Motion carried with a second by Mr. Zalopany.

Mr. Ing was excused from participating on this item.

ITEM E-5

REQUEST FOR A SPECIAL USE PERMIT TO USE A PORTION OF HAPUNA BEACH STATE RECREATION AREA, HAWAII, FOR A THANKSGIVING PARTY AND A CHRISTMAS PARTY.

Mr. Arisumi asked where, in the park, would the speakers be placed.

Mr. Nagata said that it was his understanding that it would be in the area of the audience gathered for this particular event.

Mr. Ono said that he would have reservations about placing speakers from one end of the beach to the other and exposing the whole beach to speeches and music. Some people don't want to be exposed to that kind of environment when they go to the beach.

Mr. Nagata said that kind of statement could be incorporated into the third item of their conditions where they are requiring that the sound be kept to a minimum but also some direction can be given to the location for the speakers.

Mr. Ono asked if any plans were submitted.

Mr. Nagata said no. He thought someone would be in the audience but apparently they were not able to make it today. However, Mr. Nagata did have a plan of their park and pointed out the subject area to the board.

Mr. Higashi thought that the request was for the use of the pavillion and that their sound system would be kept in the scope of said pavillion.

Mr. Kealoha felt that it would be better to give the group a designated area which could be controlled and any problems that may occur may be identified.

Mr. Nagata said that some provision could be included in the submittal to designate a particular area.

Mr. Ono said, assuming the board approves this request, he would like to consider this as an experiment and not to be precedent setting. He would like to have these two days monitored and get reaction as to what kinds of problems, if any, occurred.

Mr. Higashi recommended that only one day be approved and monitored before allowing them to use the area on the second day.

Mr. Nagata said that on the two points being brought up they have recommended that only one of these dates be allowed and in staff's more recent discussion with the applicant, they actually at this point would prefer the December date. But if the board said the November date, which is this weekend, is too close and also they would be unable to get liability insurance. On the matter of closing earlier than the request, staff is also recommending that the activity end by 6:00 p.m.

ACTION

Mr. Higashi moved that they be allowed the use of the pavillion with the idea of an area being designated which can be defined and if there are any violations in that area, the next time they come around staff will have some basis for taking appropriate action on the basis of the violation.

Mr. Nagata said that one thing he did not mention is this particular group, one of the issues has to do with the Save Hapuna issue which has been raised in certain quarters and for that reason there is some relevance to Hapuna Beach but if there was no real relevance, staff would probably have recommended denial.

Motion carried with a second by Mr. Kealoha.

Mr. Ing was excused from voting on this item.

ITEM E-6

THE EASTER SEALS HAWAII REQUESTS PERMISSION TO USE THE PERIMETER OF THE PARKING LOT AT AINA MOANA STATE RECREATION AREA (MAGIC ISLAND).

ACTION

Unanimously approved subject to the conditions listed in the submittal. (Kealoha/Arisumi)

ITEM E-7

REQUEST BY THE HONOLULU POLICE DEPARTMENT TO UTILIZE A PORTION OF SAND ISLAND STATE RECREATION AREA FOR CUSHMAN VEHICLE TRAINING.

ACTION

Mr. Ing moved to approve the issuance of a Special Use Permit to the Honolulu Police Department for Cushman Vehicle Training within the unimproved area of Sand Island State Park effective December 1, 1985 through November 30, 1986, subject to the conditions listed in the submittal. Motion carried with a second by Mr. Zalopany.

Mr. Kealoha voted no.

ITEM E-8

REQUEST FOR OUT-OF-STATE TRAVEL.

ACTION

The board unanimously approved this out-of-state travel for Dr. Ross Cordy to attend the Society for Historical Archaeology Conference. (Ing/Kealoha)

ADDED
ITEM E-9 FILLING OF POSITION NO. 30241, GROUNDSKEEPER I, AT THE WAIANAPANAPA STATE PARK, MAUI PARKS SECTION.

ACTION Mr. Ing moved to approve the hiring of Ms. Bethlen H. Kawaiaea for Position No. 30241, subject to her passing the required physical examination. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1-a FIRST HAWAIIAN BANK REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-3596, LOT 37, KANOELEHUA INDUSTRIAL LOTS, WAIAKEA, SO. HILO, HAWAII TO LAUPAHOEHOE TRANSPORTATION COMPANY, INC.

Item F-1-b FRANK SANTOS APPLICATION FOR REVOCABLE PERMIT COVERING LAND AT HANAPEPE, KAUAI.

Mr. Ono asked that this item be deferred for review by staff.

Item F-1-c CORMAX CORPORATION REQUEST FOR CONSENT TO SUBLEASE TO ROBERT TAKATA, INC., DBA DOUGH BOYS, PORTION OF G. L. NO. S-4644, KALAUAO, EWA, OAHU.

ACTION Mr. Kealoha moved to approve Items F-1-a and F-1-c as submitted. Motion carried unanimously with a second by Mr. Zalopany.

ITEM F-2 NEW HOPE CHRISTIAN FELLOWSHIP REQUEST FOR RIGHT OF ENTRY FOR TOPOGRAPHIC STUDY AND ANALYSIS, WAIAKEA, SO. HILO, HAWAII.

ACTION Mr. Higashi moved to authorize the issuance of a right-of-entry to the New Hope Christian Fellowship to the subject property for a period of one year from the date of approval, subject to the conditions listed in the submittal. Seconded by Mr. Zalopany, motion carried unanimously.

ITEM F-3 U.H. REQUEST FOR RIGHT OF ENTRY FOR SUB-SOIL INVESTIGATION AND CONSTRUCTION OF POWER AND COMMUNICATION SUBSTATION, MAUNA KEA, HAMAKUA, HAWAII.

(See Page 9 for Action.)

ITEM F-4 DEPARTMENT OF EDUCATION REQUEST FOR ACQUISITION OF LAND REQUIRED FOR ADDITION TO LAHAINA INTERMEDIATE SCHOOL, LAHAINA, MAUI.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM F-5 UH REQUEST FOR AUTHORIZATION TO ISSUE R.P. COVERING PORTION OF G. L. NO. S-4488, SNUG HARBOR, HONOLULU, OAHU.

(See Page 9 for Action.)

ITEM F-6 STAFF RECOMMENDATION FOR CANCELLATION OF HOMESTEAD LEASE NO. 38, HAUULA, OAHU.

Mr. Detor said that the parties involved have paid up and therefore asked that this item be withdrawn. The reason staff had recommended cancellation is because the homesteader had not paid his real property taxes. However, this has now been paid.

ACTION Withdrawn.

ITEM F-7 HAWAIIAN ELECTRIC CO., INC. AND HAWAIIAN TELEPHONE CO. JOINT APPLICATION FOR ANCHOR EASEMENTS AT WAIMANALO, OAHU.

ACTION Unanimously approved subject to the conditions listed in the submittal. (Ing/Arisumi)

ITEM F-8

COUNTY OF KAUAI, DEPARTMENT OF WATER, APPLICATION FOR DRAINAGE EASEMENT, AKIALOA ROAD DRAIN, KEKAHA, KAUAI.

Mr. Detor asked that wherever "Department of Water" appears in the submittal that it be changed to "Department of Public Works."

ACTION

Unanimously approved as amended and subject to the conditions listed in the submittal. (Zalopany/Ing)

ITEM F-9

DEPARTMENT OF TRANSPORTATION REQUEST FOR EXECUTIVE ORDER SETTING ASIDE SUBMERGED LAND AT NAWILIWILI, LIHUE, KAUAI.

ACTION

Unanimously approved subject to the conditions listed in the submittal. (Zalopany/Ing)

ITEM F-10

DEPARTMENT OF TRANSPORTATION REQUEST FOR RIGHT OF ENTRY TO CONSTRUCT ROCK REVETMENT, KEKAHA, KAUAI.

ACTION

Unanimously approved subject to the conditions listed in the submittal. (Zalopany/Ing)

ITEM F-11

DEPARTMENT OF HEALTH REQUEST FOR ACQUISITION OF SUBLEASE COVERING OFFICE SPACE AT 277 OHUA AVENUE, HONOLULU, OAHU.

ACTION

Unanimously approved subject to the review and approval of the sublease agreement by the Office of the Attorney General. (Ing/Zalopany)

ITEM F-12

DEPARTMENT OF SOCIAL SERVICES AND HOUSING REQUEST FOR ACQUISITION OF LEASE COVERING THE 2ND FLOOR OF THE BRAINARD & BLACK BLDG., HONOLULU, OAHU.

ACTION

Unanimously approved subject to the review and approval of the sublease agreement by the Office of the Attorney General. (Ing/Arisumi)

ITEM F-13

DEPARTMENT OF SOCIAL SERVICES AND HOUSING REQUEST FOR ACQUISITION OF SUBLEASE COVERING OFFICE SPACE AT 33 SO. KING STREET, HONOLULU, OAHU.

ACTION

Unanimously approved subject to the review and approval of the sublease agreement by the Office of the Attorney General. (Ing/Kealoha)

ITEM F-14

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS REQUEST FOR ACQUISITION OF LEASE COVERING SPACE #02, BUILDING 2, CHINATOWN CULTURAL PLAZA, HONOLULU, OAHU.

ACTION

Unanimously approved subject to the review and approval of the sublease agreement by the Office of the Attorney General. (Ing/Kealoha)

ITEM H-1

REQUEST FOR EXTENSION OF CDUA FOR A SUBDIVISION, COMMERCIAL GOLF COURSE, BEACH PARK, ARCHAEOLOGICAL PARK, AND AGRICULTURAL USES AT SOUTH KOHALA, HAWAII (MAUNA LANI RESORT, INC.).

(See Page 9 for Action.)

ITEM H-2

CDUA FOR A SUBDIVISION, COMMERCIAL GOLF COURSE, BEACH PARK, ARCHAEOLOGICAL PARK, AND AGRICULTURAL USES AT SOUTH KOHALA, HAWAII (MAUNA LANI RESORT, INC.).

(See Page 12 for Action.)

ITEM H-3

AMENDMENTS TO CHAPTER 13-1 AND 13-2, ADMINISTRATIVE RULES.

Mr. Evans said that the Board of Land and Natural Resources was authorized through Act 170 of the 1983 Legislative Session to appoint masters to conduct public hearings on behalf of the full board for both subdivision and commercial use Conservation District Use Applications. The board was also required to promulgate rules setting forth criteria and standards for the masters and situations in which a master may be appointed.

Mr. Ing asked, "in order to appoint such a hearing officer, is that what is to come before the board as an agenda item or can it be done outside of the meeting?"

Mr. Evans said that in staff's view, it would be the Chairman's decision as to whether or not a hearing officer would be appropriate and based upon his judgment staff would follow his guidance and that task.

Mr. Higashi felt it more appropriate that the board delegate this authority to the Chairman.

Mr. Evans said that they were here right now asking the board for this because this is what they need.

Mr. Ono felt that it might be better to let the whole board handle a couple of them, see what kind of operational problems may occur, then after the bugs are worked out some kind of delegation can take place.

Mr. Ing asked whether this rule would set out any procedures by which one is appointed.

Mr. Evans said no.

ACTION

Mr. Ing moved to adopt the following amended sections of Chapters 13-1 and 13-2, Hawaii Administrative Rules, as proposed:

1. Section 13-2-1 adds a new definition of hearing officer;
2. Section 13-2-23(b) relating to the Board of Land and Natural Resources' authority to designate a hearing officer for Conservation Use applications.

Seconded by Mr. Higashi, motion carried unanimously.

ITEM H-4

CDUA FOR A SUBDIVISION FOR THE KALAHEO LANDFILL, AND ACCESSORY USES AT KAILUA, OAHU (C&C HONOLULU, DEPARTMENT OF PUBLIC WORKS).

(See Pages 19 and 20 for Action.)

ITEM H-5

AFTER-THE-FACT CDUA FOR AN ADDITION TO AN EXISTING COTTAGE USE AT TANTALUS, OAHU (DONALD HO & RANDOLPH GALT).

Mr. Ono said that this enclosed garage is now being used for a different purpose and asked if this allows a separate household to occupy this former garage.

Mr. Evans said, no. Staff has received a statement from the applicant that represents that he neither proposes to rent nor convert the area into a separate dwelling.

ACTION

Mr. Ing moved for approval with the added condition that no further structures are to be allowed. Seconded by Mr. Kealoha, motion carried unanimously.

- ITEM H-6 CDUA FOR TRANSITING PUBLIC BEACH RESERVE FOR COMMERCIAL PURPOSES AT HANAKOO, KAA NAPALI, MAUI (HYATT REGENCY MAUI).
- (See Page 16 for Action.)
- ITEM H-7 CDUA FOR A SINGLE-FAMILY RESIDENTIAL USE AT KIPAHULU, MAUI (WILLIAM THOMPSON).
- (See Page 8 for Action.)
- ADDED ITEM H-8 REQUEST FOR APPROVAL TO ENTER INTO THREE CONTRACTS DURING FISCAL YEAR 1985-1986 WITH THE UNIVERSITY OF HAWAII (UH) TO CONTINUE THREE RESEARCH PROJECTS.
- ACTION The board unanimously voted to authorize the Chairperson to negotiate and subject to the Governor's approval, enter into the contracts listed in the submittal. (Ing/Kealoha)
- ITEM I-1 APPOINTMENT OF LICENSE AGENT "LIHUE FISHING SUPPLY," ISLAND OF KAUAI.
- ACTION Mr. Kealoha moved to appoint Lihue Fishing Supply as a license agent to sell hunting and freshwater fishing licenses. Seconded by Mr. Zalopany, motion carried unanimously.
- ITEM J-1 LEASE, LEI STAND CONCESSIONS, HONOLULU INTERNATIONAL AIRPORT, OAHU.
- ACTION Unanimously approved as submitted. (Kealoha/Ing)
- ITEM J-2 VENDING MACHINES AGREEMENT, LIHUE AIRPORT, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Arisumi)
- ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4058, ETC., AIRPORTS DIVISION.
- ACTION Unanimously approved as submitted. (Kealoha/Zalopany)
- ITEM J-4 RENEWAL OF REVOCABLE PERMITS 3806, ETC., CONFORMING USE, AIRPORTS DIVISION.
- ACTION Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-5 ISSUANCE OF LEASE BY PUBLIC AUCTION, HARBORS DIVISION, WAREHOUSE NO. 6, VICINITY OF PIER 21, HONOLULU HARBOR, OAHU.
- ACTION Unanimously approved as submitted. (Arisumi/Zalopany)
- ITEM J-6 APPROVAL OF CONSENT TO SUBLEASE, HARBORS DIVISION, HONOKOHAU BOAT HARBOR, HAWAII (KONA MARINE & FUEL, INC.).
- ACTION Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-7 APPROVAL OF CONSENT TO SUBLEASE PORTIONS OF THE PREMISES OF LEASE NO. 42, PIER 35, HONOLULU HARBOR, OAHU (NATIONAL COMPANY, INC.).

Mr. Higashi asked if this was consistent to the submittal. It says that it should be consistent with maritime uses.

Mr. Garcia said that this particular license has been a problem for DOT for quite some time in the sense that it was given out by the Board of Harbor Commissioners and at the time that they gave out the license, or the lease (they changed the lease to a license) they had permitted various types of subleases in there. Although they say in the submittal that the use must be consistent with marine or maritime activities, there are some activities that are not.

Mr. Garcia said that there are not enough maritime users to fill the building.

Mr. Higashi felt that the board should be given some reasons as to why this is being used for other than maritime use.

Mr. Garcia said that it had been suggested that this item be deferred and he agreed.

ACTION Deferred

ITEM J-8 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NEAR PIER 23, HONOLULU HARBOR, OAHU (CARNATION CO., MILLING DIVISION).

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-9 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAILUA-KONA, HAWAII (KAILUA-KONA DEVELOPMENT GROUP).

ACTION Unanimously approved as submitted. (Higashi/Zalopany)

ITEM J-10 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 38, HONOLULU HARBOR, OAHU (MAMALA BAY SHIPWRIGHTS, INC.).

ACTION Unanimously approved as submitted. (Ing/Zalopany)

ITEM J-11 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NAWILIWILI HARBOR, KAUAI (TRISHA LEI SEARS).

ACTION Unanimously approved as submitted. (Zalopany/Arisumi)

ITEM J-12 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU (ZENEN G. OZOA, DBA KEWALO SHIP'S GALLEY).

ACTION Unanimously approved as submitted. (Ing/Arisumi)

ITEM J-13 CONTINUANCE OF REVOCABLE PERMITS H-83-1127, ETC., HARBORS DIVISION.

ACTION Mr. Higashi moved for approval as submitted. Motion carried with a second by Mr. Zalopany.

Mr. Ing was excused from voting on this item.

ITEM J-14 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HALEIWA BOAT HARBOR, OAHU (ALFRED L. OGA).

ACTION Unanimously approved as submitted. (Ing/Zalopany)

ITEM J-15 USE OF HARBORS DIVISION, FACILITIES, PIERS 9 AND 10 PASSENGER TERMINAL, HONOLULU, OAHU (DOWNTOWN BUSINESS COUNCIL AND HONOLULU ADVERTISER CHRISTMAS FUND).

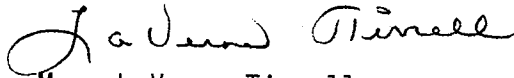
ACTION Unanimously approved as submitted. (Ing/Zalopany)

RESOLUTION: The board unanimously adopted a Resolution commending Mr. George Kanemoto for faithfully and conscientiously serving the State of Hawaii for more than twenty-three years and wished him well as he retires from the Division of State Parks, Outdoor Recreation, and Historic Sites as a Park Maintenance Supervisor II, on November 29, 1985.

RESOLUTION: The board unanimously adopted a Resolution commending Mr. George Kanemoto for faithfully and conscientiously serving the State of Hawaii for more than twenty-three years and wished him well as he retires from the Division of State Parks, Outdoor Recreation, and Historic Sites as a Park Maintenance Supervisor II, on November 29, 1985.

ADJOURNMENT: The meeting was adjourned at 1:10 p.m.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



SUSUMU ONO
Chairperson

lt