

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

DATE: March 14, 1986  
TIME: 8:30 A.M.  
PLACE: State Office Building  
75 Aupuni Street  
Hilo, Hawaii

ROLL  
CALL

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 8:35 A.M. The following were in attendance:

MEMBERS

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

STAFF

Mr. Ralston Nagata  
Mr. James Detor  
Mr. Roger Evans  
Mrs. LaVerne Tirrell

OTHERS

Mr. Bill Tam, Deputy Atty. Gen.  
Mr. Adam Vincent, D.O.T.  
Mr. Narahari Swami (Item E-3)  
Mr. Larry Yanagisawa (Item F-11)  
Mr. Glenn Umetsu (Item H-3)  
Messrs. Art Murakami, Rodney Fujiyama,  
Dave Arakawa, Gary Okamoto, William Godfrey,  
Dr. Karl Bathen & Dr. David Ziemann (Item H-6)

Mr. Ono apologized for the change in meeting place. The Meeting Notice erroneously showed the meeting to be at the County of Hawaii Council Chambers instead of the State office Building.

ADDED  
ITEM

Mr. Ing moved to add the following item to the Agenda. Seconded by Mr. Kealoha, motion carried unanimously.

Item E-6 -- Filling of Planner III Position, Position No. 26373, Division of State Parks, Oahu.

Items were considered in the following order to accommodate those applicants present at the meeting.

ITEM H-3

AMENDMENT TO A CDUA FOR A TELECOMMUNICATION FACILITY AT KOKO HEAD, OAHU.

ACTION

The board approved the amendment to CDUA OA-1749 for the installation of four 10-foot high whip antennas on the existing 50-foot high tower at Koko Head subject to the conditions listed in the submittal. (Kealoha/Higashi)

Mr. Ing was excused from acting on this item.

Mr. Ono asked the applicant if he had reviewed the conditions listed in the submittal.

Mr. Umetsu said that he did review the conditions and had no objections.

REQUEST TO RENEW PERMIT TO CONDUCT INTERNATIONAL SOCIETY FOR KRISHNA  
CONCIOUSNESS, INC. (ISHCON) RELIGIOUS ACTIVITIES AT NUUANU PALI STATE  
WAYSIDE, OAHU.

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Mr. Nagata asked that the date shown under staff's recommendation be changed from April 30, 1986 to April 30, 1987.

Mr. Nagata said that the applicant's, in this request for extension, are asking also that they be allowed to serve hot drinks.

Mr. Nagata called to the board's attention some of his recent observations:

1. There is a donation list posted with the items which are made available by ISHCON.
2. It appears that the group is not only serving drinks and cookies, but also pushing the sale of packages of cookies.
3. They have a green, out-door carpet type of material in front of their table. Mr. Nagata felt this to be a positive thing inasmuch as it covers their coolers, etc. However, he cautioned the group of informing the department before they make any changes.

Mr. Ing asked, "in terms of the submittal, are there any changes in the conditions that are listed?"

Mr. Nagata said that the only change is to allow use of the hot plate. However, Mr. Nagata said that he would like to add also that a donation list not be allowed, that they not be allowed to sell their cookies in quantity and also a condition to allow the table skirting that they are presently using.

In answer to Mr. Ono's question, Mr. Nagata said that he did not know the amount they have made from their sales.

Mr. Ono asked if any attempt was made to get these figures.

Mr. Nagata said that he did not request this information.

Referring to Condition No. 9, Mr. Arisumi felt that if any additional signs needed to be posted it should be at the cost of the applicant and not of the department. Accordingly, he asked that the language be changed in the last paragraph of Condition 9 wherein the applicant would be required to pay for any additional signs should they be needed.

Mr. Nagata said that he would make this change.

Mr. Narahari reminded the board that they are already allowed to carry on their religious activities at the Nuuanu State Wayside for the purposes of fund raising, the purposes of distributing their sanctified foodstuffs and sanctified literature. But for the purposes of carrying out these activities in the manner which was the least abraisive to the public, they came to the board to ask if they could carry on their activities limited to one table, etc. so that they would have less problems and complaints as they have had in other places.

Insofar as having a sign listing donations, Mr. Narahari said that their sign just suggests donations. He feels that this works two ways. He would be happy to take the sign down but he wanted the board to understand what would happen if the sign should come down. He said that there is no question in the minds of the tourist in that area as to what they feel is a reasonable donation for a cookie. They asked \$1.00 for a drink and 2 for \$1.00 for the

cookies. This allows that there is no bickering back and forth. There are times that the Japanese tourists may give a donation of \$3.00 or even \$30.00. They do not want that. They would prefer a reasonable donation. The sign ends all of that. They are willing to take down the sign but feel that there will be complaints when they do.

Mr. Ono asked, "complaints of what nature?"

Mr. Narahari said that people say that they are taking unfair advantage of the tourist. With the sign they can take a look and walk away rather than have some encounter with them.

Mr. Ono felt that it could also work the other way e.g. the power of suggestion by having a sign up there with a suggested price list.

There was much discussion between Mr. Narahari and the Board as to how the sign should read.

When asked by Mr. Ing as to the amount they have taken in, Mr. Narahari said that he would approximate the average amount per day would be about \$125.00.

Mr. Ing felt that the way to resolve this is to take action on the submittal except the aspect of the donation sign and, maybe at the next Oahu board meeting, Mr. Narahari can bring the sign to the board and then the board can take a look at it and resolve the issue separately at that time.

Mr. Narahari said that he will be out of the country and will not be returning until the 10th of April.

ACTION

Mr. Ing moved for approval of the submittal with the following amendments:

1. That this permit will run through April 30, 1987.
2. Approve use of the skirt presently being used around the table.
3. That the present sign remain until the matter of the sign is taken up at the next Oahu board meeting after April 10th when Mr. Narahari should be back. In the meantime, Mr. Ing asked that Mr. Narahari bring in the sign and that Mr. Nagata contact some of the tour operators operating in the area to find out what their feelings are with regard to the sign.

Seconded by Mr. Higashi, motion carried unanimously.

ITEM F-11

RESUBMITTAL - DSSH REQUEST FOR ACQUISITION OF LEASE COVERING OFFICE SPACE IN THE ALA MALAMA BUILDING, KAUNAKAKAI, MOLOKAI.

Mr. Detor said that this item was deferred at the last meeting because the board voiced concerns about the \$1.92 per sq. ft. per month charge for office space on Molokai.

Mr. Larry Yanagisawa of the Hilo DSSH office was at the meeting but was unable to answer a lot of the questions posed by the board. Mr. Arisumi therefore asked that this item again be deferred until these questions could be answered.

ACTION

Deferred.

CDUA FOR 1) DREDGING OF SWIMMING LAGOON CHANNELS; 2) INSTALLING OF PATHS AND VIEWING PLATFORMS; AND 3) LANDSCAPING AND SHORELINE MODIFICATION ON STATE-OWNED SUBMERGED LANDS ADJACENT TO THE WEST BEACH DEVELOPMENT AT HONOULIULI, OAHU.

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Mr. Evans said that a public hearing was held on this application and, because of one of the concerns that came up staff asked the Attorney General's Office for an opinion as to whether it was legal to break through the reef under one specific section of the law, Chapter 205-33. A response from the Attorney General's Office stated that:

"They believe that HRS, Sec. 205-33(2), is applicable because dredging is a taking of sand under Sec. 205-33(a) unless specifically excepted therein. Dredging is specifically exempted by HRS, Sec. 205-36 and -37, in the case of harbor dredging and Section 205-33(a)(3) for maintenance dredging. By specifically exempting certain kinds of dredging from Sec. 205-33, it appears that all forms of takings of sand were intended to be covered by Sec. 205-33."

Mr. Evans said that in November the applicant was informed that they would be required that they would have to somehow comply with Chapter 205 that relates to the shoreline management area. There was some difficulty so, at the request of the applicant, the application was pushed back to today, the last possible date that the board can act on this.

Mr. Evans said that subsequent to the writing of this submittal staff tried to inform the board that the applicant was in the process of attempting to overcome the two specific processing problems that we had -- the SMA permit and they asked for reconsideration of their 205-33. The applicant did send in a request to reconsider and staff did forward that request to the Attorney General's office. On March 12, 1986 notice was received that the City had acted on the SMA problem. Prior to that action occurring Mr. Evans said that he spoke to the applicant's attorney and a question that came up was where was staff in terms of their analysis. Mr. Evans said that they had not analyzed the project because of these procedural questions.

Mr. Evans understood that staff's hurdle on 205-33 has also been overcome. Staff's original recommendation was based on a written opinion. However, staff is now in receipt of a second written opinion which suggests: 1) that the county can in fact grant a variance under 205-33 and that is their administrative capacity; 2) this board, notwithstanding what the County does, does have the authority to grant, deny or place conditions upon any such request under Chapter 183-41, so staff's reading is that the one does not necessarily include the other rather than they are exclusive in nature. As such, Mr. Evans said that the applicants, in terms of his representation, has been able to overcome these two procedural hurdles. However, as of this morning, staff has not completed its analysis.

Mr. Kealoha asked that the word "sturgeonfishes" shown at the bottom of page 1 be changed to "surgeon fishes".

Mr. Ono asked Mr. Evans why this application was treated differently from the procedural standpoint. Normally, staff conducts its analysis simultaneously with the permitting requirements. With this one, you're saying you waited until all of the other permits were obtained before staff started to move.

Mr. Evans said that this analysis actually stopped. At the end of the public hearing staff takes a look at everything they have so far and the analysis really starts at that stage. In this particular case, a question was raised about Chapter 205-33 so staff felt that this question should be addressed inasmuch an interpretation of the law may mean that you cannot cut through

the reef. This matter was sent to the the Attorney General's office. Their response was that Chapter 205-33 applies, therefore you cannot cut through the reef. At that point, staff's analysis essentially stopped.

Mr. Evans said that the applicant was informed of the A.G.'s opinion. They, however, came in for a reconsideration and this reconsideration was also sent to the Attorney General's office. This morning's submittal is a result of that reconsideration.

Mr. Higashi asked Mr. Evans for the date staff's analysis stopped.

Mr. Evans said that a memo was received from the Attorney General's office on January 3, 1986 and that particular memo indicated that the project was prohibited. The applicant was immediately contacted and on January 31st staff did receive a letter from their attorney requesting the reconsideration. On February 7, 1986 staff sent that request for reconsideration back to the Attorney General asking that they take a look at it. Mr. Evans said that he was informed this morning of the results of that reconsideration.

Mr. Higashi said, "in light of that opinion you stopped work altogether?"

"That's correct", said Mr. Evans.

Mr. Ing asked Mr. Evans what was left to be done in the analysis.

Mr. Evans said that representation at the public hearing was a question of who gets through the shoreline after you break through reefs, do we or do we not have a Hawaii Kai, etc.

Mr. Ing informed Mr. Evans that that was a legal question.

Mr. Ing said that according to staff's recommendation for denial it was based upon: 1) no SMP and, 2) the prohibitions created by 205-33-a. If for some reason those are cured, then there is no reason for denial as far as staff's analysis is concerned.

Insofar as the analysis has gone to this point, the answer is yes because it has only gone through the procedure aspects, said Mr. Evans.

Mr. Ing asked, "if the board does not take action and the permit period runs, what happens to the CDUA?"

Mr. Evans said that if the board does not take any action today under Chapter 183-41 which is what this is applied for, it would mean that the permit is automatically approved. The land that this action is proposed to occur on are State lands, as differentiated from private lands. Whether or not a party with an approved CDUA can walk onto State lands and carry out the project he was not too sure about.

Mr. Ing asked, "then this would be approved without conditions?"

Mr. Evans said that this would be his understanding.

Mr. Ing felt that staff was placing the board in a very awkward position. He felt also that it would have been better for staff to have completed their analysis assuming the defects were cured.

Mr. Rodney Fujiyama, attorney for the applicant, said that on January 3, 1986 Mr. Evans received the first opinion from the Attorney General. On January 31st the applicant requested a reconsideration -- a span of 28 days. Mr. Evans must have known when they asked for a reconsideration that there was a

legal basis for a different interpretation under the statutes. What we are saying is that we do not feel that it would be appropriate or fair to us that the analysis was not done because of this 28 day lapse in light of the fact that there is a total of 180 days to make a decision.

Another thing pointed out by Mr. Fujiyama is that in checking with all the people who they have had work on the application there was never a time in which they had said that they wanted them to hold off with the work. In fact, representations had from people who have worked directly on this matter is that we were ready, willing and able to meet with anyone at any time with respect to any concern which they might have. They even went as far as saying that their experts would be on 24-hours notice and call. They have even brought in some of their experts today to answer any concerns or questions that the board may have.

Mr. Fujiyama said that certain things were said as to why the permit should not be granted. The first reason was the legal question as to who owns the shoreline. One of the State's conditions is that the applicant shall comply with all the applicable statutes, ordinances, rules and regulations of the federal, state and city and county governments and the applicable parts of Section 13-2-21, Administrative rules as amended. So if it's owned by the State, and that's what the laws says, then they are bound by it so he did not feel that that should be used as a substantive reason to deny their application.

Another thing mentioned by Mr. Evans was the green sea turtle. Mr. Fujiyama said that they would be willing to live with a condition that they have agreed to in the SMP process. He referred to County Resolution 86-61, page 7, last paragraph which states that no blasting shall occur, unless, after describing the measures to be taken to mitigate potential effects on humpback whales and other endangered or threatened species like the green sea turtle, APPLICANT has obtained the approval of both the COE and the National Marine Fisheries Service (NMFS). He felt that this condition would meet the concern that was articulated in the letter of the State agency that Mr. Evans referred to in his staff report to the board.

One more reason by Mr. Evans that this board should not act is because there are state lands and something may have to be worked out with respect to State lands. They ask two things. They do not feel that this is a problem and a basis for denying their application. First, they agreed to comply with the standard provision that they follow by law. Second, he believed there is a provision in the applications granted in the past which reads: "other terms and conditions as may be prescribed by the Chairperson". They would be more than willing to accept such a condition.

Mr. Kealoha pointed out specific concerns from the submittal which he felt were not clearly addressed in the EIS. He felt that if they could take a look at these things in terms of conditions then maybe we could save time. The board could take a short recess so that the applicant and his people could get together and the board will get their huddle together and then come back with an analysis.

Mr. Ono said that he would like Art Murakami to make his presentation before they go into a huddle. However, the board will not go into an executive session to consider their views, they will just keep it open. After Mr. Murakami's presentation they will come back to this particular item at the end of the Agenda. He suggested that Mr. Evans also become familiar with some of the areas cited by Mr. Kealoha and get hold of a copy of the conditions proposed by the applicant and present an independent assessment on his part.

Mr. Art Murakami, commented on HRS 205-33. He did not feel that this board should take lightly the initial opinion of the Attorney General Dona Hanaike concerning the applicability of the section. He said that he and the rest of the public is at a disadvantage inasmuch as they have no idea as to how the Attorney General has reversed itself on this point. The reconsideration has come as a surprise this morning and there is no way that he can respond, point by point, as to how they have reconciled the obvious application of that section.

Mr. Ono asked Mr. Murakami whether he would like to hold off on his presentation until a copy of the latest opinion is given him.

Mr. Murakami preferred to go ahead because in his opinion the statute is an absolute bar for this project's proposal to use submerged lands to create these channels.

Mr. Ing said that what the A.G.'s opinion says is that pursuant to 205-33 the statute says that the County's have the right to grant variances to the prohibitions enumerated in the chapter and by the granting of the SMP that's in effect the variance to the prohibitions enumerated in the chapter.

Mr. Murakami said that what they are referring to will probably show on separate variances infinite and distinct from the SMP which was also apparently granted. But that was only half of the opinion. The exemptions talk about uses within the shoreline area, they do not talk about uses seaward of the shoreline.

Mr. Murakami felt that this board had no authority to even consider this and felt that they should address this question before any time is even taken to address Mr. Kealoha's appropriate concerns about the mitigation issues and the various issues that have gone unresolved for years. This is not the first time that this has been raised.

Mr. Murakami said that the reason his clients are not at the meeting is because it is in Hilo.

Mr. Ono said that this item will be kept open and taken up again at the end of the meeting.

(See Page 12 for continuation of this item.)

ITEM D-1

TROPICAL PICAL ETHANOL PRODUCTS WATER USE PERMIT APPLICATION, PEARL HARBOR GROUND WATER CONTROL AREA (GWCA), OAHU.

ACTION

Mr. Higashi moved to approve as submitted. Motion carried with a second by Mr. Kealoha.

Mr. Ing was excused from acting on this item.

ITEM D-2

EXTENSION OF PERIOD TO ACT UPON APPLICATION FOR A PERMIT TO WITHDRAW WATER FOR BENEFICIAL USE FOR HONOLULU BWS KUNIA II WELLS IN THE PEARL HARBOR GWCA, OAHU.

ACTION

Unanimously approved as submitted. (Kealoha/Ing)

ITEM E-1

REQUEST TO USE SAND ISLAND STATE PARK FOR FIRE DEPARTMENT HELICOPTER RESCUE TRAINING EXERCISES.

ACTION

Unanimously approved as submitted. (Kealoha/Higashi)

ITEM E-2

APPROVAL TO ENGAGE THE SERVICES OF CONSULTANTS TO ASSIST IN THE DETAILED PLANNING TO IMPLEMENT THE KAHANA DEVELOPMENT PLAN.

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

ITEM E-3 REQUEST TO RENEW PERMIT TO CONDUCT INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. (ISHCON) RELIGIOUS ACTIVITIES AT NUUANU PALI STATE WAYSIDE, OAHU.

(See Page 3 for Action.)

ITEM E-4 REQUEST PERMISSION TO USE A PORTION OF THE AINA MOANA STATE RECREATION AREA FOR A RUN & SWIM TINMAN BIATHLON.

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

ITEM E-5 REQUEST FOR A SIX-MONTHS LEAVE OF ABSENCE WITHOUT PAY.

ACTION Mr. Ing moved to authorize the granting of a six-months leave of absence without pay to Mr. Henry Domingues so that he will be able to convalesce from his illness. Seconded by Mr. Kealoha, motion carried unanimously.

ADDED  
ITEM E-6 FILLING OF PLANNER III POSITION, POSITION NO. 26373, DIVISION OF STATE PARKS, OAHU.

ACTION Mr. Ing moved to approve the appointment of Mr. Gary Doi to fill Position No. 26373 assigned to the Planning Branch. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1-a BERNARD K. AND STANLEY K. HALAMA APPLICATION FOR REVOCABLE PERMIT FOR RESIDENTIAL/AGRICULTURAL PURPOSES COMMENCING APRIL 1, 1986. RENTAL: \$11.00 PER MO.

Item F-1-b JULES KANAREK APPLICATION FOR REVOCABLE PERMIT, KAPAA, KAUAI.

Deferred.

Mr. Ono asked that this be put up for lease instead of permit. Mr. Detor is to look into this possibility.

Item F-1-c RESUBMITTAL - KENNETH SAITO REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-4838, LOT 25, KEAHOLE AG. PARK, PHASE II, KALAOA-OOMA, NO. KONA, HAWAII.

Item F-1-d JAMES K. HUEU III APPLICATION FOR REVOCABLE PERMIT COVERING LAND AT KEANAE, KOOLAU, HANA, MAUI FOR GENERAL AGRICULTURE PURPOSES COMMENCING APRIL 1, 1986. RENTAL: \$11.00 PER MO.

Item F-1-e RICHARD ROBERTS REQUEST FOR CONSENT TO ASSIGN G. L. NO. S-5236 TO DOUGLAS M. WEDEMEYER, LOT 15, KOKEE CAMP SITE LOTS, WAIMEA, KAUAI.

Deferred.

Staff to research as to whether it is possible to withhold request for transfer. Mr. Ono would like to know what flexibility the board may have.

Item F-1-f CORMAX CORP. REQUEST FOR CONSENT TO SUBLEASE, G.L.NO. S-4644, KALAUAO, EWA, OAHU TO MR. & MRS. CHONG PHIL RA dba FASHION BY JAYWILL.

Item F-1-g DR. JOHN LOWREY REQUEST FOR CONSENT TO PARTIAL ASSIGNMENT OF GRANT OF EASEMENT (LAND OFFICE DEED NO. S-27,467), LALAMILO, WAIMEA, SO. KOHALA, HAWAII.

ACTION Mr. Kealoha moved to approve Items F-1-a, c, d, f & g. Motion carried unanimously with a second by Mr. Ing.

Items F-1-b and F-1-e were deferred.



ITEM F-2	STAFF RECOMMENDATION FOR RENTAL ADJUSTMENT, REVOCABLE PERMIT NO. S-5256, WAIOHINU, KAU, HAWAII.
ACTION	Unanimously approved as submitted. (Higashi/Kealoha)
ITEM F-3	STAFF RECOMMENDATION FOR PUBLIC AUCTION SALE OF A LEASE COVERING LAND AT HONOULIWAI, MOLOKAI.
ACTION	Unanimously approved subject to the conditions listed in the submittal. (Higashi/Arisumi)
ITEM F-4	DIVISION OF FORESTRY AND WILDLIFE REQUEST FOR PUBLIC HEARING AND ISSUANCE OF EXECUTIVE ORDER SETTING ASIDE ROADWAY AS ADDITION TO KULA FOREST RESERVE, KAONOULU, KULA, MAUI.
ACTION	<p>Mr. Detor explained that this road which presently leads to the Forest Reserve is presently not part of the Forest Reserve. Staff would like to incorporate it as a part of the Reserve.</p> <p>At Mr. Ono's request for the name of a Master, Mr. Detor asked that the submittal be amended with a recommendation that Mr. Libert Landgraf be appointed Master for this hearing.</p> <p>Unanimously approved as amended. (Arisumi/Zalopany)</p>
ITEM F-5	RESUBMITTAL - STAFF RECOMMENDATION FOR EXCHANGE OF LANDS WITH THE HAWAIIAN HOMES COMMISSION, OAHU.
ACTION	Mr. Ing moved to approve the land exchange proposal and authorize the Chairperson to take necessary steps to complete said land exchange. Seconded by Mr. Kealoha, motion carried unanimously.
ITEM F-6	STAFF RECOMMENDATION FOR CANCELLATION OF REVOCABLE PERMIT NO. S-5654, SAND ISLAND, HONOLULU, OAHU.
ACTION	<p>Mr. Detor asked that this item be deferred inasmuch as the Permittee has asked that this be considered at the next Oahu meeting.</p> <p>Deferred.</p>
ITEM F-7	KENNETH PONCE REQUEST FOR WAIVER OF SINGLE-FAMILY DWELLING RESTRICTION, LAND PATENT GRANT NO. S-15,652 COVERING LOT 1, BLOCK K, KAPAA TOWN LOTS, KAPAA, KAUAI.
ACTION	<p>Mr. Detor asked that this item be deferred inasmuch as Mr. Ponce could not come to Hilo but will attend the next Oahu meeting.</p> <p>Deferred.</p>
ITEM F-8	STAFF RECOMMENDATION FOR PUBLIC AUCTION SALE OF A LEASE COVERING LOT 21-A OF THE HANAPEPE TOWN LOTS, 1ST SERIES, HANAPEPE, KAUAI.
ACTION	Deferred.
ITEM F-9	<p>Mr. Detor said that there may be some problems with this items so asked that this item be deferred for no longer than two meetings after this one.</p> <p>RESUBMITTAL - E. F. NILSON, INC. APPLICATION FOR REVOCABLE PERMIT, NAWILIWILI, KAUAI.</p>
	<p>Mr. Detor said that on January 24, 1986 the Board considered a request by E. F. Nilson and Alexander Deigan to terminate Mr. Deigan's existing Revocable Permit No. S-4899 and thereafter issue a new permit for the same area to E. F. Nilson, Inc.</p>

Questions were raised concerning the ownership of the four buildings built on the land by Mr. Delegan. Staff's position is that when the Delegan permit is cancelled, any improvements left on the land are surrendered to State ownership. A rent factor for such state-owned buildings in addition to the suggested ground rent of \$356.00 would then be appropriate for the Nilson permit.

Upon being advised of the State's position, the parties agreed to cancel the arrangement with Mr. Delegan continuing as permittee. E. F. Nilson, Inc. will relocate its operation from the State land.

ACTION Mr. Zalopany moved to rescind the Board's action of January 24, 1986. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM F-10 DEPARTMENT OF SOCIAL SERVICES AND HOUSING REQUEST FOR ACQUISITION TO LEASE COVERING OFFICE SPACE AT 45-513 LULUKU ROAD, KANEOHE, OAHU.

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

ITEM F-11 RESUBMITTAL - DSSH REQUEST FOR ACQUISITION OF LEASE COVERING OFFICE SPACE IN THE ALA MALAMA BUILDING, KAUNAKAKAI, MOLOKAI.

Deferred. See Page 3.

ITEM F-12 U. S. NAVY REQUEST FOR A RIGHT OF ENTRY TO REMOVE ROCK FROM STATE PROJECT AT KEKAHA, KAUAI.

Mr. Kealoha asked, "how much would they be paying for the rocks."

Mr. Detor said that price was not discussed. However, he suggested that the submittal be amended to authorize the Chairman to set the price for he rocks.

ACTION Unanimously approved as amended. (Zalopany/Arisumi)

ITEM Z-1 RESULTS OF PUBLIC AUCTION OF GOVERNMENT LEASES ON THE ISLAND OF KAUAI, HELD FEBRUARY 25, 1986.

The above report was unanimously accepted by the Board.

ITEM H-1 CDUA FOR THE DEVELOPMENT OF KAHALUU WELL I AND ACCESSORY USES AT KAHALUU, OAHU.

Mr. Ing asked if any limitation was needed in the approval on the amount withdrawn or would that be handled separately?

Mr. Evans said that the amount withdrawn would be limited by the amount represented to be withdrawn in the application. They are able to withdraw 1.4, however, they represent that they will limit withdrawal to 1.0 mgd.

Mr. Ing asked whether that could be included in the approval.

Mr. Evans said that he would include this.

Mr. Ono questioned the meaning of Condition No. 9.

Mr. Evans said that this condition was included by staff because in their discussions with DOWALD they really did not know with a degree of certainty what the effect would be in terms of aquatic, fauna and biota in other areas as a withdrawal from this particular well. In terms of the underground they do not know how far it is or how large the basis is so to protect our natural

resources in the future if they found, because of this withdrawal, a detrimental affect on those resources they could come back and limit this 1.0 mgd a day to a lower figure. This is what Condition No. 9 means.

Mr. Ono felt that the condition was so broad that it would be hard for the applicant and the board to know what is expected. Also, the applicant to be required to pump a quantity as determined by the department implies that it is always going to be a lower figure. There possibly could be no pumping at all.

Mr. Evans said that if it is the case that it would wind up destroying the natural resources in the area, the answer would be yes.

Mr. Ono said that the condition does not say this. He said that he would like to make it clear and you can go all the way from zero to a million gallons per day and if the stream level is being reduced because of this particular well there might be no pumping at all.

Mr. Evans said that the condition could be changed to say, "required to pump a lesser quantity or cap/close the well as determined by the department.

Mr. Ono said that the Board of Water Supply is aware of this, so it won't be a surprise to them.

ACTION Mr. Ing moved to approve as amended. Seconded by Mr. Higashi, motion carried unanimously.

ITEM H-2 REQUEST TO AMEND A CDUA APPROVED ON DECEMBER 20, 1985 (MANELE BOAT HARBOR IMPROVEMENTS).

ACTION Unanimously approved as submitted. (Arisumi/Zalopany)

ITEM H-3 AMENDMENT TO A CDUA FOR A TELECOMMUNICATION FACILITY AT KOKO HEAD, OAHU.  
(See Page 1 for Action.)

ITEM H-4 REQUEST FOR TIME EXTENSION ON A CDUA FOR A SINGLE-FAMILY RESIDENTIAL USE HAENA, KAUAI.

ACTION Mr. Zalopany moved to approve as amended. The amendment being that this will be the final extension. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM H-5 REPORT ON MOORINGS FRONTING KAIMANA BEACH HOTEL, OAHU.

Mr. Evans asked to correct No. 1, last line, as shown on page 1 by deleting the period after the word cited and adding the words "by DOT".

Mr. Evans said that the board had recently inquired about some moorings fronting the Kaimana Beach Hotel. The concern was that several moorings were in the water and a question was raised relating to the issuance of a permit.

Staff review of the issue indicated no CDUA had been approved for moorings at that location. DOCARE's investigation indicated that:

1. There is a restricted area that extends from the outer corner of the Kokohead (KKHD) side of the natatorium wall to the groin fronting the Kaimana Beach Hotel. No vessels are allowed to moor within this area. Vessels found inside are cited by D.O.T.
2. There are two vessels moored outside the restricted area on the ewa side of the groin. One is a catamaran, the other an outrigger canoe.
3. Vessels moored on the KKHD side of the groin are within a recognized offshore mooring area (governed by DOT) and are not in violation.

4. DOT confirms that a mooring is considered to exist when an anchor, concrete block or similar device is placed on the bottom with a line or chain holding a mooring buoy to which the boat is attached. Anchoring, on the other hand, constitutes holding the vessel in place with its own ground tackle.

Land Management has said that DOT has jurisdiction from the highwater mark seaward and that the complaint should be referred to Harbors. As a result of staff's review and the clarification of jurisdiction, the issue will be forwarded to DOT for appropriate action.

ACTION

No action by the board was necessary.

ITEM H-6

CDUA FOR 1) DREDGING OF SWIMMING LAGOON CHANNELS; 2) INSTALLING OF PATHS AND VIEWING PLATFORMS; AND 3) LANDSCAPING AND SHORELINE MODIFICATION ON STATE-OWNED SUBMERGED LANDS AND ADJACENT TO THE WEST BEACH DEVELOPMENT AT HONOLULI, EWA, OAHU.

(See Pages 3 through 7 for earlier discussions on this item.)

In answer to Mr. Ono's question, Mr. Evans said that he did have a chance to look over the suggested conditions and also those areas of concern flagged out by Mr. Kealoha for review.

Mr. Evans said that he does have a number of conditions that reflect the concerns that were expressed by public agencies and that Mr. Kealoha suggested they look at. He said that they have come up with about 42 conditions.

Mr. Ono said that he was not seeking the applicant's concurrence, he just wanted Mr. Evan's independent observations and comments.

Mr. Evans felt that the applicant had made a concerted effort to incorporate conditions that have been expressed before. In terms of staff's review, he suggested that the first condition be that, should the board approve this permit, all of the conditions submitted by the applicant on March 14 with one change and that change be in his last condition which is condition no. 22, be incorporated.

Mr. Ono informed Mr. Evans that the board did not have a copy of the applicant's conditions.

Mr. Evans said that Condition 22 says that the applicant can retain a whole or a partial release of any of these conditions which may be granted by the Chairman. What is being suggested is a couple of wording changes in terms of flexibility that the applicant can request or partial release of any conditions, not only those which are contained among the ones that the applicant is recommending himself, which may be granted by the board. Mr. Evans said that there is a process whereby when someone wants to change a condition staff comes back to the board to change a condition.

From there, Mr. Evans said he would then go back to the public agencies and looking after their particular technical, functional responsibilities.

Beginning on page 3, we have under the US Fish and Wildlife Service a. (1) where it says: "Runoff water from the spoil disposal area should not be allowed to return to the ocean", the word "should" to be replaced with the word "shall".

Mr. Evans said that as he goes through all the conditions, "should" will be replaced with the word "shall".

The next condition would be the next paragraph where the opening of the shoreline barrier is discussed. The condition reads: "the opening of the shoreline barrier to create the flushing channels be initiated when the turbidity and suspended sediments loads within the lagoon approximates the adjoining nearshore waters.

Next condition starts on page 4 where it says (3), it would be condition (4) as follows:

- (4) If blasting is necessary, the blast plan shall be reviewed by our Division of Aquatic Resources (DAR) and the National Marine Fisheries Service (NMFS).

On page 4 where it says (4) it would be condition 5 as follows:

- (5) Lagoons shall be constructed incrementally, starting from the south end of the project.

Next condition would be:

- (6) U. S. Army Corps of Engineers, NMFS, shall be allowed access during the lagoon construction phase to assess impacts to nearshore marine resources and the effectiveness of the mitigation measures.

Condition (7) would be under b., same agency, beginning from line 7 reading as follows:

- (7) Drywells, surface ponds, golf courses, park lands, and landscaped areas be used for stormwater disposal.

Next condition would be four lines below that and would read:

- (8) The drainage system, particularly at the north end of West Beach, fully utilize the above design recommendations to limit runoff discharge into coastal waters.

Condition (9) would reflect the second to the bottom paragraph of page 4:

- (9) Anchoring of boats in the West Beach areas be controlled through the use of permanent anchor buoys and designated anchorages be funded and maintained by the developer and developed in consultation with the DAR.

Mr. Kealoha asked Mr. Evans if he could somehow add in the purpose for recommending those sections primarily to protect the coral heads. He felt that we may have a problem with DOT -- whether or not the board can say what they can do.

Condition (10) would be under d. on page 4:

- (10) That interpretive displays stressing marine life natural history and conservation be placed along the public access walkways and shoreline along West Beach and be funded and maintained by the applicant and developed in consultation with your DAR.

Next condition would be on page 6, under Recreational Resources:

- (11) That the public parking stalls will be provided and incorporated in the final design.

Mr. Evans said that staff really does not have in mind the number of parking stalls.

Mr. Ing asked when he would have these figures.

Mr. Evans said that this is something that staff would have to take an action on when they see the final design plan. However, Mr. Evans said that with the applicant's Condition No. 22, if they come up with a recommended number of proposed parking stalls and they felt that it was unreasonable, under Condition No. 22 they could come back to the board and argue that it was unreasonable.

Conditions 12, 13, & 14 are taken from page 6 under comments from DOT:

- (12) The approved Corps of Engineers permit and agreement on terms to accommodate and compensate for the removal of a portion of the Federal wave absorber structure.
- (13) If applicable, an appropriate long-term lease with the State Harbors Division approved by the Land Board for use of the fast and submerged land required for the connecting channel including appropriate compensation and operational conditions.
- (14) An agreement with the State Harbors Division which includes:
  - a. Appropriate controls to ensure the safety of the use of the entrance channel including any necessary warning devices, chase craft and public education.
  - b. Appropriate provisions regarding indemnification and liability insurance.

Conditions 15 and 16 are taken from Page 7 under Drinking Water:

- (15) That no possibility of cross-connections can exist between the potable and nonpotable water systems.
- (16) The nonpotable system shall be isolated to such activities as highway landscaping, golf course irrigation, and for watering of large common areas.

Mr. Ing asked how this related to conservation lands.

Mr. Evans said that this goes back to one of the questions that staff had asked themselves. "Are we relating our actions totally to the conservation districts?" If they are going to confine themselves totally to the conservation district then in terms of their analysis they will take a look at what the benefits are to the conservation district as well as what the detriment is to the conservation district in terms of staff's analysis.

Mr. Ono asked Mr. Evans if we had an A.G.'s opinion on this.

Mr. Evans said several years ago they had received an opinion as it related to environmental impact statements.

Mr. Ono thought that that particular opinion related to more than the EIS and, if staff had deviated from that opinion he wanted to know on what basis.

Mr. Evans said that he could not represent to the board this morning that that opinion confined the board to the conservation district or to the extent that the board is only required to look at the conservation district and did not allow it to look outside the conservation district.

Mr. Ing asked, "won't DOH make its own requirement with regards to drinking water?" Mr. Ing did not know how we could enforce this condition inasmuch as this is urban land.

Condition No. 17 is taken from 2. under Noise on page 6:

Mr. Higashi asked Mr. Fujiyama if they were providing some mitigating measures for noise in their conditions.

Mr. Fujiyama said yes. He felt that this condition no. 2 was almost verbatim to their condition 18.

Mr. Evans said that he was not suggesting that staff's conditions are in any way different from what Mr. Fujiyama is suggesting.

Mr. Higashi said that he is only looking for the language. If it is covered then they don't have to fumble around for sufficient language.

Mr. Evans said that one thing he did indicate to Mr. Fujiyama was that he has these set of conditions and we feel that we have our set of conditions and by the time we get done two conditions may be the same thing in which case they would take presence.

Mr. Ono felt this was fine so staff could go ahead.

- (17) Through facility design, noise from equipment such as air conditioning/ventilation units, generators, pumps and exhaust fans must be attenuated to meet the allowable noise levels of Title II, Administrative Rules, Chapter 43, Community Noise Control for Oahu.

Condition No. 18 is taken from the top of page 8, a. b. & c.:

- (18) Activities associated with the construction phase must comply with the provisions of the regulations.
- a. A noise permit must be obtained if the noise levels from the construction activities are expected to exceed the allowable noise levels of the regulations.
  - b. Construction equipment and on-site vehicles or devices requiring an exhaust of gas or air must have a muffler.
  - c. The conditional use of the permit must be complied with as specified in the regulations and the conditions issued with the permit.

Condition No. 19 is shown as 4. on page 8:

- (19) Traffic noise from heavy vehicles traveling to and from the construction site must be minimized in residential areas and must comply with the provisions of Title II, Administrative Rules, Chapter 42, Vehicular Noise Control for Oahu.

Condition No. 20 is taken from the last four lines of the last paragraph under Wastewater Treatment on page 8:

- (20) That noise from commercial, recreational, and marine activities have affected residential areas. Plans for mitigative measures to prevent such problems shall be adopted.

Mr. Kealoha asked if there is one standard for noise and one for air.

Mr. Evans said that there is a standard for noise but whether that standard for noise applies to motor boat noise he did not know. There is also a standard for air. However, he did not know of the applicability to marina.

Condition 21 is taken from 1. under Division of Aquatic Resources on page 8:

- (21) If the applicant decides to dredge a "separate" or "parallel" channel entrance to the marina, the potential impacts on aquatic resources and public fishing which could result from channel construction should be assessed with adequate opportunity for the public to review and comment.

Condition 22 is taken starting from line 6 of 2. shown on page 9:

- (22) The applicant shall employ the smallest charge in blasting to excavate and the minimal number of detonations necessary to complete the job. Blasting should not be conducted during the whale migration period of November through June inclusive. Blasting operations should not be conducted while threatened or endangered species such as sea turtles, dolphins, and whales are in the vicinity of blast sites.

Condition 23 is taken from 3. on page 9:

- (23) Excavation of the marina should begin at its mauka end, proceeding seaward, with breakthrough to the sea postponed until erosion of upland soils is controlled and the project depth for the entire marina is attained, thereby minimizing escaping of sediments into the sea.

Condition 24 is taken from the first paragraph of comments from Aquatic Resources, 25 from the second paragraph, 26 from the third, and 27 is taken in its entirety from the fourth paragraph:

- (24) Blasting shall be restricted to the period from June through October; prior to blasting the area around the charge(s) should be inspected visually, and blasting should be delayed until any marine mammals or sea turtles observed are safely out of the blast areas.
- (25) Excavation shall begin at the mauka end of each lagoon and should proceed seaward, with breakthrough to the sea only after the basin depth has been achieved and upland and adjacent soil have been stabilized.
- (26) With respect to establishing applicable turbidity limits for State waters, the State's Department of Health should be consulted in order to minimize impacts adverse to the project's nearshore water quality.
- (27) To mitigate impact adverse to the marine environment from pollutants and sediments potentially discharged during construction and landscaping, grubbing and grading should be restricted to periods of minimal rainfall and low runoff, and areas denuded of vegetation or susceptible to erosion should be replaced or otherwise stabilized quickly. Care should be taken to prevent construction materials, petroleum products, wastes, debris, and landscaping substances (herbicides, pesticides, fertilizer) from blowing, washing, flowing, or leaching into the sea.

Condition 28 is taken from the second to last paragraph of page 11 under Comments from Land Management:

- (28) The applicant should also need to state liability and maintenance responsibility for the proposed dredged entrances to each lagoon seaward of the certified shoreline.

Mr. Evans thought that the applicant may have some problems with this condition.



Conditions 29 and 30 are taken from 1. under Proposed Lagoons on page 12, and 31 is taken from 2. under Proposed Lagoons:

- (29) That construction right-of-entry and easements for the channel and islands have to be approved by the Board prior to construction.
- (30) That the developer buy the dredged material from the state via a land license if deemed to be required.
- (31) The state lands seaward of the shoreline left in its natural state and the pathways, viewing platforms and landscaping be done solely within the fee property.

Mr. Ono asked if this condition meant that there could be no dredging at all.

Mr. Evans thanked Mr. Ono for calling this to his attention and asked that Condition 31 be amended as follows:

- (31) The state lands seaward of the shoreline left in its natural state and that the pathways, viewing platforms and landscaping be done solely within the fee property as opposed to being done on the State property.

Condition 32, if required is taken from 3. under Marina on page 12:

- (32) If applicable, disposition of submerged land must have prior Governor's approval and approval of the legislature by concurrent resolution.

The last two conditions are not listed in the submittal and there may well be disagreement on these two conditions.

Staff took a look at the Hawaii Kai situation where there was some public interest -- the case went to court and the court ruled it would be a taking by Kaiser-Aetna and basically what it did was made a marina out there and they kept the marina private and the manner in which that marina was kept private was primarily through the shoreline. Staff is suggesting that the current state law relating to the shoreline defining the boundary of public lands be applied and any changes in the shoreline as a result of this project. The reasoning for this is to allow the marina the changes in the shoreline that it becomes public property. It is a form of linkage between an action where the developer is granted something and at the same time the public is given something. There is a downside to it.

Mr. Ing asked, "what is the condition you are imposing?"

Mr. Evans said that the condition being imposed is that....

Mr. Ing asked, "is it on here or are you going to tell us what it is?"

Mr. Evans said he just asked for the condition which is that when they go and dredge, those lands they dredge that are not open to the open ocean are now public property. In other words, the shoreline still is consistent with the current wall, which is the highest reaches of the waves instead of going and dredging these channels and having the shoreline still remain where it was.

Mr. Ing asked, "isn't that a taking?"

Mr. Evans said that from the developer's standpoint he could argue that it is a taking. From staff's standpoint in terms of arguing as a matter of linkage for a conditional use permit, it is not a taking. Staff felt that if something isn't done now then it would be very difficult to do in the future.

Assuming that it becomes State property, Mr. Ing asked if that wouldn't give the State liability for someone injured in the lagoon.

Mr. Evans said that would be the downside for the board to consider.

Mr. Ing asked if it wouldn't be better to have public access while keeping maintenance and title with the private property.

Mr. Evans said that would be a perfect applicable condition that would not be a situation where now we have the access but it is not public.

Mr. Higashi asked, "then would you rather recommend that instead of your first recommendation?"

Mr. Evans said, "that the public retain access to any waters created by this action, yes."

"You're saying that if there is no connection directly with the open water then it can be private", asked Mr. Ono? Mr. Ono was trying to find a distinction for the basis of saying it should be private vs. it should be public.

Mr. Evans said only if there is a direct connection like the Hawaii Kai Marina.

Mr. Evans last condition no. 34 would be:

- (34) If there is any conflict between the conditions of the SMA and the conditions as they occur here the most restrictive shall prevail.

Mr. Ono asked, "what about the U. S. Corps permitting process?"

Mr. Evans said that any conflict between the conditions of any other permit and these, the most restrictive shall prevail.

Before getting into any kind of discussion towards decision making, Mr. Ono asked Mr. Murakami to respond to the latest AG's opinion. Also, to the conditions recommended by Mr. Evans and the applicant.

Mr. Murakami said that as far as he can gather, the A.G. is apparently relying on the purported power of the agency which, in this case, would be the Department of General Planning. From what he can tell there wasn't a review of the activity supposedly prohibited by this park. What I know of what the City and County had was not a full plans specifications for the open ocean dredging because they were relying on information to come in from the Corps of Engineers, which had not been completed at that time.

The position of the AG says that the board has the intent duty to determine whether or not such activity should be allowed. The AG opinion appears to say that because the regulations allow possible use of this area then it is up to this board to decide. He noted however that the regulations specifically do not allow for such removal in the open ocean and that therefore a conditional use permit from the board must be obtained. It seemed to him, not having looked at what that condition referred to in the section says that the prohibition contained in 13.2 which would not allow such use in conservation area should at least alert this board that whoever drafted the initial version of that regulation really did not intend for open ocean dredging to be covered on such a conditional use permit.

As to the conditions, Mr. Murakami noted significantly two items which he felt were left out and that includes the section dealing with compliance with State water quality standards and 2) there have been suggestions, and he did

not think it was recommended by staff, that if there is open ocean connections to the lagoon areas that they be phased, or incremental openings of the lagoons so that by monitoring and reports it can be determined what is happening. If such openings become detrimental to the ocean then further connections can be stopped. Mr. Murakami said that in the monitoring that these reports be made specifically available to the interested parties who testified before the board and that it includes the consideration not only to turbidity but also direct measurements on the effect on such things as limu and fish life and other marine life in the area. He understood that the limu areas exist immediately offshore in the very areas where the actual dredging will take place.

Mr. Ing asked Mr. Murakami whether he or his client had ever charted where the limu areas were in relationship to the lagoon to be constructed.

Mr. Murakami said that there was no actual charting.

Mr. Ing asked Mr. Fujiyama whether their Marine experts had determined where the limu lies in relationship to where the lagoon is to be constructed.

Dr. David Ziemann of the Oceanic Institute on Oahu said that they were contracted to provide professional services in estimating marine impacts in the area. In the course of looking at those impacts they contracted with Dr. Richard Brock of the University of Hawaii who performed a survey of the nearshore environment between the Barbers Point Harbor and this general area and the northern extent of the West Beach property. They asked that surveys of the limu at the specific sites of the lagoons be performed and the results of those surveys were that species of limu which are currently collected by limu pickers occurred either not at all or only uncommonly in those specific sites.

Mr. Ing asked, "there is limu there but not the limu people eat?"

Dr. Ziemann said, exactly.

Mr. Ing asked whether there was a plan as to how each of the lagoons is to be opened.

Mr. Fujiyama said that their condition 11. a. states that the lagoons should be constructed starting from the north end of the project.

Mr. Ing asked, "what is the difference in time between opening Lagoon I and Lagoon II?"

Mr. Godfrey said that they would open them in the appropriate season to minimize impacts, so the amount of time would probably be about 2-3 months.

Mr. Ing asked whether, in that 2-3 months, there would be enough time to assess the effects of the opening of the first lagoon.

Mr. Godfrey said, "the SMA permit controls how much they can release per day into the ocean."

Mr. Ing asked, "if after opening the first lagoon, is there some plan to assess what happens to the surrounding area?"

Mr. Godfrey said, yes. It is a requirement of the SMP.

Mr. Ing asked who would have access to the results of the survey.

Mr. Godfrey said that it would be public record but he knew that they have to make this information available to DLU and other appropriate agencies. Also, condition 13.d. of their conditions says that periodic monitoring reports shall be submitted to DLNR and the other responsible agencies.

There was much concern voiced by Mr. Kealoha regarding the impact this construction would have on the limu.

Mr. Godfrey said that whatever limu is destroyed will come back. However, it cannot be said what kind of limu will be back. The heaviest mortality of limu would occur within a week and it would take a few weeks to see the impact.

Dr. Karl Bathen explained that in projecting the water quality inside the lagoon, the data comes from one understanding the water quality that exists off the harbor the whole year as the source of water that will be going into the lagoon and, second, whatever natural groundwater has for years been infiltrating soil along the coast, that same condition will prevail. Dr. Bathen said that additional things other than those natural things which have always been along the coast will not be found. The lagoons have been raised such as everything which were ever to occur will never enter the lagoon. The purpose of this is because it is important to the developer that the quality of that water in the lagoon stay as pristine as the initial coastal water.

Mr. Kealoha asked if they will make all that data available to the board.

Dr. Bathen said, yes. It is a report backing up the EIS.

Getting back to the question of opening up the lagoons, Mr. Ing asked, "if we gave a ninety day minimum between opening up of any subsequent lagoon, could you live with that?"

Mr. Fujiyama said, yes.

Mr. Murakami stated that he was unclear as to what the ninety day limit meant. The way he reads the City's Resolution, the phasing of the incremental construction of the lagoon, the opening is not timed to any incremental planning as per (d) on page 7 of the City's Resolution No. 86-61. He wondered if the board is suggesting a specific incremental opening of the lagoon on top of that.

Mr. Ing said that he actually was addressing his concern about separate and incremental openings of the various entrances and having sufficient time to monitor the impact of the opening before you go on to the next one. That is all he was addressing. It seems that ninety days is enough time for that monitoring to take place and the impact to settle or stabilize.

Mr. Ono told Mr. Fujiyama that a lot of attention has been paid to monitoring before, during and after -- they want to see the results.

Mr. Fujiyama said that this was specifically provided for in the conditions proposed to the board, exactly in those words.

Mr. Ono said that he wanted to make sure that the before portion, the baseline portion, is relevant. He didn't want a before that goes back to 1974 or whatever. It has to be very pertinent and applicable to that particular site.

Mr. Ono asked, "what if you cut through the first opening and there is adverse impact, and you cannot take corrective action within ninety days, are you allowing yourself as far as your construction time table -- some leeway so that you would be able to take care of some of the major concerns that may

crop up after you make the first opening?" Mr. Ono said the reason he is asking this is because he does not want the board or City to be put in a position -- "hey, our construction time table is so tight that you guys have to approve the second cut. He does not want to see anybody in that kind of a situation."

Mr. Fujiyama said this would depend on what conditions are proposed by the board. He said that some of the conditions proposed by Mr. Evans say that you cannot blast during a certain time of the year even if there are no turtles and even if there are no whales and that really puts back their schedule because they did not take into account under no circumstances even if there are no whales they cannot do anything during that period of time. That condition would impact their time schedule.

Mr. Ono said, assuming that the most restrictive conditions that were discussed this morning are adopted by the board but still you tried your best in good faith, lived up to all of the restrictive conditions, but still the surrounding area gets adversely impacted, are you allowing your construction time table enough flexibility to take further corrective actions?

Mr. Godfrey suggested, since they spent a couple of years trying to figure out how to do this project in an environmental sense of a manner, rather than ninety days that there be a provision for the development to present the findings of this monitor to the appropriate boards and reviewing agencies and if the work is meeting the environmental quality standards that they imposed on them that the developer be allowed to open, say, Lagoon No. 2 sooner than the ninety-day review cycle. This would give them the flexibility to open the channels, to dredge the offshore work in season. It could give them a better opportunity to do the work in the season where the environmental impact would be the least, which is what they would like to do. Mr. Godfrey said that he really would not like to have a rigid time schedule because that works against what they want to do and what they want to do is minimize the impact. The intent is right but the application could potentially have more environmental impact than necessary. The question of, "do we have enough time in our time table?" -- their time table is going to be driven by the environmental conditions and water quality standards they have to meet and the developer's time table is over a period of two to five years to complete these lagoons and marina, so the answer would be yes, there will be enough time.

Mr. Ono felt that Mr. Ing's concern was if time is the only thing that would help, whether adverse impact will take place or has taken place so to say at what point in time -- say the 50th day there is no impact so let's go with cut number 2 may not be a realistic approach to take because it might take ninety days to find out if there is adverse impact.

Mr. Ono asked Mr. Fujiyama if he had any reaction to Mr. Murakami's suggestion as to the conditions and also to Mr. Evan's recommendations.

Mr. Fujiyama said that he would like some opportunity to talk to his client to find out what his reaction is to some of these conditions.

Mr. Ono said that he will break off at this portion to clarify what is intended by the other party. We will move on to the last portion of our agenda and come back to the very tail end of this afternoon's meeting and take action on Item H-6.

(See Page 24.)

ITEM I-1

APPOINTMENT OF LICENSE AGENT "SHOP 2", ISLAND OF MOLOKAI.

ACTION

Unanimously approved as submitted. (Higashi/Arisumi)

ITEM J-1 NEGOTIATION OF RENT-A-CAR CONCESSION CONTRACTS, MAUI/HAWAII DISTRICTS (PACIFIC MOUNTAIN LEASING, INC.).  
ACTION Unanimously approved as submitted. (Arisumi/Zalopany)

ITEM J-2 CONSENT TO PARTIAL ASSIGNMENT OF LEASE NO. DOT-A-75-6, KAHULUI AIRPORT, MAUI (WARE D. FULLER - HEMMETER AVIATION).  
ACTION Unanimously approved as submitted. (Arisumi/Zalopany)

ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4170, ETC., AIRPORTS DIVISION.  
ACTION Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM J-4 RENEWAL OF REVOCABLE PERMITS 3628, ETC., CONFORMING USE, AIRPORTS DIVISION.  
ACTION Mr. Kealoha moved to approve as submitted. Motion carried with a second by Mr. Zalopany.  
Mr. Ing was excused from voting on this item.

ITEM J-5 SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION., PORTION OF FAST LAND AND SUBMERGED LAND, EXECUTIVE ORDERS NOS. 2636 AND 302, KEEHI LAGOON, HONOLULU, OAHU.  
ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-6 SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION, PORTION OF FAST LAND AND SUBMERGED LANDS, EXECUTIVE ORDERS NOS. 3201 AND 3202, KEEHI LAGOON, HONOLULU, OAHU.  
ACTION Unanimously approved as submitted. (Kealoha/Higashi)

ITEM J-7 SALE OF A LEASE BY DIRECT NEGOTIATION, HARBORS DIVISION, PORTION OF FAST LAND AND SUBMERGED LAND, EXECUTIVE ORDER NO. 3013, PIER 41, HONOLULU, OAHU (HONOLULU SHIPYARD, INC.).  
ACTION Mr. Kealoha moved to approve as submitted. Motion carried with a second by Mr. Higashi.  
Mr. Ing was excused from voting on this item.

ITEM J-8 SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION, ALA WAI SMALL BOAT HARBOR, HONOLULU, OAHU.  
ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-9 SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU.  
ACTION Unanimously approved as submitted. (Kealoha/Ing)

ITEM J-10 SALE OF A LEASE BY DIRECT NEGOTIATION, HARBORS DIVISION, PORTION OF FAST LAND AND SUBMERGED LAND, EXECUTIVE ORDER NO. 1261, KEWALO BASIN, HONOLULU, OAHU (KEEHI MARINE, INC., DBA KEEHI MARINE CENTER).  
ACTION Unanimously approved as submitted. (Kealoha/Ing)

ITEM J-11 SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION, MAALAEA BOAT HARBOR, MAUI.  
ACTION Unanimously approved as submitted. (Arisumi/Zalopany)

ITEM J-12	ISSUANCE OF A CONTRACT FOR A RESTAURANT AND PARKING LOT, HARBORS DIVISION, MAALAEA HARBOR, MAUI.
ACTION	Unanimously approved as submitted. (Arisumi/Zalopany)
ITEM J-13	APPROVAL OF CONSENT TO SUBLEASE, HARBORS DIVISION, HONOKOHAU BOAT HARBOR, HAWAII (GENTRY PACIFIC, LTD.).
ACTION	Unanimously approved as submitted. (Higashi/Arisumi)
ITEM J-14	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, ALA WAI SMALL BOAT HARBOR HONOLULU, OAHU (PETER M. NENEZICH).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-15	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40, HONOLULU HARBOR, OAHU (SHUTTLE EXPRESS, INC.).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-16	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40, HONOLULU HARBOR, OAHU (PACIFIC MARINE LINES, INC.).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-17	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIERS 19 AND 20, HONOLULU, OAHU (BREWER CHEMICAL CORP.).
ACTION	Mr. Higashi moved to approve as submitted. Motion carried with a second by Mr. Kealoha.  Mr. Ing was excused from voting on this item.
ITEM J-18	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NAWILIWILI HARBOR, KAUAI (BOB'S BARGAIN RENTALS, INC.).
ACTION	Unanimously approved as submitted. (Zalopany/Arisumi)
ITEM J-19	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, HONOLULU, OAHU (AUTOSTO, INC.).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-20	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NEAR PIER 23, HONOLULU HARBOR, OAHU (MANNA PRO CORP.).
ACTION	Unanimously approved as submitted. (Kealoha/Higashi)
ITEM J-21	USE OF HARBORS DIVISION FACILITIES, PIER 7, HONOLULU HARBOR, OAHU (PHILIP RICHARDSON DBA INTERNATIONAL CATERING CONCEPTS).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-22	USE OF HARBORS DIVISION FACILITIES, PIER 10, PASSENGER TERMINAL, HONOLULU, OAHU (DOWNTOWN BUSINESS COUNCIL).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)
ITEM J-23	ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, OAHU, (ERIK BUILDERS, INC.).
ACTION	Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-24

LEASE FOR FIXED BASE FACILITIES, AIRPORTS DIVISION, HONOLULU INTERNATIONAL AIRPORT, OAHU (AIR SERVICE CORP.).

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-25

RIGHT OF ENTRY TO INSTALL ADDITIONAL PIPELINES AT PIERS 31 THRU 34, HONOLULU HARBOR (PACIFIC RESOURCES, INC.).

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-26

ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, BARBER'S POINT HARBOR, OAHU (MARISCO, LTD.).

ACTION

Unanimously approved as submitted. (Kealoha/Higashi)

ITEM H-6

WEST BEACH DEVELOPMENT, OAHU.

(See also Pages 3 through 7 and 12 through 21)

Mr. Fujiyama said that they were not able to go through all of the conditions but did go through the following:

1. They would like to change the word "run-off water" to "silt".
5. They propose to start from the north end. If it's very important that they start from the south end, then they will consider whatever the board has to say but if they have a preference they would like to start from the north.
7. They would like to use their condition 7. instead, basically because it is very specific as to the kinds of various methods of reducing the drainage and they would like to take into account all different kinds of different systems rather than be limited to the ones that were listed or to have to use each of those listed.

Mr. Ono asked Mr. Fujiyama to let the board know the substance of the condition when the numbers are read.

8. Relates to Mr. Evans Conditions 7 & 8 on drainage system shall fully utilize the design recommendations to limit runoff discharges into the coastal waters.

They would like to change the word "limit" to "reduce".

Mr. Fujiyama said that they would like to use their Condition No. 7 to cover staff's conditions 7 and 8.

11. As to staff's public parking condition 11, they prefer their condition 14 inasmuch as it is more specific as to the number of parking stalls which they have to provide.

Mr. Kealoha said that their condition 14 says that it "should" include not "shall" include.

Mr. Fujiyama said "shall" is fine.

13. Referring to staff's condition 13, under 2. on page 6, he asked that the words "If applicable" be inserted in front of that sentence.

Referring to staff's condition 22, under 2. on page 9, relating to blasting, Mr. Fujiyama said that the problem they have with blasting in that paragraph is the restriction to the period from November through June. The rest is perfectly acceptable to them.

Mr. Higashi asked Mr. Fujiyama if he had any suggestions as to how to mitigate the whale period.



Mr. Ing said that he is saying to put a period after the word period so it just reads, "not conducted during the whale migration period."

Mr. Fujiyama said that their intent is that they do not want to be limited to a specific time period where they can't do it. If there are whales out there then they shouldn't do it, period. But they should not have a category for prohibition on construction during that period of time.

Mr. Ono asked who would be responsible to see that there are no whales in that area?

Mr. Fujiyama suggested their condition 9 which says, "we have to obtain the approval of the Corps of Engineers, the National Marine Fisheries Services and DLNR's Division of Aquatic Resources."

Mr. Ono felt that this would put the burden on the government agencies to clear the way for them. He did not feel this should be the government's responsibilities. He felt that it should be the responsibility of the applicant. If they want to pay for the expenses then maybe fine.

Mr. Fujiyama said that they would have no objection to paying for these services.

Mr. Ono felt that they should at least pay to cover the direct costs.

- . Referring to staff's condition 23 under 3., page 9, having to do with excavation of the marina, on the first line they would like to delete the word "end" and include "of the barrier", which is condition i. in their SMP.
- . Referring to staff's condition 24, on page 9 which has to do with the restriction of blasting from June through October, they have the same problem with limiting it to a specific period. They have no objection to their condition 9. including that they will pay for the government services which they request.
- . Staff's condition 25 starts with the words "excavation shall begin at the mauka end", instead of the word "end" they would like to include the words "mauka of the barrier".
- . Staff's condition 31 on page 12, they have some concerns with keeping some of the State properties in their natural state.

Mr. Ing said that Mr. Evans clarified that by reading just the last two lines: "The pathways, viewing platforms and landscaping be done solely within the fee property."

- . Condition 32, page 12, Mr. Fujiyama asked if he could add after the word "Also", the words "if applicable" disposition of submerged land must have prior Governor's approval and approval of the legislature by concurrent resolution.
- . Insofar as condition 33, they were not very clear as to what staff was trying to articulate because they do not want boats in their lagoons. They are willing to say "boats to have public access to their marina because they have public boating launches but he did not understand what staff's input meant. He wants to get the land, he should pay us for it, and take the liability that goes along with it."

Mr. Fujiyama said that since the Chairperson does have the power under one of their proposed conditions to include other terms and conditions, until Mr. Evans clarifies that a little more to them, they cannot agree to condition 33.

- . Condition 34 which says that, any conflict, the most restrictive shall prevail, they go along with.

Mr. Fujiyama said that he was not too clear on all of Mr. Murakami's conditions but they were agreeable to the one that provided for the ninety days, the first lagoon and to wait for that to see what kind of impact will come from that.

Mr. Ing asked Mr. Fujiyama, what about Mr. Murakami's concern regarding the 10 N.T.U's.

Mr. Fujiyama asked to have the person they have doing their water quality work address that.

Dr. Bathen went on to explain to the board the meaning of NTU, which is a means of measuring the turbidity of the water. Turbidity comes about from particular materials in the water.

Mr. Ono asked if exceptions are made for construction activity.

Dr. Bathen said, "not in the state water quality standards per se, they deal again with just testing the water quality as it exists around the island during normal conditions."

Mr. Ono asked, "in reference to the whalers, I would like to know how far the sounds and the affect of a blasting extends?"

Mr. Godfrey, referring to Darvey's literature, said that whales will not be a problem. They cannot even get close enough and smaller marine mammals e.g. dolphins and sea turtles that as long as any mammals are more than 50 feet away from the charge site, they will not be endangered.

Mr. Ono asked, "you mean underwater blasting won't affect whales?"

Mr. Godfrey said that in Darvey's analysis, that is what he came up with.

Mr. Ono asked, "then why do we bother putting all these conditions in -- not only this project but others also?"

Mr. Godfrey did not know.

Getting back to condition 9, Mr. Higashi said that he was not completely satisfied with this condition. He concurred with the Chairman that this should be tightened up somehow. The mitigation plan he felt should be submitted with the construction schedule -- whether the clearance will be on a daily or weekly basis or continued observation in the area of whales or turtles. Right now it's kind of broad and the last three paragraphs really don't say too much.

Mr. Fujiyama was agreeable to this.

In this connection, Mr. Ono said that he would also like those agencies determine to what extent monitoring should take place. Not only 50 feet away from the point of detonation. He didn't think this was acceptable.

Mr. Fujiyama wanted to make it clear in response to the discussion that went on between Messrs. Murakami and Ing that when they say the more restrictive standards as to water quality, they are talking as to construction and not as to him saying that we have to just comply with the ambient quality and more restrictive of the ambient quality the construction standard requires.

Mr. Ono asked the board members if they had any suggestions as to how to conclude this item.

ACTION

Mr. Ing moved for approval of the CDUA application by West Beach and as conditions of approval, that the board adopt the conditions proposed by Mr. Evans with the following amendments:

1. As requested by Mr. Fujiyama, that the word "silt" replaces the words "runoff water".
2. That Mr. Evan's listed conditions 7 and 8 be deleted and West Beach Condition No. 7 be substituted instead.
3. With regards to Mr. Evan's Condition 11 that the West Beach Condition 14 be substituted with regards to specific number of minimum parking stalls at the various access as proposed.
4. That Mr. Evan's Condition 13 be amended to include the words "if applicable" an appropriate long-term lease with the State Harbors Division shall be approved by the Land Board for use of the fast and submerged land.
5. That Mr. Evan's proposed Condition 22 be modified to read as follows:  
"The applicant shall employ the smallest charge and the minimal number of detonations necessary to complete the job. Blasting shall not be conducted during the whale migration period. Blasting operations should not be conducted while threatened or endangered species such as sea turtles, dolphins, and whales are in the vicinity of blast sites.
6. That Mr. Evan's Condition 23 be amended to substitute the words "of the barrier" for the word "end" in the first line.
7. That Mr. Evan's Condition 24 be amended to read as follows:  
"Prior to blasting the area around the charge(s) should be inspected visually, and blasting should be delayed until any marine mammals or sea turtles observed are safely out of the blast areas.
8. That Condition 25 be amended to replace the word "end" with the words "of the barrier" so it reads "should begin mauka of the barrier."
9. That Condition 32 be amended to read:  
"If applicable, disposition of submerged land must have prior Governor's approval .
10. That Condition 33 be amended to read"  
"That public access along the shoreline of the lagoon shall be provided as shown in Applicant's Exhibit 3, page 3 and it shows the public shoreline easement boundary for each of the lagoons. This is a pedestrian access which also includes access to the water.
11. That Condition 35 be added as follows:  
"The lagoon will be open to the sea beginning with the north end and proceeding in a southerly direction, commencing with Lagoon No. 1 first." The minimum period of time between the termination of any dredging or excavation seaward of the certified shoreline and the commencement of any dredging or excavation seaward of shoreline for

the second lagoon be a minimum of ninety days. During that period of time, additional monitoring be conducted with regards to marine life and that reports be submitted to the various public agencies and made available to the public.

Further, that the minimum period of time between the completion of construction activity for opening of the second lagoon and the commencement of construction activities of the third lagoon may be decreased from ninety days depending on the results and the reports submitted on the opening of the first lagoon. The board will decide whether that is to be decreased from the ninety days.

12. That Condition 36 be added which says that the board reserves the right to amend these conditions and the right to stop work in the conservation land should any adverse ecological results occur.
13. Add other conditions as listed by West Beach that are not inconsistent with Mr. Evan's conditions e.g. compliance with Federal, State and County regulations, hold-harmless indemnity clause and other items listed in the West Beach proposal but only to the extent that they are not inconsistent with what Mr. Evan's presented and the board amended.
14. With regard to Conditions 15 and 16 that the applicant be required to comply with Department of Health regulations regarding potable and non-potable water in any permits they may issue.

Mr. Ono asked Mr. Ing for clarification on one of the recommended conditions. On the days that blasting take place, where monitoring is required, that the applicant is to pay for any government personnel that might be required to monitor.

Mr. Ing said that he would expand the amendment to include that the applicant shall cover the cost for any governmental monitoring pursuant to blasting.

Mr. Higashi added that in the redrafting of the terms and conditions as proposed by the board, that the Chairman and one board member go through this form, plus the AG, before the final form is drafted. He felt that right now we do not have it in good final form. Before it comes back to this board, he asked that the Chairman and one board member review same.

Mr. Arisumi seconded.

One point to the applicant. Mr. Ono said that these conditions for the decision to be made pertains to the conservation district use application only and does not refer to the applicable disposition. If any other requirement or approval should be obtained e.g. right of entry or easement or leasing of public lands, etc., those will be additional steps that must be taken by the applicants. He just wanted it understood that this is not a blanket approval for the other steps that might be necessary.

Mr. Fujiyama said that was his understanding.

Mr. Ono called for a vote. Motion carried unanimously.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:50 p.m.

Respectfully submitted,

*LaVerne Tirrell*

Mrs. LaVerne Tirrell  
Secretary

APPROVED:

*S. Ono*  
SUSUMU ONO  
Chairperson

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