

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

DATE: July 10, 1987
TIME: 9:00 A.M.
PLACE: Kalanimoku Building
Room 132, Board Room
1151 Punchbowl Street
Honolulu, Hawaii

ROLL
CALL

Chairperson William W. Paty 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. Moses W. Kealoha
Mr. Leonard Zalopany
Mr. John Arisumi
Mr. Herbert Arata
Mr. William W. Paty
- STAFF: Mr. Manabu Tagomori
Mr. George Matsumoto
Mr. Ralston Nagata
Mr. Mike Shimabukuro
Mr. Maurice Matsuzaki
Mr. Tatsuo Nakamura
Mr. Roger Evans
Mrs. LaVerne Tirrell
- OTHERS: Ms. Dona Hanaike and Mr. Johnson Wong,
Deputy Attorney Generals
Mr. Peter Garcia, Dept. of Transportation
Mr. Watson Yoshimoto
Messrs. Bert Hatton, Bob Nakata, Allan Murakami,
Creighton Matoon, Arthur Mori, Myron Murakami,
Tomosi Tokuaifu, John Reppun and Mesdames
Martha Black, Victoria Creed, Susan Miller,
Jan Dickerson and Dawn Larson (Item D-1)
- Mesdames Linda Wong, Cora Tanaka, Nona Beamer,
Sterett, Kinau Wilder and Messrs. Hank Wynand,
Waltah Clarke, Clayton Eseke, Chucky Mahoe,
Gordon Kaaihue, Carroll Taylor, Kimo Leong,
Rodney Aiu, Milton Carter, Charles Kaanoi,
Joe Recca, Lou Nevels and Ed Harris (Added
Item F-24)
- Messrs. Kamuela Price and Maui Loa (Item H-1)
Messrs. Michael Sussman and Ed Bittner (Item H-2)
Mr. Hugh Ono (Item H-3)
Mr. Jim Ferry, Ms. Susan Miller and Hope Miller
(Item H-7)
Mr. Daniel Hong (Item H-8)
Mr. Kelvin Taketa (Item H-9)

SHIKAR-
SAFARI AWARD: Mr. Tatsuo Nakamura, Conservation and Resources Enforcement Officer, who serves as the branch chief on the island of Kauai, was presented the Shika-Safari Club International Wildlife Officer of the Year Award for 1986. Mr. Mutsuzaki said that this award brings public attention to the work and dedication of Fish and Wildlife Personnel in the United States and increases public interest in sound conservation practices.

RESOLUTION: A Resolution recognizing Mr. Tatsuo Nakamura for his high level of performance and also congratulating him as the recipient of the Shikar-Safari Club Award for International Wildlife Officer of the Year for 1986 was adopted by the Board.

Mr. Watson Yoshimoto, who represents the State of Hawaii with the Shika-Safari Club, presented the plaque which comes with this honor to Mr. Nakamura.

Mr. Paty remarked that too little credit goes to officers like Mr. Nakamura, kind of like the unsung heroes, along the beaches and up the side of the hills, who try to do what they can to preserve and conserve and enhance our natural resources.

MINUTES: Mr. Ing moved to approve the Minutes of April 10, 1987, April 24, 1987 and May 8, 1987 as circulated. Mr. Kealoha seconded. Motion carried unanimously.

ADDED
ITEMS Upon motion by Mr. Ing and a second by Mr. Kealoha, the following items were added to the Agenda:

Item E-5 -- Filling of Vacant Groundskeeper I Position No. 02777, Hawaii Parks Section.

Item F-24 -- City and County of Honolulu Requests Reconsideration for Authorization to Issue a Contract for a Commercial Show Within the Waikiki Shell at Kapiolani Park, Honolulu, Oahu.

Item F-25 -- Out-of-State Travel Request for Land Management Administrator to Attend WSLCA Conference.

Item H-10 -- Permission to Fill the Position of Clerk Typist II in the Aquaculture Development Program, Oahu.

Item J-20 -- Use of Harbors Division Facilities, Pier 10 Passenger Terminal, Honolulu, Oahu (Make a Wish, Hawaii, Inc.)

Item J-21 -- Use of Harbors Division Facilities, Pier 10 Passenger Terminal, Honolulu, Oahu (Cloud 9 Productions).

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

Mr. Paty stated that, as a matter of procedure, the board would have to first vote on the matter to reconsider Item F-24. If the request to reconsider is approved, then the board will proceed to hear the elements of the case.

MOTION: Mr. Ing moved to reconsider the request for authorization to issue a contract for commercial show within the Waikiki Shell at Kapiolani Park. Mr. Kealoha seconded, motion carried. Mr. Zalopany opposed.

ADDED
ITEM F-24

CITY AND COUNTY OF HONOLULU REQUESTS RECONSIDERATION FOR AUTHORIZATION TO ISSUE A CONTRACT FOR A COMMERCIAL SHOW WITHIN THE WAIKIKI SHELL AT KAPIOLANI PARK, HONOLULU, OAHU.

Mr. Shimabukuro said that the board, at its meeting of February 27, 1987, voted to deny the City's request for authorization to issue a contract for a commercial show within the Waikiki Shell at Kapiolani Park. The motion to deny was made on the basis that at a later date the board would want to re-evaluate the situation after the lawsuit has been resolved or there had been sufficient progress made in the lawsuit to provide the Board with further guidance.

Subsequently, said Mr. Shimabukuro, the Kapiolani Park Preservation Society filed a suit against the City and County of Honolulu, which also involved the State of Hawaii, regarding the Honolulu Zoo concession matter. Staff has been advised since then that Judge Richard Au had made a Summary Judgement in favor of the City and County of Honolulu in this case. The question, at the time, was whether or not the use of the premises and the making of such

concession or license agreement constituted a violation of the provision or purpose for which Kapiolani Park was to be used. Mr. Shimabukuro said that he did not have a written decision but this information is based on transcript of the court proceedings. Since only that material is available to staff, Mr. Shimabukuro asked that the board take no action on this request. He understood also that the Kapiolani Park people were going to appeal Judge Au's decision.

Mr. Kealoha asked Mr. Shimabukuro whether or not there was any update from the City.

Mr. Shimabukuro said that the only thing they had was that the board reconsider this matter. However, they do have correspondence from the Kapiolani Preservation Society people updating what happened on the case and the fact that they were going to appeal the case. This, however, is on the Honolulu Zoo matter.

Because there was no updated information from the City people with respect to the Shell, Mr. Kealoha said that we have a problem evaluating the Shell business.

Ms. Linda Wong, Executive Assistant to the Mayor, thanked the members of the Board for accepting the City's application to reconsider their request for approval for an entertainment concession at the Waikiki Shell. She continued her testimony as follows:

"We first came before you with this proposal in December, 1986. On February 27, 1987, the board denied our request with the caveat that they would like to reevaluate the proposal following resolution of the pending court case concerning the City's application for a new restaurant at the zoo. The court order has been issued in that case and City Deputy Corporation Counsel, Cora Tanaka, is with me today to brief the board on that decision.

'But first I would like to review briefly the nature of the City's proposal and why we believe it will be of benefit to the State, the City and the citizens of Honolulu.

'The Waikiki Shell is a 32-year old facility. It is badly in need of repairs. It has only one-fourth of the required restrooms for a facility of its size. Also, because of the decibal level imposed by the community noise code on users of the Waikiki Shell, the facility has had very limited use in recent years. Lack of use meant difficulty in justifying appropriations for maintenance and improvement of the Shell. Containment of the Shell was the only solution. An estimate showed that this was a very expensive proposition. The answer was to allow someone in the private sector to use the Shell under a concession agreement in exchange for their capital expenditures to solve the sound problem and upgrade all other Shell facilities.

'The City spent much time and care to develop a request for a proposal which was advertised in June, 1986, a year ago, and Shell Productions was the successful bidder. In exchange for a 10-year concession contract, Shell Productions will spend in excess of \$3 million of their own funds to upgrade the stage, restroom, lighting and sound systems at the shell and to construct a canopy over the fixed seats which will contain the sound well below the requirements of the noise code.

'The entertainment plan, and a lot has been said about this, and I think there is a misconception here, the entertainment that is planned is for young and old, local residents, or visitors. It is not a Waikiki night club act or a Las Vegas review but rather a wholesome Hawaiian, cultural experience. It will provide an opportunity for our local residents and tourists to experience old and new Hawaii through visual images, song and dance. Persons attending the shows will be able to see lei making and other Hawaiian arts and crafts -- something that is really lacking right now in Waikiki. Dinner

is planned to begin at 6 p.m., the show to begin about 7:30 p.m., and everything completed by 9:15 p.m., at the latest, and this would be run Sunday through Thursday, which are off-peak days. At the present time, it's very rarely used on those days.

'During the five night a week tenancy by Shell Production, the effect on the neighborhood will be minimal. The bothersome sound will have been contained and projections show that only about 30% of the audience, or roughly some 650 people per night, will come to the shell by automobile. The balance will come by special buses or on foot so the impact on traffic and parking will be limited.

'It is not often that the newspapers will come out and back a City project but the day after the Land Board rejected the plan because of the pending court case, the Honolulu Star Bulletin, in its Saturday, February 28, 1987 editorial entitled "Restoring Two Waikiki Facilities", had this to say.

'The shell was used only 49 times last year, on average less than once a week. Under this plan 124 days a year would be reserved for events other than the proposed Polynesian show, including every Friday and Saturday evening.

'That is ample provision for community use. And all users would benefit from the improvements that the contractor would provide. Moreover, the existing noise problem for residents of the area would be alleviated.

'Although the Land Board rejected the plan - state approval is required because the Shell is on state land - the board agreed to reconsider its decision after legal questions are resolved in a pending lawsuit.

'If the legal problems are cleared away, the board ought to let this project proceed. The Shell should be renovated, improved, and used as much as possible. The city proposal meets those objectives.

Ms. Wong stated that she just had to get the above in for the record.

'One important thing I would like to have you people remember is that we are not taking away any land or displacing any recreational and/or park activity. What we are doing is improving an existing facility so that the public can utilize it more often with minimal disturbance to the neighbors."

Maps showing the project were presented to the board by Ms. Wong. She then continued as follows:

"As I understand it, the City's concession agreement would pertain to only that portion of the permanent seating area which is covered, the grass area, the stage, restrooms, dressing rooms, etc. The City is not entering into a lease agreement where the bidder takes possession of the land. Economically, over the ten years of the contract, the City would receive a minimum of \$2,400,000.00. The State would receive a minimum of \$400,000.00 in excise taxes, not to mention the multiplier effect produced by the approximately 200 jobs expected to be created. The show itself is expected to feature a cast of approximately 35 local entertainers, thus providing good paying job opportunities for our people. This vastly improved facility with up to date lighting, sound systems, would be available approximately 124 days a year for concerts, graduations, lei days, aloha week festivities and the other activities which Honolulu citizens might enjoy.

'In other words, when the City went out with it's request for proposals they realized that they would need the shell for their Aloha week festivities and that has been spelled out in the proposed concession agreement with the successful bidder. Also, they recognized that Fridays and Saturdays are the days that your symphonies, rock concerts, these types of things, those are left and available for the public.

'The question of commercialization of Kapiolani Park has been raised. Current activities in the park include the symphony and other concerts. The golf driving range, the food concessions, the Kodak hula show, craft fairs and the exhibiting and sale of paintings on the zoo fence. All of these are commercial enterprises and they are there because they enhance the public's use and enjoyment of the park. The entertainment concession that the City is proposing is simply an extension of the use to which the Shell is currently and legally being put. Had the City had the millions of dollars necessary to put in the capital improvements at the Shell, they would have done it themselves. But they have had to go to the private sector and let them take the risk to join as our partner in rehabilitating this 32-year old facility.

'It must be stressed that all of the activities that we are talking about would be confined within an existing public facility. This project, I believe, will not hurt anyone as it does not take away from any present activities. In fact, what it will do is increase the public's use and enjoyment with an already existing facility which is presently available for use."

Ms. Wong said that, in addition to their legal counsel, they had in the audience the successful bidder for the City's project, Mr. Hank Wynand and many local entertainers and Ms. Winona Beamer who is an authority on Hawaiiana who, if they are successful, will be helping in the show. Also, the Visitor's Bureau as well as Neighborhood Board 8, have been among those who have indicated support. She hoped that the Land Board would consider this project favorably and look upon it as a good opportunity for the State and City to jointly work together for the beautification of this park and for an improved public facility to be enjoyed by all. A project, which the City feels does the greatest good for the greatest numbers, not the privileged select few.

Mr. Zalopany asked, "what would happen should the appeal to the Supreme Court overrule your decision?"

Ms. Wong said, "that would be something we would have to take into consideration. What we are hoping is that the members of the Land Board would give us the go-ahead because we still have to go through hearings with the City Council if you people give us the go-ahead."

Mr. Zalopany said that he would rather wait for the Supreme Court to make its decision, one way or the other.

Ms. Wong said that when the City went out for this project about a year ago, the bidder did spend a considerable amount of money in drafting up his plan, which has been sitting for six months. Hopefully, if the board gave them the go ahead, maybe subject to what the Supreme Court says, during that time they would at least be able to make their presentation to the City Council, which may take awhile, rather than making them stop here before getting a ruling from the Supreme Court. She said that the Land Board is one of their biggest hurdles. The City Council would be their next big hurdle. Even though the board may approve, the City Council may not but they would have the opportunity to move from the State to the City Council rather than waiting.

Mr. Kealoha asked whether the proposal from the City was submitted to the Board.

Ms. Wong said, yes. The City originally had wanted to do this project themselves but found that it was too costly.

Mr. Kealoha asked about the number of days in one year that would be used by the concessionaire.

Ms. Wong said, 244. The public would have about 124 days.

Mr. Kealoha wondered if the public's demand for use of the Shell wouldn't increase because of the fact that the Shell would be renovated -- maybe from 124 days a year to 180 days years.

Mr. Wynand did not believe so. He said that only 49 days were used in the last thirty years.

Ms. Wong felt that the City was really in a Catch 22 situation. The City does not have the funds to upgrade the facility so there has to be a little bit of a trade-off. In order to get a private company in to spend the \$3 million to upgrade the facilities they had to give up something to them in order for them to recoup some of their cost. The main concern of the people putting this together was that they would have to allow enough use by the public and yet, on the other hand, give the private person who is coming in to spend their own money to take the risk something back.

With respect to the parking lot, Mr. Kealoha asked whether the promoter would have exclusive use of the parking lot.

Ms. Wong replied, no.

Ms. Cora Tanaka, Deputy Corporation Counsel for the City, said that a lawsuit was brought against the City after the Board had approved the application. However, the Court, on June 12, 1987 upheld the Board's decision in granting the City the Concession Agreement. There seemed to be no doubt in the court's mind that the City was not constrained by the prior deed or act passed by the legislature in entering into the new concession agreement and the license agreement.

Ms. Tanaka continued her testimony as follows:

'The decision of the court addressed two important issues. The City and County was not restricted by Act 53 in entering the zoo concession agreement and the proposed activity by the City and County were permissible park uses. You have just received a copy of the final order which was recently signed by Judge Richard Au. This is the Final Order regarding this case and it is the City's opinion that now we may proceed and move forward with Kapiolani Park. What this Order basically meant and what Judge Au stated in court in granting the City and County the Motion for Summary Judgment was as follows:

"The 1913 Honolulu Park Commission was created for the purpose of taking Kapiolani Park land in trust as a public park. In 1913 the Governor, pursuant to Act 153, set aside Kapiolani Park through Executive Order 22 to be set aside as a public park."

'The intention of the Legislature was clear. The court stated that the City and County is vested with the authority to take and manage the land for public park purposes. The only issue that the court recognized was whether or not the use for those on these premises and the making of such food concession constitutes a violation of the provisions for the purposes for which Kapiolani Park was to be dedicated, and the court said no, there was no violation.

'Act 53, assuming that it still has some validity, provides that the land is to be used primarily for public park purposes. But the court says that the character and the use of the park would not change after the licensing and concession agreements were entered into with the City and County, that the purpose is still satisfied. Finally, the court stated that he did not see that the authority of the City and County is "constrained" by Act 53, Act 163, or the executive order. The legislative intent, as the court stated, is clear. In 1913 the State transferred the management to the City and County because the Supervisors at that time of the County of Oahu had refused to allocate anymore money to include Kapiolani Park unless they had some control and management over Kapiolani Park. As a result, the Legislature, in 1913, made the transfer because they recognized the economic benefit -- the need to improve Kapiolani Park. Today the City and County is again before the board and is requesting approval to efficiently manage and improve the shell facility. As a result of the budget constraints that all municipali

ties have, the City sought to improve the existing facility and the use of the facility. Here, there is an economic benefit which will improve an existing facility for the benefit of all citizens of the City and County of Honolulu. How many of us have even gone to the Shell recently. Right now it is used only 49 days out of the year. Compared to the rest of Kapiolani Park, this existing facility is under-utilized. But no one wants to use it if the facility is inadequate, if the sound restraints are too restrictive. The City merely wants to improve the facility for the citizens of Honolulu without having to take directly from their tax dollars and without going to the Legislature for an appropriation."

Mr. Wynand said that he has been given an opportunity by the City of Honolulu and the State of Hawaii to improve this facility, which is in very bad shape. Referring to money being expended and the risk factor, he said that he was requested by the City to finance the project and that this was not his money although the original investment was his. He had to find funds from somewhere else for \$1,300,000.00. They felt that in order to bring the facility up to par, their cost would be \$3-1/2 million. He felt that this was a way for him to pay back some of the benefits he got out of the State in his 30 years of film making. He felt that he could give his friends in the entertainment field a way to find a living in the entertainment industry. He presented to the board letters from various members of the community in support of his project.

Mr. Wynand said that this has been a long, hard road for him. He said that more than 90% of the people involved in his project are from Hawaii. Some of the technical assistance is from the mainland and the financing is from the mainland. They have been before the board on numerous occasions and he had to go back to his funders because of the delay and this has increased his cost of this project considerably. However, he still feels that the project has great merit and a great potential for being an addition to the economical picture of the State. In their proposal they would like to have a road show, traveling the world with the same music that is being played in the Waikiki Shell. This would give an opportunity for the young entertainer to be a part of a true Hawaiian show, where they can really show their talent. In his motion picture work he found so much need for the entertainer to be presented and they have, through their mobility in the motion picture industry, been able to do this.

Mr. Ing asked Mr. Wynand if he would review again the nature of the improvements that he proposes.

Mr. Wynand said that in the requested proposal, this is a commitment that he has to make. If he does not fulfill this he will lose his show and his commitment. One is to eliminate the sound problem and bring it back to the code and regulations of the City and the State. The second is the rain out

problem due to the building of a canopy over the seated area so that other promoters will not lose revenue due to rainouts or shows being cancelled. The third is the general improvement of the staging and dressing room area of the Waikiki Shell. Fourth, the fact that now people stand in line to go to the bathroom for 45 minutes, he has to triple the amount of rooms that are available. These, he said, are the basic ingredients of his commitment.

In answer to Mr. Ing's question, "how many seats are available, Mr. Wynand said that 2400 seats are presently available and he does not intend to increase this number.

Mr. Ing asked, "how many people do you expect to be attending your show?"

Mr. Wynand felt that 1000 to 1500 a night would be watching the review. The maximum would be 2400.

Mr. Zalopany asked Mr. Wynand why he couldn't wait until after a decision was made by the Supreme Court.

Mr. Wynand said that the City has won a decision. If he had to wait for a decision from the Supreme Court there wouldn't be any buildings in the State of Hawaii. If he had to wait, the investment and the dedication of the people here in Hawaii has now gone to the limit of saying, a matter of fact if you ask the City, this is my fourth trip in front of this honorable board of waiting, waiting and in this particular period it draws them into a very economic situation. He has to take the chance and he does not know if the Supreme Court will hear this.

Mr. Lou Nevels, Attorney for Wynand Productions, said that at the last meeting of this board, it was suggested that this board await the benefit of the advice that a court decision would give. That decision was actually made on June 12th. The decision is very clear cut. The decision in that matter was not of this particular situation but of the zoo restaurant. No question that it has a great bearing on this. However, it has been suggested that a case will be filed in this matter as well. Not only would there be an appeal, according to Mr. Taylor's clients, of the existing decision which was rendered on June 12th by Judge Au, but in addition a separate and distinct case would be filed with regard to this matter. That matter, I am certainly going to assume, is going to be reached with a consistent decision by any Judge who has jurisdiction of it. That decision, which I would assume would go in favor of my client or the City and County of Honolulu, would itself be very possibly appealed. All I am suggesting is that we are talking about not months but literally years. There is unlikely any probability of the Supreme Court of the State of Hawaii under the present situation, acting on this in less than a year or 18 months. Mr. Wynand's position is not only appropriate, but realistic. He just can't wait for another year, 18 months or possibly two years for this thing to be again decided. Particularly due to the fact that the board had, at the last meeting, indicated that it was seeking the guidance of the court which has now rendered its decision. Not meaning to be impertinent, Mr. Nevels remarked that if this board insisted upon waiting in every disputed matter for a Supreme Court decision, he suggested that the State will not benefit from this.

Mr. Zalopany remarked, "you mean you would advise your client to go ahead with the project if the board approves it and down the road there is still a question as to whether or not the Supreme Court will approve this case? What if they rule against?"

In answer to the question as to my advice to my client, Mr. Nevels said, yes. As to what might happen in the future, there are any number of possibilities as to what might happen and what a Supreme Court decision might do. There are numerous possibilities and he is not at all concerned. He is convinced

in his own mind that the Supreme Court, if it ever came to that, would sustain the ruling which was made by Judge Au or any similar ruling that he would anticipate, to their particular situation.

Mr. Ing asked, "how necessary is it, Mr. Wynand, that you have what amounts to five days a week for the use of the show. Why couldn't it be less?"

Mr. Wynand said that in their economical calculations, the risk factor in the investment warrants the amount of days needed for this. If the City has need to go into the Shell during their concession period, then they are committed to exchange these days with the City. Mr. Wynand said that he wanted seven days -- the City asked him for five days. They started off with about \$1.3 million and now he is up to \$6-1/2 million and the bulk of the property will be owned by the taxpayer. In order for him to proceed economically, he would need these days.

In terms of employment, Mr. Arisumi said that Ms. Wong had mentioned that about 200 people would be employed.

Mr. Wynand said, yes. These would be full time jobs. In the other case we only mentioned the work which we are doing in Honolulu. There is another element which is tied in with this which has nothing to do with the City or the State and this is the road show. Those people would travel from Hawaii which would give the kids who are working in the show a chance to get away from the boringness of a show and present themselves to other nations and people. Ninety-nine percent of this venture is Hawaii. He said that he is about the only one, and the creative director of the show from the mainland, He is bi-coastal, however, since he now lives in Hawaii.

Mr. Paty felt it would be easier if those who concurred with the applicant spoke first then we could go to those who did not concur with the application.

Mr. Waltah Clarke stated that this is his 50th year in the State of Hawaii although he looks like a coast haole. He said that he helped Don Beachcomber put his place together in 1947 and it used to have the original top shows in the islands. He understood that this show would be pre-sold by travel agencies. One thing that really bothered him the years he has been looking at the Shell -- you can see the beautiful thing going apart. If the local people knew that they would certainly be against the thing falling apart and Kapiolani Park does not have enough money to put the thing together. He has been told that the show will travel the world. The reason the word "Aloha" is known worldwide is because in the 20's there were Hawaiian shows traveling the world and it seems to him that if this show goes around the world, tourist wise, it would make Hawaii even more famous so he could not see how they couldn't support this.

Ms. Nona Beamer said that she is very much in favor of this project for the grand, philosophical reason -- to preserve and perpetuate Hawaiian culture. She feels that our kamaaina people need to be reinforced of the worthiness and the beauty of the culture and certainly the mainland should be interested in this too.

Others who testified verbally in favor of this project were Clayton Eseke, Chubby Mahoe, Rocky Kaaihue, Milton Carter of the Musicians Union, Joe Recca, a Waikiki Entertainer, Ed Jarris of Hawaii Aloha 2000, Charles Kaanoi and Kinau Wilder.

Messrs. Carroll Taylor and Kimo Leong, Counsel for the Kapiolani Park Preservation Society, presented written testimony to the board. On behalf of their client, they objected to the board considering favorably the City's request for reconsideration of the board's prior denial. The first that they

officially learned that this was going to be on the Agenda for this morning was yesterday afternoon and he felt that a number of people out in the society in general amongst their clients, the Preservation Society who, if given adequate notice, would have shown up today to express their concern and disapproval of the City's request. He wanted the record to reflect that they do object to the board rendering a favorable decision on the request today on the basis of inadequate notice to members of the public.

Mr. Taylor did not feel that the board has been given the full story of what is planned for Kapiolani Park. (Maps, diagrams, plans from the environmental assessment statement prepared by Wynand's Production were presented to the board for viewing.)

Mr. Taylor said that one of the stated concerns has been sound suppression. At one of the hearings there was a sound engineer, hired by the applicant, who testified as to how you could suppress the sound and one device would be to use, like in a drive-in theatre, multiple sources of sound where you would not have the sound projecting out on the stage beyond the perimeters of the park. In speaking to the engineer, it turned out afterwards that this wasn't the sound system prepared for this. The question was asked, "could you devise a system which would restrain the sound within the facility?" He said that there was a system that could be devised but that isn't the system they are talking about. They are talking about sound emanating from the stage. The report from the sound engineer was impressive but had no relevance to what they had planned.

Mr. Taylor said that on top of the grassy knoll are structures and in the environmental impact assessment these structures are identified as 320 lineal feet of food booths and concession arrangements which have roofs 20 to 35 feet high, which are constructed on pilings on the Kalakaua side of the grassy knoll and each structure has 480 square feet of space inside of it. He said that Mr. Ing had asked what the improvements were that were intended for the Shell and the board did not get the straight answer. The answer received was what the intent of the improvements was to suppress sound. Well, they are going to build a sound barrier of food booths and concession shops as a sound suppressant. He felt that this was like saying that the Aloha Stadium was built for a swap meet.

Mr. Taylor reminded the board that on December 10, 1986 an Attorney General's opinion was received which addressed separately the zoo restaurant and the proposed entertainment concession at the Waikiki Shell and that Attorney General's opinion states unequivocally that it believed that the proposed Shell concession is not an appropriate use of a public park. Not surprising, said Mr. Taylor, because in his review at the State Library of the old newspaper clippings relating to the Queen Surf Restaurant, Mayor Fasi's then Corporation Counsel, Paul Devins, was quoted on August 15, 1969 as saying of the Queen Surf "since the present Queen Surf Restaurant nightclub operation is not incidental and appropriate to park use, we believe that it would be unreasonable or an abusive discretion, or an act of bad faith, to continue the Queen Surf lease." Mr. Taylor said that the 320 feet of food booths with a perpetual style entertainment concession in the Waikiki Shell fits the same category. If it was bad for the Queen Surf in 1969, what has changed to make it good for the Waikiki Shell in 1987? He pointed out that the same arguments were made back in 1969 to prevent the Mayor from tearing down the Queen Surf i.e. think of the jobs that are being lost. Now the Mayor has turned that around and he is saying, "think of the jobs that he has created." Perhaps all the people who were unemployed in 1969 can now find jobs in Kapiolani Park. Also back in 1969 the Mayor was quoted as saying in the Honolulu Advertiser of March 26, with respect to the Queen Surf, "there are more than enough night spots and tourist attractions in overcrowded Waikiki to satisfy the requirement for a nightclub restaurant. He would submit that it were true in 1969 it is even more true today.

Mr. Taylor said that the 1987 State Legislature passed Senate Concurrent Resolution No. 14, which directs that all governmental departments and agencies of the State of Hawaii, including, but not limited to, the Department of Land and Natural Resources, be informed that it is a position of the Legislature that the use of any part of Kapiolani Park, including the Honolulu Zoo, for a private profit making purposes, should be prevented by all means available for those departments and agencies. He said that the Legislature, when asked to address the problem, has specifically said they don't want a public park being used for a private profit making enterprise.

Mr. Taylor said that he has heard many times today that the City does not have the funds to make these improvements and that this is an expansive operation and it's a shame that the Waikiki Shell has been allowed to deteriorate and they agree that the Waikiki Shell should be improved. However, Mr. Taylor reminded the Board that when the Councilman Leigh Wai Doo appeared before the board on this very issue, he said "the City Administration has never asked the City Council for any funds to improve the Waikiki Shell". If they want the shell improved, instead of leasing it out they should go to the Legislative body of the City and ask for permission.

With respect to Judge Au's ruling, the Land Board specifically is looking for guidance, said Mr. Taylor. He did not feel that there could be much guidance from that decision. He felt this to be his fault because he did not do his job of persuading Judge Au that the position of his client was the proper position. He said that he will have another shot at it because the Society has decided that it will appeal Judge Au's decision and you never can tell what's going to happen but he does believe that there are significant issues which he did not present to Judge Au clearly for him to make the proper decision. He is optimistic that he'll do better the second time around.

Mr. Taylor, in answer to Mr. Zalopany's question as to how long a reply would take if an appeal was filed, said, "roughly a year". He said that they might file a Motion to Reconsideration by Judge Au but in all likelihood they would probably just file an Appeal because very seldom can you get a trial judge to reverse a decision he has already made.

Mr. Ing said that he did have the drawings passed out by Mr. Taylor; he did have it since prior to the last board meeting which they made a decision. He asked Mr. Taylor whether they had undergone a discovery process in the lawsuit.

Mr. Taylor said that they had documents produced on the Monsarratt Avenue restaurant. They had documents from the City relating to that and they had documents from Pentagram relating to that but nothing relating to the Shell.

Mr. Ing said that there was a point raised in argument concerning the applicability of Section 170-11 on board approval prior to issuance of the Session Agreement to Royal Contracting. He did not see the brief so asked Mr. Taylor what was the point of that.

Mr. Taylor said the issue was that the City gave a license agreement to Royal Contracting to use the area behind Waikiki Shell for construction storage materials and construction equipment. They gave a license agreement which reads to them like a lease but they called it a license agreement. They gave that out without seeking Land Board approval prior to issuing the license and giving the land over to Royal Contracting. They complained, amongst reasons, that it was a use of Kapiolani Park which required Land Board approval before the City could enter into it. Judge Au, however, said that they did not have standing to complain, that was not a private party's right to complain but rather a Land Board's decision to be taken.

RECESS:

10:40 - 10:55 A.M.

Mr. Paty asked whether there were any others wishing to testify on the Waikiki Shell.

Mrs. Sterett felt that once again the board has been misled. She said that we are talking about an area of 7.65 acres that they are planning to lease. There are 2400 theatre type seats and 8000 in the seating area that is uncovered so we are talking about 10,400 seats. She continued as follows:

"The whole area that we are talking about includes where the Kodak Hula Show, where the Royal Hawaiian Band is and the entire fenced area. The reason for this is that they may need that area in order to do the lawn tables that they will be putting out and I think that this should be certainly addressed. One of the things is that if the Land Board were to grant permission to the City to lease these 7-1/2 acres of prime land for 15 years and, by the way the City is also asking for an extension of five years and the original contract was for ten years so it appears to me that they would have go out for bid again. Well, that's another issue. It will no doubt go down in history as the largest landgrab in the history of the island. In fact, it could add a new chapter to the book "Land and Power."

Mrs. Sterett continued in objection of this project.

A Mr. Rodney Aiu, felt that Mr. Taylor should let everyone know who the principals of Kapiolani Park are. From Mr. Taylor's testimony, Mr. Aiu said that it seemed like the whole of Kapiolani Park would be misused. However, we are only talking about the Waikiki Shell which is dormant most of the time. The area we are talking about, said Mr. Aiu, will not be deprived of use by the general public since it is locked most of the time anyway.

Mr. David Sterett, President of West Diamond Head Community Association, spoke in opposition of the proposal by the City. He does not feel that Kapiolani Park should be exposed to commercial development, and this is what this is.

Mr. Steven Gray, who runs in Kapiolani Park, did not believe that moving Waikiki to the Shell would be a very good use of a public park.

Ed Jarris amended his testimony by adding that if this goes to the Council then it will get a full hearing which the attorney for the opposition suggests is missing and it will give everyone a chance to give full input.

Mr. Ing stated that Mr. Taylor had raised the point about the timely notice with respect to this item being on the Agenda and he had to admit that he shared his concerns. People often criticize government because it moves so slowly and his feeling was that that is sometimes justified and sometimes required by law. In this case it happens to be the later. I don't want to duck the issue and I don't want to pass the buck but he did not feel that because this was an added item that sufficient notice perhaps may not have been provided and because of that asked to move this matter for action at the next board meeting. However, because most of the people are here today Mr. Ing proposed that the board consider the following:

1. The board find that the public benefit to be obtained by improvements to the shell outweigh potential detrimental impacts and that the board consider approval of the City's contract or the board give its authority to the City to issue a contract on certain conditions, that the improvements in fact be required that the final construction plans be submitted to the board for review and approval and the hours of operation be limited from 6:00 p.m. to 10:00 p.m.
2. That the number of days the successful bidder be allowed to use the Shell be limited to a maximum of 225 days, not to exceed five days in any one week and not to include Fridays and Saturdays.

Mr. Ing said that these are matters for the board's consideration in the interim but that we actually move this matter to take action at the next board meeting, which may be in Maui.

ACTION

Mr. Ing moved to defer this item to the next board meeting. Mr. Kealoha seconded.

Mr. Kealoha stated that he will be prepared at the next meeting to add some conditions.

Mr. Paty called for the vote. Motion carried unanimously.

ITEM D-1

ADOPTION OF INTERIM INSTREAM FLOW STANDARD FOR WINDWARD OAHU.

Summarizing the background, Mr. Tagomori said that the instream use protection program is inbedded in Chapter 176-d, HRS and also the recently passed water code Act 45, 1987. There are four significant parts of the program: 1) establishment of permanent instream flow standards, 2) interim flow standards which would expire once the permanent standard is established, 3) stream channel alteration permit and 4) establishment of a departmental program.

Mr. Tagomori said that when Chapter 176-d was passed in 1982 the department formulated administrative rules, completed instream study for Windward Oahu, analyzed stream flows for Windward Oahu streams under cooperate state and USGS programs, contracted the University of Hawaii's Water Research Center to develop methodology to establish instream standards for the native aquatic species, established an instream program staff with one full time planner and just recently hired a civil engineer to work on this program. Staff has recently contracted the US Geological Survey to develop median stream flow data for east Maui and Kauai streams.

Mr. Tagomori said that the water code requires an interim instream flow standard for Windward Oahu being established by July 31, 1987, a few weeks from now.

Accordingly, Mr. Tagomori presented this item to the board with a recommendation to approve and thereby establish an interim instream flow standard equal to 60% of the median streamflow for all Windward Oahu streams. Staff's original recommendation was for 30% instead of 60%. However, Mr. Tagomori said that the difference between 30% and 60% is that on 30%, aquatic life will have good survival habitat. 60% will create a better habitat for aquatic life which will be conducive to propagation of reproduction of the species.

In implementing the interim standards, Mr. Tagomori added that 1) they would like all existing diversion to all legal water rights remain unaffected, 2) where actual streamflow records exist, these records shall be used to calculate median flow, 3) where actual streamflow records are unavailable, then the formula established by the U.S. Geological Survey be used to calculate the stream flows. They would also like to add that there are known sensitive instream value in some of the streams at Windward Oahu. The Kawainui Marsh and Stream system has been designated by the board as status quo whereby prohibiting any new stream diversion or reduction in streamflow until a permanent instream flow standard is adopted by the board of the new Commission called for in the water code. Staff expects to recommend standards for Kawainui Marsh and instream systems within one year so staff is asking that the board also adopt a status quo situation for Kawainui Marsh for one year.

In summary, Mr. Tagomori said that staff is recommending that the 30% be amended to 60% of median streamflow and that Kawainui Marsh be designated as status quo for one year or until the permanent standards are established.

Mr. Ing asked, "what is the requirement in the Statewide water code with respect to instream flow standards?"

Mr. Tagomori said that Act 45 basically expands the windward program throughout the State, maintaining the basic provisions of the Windward program. For example, it calls for permanent stands, interim standards, stream alteration permits and a statewide program. The code adds additional deadlines to establish interim standards throughout the State.

Mr. Ing asked whether we had regulations in effect for the Windward streams.

Mr. Tagomori replied, yes.

Mr. Ing asked how these flow standards would affect those regulations.

Mr. Tagomori said that the flow standards are the result of the administrative rules that were promulgated to implement the law.

Mr. Ing asked, "what does it mean to have a flow standard up to a certain level?"

Mr. Tagomori explained that this will be the amount of water which will be retained in the stream and any subsequent allocation of water, such as a stream diversion, would have to respect that flow of water so staff is pre-determining the quantity of water to remain in the stream.

Mr. Ing asked, "without the standard as proposed today, what would happen if someone would come in today?"

Mr. Tagomori said that there would be no pre-determined quantity of water to be reserved for fish life or for whatever other instream use. The board might be making an allocation of water without the benefit for the requirement for instream uses.

Mr. Ing asked whether there were any pending applications for withdrawal of water from the streams.

Mr. Tagomori said they have not implemented the water code upon which it will require permits being issued prior to diverting stream water. However, there is a requirement that before a permit can be applied in any area there is a designation procedure which needs to be acted upon first. So when you talk about stream water diversion the program is not quite set up as yet.

Mr. Ing remarked, "so, until this provision comes into effect someone can withdraw water from the stream without going through the board or through the department.

Mr. Tagomori answered, yes and no. Yes, depending on where he might want to divert and no, in terms of geographical location. This program, establishing interim standards, will cover all windward streams whether in conservation, agricultural or urban.

Suppose we go along with your recommendation, said Mr. Ing, if someone wanted to withdraw water from the stream what would be the process.

Mr. Tagomori said that they would calculate the flow at that point of requested diversion and apply 60% if the board adopts this, and determine the quantity of water that needs to be retained in the stream. Water over and above that will be allowed to be diverted.

In that calculation, if you referred to the Tennant's Montana Method, is that the same as the regression formula recommended by the USGS, asked Mr. Ing?

Mr. Tagomori said that the Regression formula is to calculate the median stream flow. The Tennant method takes the flow record -- they use mean or average flow and they apply a percentage of that flow. What staff has done is modified the Tennant. Instead of mean flow, staff uses median flow.

Mr. Ing asked, "under your proposal, where you have actual records of the stream flow, you will use that to determine median flow and where you do not you will use the USGS Regression formula to determine median flow?"

Mr. Tagomori replied, yes.

Mr. Ing asked, "if you went out and measured it then you would only have data for that point and time?"

Right, said Mr. Tagomori.

"Say we set it at 60% of the median flow as recommended and someone withdraws water pursuant to the procedures that have been established and subsequently the permanent instream standards come into effect which are higher than the interim standards, the person who has obtained permission to withdraw water is now grandfathered in, using the permanent instream flow standards", asked Mr. Ing?

Mr. Tagomori felt that if they did issue a permit on the interim standards they would condition that standard subject to permanent standards being established so there will be flexibility to adjusting the flow to be diverted by the applicant. He felt that would be fair to the user as well as the requirement for whatever permanent standards are finally adopted.

Mr. Ing asked if there is a schedule now being prepared which would indicate the lapse of time in between the effective date of the interim standard for Windward Oahu and enactment of the permanent standards.

Mr. Tagomori said that permanent standards are programmed for the Kawaiinui Marsh Instream System and they estimate that they will be ready to come to the board by next summer.

How about the Windward area, asked Mr. Ing?

Mr. Tagomori said that they have identified some other priority streams such as Kahana, Kaluanoi etc. but no time table has yet been set. Budget availability would have to be considered, manpower, etc.

In other words, said Mr. Ing, the Interim Standards could be in effect for five years?

Yes, replied Mr. Tagomori.

Mr. Paty asked Mr. Tagomori if he would review again his reasons for going with the Montana System - Regression method.

Mr. Tagomori said that they had looked at various techniques in establishing stream flow standards which, in essence, is the water requirement for various instream uses and the methodology is basically attached to aquatic life forms. They targeted this to fish life. He said that for a few years staff contracted the University of Hawaii to develop incremental methods. The conclusion of this report is that you have to go through detailed methods at

big expense for each site, or stream. That being the case, in the interim staff is looking for something much simpler, economical and can be applied easily. They looked at the Tennant method which is based upon median flow which they can calculate. This is not a precise method but based upon the best technology, they feel, in terms of technique, application and management.

Mr. Paty said the Fish and Wildlife people here take acception to this approach and they say that the Division's methods neither reflects the complex geography of Windward Oahu streams nor is it biologically relevant.

Mr. Tagomori felt that this is only a temporary standard and a method which can be applied. However, he would not recommend the Tennant method for the permanent standards.

Mr. Paty asked if moving from 30% to 60% of the Median flow would indicate that you felt that this is the level which would support fisheries reproduction, etc.

Mr. Tagomori said that the 30% represents the survival of aquatic life forms whereas the 60% would give you more water in the stream and support reproduction of aquatic life form.

Mr. Bert Hatton, representing Oahu Sugar Company, Waiahole Water Company and the HSPA summarized his written comments as follows:

"We spent 8-10 years agonizing coming together on this code. We did not know that the Tennant Method at the 30% level was going to be proposed until four days ago and did not know until today that a 100% increase in that method was being now recommended. That is a pretty major change in a span of about 24 hours.

'We do have some serious concerns about the use of a mainland standard, which was adapted for mainland streams, relying on glacial flows, snow melt and mainland species but, quite frankly, we do not know enough about that standard as to how applicable it would be to our streams in Hawaii. We would urge caution.

'There has been a considerable amount of discussion of the instream uses in the establishment of this standard. Nowhere in the material which they have seen in the discussion today is the mandate which is called for in the code. In Part 6, Section 2.d it says: "in considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present, or potential uses of water for non-instream purposes, including economic impact of restricting such use." That is specifically in relation to the establishment of the interim standard and in terms of the permanent standards, that is also discussed. Perhaps that has been done but we certainly have not seen it and certainly have not had to reply on it if it has been done, which leads me to our major request to defer action till that analysis can be made.

'I recognize that there is a July 31st deadline called for in the code and let me tell you that I appreciate the problem that DOWALD has in having to pull something together very fast on this and I appreciate the work that they have done in the past on other water but we would like to present these concerns to you and if you feel it appropriate, I would like to pass along our written comments.

'In the 8 years we spent putting together the water code where many, many people were involved, it seems to me that the process of putting that together was very important. Reams of words were written and hours, days, weeks, months of discussion given on that and it seems that you have a

decision facing you where a recommendation is waivering by a hundred per cent in a span of a few days that it would seem appropriate to spend more time reviewing that.

'We are not opposed to the setting of interim stream flow standards. We think that it is appropriate -- it is the law, and we are only here asking that it be done in accordance with the law.

Mr. Paty asked, "having been a part of this study for so long, have you any suggestion as to methodology or the formula approach for this?"

Mr. Hatton did not have a suggestion. However, his major concern was that we balance it against the potential and existing economic uses of those streams which should also be checked against other state plans and policies regarding aquaculture farming, municipal uses so we keep the standards in concert with other plans throughout the state. He realized that this a difficult task but would provide further input if necessary.

Mr. Bob Nakata, speaking as a plaintiff on the Waihee Water Case of a number of years ago, argued for no stream diversions in Windward Oahu until permanent standards are set. Contrary to what was said a little earlier, said Nakata, the Windward Instream law has been there since 1982. When that was passed there was discussion about making it statewide at that point and the decision of the legislature was not to do that, to apply it just to Windward to begin with -- Windward was to be the test guage. He said that we have come to a point where the water code has mandated interim stream flows and the department has come up with a formula which he thinks is totally inappropriate to the situation in Windward Oahu and maybe to the whole state. Mr. Nakata presented the board with his credentials and then continued testifying why he was not in favor of the formula used by the department. He felt that if we were to say "no further diversions" this would increase the pressure to move faster.

Mr. Ing said, "if the board were to accept this suggestion, that there be no diversion until a permanent standard is developed....."

Mr. Nakata remarked, "no new diversions."

Mr. Ing asked how this would affect the farmers.

Mr. Nakata said that most of them are already using the stream waters. Right now the Board of Water Supply is building a new reservoir in Kahana Valley. He understands that according to the Board of Water Supply's draft EIS they plan to draw in the order of 40-45 million gallons a day from Windward Oahu.

Mr. Ing asked if, under the water code, the Board of Water Supply were to increase its use of ground water from any one of those wells, if it would necessarily be controlled by the instream flow standards.

Mr. Nakata replied, "I would think so, based on the Waihee case."

Mr. Paty asked, "if the present users are grandfathererd in and you went to a 60% median as proposed by staff, what affect do you think it would have as a practical matter?"

Mr. Nakata did not know but he was concerned that the formula and methodology being proposed, the intent seemed to be to maximize the amount that could be diverted. With the interim stream flow standards, he felt that this would be inappropriate. The interim standards, he felt, should be designed to protect the resource not maximize the withdrawal.

Ms. Martha Balck of the American Association of University Women (AAUW) said that she had attended the DLNR information meeting in Kaneohe and had revised her original testimony because she found out that most of the things which they had discovered from reading the Windward study and from the Water Code and from other things that they had been following that they were on the right track. She said that she had reviewed the environmental impact statement at the Board of Water Supply which, in part, said that the quality of Oahu streams are degraded and depleted and the best quality ratings on Oahu are only comparable to moderate quality on other islands. She said that it is imperative that with only six streams retaining limited quality rating of the thirty six considered in the study be protected. They are the only remaining streams which contain native Hawaiian habitat. Without protection, native fauna which can only be found in Hawaii will be lost. The six streams which must be saved are Kahana, Kaluanui, Koloa, Punaluu, Waiahole and Waikane and probably Maakuano. In addition Kawainui and Kaelepu Pond rate the highest protection.

Ms. Black presented written testimony. In summary, the four aspects of great concern to the AAUW are: 1) the poor quality of Windward streams, 2) the 30/60% range proposed which is based on the newly crated formula DLNR has selected to calculate interim instream flow standards, 3) diminished regard for socio economic values and 4) the lag time before implementation of water code with rules and regulations and permanent inflow stream standards.

Someone named Paul stressed that this area is already severely impacted. He said that Waiahole Stream, in ancient times, had a flow of 30 million gallons a day. The present is something like 2.3 million. So, when we are talking about reducing stream flow, we are talking about a stream that is severely impacted. He said that this is true of all the streams on the Windward side. He suggested keeping the existing uses but don't allow new ones. He felt that it should be kept at 100% of what they are right now until the studies have been done.

Ms. Jan Dickerson of the Kahaluu Neighborhood Board testified in opposition of removing water from the Windward side during the interim time.

Mr. Myron Murakami, State Legislative Chairman for the Hawaii Farm Bureau Federation, speaking on behalf of the Oahu Farmer's Association, said that their concerns are basically whether the establishment of interim standards will account for sufficient water resources for the East Oahu area to meet the agricultural needs for farmers currently taking from streams and wells as well as any future projected uses for State Ag parks and new or renewed agricultural activities on the Windward side. He said that he is also personally involved since he is taking water from the Kalae Stream, which comes from Waihee.

Mr. Paty asked Mr. Murakami how he felt we should proceed at this period and time.

Mr. Murakami said that he needs the water when there is not enough rainfall.

Mr. Paty asked Mr. Murakami how he felt about the 60%.

Mr. Murakami said that he did not know. If you have an interim standard that no water is to be diverted -- he felt that taking of the waters is a diversion. He personally felt that no more water should be taken out. However, in terms of agricultural activities projected for the area, if there are no new diversions of water then where are you going to get the water for the Ag park.

Ms. Victoria Creed, representing the Maunawili Community Association, commended DOWALD for coming out to the communities to solicit their opinions. She feels that they are on the right track in trying to find standards although this one may not be the correct one. She continued testifying as follows:

"It is of utmost importance for all of us, agencies, political bodies and individuals to do what we can as soon as we can to create a viable water resource from our inland streams and we have the chance to start with our Oahu Windward streams. Interim standards have to be stringent, not less than the permanent codes so we do not degrade or destroy our streams in any further irreparable manner.

'Therefore I would like to suggest that the date be set back so a decision is not made irresponsibly just to make a deadline. Furthermore, I think water banking should be geologically determined, so different water needs are set up against different water resources and matched as compatibly as possible. Certain water needs, like small agricultural plots obviously fit with inland stream water resources. Other needs, whether of riparian owners or not, are better matched with well or dike waters when these uses do not alter the inland stream flows. Desalinated ocean waters are also obvious future potential sources for Hawaii especially for large water users. I think a formula for quantity of flow is at best one link in the chain of requirements important for establishing stream standards. A quantitative standard for each stream needs to be established along with considerations for area land use. In Windward Oahu, small agricultural users should be given a priority status where at all possible and along with that use for agricultural should go the best of ancient and modern land erosion and irrigation methods made available through educational efforts to those who use stream water so that their use is efficient and promotes good water management so others can enjoy it as well. Part of stream standards needs to be some agreement about priorities for water usage, distribution and conservation. These uses need to be matched from the different available resources, not necessarily against stream waters.

'I also think volunteers would be forthcoming to help check water levels and might do other tasks to help out the paid personnel with monitoring, etc.

'Deadlines are set to encourage goal setting and positive actions towards those goals but are not useful if they encourage destructive results. I think a formula by July 31, 1987 is not enough and would generate disastrous results to our inland streams."

Ms. Susan Miller presented written testimony as President of Kawai Nui Heritage Foundation. In summary, they felt that the proposal presented to the community by DOWALD in workshops on July 6 and 7 appears to have the potential for serious damage to the streams in the ahupua'a, as well as to other Windward streams. They are concerned about applying one formula to any point of diversion on any stream in Windward Oahu but it does not provide any consideration of the various instream values which the State Water Code says shall be protected: "fishery, wildlife, recreational, aesthetic, scenic, and other beneficial uses". They believe that these values can only be dealt with on a stream-by-stream basis, not in the aggregate.

Ms. Miller asked that the proposal be deferred, extend the deadline for Windward Oahu streams to December 31, 1987 with the following conditions: 1) that DOWALD be directed to use the expertise available in the Fish and Wildlife Service to come up with stream-by-stream interim instream flow standards that take the various instream values and 2) that no permits to harvest water for either new or expanded diversions of windward oahu streams be granted until the interim instream flow standards have been approved.

Ms. Miller remarked also that they reserve the right to request a contested case hearing, if necessary, in order to give the board the legal basis to extend. If the board insists on adopting some basis of DOWALD's present proposal then they say use 100% of the observed mean value.

Ms. Miller also presented written testimony from the Sierra Club, who are also asking for 100% of the observed mean value.

Mr. Paty thanked Ms. Miller for her offer of a contested case hearing.

Mr. Allan Murakami, of the Native Hawaiian Legal Corporation, representing Mr. George Fukumitsu a Windward taro farmer, and several other taro farmers from East Maui, presented written testimony urging that the Board of Land and Natural Resources to adopt 100% of observed mean discharge as the interim standard to be adopted by July 31, 1987.

Ms. Dawn Larson, President of Hui Mala Aina o Laie, voiced concern about riparian rights since many of the landowners of kuleanas in Laie have properties that border the stream. She was concerned that Kahawainui Stream was not listed. Another concern is the diversion of water anywhere except for where it belongs. They feel that no government agency or anyone else has the right to decide where the water should be taken out of the streams to be used elsewhere. They have lived on their land since the days of the Mahele and have been concerned as to why people try to extinguish the rights of native Hawaiians.

Mr. Tomosi Tokuaifu, a taro farmer speaking on behalf of the Punaluu Community Association, said that they do not want any depletion of the current flow of any of the streams in Windward Oahu. Written testimony was also presented.

Mr. John Reppun, a taro farmer representing the Kahaluu Neighborhood Board said that they have taken the position against any further diversion. It's not a "no" diversion position, it's a "enough" diversion position. Every stream on the Windward side has been diverted extensively. He said that they are down to the last of what is left of surface flow and you can only put off looking at desalination so long, you can put off the problem of looking at Windward water to supply Leeward needs for so long. It's impossible to translate economic value of something indirect like aesthetic values, rural style of living and agriculture that provides a tremendous amount of drawing power to industries like the tourist industry. The Windward side is one of the most scenic sites primarily because it has things like streams flowing and the kind of existence that happens around that kind of environment. Speaking also for his brother Charles who was not able to be here today, Mr. Reppun said that the Water Commission will be formed and setting standards will be one of their duties so interim standards should be set high in order to give them the greatest possible leeway.

Mr. Ing asked Mr. Tagomori, "if the board were to set a standard today, could that be changed by a subsequent petition to set a standard on an individual stream -- could it be superceded by?"

Mr. Tagomori said that the way the present law reads, interim standards will terminate when the permanent standard is established.

Mr. Ing asked if there is a process to change the interim standards.

Mr. Tagomori believed that it could be changed by the board as more new information is gathered.

Mr. Ing felt that the board should be more conservative and in terms of the numbers he said that he had two recommendations which he was not yet ready to put in the form of a motion but for discussion purposes, he said that certainly with respect to the calculated flows, he would recommend that we go with 100%, not 60%. With respect to those streams where we do have records, he would consider 60% of the mean or 100% of the observed median. But he would not be willing to consider anything less than that.

Mr. Ing felt that we would have to look at this in view of the interim nature of the controls and what we have presently left on the Windward side. In addition to that, if these are placed on all of the streams and if there is indication that, with respect to an individual stream, perhaps some other standard ought to be set. The person involved can always come in and petition to the board to get a specific standard set for an individual stream. I think that if we went with the 100% of the mean, which many have recommended, people that are farming on the Windward side and those that wish to continue farming and expand their farms, are going to have a difficult time. He felt there is room there for some use of excess waters in addition to what is presently being drawn.

Mr. Paty asked the Board if they wanted to take action at this time.

Mr. Ing said that he would like to take action. He did not think that we should wait. The next meeting will be on Maui and many of these people will not be able to make that trip. If someone requests a contested case then the board would have a lot more time

Mr. Paty said that there were concerns expressed that some did not have a chance to respond to the extent that they wanted to because of the relatively short period of time.

Mr. Ing said, that's true and we have only one more meeting before the 31st unless we were to set a special meeting. Because standards are being set for the Windward side if, at all possible, he would like to have that meeting here on Oahu.

Mr. Kealoha suggested taking a break to meet with Counsel to find out whether the board will be able to vote at that special meeting.

Mr. Paty asked the feelings of the audience with respect to a special meeting.

Mr. Kealoha, like Mr. Ing, felt that a decision should be made before the deadline, but on Oahu. They could make a decision today but he felt that there were questions deserving a little more thought.

With respect to the special meeting, Deputy A.G. Johnson Wong said that all that is required is that at least five days notice is given to all members prior to the date of the special meeting.

Mr. Kealoha asked if this special meeting had to be published in the papers.

Mr. Wong stated that a meeting is different from a hearing.

Mr. Kealoha informed Mr. Wong that the board intends to make a decision.

Mr. Wong said that the board is allowed to take action. However, no disposition is to be made at such a special meeting.

Mr. Zalopany asked about the "Shell".

Mr. Wong said that there may be a question as to whether the consent calendar is a disposition.

Mr. Paty said that a special meeting of the Land Board would be held at 2:00 p.m., Thursday, July 30, 1987, to review the interim instream flow standards, at which time a decision will be made.

RECESS: 1:15 p.m. to 1:40 p.m.

ACTION Mr. Ing moved to defer Item D-1 to July 30, 1987, at 2:00 p.m., at which time there will be a special meeting of the board to consider adoption of instream flow standards for Windward Oahu. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM H-3 REQUEST FOR AMENDMENT TO CDUA CONDITIONS FOR CDUA APPROVAL OF HILO OUTFALL EXTENSION (HON. HUGH Y. ONO).

Mr. Evans said that staff had come before the board a short time back with a request for approval as a result of a staff analysis on the Hilo Outfall on the Big Island. Incorporated in that request for approval were about 35 some odd conditions. Several concerns were expressed relating to certain specified conditions by the County and what staff represented at that time is that because of deadlines if the board would go ahead and approve the application and let the staff get together with the County with their agent they would work on those specified conditions and come back to the board with the recommended changes. Staff has completed their review of the concerns expressed by the County and generally they have, as a result of those interactions, placed themselves in a position this morning where they are basically in agreement with the County or the County in agreement with staff with all except one. Mr. Evans asked that the board accept those conditions which they are in agreement with. However, they are currently apart with the County as far as condition no. 8 is concerned. The primary concern expressed to staff is an economic one.

Mr. Arata asked Mr. Evans if Condition 8, where he has said that it appears to be economic, whether the statement was made by staff or the County.

Mr. Evans said that it would be a statement made by staff. In his sense, it would be agreed to by the County.

Mr. Hugh Ono, Chief Engineer for the Hawaii County Department of Public Works, felt that the condition is reasonable providing that they can meet it within the funds available. He said that there is good reason for them to believe that in meeting this condition it will add \$2 million to the cost of the project. It would mean that the project would increase by 25%. This is a \$6-7 million project. The staff recommendation which he has read is, that should the project come within the funds available, the County of Hawaii would certainly be appeased to proceed with the project as per conditions in the CDUA. However, he asked for relief from that condition should the project not be able to come within the funds available for several reasons.

Mr. Ono said that, first of all, the Corps permit which has already been granted to the County of Hawaii does allow them to stockpile the material along the trench. Secondly, they are faced with EPA deadlines and the project cannot tolerate any delay and the end result would be a \$100,000 fine and \$25,000 per day until the outfall extension is in fact completed. In addition to that, the CDUA and some other requirements require them to complete the blasting for this work by November 30th and it is imperative for them to proceed because of the time element. By the time the contract is awarded they would only have a few months at the most to complete the blasting work. Mr. Ono presented the board with photos from their previous job showing the stockpile material which laid upon the side of the trench. He did not think that it had a detrimental effect. The coral has returned and there continues to be fish life.

Mr. Arata asked Mr. Ono if he was agreeable with all conditions recommended by staff, including amended Condition No. 8.

Mr. Ono felt that the amended condition calls for some other stockpiling provision which requires them only within the center third outfall extension. They would like to be allowed to stockpile along the length of the trench, should they not be able to bid within the funds available. That, he said, would be determined by July 30th.

ACTION

Mr. Arata moved for approval as recommended by staff with the provision that stockpiling along the trench be allowed and be limited to a hundred feet on both sides. Mr. Arisumi seconded.

Mr. Ing called for discussion.

With respect to that condition, Mr. Ing asked Mr. Evans "where was the derivation to the condition?"

Mr. Evans said that it came from the Division of Aquatic Resources and the concern expressed was that should stockpiling occur there, it will kill the coral. Whether or not the Division had had an opportunity to review Mr. Ono's photographs, Mr. Evans did not know. However, as a result of the concerns expressed by the Division of Aquatic Resources staff did clearly state as a part of that condition that no stockpiling shall be allowed.

Mr. Ing did not think that they wanted to stockpile here. They wanted to dispose of it along the trench. The reason for that condition is that in the area where the dredged material was disposed of would kill the coral.

Mr. Evans said that there was live coral in that area.

Mr. Ing could not tell from the photos so asked Mr. Ono what the width of the pipe was.

Mr. Ono said that the pipe was 48" in diameter and was to be laid on the ocean floor.

Mr. Ing asked, "and how much dredging?"

Mr. Ono said that it would be about two-thirds of the way below the existing sea floor.

For clarification, Mr. Ing asked Mr. Arata if the condition being proposed is that if the bid does not come in

Mr. Arata explained that if the cost prohibits the building of the trench then they will have to do the stockpiling along the trench.

For Mr. Paty's information, Mr. Ing explained that there was a motion to approve the recommendation with an amendment of Condition No. 8 that in the event that Condition No. 8 was cost prohibitive in terms of the County budgeted funds then the contractor would be allowed to dispose of the material along the length of the pipeline.

Mr. Paty called for the vote.

Motion carried unanimously.

CDUA FOR CONSOLIDATION AND RESUBDIVISION TO ESTABLISH THE MOOMOMI NATURE PRESERVE AT TMK: 5-1-02:1, 35, MOOMOMI, MOLOKAI (NATURE CONSERVANCY OF HAWAII).

Mr. Evans explained that this was private land within the general subzone and that there are no structures. What is proposed is the establishment of a staffed nature preserve for conservation of native wildlife and vegetation. Staff has completed their analysis and is recommending approval subject to thirteen conditions. Because this is entirely on private lands, Mr. Evans said that Condition No. 3 should not have been included and asked that it be deleted.

Mr. Evans said that some concern was expressed with respect to Condition No. 8, relating to a management plan for review and comment. Staff met with the applicant and they are amenable to all these conditions with the exception of one other and this other condition is a requirement for a shoreline survey. In terms of staff's discussion with the applicant, Mr. Evans said that staff would have difficulty in modifying the recommendation. Notwithstanding that, Mr. Evans said that because they do feel that part of it is the shoreline and, in order to have it recorded as required under Condition No. 6, that we will have to have some metes and bounds and we need to have a boundary between the public land and the private land.

Mr. Arisumi asked Mr. Evans to again explain Condition No. 6.

Mr. Evans said that Condition No. 6 requires that what these folks have to do if the board sustains it is to go have this approval documented and what is going to be documented basically is a consolidation and resubdivision so we have a new piece of land. Part of that piece of land is going to abut the shoreline or public lands. In order to abut that, staff feels that there needs to be metes and bounds. In order to establish the metes and bounds the likelihood is great that he will have to get a shoreline survey. This is the concern that the applicants had. They would like not to go through a shoreline survey.

Mr. Arisumi asked, why?

Mr. Kelvin Taketa, Executive Director of the Nature Conservancy, said that in talking to the surveyor about that condition, he estimated the cost to the nature conservancy to be about \$22,000 to have this certified shoreline survey done and it would take about two months. The difficulty they have with that is, for one thing, they are trying to acquire the property from Molokai Ranch and they are in the process of transition from local ownership to a New Zealand company who more and more are taking control of the company. They are being charged interest for their purchase agreement so the net effect to the conservancy for having to get a shoreline survey is about \$30,000. As a non-profit agency it would be hard for them to get that kind of money. In addition, it is not their intention to create any improvements or structures on either the conservation land or the state land with the exception of maybe creating better trails or roads eventually for public access. However, Mr. Taketa said that this would be addressed in a pending CDUA that they have with the department now for their management use of the area.

Mr. Taketa said that in talking with the Bureau or the Land Court that they will be asking them to provide them with the best property description possible so if they need to get it then they will. However, if they don't need to do it in order to record the transaction then they would ask for relief from that condition.

Mr. Evans pointed out that Condition 6 as it presently reads is not specifically requiring a survey. What would generally require the survey is the process they go through to accomplish Condition 6.

Mr. Ing asked about Condition 8.

Mr. Evans said that it is through this condition that staff has made this specific requirement.

Mr. Taketa apologized. He was really referring to Condition 8 instead of Condition 6.

Mr. Ing said that we usually require a certified shoreline, but we definitely require it if any improvements are put on it.

Mr. Taketa asked for clarification of Condition No. 9, which requires them to maintain public access to the shoreline for fishing and other activities. He said that they would be happy to do that but the only thing that they would like to call to the board's attention is that their access to the area goes across both Hawaiian Homes and Molokai Ranch lands. To the extent that they are changing any practice that they have in place now, he said that they don't intend to make it more restrictive but when you say public access it could mean that they are supposed to let anybody come and go as they please and that, obviously, is not within their control.

ACTION

Mr. Arisumi moved to approve as amended. Seconded by Mr. Arata, motion carried unanimously.

ITEM H-1

AFTER-THE-FACT CDUA FOR RELIGIOUS USE AT WAIMEA BAY BEACH PARK, WAIMEA, OAHU (MR. KAMUELA PRICE).

Mr. Evans said that this was deferred at the last board meeting at the request of the applicant. This is a parcel of land owned by the City and County of Honolulu which they purchased in April, 1970 for about \$637,000 through the use of eminent domain. The landowner at that time was Castle & Cooke and the public purpose expressed at that time was a park. Within that context Mr. Evans said that it is within our limited subzone and is currently used by park patrons. Through the public hearing and review from other agencies, staff felt that this analysis required a different type of approach from that normally provided the board. That very general type of approach is expressed in Attachment A which focuses on a brief history of land use as opposed to land activities. It focuses on representations made by the applicant relating to religion and the applicant's focus on his, and staff agrees, constitutional First Amendment protected activities.

With due respect to the applicant's religion, Mr. Evans said that based upon the records they did not feel at this time that this is a recognized First Amendment activity. As such, staff's recommendation is one of denial.

Mr. Ing asked Mr. Evans if he could elaborate as to why the recommendation is split as it is.

Mr. Evans said that the biggest reason was, respect of staff. Because of the particular concerns which were related at the public hearing, for the first time, in terms of land use, staff had to analyze it. Notwithstanding this analysis, it seemed important that staff be respected in terms of their work. That is why the staff individual whose name is signed felt that this was the way he felt I should go. One approach that staff could have taken but chose not to was to have the board deny the request for the after-the-fact continuous fundraising activity period as "A" currently recommends and that there be no requirement for "B". Notwithstanding that, the staff that prepared this felt that it was important for them to put it in and I felt it important for me to respect it. In fact, said Mr. Evans, I don't think "B" is needed. This is handled by the City and County.

Mr. Price said that when he analyzed what has been presented to the board today, it seems that this is the way they always thought things were. The City had approved their going there because they had the constitutional right to be there the same way the Hare Krishna and anybody else would. Mr. Price said that there were only three people who objected and he has since spoken to those three people and he thought that they would be willing to give the board a letter to withdraw.

Mr. Price explained as follows how they happened to be in the park in the first place:

"In the beginning we would have to go into Waimea Falls...these are the sacred grounds of our people. They do charge admission. They do have these things on conservation land and we came to an agreement with their attorneys that if we could stay in the park then in the end we'd drop any actions that would be asking what our purpose would be to be up there because we're not looking to make a lot of money.

'This morning you talked about a park where they want to come in and put something in and save the City some money and maybe make several million dollars and that is considered a commercial enterprise. But the difference is, if somebody were to point out to you that these people have a commercial enterprise...you have to see that the difference is that the little bit of kuni kuni that the Hawaiians make there doesn't go in their pockets...that goes to feed the ohana. That is the cultural way that the Hawaiian people have lived for centuries and it gives the public an opportunity in a way to see that."

Mr. Price asked for the Minister of their church to come forward.

Minister Maui Loa went on to explain their church and the people and the strong ohana and christianity in the area and their rights to their beliefs. They are natives of Waimea and they are trying to recover what was lost.

For clarification, Mr. Evans stated that, with all due respect, they have the freedom to believe what they want to believe but staff's recommendation for denial is based on the fact that they have not raised this issue to the level of a recognized religion yet. Secondly, while staff does suggest that the City and County has rules and regulations in place for religious uses and First Amendment activities on a limited basis, staff is not speaking for the City and suggesting that the City recognize this as a religion. Lastly, in terms of the religious belief, while staff does agree with that, they may have concern with conduct -- how one conducts themselves in expressing those beliefs. Mr. Evans said that were this to be raised to the level where staff would recognize it, then they would address it in terms of conduct but it is not at that level yet.

Mr. Price believed that staff was making a sincere recommendation. However, he felt that the board should say that they don't see anything in their area here and, if the City says they have looked at it the way they have then there is no reason for the board to look at it unless they do get some complaint in that area.

Mr. Price said that the difference between a business or concession is that they go into the park to make a profit. When the Church goes down there, it is the way they live. They sell the hotdogs and feed about 30-40 Hawaiians every day. They would make a lot more if they didn't deliver a hotdog. It would be more profitable if they would just ask people to make a volunteer donation. \$2.00 is what they ask for that hotdog.

Mr. Arata asked, "if somebody came and did not have \$2.00.....

Mr. Price replied, "they're fed". They will share anything they have with you. They just want to get by day by day. Bring enough kuni kuni during the day so that at night all the hungry people can eat.

Mr. Arata asked Mr. Price, "how much time did the staff spend with you?"

Mr. Price said that nobody ever talked to him. He went upstairs and talked to staff for one minute. All he told them was that he noticed that they had a letter from OHA that wasn't signed.

Mr. Arata did not think that staff could have gotten all of this information from him in just one minute.

Mr. Price said that all this information came from their City application, which was approved. They spent a lot of time with the City who said that if the Hare Krishnas can do it, if they can advertise on the radio, come and buy our huli huli chicken, come and buy our beans, etc. certainly the Hawaiians can do that.

Mr. Arata asked how was it that he was not able to convince the Office of Hawaiian Affairs.

Mr. Price said that they were never called in otherwise they would have convinced them. When somebody just asked them if they would like to meet with them they said that they had no quarrel. Mr. Price said that they tried to pin down who signed the letter. He said that the letter was not a petition of the Office of Hawaiian Affairs, it was an unsigned letter.

Mr. Arata said that it says that testimony received from the Office of Hawaiian Affairs indicate that the lunch wagon appears to be more of a commercial fund raising operation than a religious one.

Mr. Price reiterated that the letter was unsigned. He said that OHA did not say one word to them.

Mr. Evans explained that the unsigned letter was an oversight on their part. Staff certainly did not want to say anything which would present that it might be OHA but, notwithstanding the fact that it is unsigned it would necessarily give staff, in terms of DLNR, thoughts and consideration for when the analysis is done -- signed or not.

Mr. Price said that he did not think that this was the kind of decision OHA or the board would like to make.

Mr. Evans explained that normally when a hearing is held and testimony is received it is not necessarily signed.

ACTION

Mr. Ing moved that the board deny this request for parking a truck in Waimea Beach Park and offering food for a minimum donation of \$2.00 and that the applicant be ordered to cease and desist any such operations immediately and if they continue to operate a truck in Waimea Beach Park and continue to offer the food for a minimum donation of \$2.00 that he be fined accordingly. Seconded by Mr. Kealoha, motion carried unanimously.

Mr. Price asked whether he would have a right to appeal this decision.

Mr. Ing suggested that Mr. Price consult his attorney.

ITEM H-7

CDUA FOR A NONCONFORMING SINGLE FAMILY RESIDENTIAL USE WITH ATTACHED MAIDS QUARTERS AND STABLE AT KAILUA, OAHU (MR. JIM P. FERRY, AGENT FOR MR. & MRS. DAVID FAZENDIN).

Mr. Evans presented this item with a recommendation for approval subject to nine conditions. He stated, however, that there has been concern expressed over the proposed use by some residents and the concerns relate to potential mis-guided use of the land through implementing the use. Notwithstanding that, staff did feel that the non-conforming use gives the applicant the right to this property for the use.

Mr. Ing said that the board received a letter this morning, dated July 9, 1987, from the Chairman of the Kailua Neighborhood Board No. 31 asking that this matter be delayed until their board has had a chance to review the proposal.

Mr. Arisumi felt that if the request for delay was within reason he could understand the delay. However, if the applicant qualifies under the nonconforming use then he did not feel it fair to delay. He asked if there was someone from the Neighborhood Board to explain.

There was no representative.

Mr. Jim Ferry, agent for the applicant, said that there wasn't much that he could comment on except to ask that the board accept staff's recommendation. They intend to comply with the conditions imposed and, as a matter of record, he did have discussions with staff and it is well noted that the application was made sometime back although they are still within the statutory time limit for action. His client is anxious to get on with his residence.

Mr. Arisumi asked how close the neighbors were to this subject parcel.

Mr. Ferry said that this particular section of land is situated on the old Kalaniana'ole Highway -- about 300-400 yards from the City Baseyard. This would have been an abandoned road which is not well traveled since the improved highway came in from the Saddle City area to Castle Hospital. Immediately adjacent to this piece of property is another parcel of land which was granted by this board to construct a residence. That is also in conservation zoned land. Mr. Ferry said that that is about the only other residence in the immediate area. On the makai side of Kalaniana'ole Highway is a subdivided area called Norfolk Pine which consists of 2 acre lots and this is consistent with this lot, which is 2.15 acres.

Mr. Ing said that he had one concern. The house as shown on the plot plan is situated at the top corner of this lot and the house goes up two stories. He wanted to know why it was necessary to have two stories.

Mr. Ferry said that this was to accommodate the size house the applicant's wanted and to also take better advantage of the terrain.

Mr. Ing asked, "why not build a house at the lower elevation?"

Mr. Ferry said that it would not necessarily suit the lot owner's purpose of having horses on the premises and access to riding trails.

In answer to Mr. Arata's question as to where the applicant's were from, Mr. Ferry said that they lived in Kailua.

Ms. Hope Miller of the Lani-kailua Outdoor stated that they are firmly opposed to the granting of this permit. She said that ever since a vigorous community effort and reclassification in the 60's, they believed that Olomana was saved, with the existing roadway as a boundary.

Ms. Susan Miller, President of the Kawainui Marsh Heritage Foundation, felt that the office would save themselves a lot of trouble if they would adopt a policy of sending the notice of the original application to the neighborhood boards on Oahu and to the appropriate people on the other islands at the time it's received so that people who have concerns can come in on a timely fashion. Ms. Miller also presented written testimony which, in essence, asked the board to refer this applicant to the Land Use Commission to get a boundary change to urban, for it is an urban use that is being requested.

Mr. Ing said that to a large extent they have made this decision. It's in a General Subzone. The Restrictive Subzone is a Protective Subzone where structures are not allowed. The general subzone is usually already adjacent to the urbanized areas and is less restrictive. With respect to this parcel, Mr. Ing said that the decision has already been made.

Mr. Ing asked Mr. Ferry whether deferral of this request would cause his clients any problems.

Mr. Ferry said that he saw no major problem with that. What does bother him, however, to an extent, as Mr. Evans had stated, the office is available and there is a perfect conduit between the neighborhood boards and the city hall office where they could periodically review whatever applications come on file and then refer those applications to the respective neighborhood boards.

In direct response to Mr. Ing's question, Mr. Ferry said that even though his client is anxious to get on with the plans he has long sought for his property, he felt that he could live with the deferment. He asked, however, if there was any input that the board sees possible from a neighborhood board that would change staff's recommendation inasmuch as this is a nonconforming use, and all conditions applicable to a nonconforming use have been met.

Mr. Ing said that he didn't know that it would change as much as it would give the neighborhood board an opportunity to speak. He didn't know how the other board members felt about this. If they felt we should move forward today then we will move forward.

With respect to the question raised by the neighborhood board, Mr. Kealoha said that when the process calls for a hearing they don't have a problem because then they can have their input. For those applications that don't require hearing, they're not aware of who is applying for development in those areas. He thought that maybe this is what they are looking for -- some kind of notice.

Mr. Ferry said that it would appear to him that someone from the Mayor's office, governing the neighborhood boards, could periodically visit the Planning Office and see what applications are put on file.

ACTION

Mr. Kealoha moved to approve as recommended by staff. Motion carried with a second by Mr. Zalopany.

Mr. Ing opposed and asked that, at the time the applicant submits the building plans for approval, the office consider that he submit alternative plans for a single story structure as opposed to a two story structure.

Written testimony opposing this project was also submitted by the Maunawili Community Association, the Pohakupu Association and the Olomana Association.

ITEM H-5

CDUA FOR CONSTRUCTION OF A RADIO ANTENNA SITE, WAIAKEAKUA PEAK, LANAI, TMK: 4-9-02:1 (MR. RICHARD KIRMEYER, AGENT FOR MOTOROLA COMMUNICATIONS & ELECTRONICS, INC.).

Mr. Arisumi said that as far as the height of the antenna there is a maximum of 30 feet and he did not see this in the conditions.

Mr. Evans said that he would see to it that this condition is added.

ACTION

Unanimously approved as amended. (Arisumi/Arata)

ITEM H-8

REQUEST FOR TIME EXTENSION ON THE CDUA FOR A SINGLE FAMILY RESIDENCE AND UTILITY IMPROVEMENT USE AT HUIMANU, OAHU (MR. DANIEL S. C. WONG).

Mr. Daniel Hong, representing the owner, said that the reason it took so long is because about two years ago the Board of Water Supply started construction of the Ahuimanu 500' Reservoir and they have waited approximately two years for the Board of Water Supply to complete their work so they could start construction inasmuch as they will have to use the same road which is being used by the Board of Water Supply.

When asked by Mr. Kealoha, Mr. Hong said that he represented the applicant.

Mr. Kealoha asked, "who represents the Board of Water Supply?"

Mr. Hong replied that they were representing themselves.

ACTION

Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM H-2

AFTER-THE-FACT CDUA FOR A SINGLE FAMILY RESIDENCE AND ACCESSORY USES AT ANAHOLO, KAUAI (EDDIE TANGEN, AGENT FOR EDWARD BITTNER).

Mr. Evans said that this item was deferred at the last board meeting at the request of one-half of the landowners of the property. One of the owners, Mr. Sussman, was available in Hilo and, prior to the board's deferring the matter, the board did provide Mr. Sussman an opportunity to speak before the board. Mr. Sussman basically took issue with only one of the statements we had made and that statement was the 5" watermain from Anahola Pond which was represented did not exist. Mr. Evans pointed out that Picture No. 7 showed the 5" pipe.

Mr. Evans said that the board's concerns relating to Mr. Sussman was that although he may have had a permit and entered into some negotiation with Lihue Plantation at some point and time, the question that rose was whether that arrangement satisfied any State needs such as requirements from the Land Department in terms of permits. He said that staff had received what was a November 28, 1984 copy of the arrangement between the Lihue Plantation Co. and Mr. Sussman whereby, as it says under Condition 3, that Mr. Sussman shall be solely responsible for obtaining any and all license permits which may be required for construction or operation of any work done for delivering water to his kuleana.

Mr. Evans said that Mr. Sussman also represented to the board that, yes, those things were correct what we alleged, that they do exist with the exception of the one pipeline and he also suggested that he recognized that the board may well fine him. He also suggested that he did not have a lot of money and suggested that the board consider his in-kind service of some kind for payment.

The board then deferred to exceed to the request of Mr. Bittner. Mr. Bittner was unable to be at the Hilo meeting and was represented by Mr. Eddie Tangen. What transpired, said Mr. Evans, is that staff did receive a telephone call from what was represented as Mr. Bittner's attorney. Not knowing what to do, they discussed the matter with Mr. Tangen since they had been interacting with him prior. A letter was received from Mr. Tangen that he had withdrawn as agent for Mr. Bittner. As such, Mr. Bittner is here today with counsel to voice his concerns.

Mr. Evans said that staff's recommendation has not changed. They did review the one concern which was expressed by Mr. Sussman relating to the 5" pipe. Photos were submitted to the board for their review.

Mr. Evans said that they did not take a look at this on a piece by piece \$500 fine but rather took an overall look at it and it developed into a fine totalling \$4500.00.

Mr. Kealoha asked if this is basically the same thing submitted in Hilo.

Mr. Evans said that it is the same submittal.

Mr. Kealoha asked who would be responsible for the \$4500.00.

Mr. Evans said that they would go after the landowners. In this particular case there are two owners so there would be a 50-50 split unless the board directs him otherwise.

Mr. Kealoha told Mr. Evans that in 1979 he had cited four violations for Mr. Bittner for \$2000, then there was an additional violation for \$2000 and the way he saw it in staff's memo of July 27, 1979 there was already imposed on Mr. Bittner a fine of \$4000. Now there is no way here that he could see that the second party was 50% owner. All of the complaints in 1979 were to Mr. Bittner. His question was, is this the same \$4000 or is this a new \$4000 that is on page 8.

Mr. Evans said that his representation would be that it would be a new \$4500 because the tax map key back in August 28, 1975 appears to be a different property than this one. This particular action is on TMK 4-8-4:parcel 5. It appears that the violation back in 1979 related to TMK 5-1-03:parcel 6.

Mr. Brian Jenkins, representing Mr. Bittner in this application, said that back in 1979 Mr. Bittner had bought interest from Mr. Sussman in the Anahola property, which is the subject of today's proceedings and back in 1977 is when the structures were built. Following that, in 1978 he bought another parcel of land in Molo'a near Kilauea and built a structure on that piece of land. During construction he was cited by members of DLNR because he did not have the right permits for this and subsequently he was told that he was to remove the whole structure. He did remove the whole structure, he paid a fine, but that has nothing to do with the Anahola structure which had already been in existence for two years. With this in mind, Mr. Jenkins said that he has nothing to do with today's problem.

Mr. Jenkins continued testifying that Mr. Bittner did not have much money and asked that the Board consider lowering its fine to \$500.00 and allowing him to keep the waterlines because he will need water for his agricultural purposes.

Mr. Arisumi asked Mr. Jenkins, "you say that he is a serious farmer, has all these jobs, leases all this land and yet he still cannot pay this fine?"

Mr. Jenkins referred the board to the letter from Bittner's accountant which showed that between 1978 and 1986 he had made as little as \$1,050.00 a year to a maximum of \$2,915.00. He works extremely hard and any kind of fine would be a hardship. He is a small time farmer.

Mr. Kealoha asked Mr. Evans if he was recommending removal of the utilities after fining the applicant.

Mr. Evans said, yes.

Mr. Kealoha asked how come this was not recommended for Nukolii.

Mr. Evans said that they did but the board's decision was to give them one shot before the Land Use Commission. The end result was that the Land Use Commission rezoned.

Mr. Kealoha said that there was nothing about removing things such as the utilities, etc.

Mr. Evans said that their sense was that if all they come to the board with is a fine and they can keep what they want there then staff would be in a position where they are saying, "pay the \$4500 and you can keep what you want." If we do this in this particular case then it would mean that they can do it in any case so the easy way to get around all the permit processing is for anybody to just go do it and then come back and pay whatever fine there is so staff needs to have the flexibility where in some cases where it is appropriate staff can say, "pay the fine and remove" and in other cases say "pay the fine and it can stay" so that is the board's decision.

Mr. Zalopany asked if this item could be deferred to the next Kauai meeting.

Mr. Jenkins asked if possible, he would like to have this problem resolved today. He said that it is a costly thing for his client also.

Mr. Kealoha said that he has no problem of the fine or having all of the improvements removed and accepting staff's recommendation.

Mr. Jenkins felt that this was unduly hard on his client and he could not see how the board could benefit on such a hard decision. Staff has said that the board shouldn't have any compassion for his client's position because he knowingly did what he did and it turned out that this was not correct. The Anahola structures were built two years before his run-in with the DLNR.

Mr. Kealoha felt that Mr. Jenkins was characterizing the board wrong -- he said, "I have a lot of heart".

Mr. Jenkins said that he appreciated that but to go along with staff's recommendation as it stands...

Mr. Paty said that this is not necessarily so, but if Mr. Jenkins wanted a decision it would be easy to go with staff's recommendation.

Mr. Zalopany said that staff would have to give the board a breakdown as to what is where, etc.

ACTION Upon motion by Mr. Zalopany and a second by Mr. Arata, this item was deferred to the next meeting on the island of Kauai. Motion carried unanimously.

ITEM H-4 CDUA FOR INSTALLATION OF PUMPS, PIPELINE SYSTEMS, AND A CONTROL BUILDING, TMK 2-4-04:5 & 39 (HON. RAYMOND SATO).

ACTION Unanimously approved as submitted. (ZALOPANY/ARISUMI)

ITEM H-6 AFTER-THE-FACT CDUA FOR A SEWER LINE AT KOKOHEAD, OAHU (MR. ROY TSUTSUI).

ACTION Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM D-2 PERMISSION TO HIRE ENGINEERING/ARCHITECTURAL CONSULTANTS TO PREPARE CONSTRUCTION PLANS AND SPECIFICATIONS.

ACTION Unanimously approved as submitted. (Arisumi/Arata)

ITEM D-3

SOIL & WATER CONSERVATION DISTRICT DIRECTORS, HAWAII AND KAUAI.

ACTION

Upon motion by Mr. Arata and a second by Mr. Arisumi, the board voted unanimously to appoint and certify the following persons for the terms shown to serve as directors of the respective Soil and Water Conservation Districts:

<u>SWCD District</u>	<u>Name</u>	<u>Elected/ Appointed</u>	<u>Term to Expire</u>
East Kauai	Russell Nishii	Elected	6/30/90
	Joeseph Vierra	"	"
Kau	Carl Bredhoff Jr	Appointed	"
	Wallace Doty, Jr.	"	6/30/89
	Steven Kai	Elected	6/30/90

ITEM E-1

FILLING OF POSITION NO. 12272, GROUNDSKEEPER I, ASSIGNED TO THE HAWAII PARKS SECTION.

ACTION

Mr. Arata moved to approve the appointment of Mr. Blaine M. Nagata to Position No. 12272. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM E-2

REQUEST TO USE THE STATE CAPITOL MALL FOR A FUN RUN.

ACTION

Unanimously approved as submitted. (Ing/Zalopany)

Mr. Ing stated that he did not want this to be a regular thing.

ITEM E-3

REQUEST FOR PERMIT TO COLLECT PLANT SAMPLES FROM STATE PARKS.

ACTION

Mr. Ing asked that the word "plan" shown under RECOMMENDATION be amended to read "plant".

Unanimously approved as amended. (Ing/Zalopany)

ITEM E-4

REQUEST TO USE A PORTION OF THE OLD KONA AIRPORT STATE RECREATION AREA FOR KEIKI TRIATHLON.

ACTION

Unanimously approved as submitted. (ARata/Arisumi)

ADDED
ITEM E-5

FILLING VACANT GROUNDSKEEPER I POSITION NO. 02777, HAWAII PARKS SECTION.

ACTION

Mr. Arata moved to approve the transfer of Eugene S. Walker to Groundskeeper I Position No. 02777. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM F-1

DOCUMENTS FOR CONSIDERATION.

Item F-1-a

REVOCABLE PERMIT TO COOK CABLEVISION, INC., HANA, MAUI, TMK 1-3-03:33. FOR USE AND MAINTENANCE OF A MICROWAVE ANTENNA FOR CABLE TV COMMENCING JULY 1, 1987. RENTAL: \$29.00 PER MO.

Mr. Shimabukuro asked to amend F-1-a by 1) cancelling the existing permit no. S-2362 to "McCaw" before issuance of the new permit and 2) amend the condition that Cook Cablevision, Inc. be registered to do business in Hawaii.

Item F-1-b

ASSIGNMENT OF LOUISE MAUI AI INTEREST IN G.L. NO. S-4884 TO LOUISE MAUI AI AND VELMA KEAHO QUEN TAI KUKUALANI FOSTER, MAUNALAHA HOMESITES, OPU, MAKIKI, HONOLULU, OAHU, TMK 2-5-24:17

- Item F-1-c AMENDMENT OF SUBLEASE BETWEEN GEM OF HAWAII, INC. AND STEVEN M. SHISHIDO COVERING G. L. NO. S-4643 AT KUWILI, HONOLULU, OAHU, TMK 1-5-20:6.
- Item F-1-d ISSUANCE OF LAND LICENSE TO FONG CONSTRUCTION CO., LTD. FOR REMOVAL OF LANDFILL MATERIAL AT WAKIU, HANA, MAUI, TMK 1-3-04:POR. 12
- Mr. Shimabukuro asked to amend Recommendation 5 by changing (84) hours to (48) hours.
- Item F-1-e LEASE BETWEEN COUNTY OF MAUI AND UNIVERSITY OF HAWAII COLLEGE OF TROPICAL AGRICULTURE AND HUMAN CONCERNS COVERING STATE LANDS AT HAMAKUAPOKO, MAKAWAO, MAUI, TMK 2-5-04:14.
- Item F-1-f ISSUANCE OF REVOCABLE PERMIT TO JOHN PUNDYKE, JR. DBA OHANA SCENIC HIKING TOURS COVERING LAND AT WAILUA, KAUAI: TMK'S 4-2-01:2, 4-4-01:2, AND 4-6-01:1 FOR BUSINESS PURPOSES (CONDUCT GUIDED HIKING TOURS).
- Mr. Shimabukuro asked to amend the sentence under STATUS by adding at the end of the sentence "Lihue Koolau Forest Reserve".
- ACTION Mr. Kealoha moved to approve Items F-1-a, as amended, F-1-b, c, d, e, as submitted and F-1-f, as amended. Seconded by Mr. Zalopany, motion carried unanimously.
- ITEM F-2 COUNTY OF HAWAII REQUEST FOR RIGHT OF ENTRY FOR SURVEY, ENGINEERING, AND DESIGN STUDY FOR WEST HAWAII SHOOTING RANGE, PUUWAAWAA, NO. KONA, HAWAII.
- ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-3 ONE (1) YEAR HOLDOVER OF G. L. NO. S-5010 (M/M EDWARD B. PERREIRA), WAILUA-NUI, HANA, MAUI, TMK 1-1-08:14.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-4 AMENDMENT TO PRIOR BOARD ACTION OF 9/28/84 (ITEM F-1-c) COVERING ISSUANCE OF REVOCABLE PERMIT TO HAWAII PUBLIC RADIO AT KOLEKOLE HILL, PAPANUI, MAKAWAO, MAUI, TMK 2-2-07:POR. 9.
- ACTION Unanimously approved as submitted (Arisumi/Arata)
- ITEM F-5 AMENDMENT TO PRIOR BOARD ACTION OF 5/9/86 (ITEM F-7) COVERING WITHDRAWAL AND RESET ASIDE OF LAND FROM PANAewa PLANT SANCTUARY AT PANAewa, LAHAINA, MAUI.
- Mr. Arisumi asked that, where May 9, 1986 is shown throughout the submittal, it be changed to May 9, 1987.
- ACTION Unanimously approved as amended. (Arisumi/Arata)
- ITEM F-6 ACQUISITION OF FEDERAL FEE SURPLUS PROPERTY FOR PUBLIC LIBRARY PURPOSES, GSA CONTROL NO. 9-N-HI-465A, 1.583 ACRES AT SALT LAKE BOULEVARD AND ARIZONA ROAD, MAUNALUA, HONOLULU, OAHU, TMK 1-1-10:POR. 04.
- ACTION Unanimously approved as amended. (Arisumi/Zalopany)
- ITEM F-7 PROPOSED LAND EXCHANGE WITH QUEEN'S MEDICAL CENTER FOR MABLE SMYTHE BUILDING SITE, HONOLULU, OAHU.
- ACTION Unanimously approved as amended. (Ing/Kealoha)

- ITEM F-8 TERMINATION OF G. L. NO. S-5041 TO GERALD SANCHEZ, LOT 86, KOKEE CAMP SITE SITE LOTS, WAIMEA, KAUAI.
- ACTION Withdrawn.
- Mr. Shimabukuro said that he received word from the Kauai Land Agent, Same Lee, that the bond was posted so the lease terms have been cured.
- ITEM F-9 DIRECT SALE OF ACCESS AND UTILITY EASEMENT AT KAPAA, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Arata)
- ITEM F-10 AMENDMENT TO PREVIOUS BOARD ACTION OF 5/13/83 (ITEM F-20), COVERING THE AUCTION SALE OF A SUGAR LEASE, HANAPEPE, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Arata)
- ITEM F-11 AUTHORIZATION TO TERMINATE G. L. NO. S-4777 TO MR. LEE SANDAU COVERING LAND AT KAPAA, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Arata)
- ITEM F-12 LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HEALTH (DOH), MEDICAL HEALTH SERVICES DIVISION, ISLAND OF HAWAII.
- ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-13 LEASE OF OFFICE SPACE FOR DEPARTMENT OF HEALTH, MEDICAL HEALTH SERVICES SERVICES DIVISION, ISLAND OF HAWAII.
- ACTION Unanimously approved as submitted. (Arata/Arisumi)
- ITEM F-14 LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF SOCIAL SERVICES AND HOUSING (DSSH), PUBLIC WELFARE DIVISION, ISLAND OF MAUI.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-15 LEASE OF OFFICE SPACE FOR DSSH, HEALTH CARE ADMINISTRATION DIVISION, ISLAND OF MAUI.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-16 LEASE OF OFFICE SPACE FOR DSSH, PUBLIC WELFARE DIVISION, ISLAND OF MAUI.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-17 LEASE OF OFFICE SPACE FOR DEPARTMENT OF HEALTH, MENTAL HEALTH DIVISION, ISLAND OF LANAI.
- ACTION Unanimously approved as submitted. (Arisumi/Arata)
- ITEM F-18 LEASE OF OFFICE SPACE FOR DEPARTMENT OF HEALTH, MEDICAL HEALTH SERVICE DIVISION, ISLAND OF OAHU.
- ACTION Unanimously approved as submitted. (Ing/Arata)
- ITEM F-19 LEASE OF OFFICE SPACE FOR DEPARTMENT OF HEALTH, KAILUA COUNSELING CENTER, ISLAND OF OAHU.
- ACTION Unanimously approved as submitted. (Ing/Arata)

- ITEM F-20 LEASE OF OFFICE SPACE FOR DSSH, PUBLIC WELFARE DIVISION, ISLAND OF KAUAI.
- ITEM F-21 LEASE OF OFFICE SPACE FOR DEPARTMENT OF HEALTH, EMERGENCY MEDICAL SYSTEMS BRANCH, ISLAND OF KAUAI.
- ITEM F-22 LEASE OF OFFICE SPACE FOR DSSH, HEALTH CARE ADMINISTRATION, ISLAND OF KAUAI.
 ACTION Mr. Zalopany moved to approve Items F-20, 21 and 22 as submitted. Motion carried unanimously with a second by Mr. Arata.
- ITEM F-23 LEASE OF OFFICE SPACE FOR DSSH, PUBLIC WELFARE DIVISION, ISLAND OF OAHU.
 ACTION Unanimously approved as submitted. (Ing/Arata)
- ADDED
ITEM F-24 CITY AND COUNTY OF HONOLULU REQUESTS RECONSIDERATION FOR AUTHORIZATION TO ISSUE A CONTRACT FOR A COMMERCIAL SHOW WITHIN THE WAIKIKI SHELL AT KAPIOLANI PARK, HONOLULU, OAHU.
 Deferred to next meeting of the board. See Pages 2 to 13.
- ADDED
ITEM F-25 OUT-OF-STATE TRAVEL REQUEST FOR LAND MANAGEMENT ADMINISTRATOR TO ATTEND WSLCA CONFERENCE.
 ACTION Unanimously approved as submitted. (Kealoha/Zalopany)
- ITEM H-1 AFTER-THE-FACT CDUA FOR RELIGIOUS USE AT WAIMEA BAY BEACH PARK, WAIMEA, OAHU (MR. KAMUELA PRICE).
 Denied. See Pages 25, 26 & 27
- ITEM H-2 AFTER-THE-FACT CDUA FOR A SINGLE FAMILY RESIDENCE AND ACCESSORY USES AT ANAHOLA, KAUAI (EDDIE TANGEN, AGENT FOR EDWARD BITTNER).
 Deferred to next meeting on the island of Kauai. See Pages, 3, 31 & 32.
- ITEM H-3 REQUEST FOR AMENDMENT TO CDUA CONDITIONS FOR CDUA APPROVAL OF HILO OUTFALL EXTENSION (HON. HUGH Y. ONO).
 Approved as amended. See Pages 22 & 23.
- ITEM H-4 CDUA FOR INSTALLATION OF PUMPS, PIPELINE SYSTEMS, AND A CONTROL BUILDING, TMK 2-4-04:5 & 39 (HON. RAYMOND SATO).
 Approved. See Page 32.
- ITEM H-5 CDUA FOR CONSTRUCTION OF A RADIO ANTENNA SITE, WAIAKEAKUA PEAK, LANAI, TMK 4-9-02:1
 Approved. See Page 29.
- ITEM H-6 AFTER-THE-FACT CDUA FOR A SEWER LINE AT KOKOHEAD, OAHU (MR. ROY TSUTSUI)
 Approved. See Page 32.
- ITEM H-7 CDUA FOR A NONCONFORMING SINGLE FAMILY RESIDENTIAL USE WITH ATTACHED MAIDS QUARTERS AND STABLE AT KAILUA, OAHU.
 Approved. See Pages 27, 28 & 29.
- ITEM H-8 REQUEST FOR TIME EXTENSION ON THE CDUA FOR A SINGLE FAMILY RESIDENCE AND UTILITY IMPROVEMENT USE AT AHUIMANU, OAHU (MR. DANIEL S. C. WONG).
 Approved. See Page 30.

CDUA FOR CONSOLIDATION AND RESUBDIVISION TO ESTABLISH THE MOOMOMI NATURE PRESERVE AT TMK 5-1-02:1, 35, MOOMOMI, MOLOKAI (NATURE CONSERVANCY OF HAWAII).

ITEM H-9

Approved as amended. See Pages 24 & 25.

ADDED
ITEM H-10

PERMISSION TO FILL THE POSITION OF CLERK TYPIST II IN THE AQUACULTURE DEVELOPMENT PROGRAM, OAHU.

(See Page 39 for Action.)

ITEM J-1

METERED TAXICAB SERVICES CONCESSION, KEAHOLE AIRPORT, HAWAII.

ACTION

Unanimously approved as submitted. (Arata/Arisumi)

ITEM J-2

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - COURIER SYSTEMS).

ITEM J-3

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - OGDEN-ALLIED AVIATION SERVICES).

ITEM J-4

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - PLEASANT HAWAIIAN HOLIDAYS).

Mr. Garcia asked that the rental be changed from \$4,400.00 per mo. to \$360.00 per month.

ITEM J-5

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - UNITED AIR LINES, INC.).

ITEM J-6

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - INTERNATIONAL LIFE SUPPORT PARAMEDIC AMBULANCE SERVICE).

Mr. Garcia asked that the rental be changed from \$4,400 per mo. to \$250.00 per mo.

ITEM J-7

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - CONTINENTAL AIR LINES, INC.).

ITEM J-8

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - BURLINGTON AIR EXPRESS, INC.).

Mr. Garcia asked that the rental be changed from \$4,400 per mo. to \$9,600 per mo.

ITEM J-9

CONSENT TO SUBLEASE, HONOLULU INTERNATIONAL AIRPORT (PAN AMERICAN WORLD AIRWAYS, INC. - COURIER TRANSFER SYSTEMS, INC.).

Mr. Garcia asked that the rental be changed from \$4,400 per mo. to \$640.00 per mo.

ACTION

Mr. Kealoha moved to approve Items J-2 through J-9 as corrected. Mr. Zalopany seconded. Motion carried unanimously.

ITEM J-10

APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4334, ETC., AIRPORTS DIVISION.

ACTION

Unanimously approved as submitted. (Zalopany/Arisumi)

- ITEM J-11 CONSENT TO SUBLEASE A PORTION OF PREMISES OF LEASE NO. H-83-2, HONOKOHAU HARBOR, HAWAII (KONA FUEL & MARINE, INC.).
- Mr. Garcia asked that, under the PURPOSE of the sublease, after the words "office space", "charter boat operations" be added.
- ACTION Unanimously approved as amended. (Arata/Arisumi)
- ITEM J-12 ISSUANCE OF LEASE, HIGHWAYS DIVISION, KINALAU PLACE, HONOLULU, OAHU (CITY AND COUNTY OF HONOLULU).
- ACTION Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-13 ISSUANCE OF REVOCABLE PERMIT, HIGHWAYS DIVISION, KAPIOLANI INTERCHANGE, NEAR SO. KING STREET, AND MANOA-PALOLO DRAINAGE CANAL (OKADA TRUCKING CO., LTD.).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-14 ISSUANCE OF REVOCABLE PERMIT, HIGHWAYS DIVISION, PARCEL P-1, PALI HIGHWAY, OAHU (SHELL OIL CO.).
- ACTION Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-15 ISSUANCE OF REVOCABLE PERMIT, HIGHWAYS DIVISION, WILIKINA DRIVE, WAHIAWA, OAHU (ISLAND AUTO EXCHANGE).
- Mr. Garcia asked the applicant's name be changed from Island Auto Exchange to Wesley F. Thomlinson.
- ACTION Unanimously approved as amended. (Ing/Zalopany)
- ITEM J-16 ISSUANCE OF REVOCABLE PERMIT, HIGHWAYS DIVISION, MCCULLY STREET, HONOLULU, OAHU (GILBERT P. AND BEVERLY ANE).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-17 ISSUANCE OF REVOCABLE PERMIT, HIGHWAYS DIVISION, KEEHI INTERCHANGE, HONOLULU, OAHU (AISEA VULANGI DBA LOVE'S LANDSCAPING CO.).
- ACTION Unanimously approved as submitted. (Ing/Zalopany)
- ITEM J-18 USE OF HARBORS DIVISION FACILITIES, PIER 10 PASSENGER TERMINAL, HONOLULU, OAHU (HAWAII ADDICTION CENTER).
- ACTION Unanimously approved as submitted. (Ing/Arisumi)
- ITEM J-19 DIRECT SALE OF LEASE OF EASEMENT AT PIERS 31-34, HONOLULU HARBOR (PACIFIC RESOURCES TERMINALS, INC.).
- ACTION Unanimously approved as submitted. (Ing/Zalopany)
- ADDED
ITEM J-20 USE OF HARBORS DIVISION FACILITIES, PIER 10 PASSENGER TERMINAL, HONOLULU, OAHU (MAKE A WISH, HAWAII, INC.).
- ADDED
ITEM J-21 USE OF HARBORS DIVISION FACILITIES, PIER 10 PASSENGER TERMINAL, HONOLULU, OAHU (CLOUD 9 PRODUCTIONS).
- ACTION Mr. Ing moved to approve Items J-20 and J-21 as submitted. Seconded by Mr. Zalopany, motion carried unanimously.

ADDED
ITEM H-10

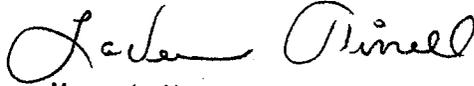
PERMISSION TO FILL THE POSITION OF CLERK TYPIST II IN THE AQUACULTURE
DEVELOPMENT PROGRAM, OAHU.

ACTION

Unanimously approved as submitted. (Ing/Zalopany)

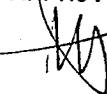
ADJOURNMENT: There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



WILLIAM W. PATY
Chairperson

It