

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

DATE: AUGUST 24, 1990  
TIME: 9:00 A.M.  
PLACE: BOARD ROOM, ROOM 132  
KALANIMOKU BUILDING  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII

ROLL CALL: Chairman 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. John Arisumi  
Mr. Herbert Apaka  
Ms. Sharon Himeno  
Mr. William W. Paty

STAFF: Mr. Roger Evans  
Mr. Mason Young  
Mr. Henry Sakuda  
Mr. Ralston Nagata  
Mr. Michael Buck  
Mr. Gordon Akita  
Mrs. Sandra Furukawa  
Mr. Edward Henry  
Ms. Dorothy Chun

OTHERS: Ms. Linnell Nishioka, Deputy Attorney General  
Mr. Peter Garcia, Dept. of Transportation  
Messrs. Susumu Ono, David Fazendin, Michael Wilson,  
Councilman John Henry Felix, John Weil, Ben Hopkins  
and Andrew C. Yanoviak (Item H-2)  
Misses Cynthia Thielen, Bonnie Heim, Hope Miller,  
Karen Kiefer and Dawn Beyer (Item H-2)  
Mr. Tom Yeh (Item F-2)  
Mr. Ken Splicer (Item F-9)  
Mr. William B. Blok, III (Item H-4)  
Mr. Steven Loui, Ms. Susan Matsuura (Item H-5)  
Mr. Michael Burke, Mr. Anne Lo-Shimazu, Mr. Neal Wu  
Item (F-4)  
Messrs. Clarence Greff, Mr. Harold Bronstein,  
Mr. Tom Hegarty, and Mr. Richard Johnson, (Item E-3)  
Mr. Ernie Jackson (Item F-8)  
Mr. Edward Mahoney (Item H-6)

ADDED ITEMS Upon motion by Mr. Arisumi and a second by Mr. Apaka, the following items were added to the agenda:

Item C-2 Filling of Position No. 13327, General Laborer I, Island of Oahu

Item G-2 Out-of-State Travel for Sandra N.S. Furukawa

Items on the Agenda were considered in the following order to accommodate those applicants and interested parties present at the meeting.

ITEM H-2 OVERVIEW OF CONSERVATION DISTRICT USE APPLICATION FOR SINGLE FAMILY RESIDENCE AND OTHER PROPERTY DEVELOPMENT ITEMS, INCLUDING SUBMITTED PETITIONS FOR CONTESTED CASE HEARING, MT. OLOMANA, KAILUA, OAHU

Chairman Paty made the announcement that he had asked Mr. Sus Ono to undertake the review of the entire matter relative to this case and submit a report to the Board. At this time the report has been submitted and he called on Mr. Ono to come forward and review the report.

Mr. Ono said, "I did submit the original written report dated August 10th, Memo to the Chairman and I understand the Board members have copies of the report."

Mr. Ono commented that the review was confined to the process, procedures related to the process in moving the Conservation District Use Applications along. The scope could have been broader but the Chairperson's scope and assignment given was narrowed down to the process. The sources of information derived for the review came primarily from the files of the department, the tapes of the Land Board proceedings and the interviews conducted of staff.

Chairman Paty asked, "How did you proceed relative to review of the chronological development of this case?"

Mr. Ono said that he went through the files, the departmental files going back to the 1987 application working up eventually to the last meeting of the Board, March 19, 1990 meeting of the Board. Also spent some time listening to the tapes of the two pertinent Board meetings, the March 1990 meeting and the February 1989 tape. He did interview Mr. Roger Evans and Jay Lembeck, the staff people that were originally assigned, or involved in this particular case. He was in contact with the Deputies Attorney General assigned to this case and Mr. Ed Henry provided much of the staff assistance to him.

Mr. Apaka asked, "Mr. Ono, in the review of the process of this application, was there any breakdown in the process? Was the process carried to the extent that it should have?"

Mr. Ono said, "I would have to say the process is in place but as to how the case was handled, the result of my review shows that the process was in place but the processing of the application left some questions to be answered."

Mr. Apaka said, "So in your mind that is a flaw somewhere, cause you mentioned there was a breakdown somewhere."

Mr. Ono said, "Yes, this is a personal opinion of mind, there is, if you want to call it a flaw, there is something that I think was overlooked in the entire process. Not only one, but for example, the key point would be whether the applicant had met all the conditions that the Board had set, and I would say the Board's conditions were not totally met, so if you want to call that a process, the process is in place but how it was applied or the procedures as applied to the particular case led me to the opinion that there was something that was deficient leading to my recommendation that the current permit that's in place be voided."

Mr. Apaka further questioned, "The so called procedural error, is that already been addressed by you in your report?"

Mr. Ono: "The result of that, if you want to call it an error, does or is reflected in the recommendation, yes."

Ms. Himeno: "Mr. Ono, it's your opinion that at the February 24, 1990, the application lapsed or became null and void for non-compliance of conditions or several conditions that appear."

Mr. Ono: "That is correct. We focussed on one primarily, the one year period, but there were other conditions that were not complied with."

Ms. Himeno: "Therefore any Board action thereafter on this application would be considered of no effect, null and void. The underlying application is null and void."

Mr. Ono responded, "That is correct. I have to stress though that it's not a legal opinion, I'm just giving a non-legal position based upon the procedure."

Ms. Himeno: "As of the February 24, 1990 Board meeting, that's the same day, they coincidentally had a meeting on the same day the petition apparently lapsed, on that day if it were moved and if the board was so inclined to extend an extension, then that could have been an alternative at that time. Is that correct? From a procedural point of view."

Mr. Ono: "I would think so, yes. I can't think of anything that would have prohibited the Board from extending the one-year deadline or the applicant asking for an extension."

Ms. Himeno: "Did you see anywhere in the record, where the applicant requested an extension of that for a one-year period or for whatever period of time?"

Mr. Ono replied, "No."

Chairperson Paty: "I note that in your report you say that before processing any new application, the probably should consult with the A.G., whether the non-conforming feature would be lost to the eligible process to consolidate. That should be clarified."

Mr. Ono: "Mr. Chairman whether the existing permit is valid or not, the question you just posed, I think it should be given consideration if, we may never see another situation like this again, but on the other hand, we may. We have two adjoining properties being requested to be consolidated into one and if at that point of consolidation, whether the combined parcel does lose the non-conforming status. This particular consolidation request was processed. The parcels were consolidated and still retained a non-conforming status."

My question is whether that is or should actually be sold. Just raising a question, when you alter the initial parcel that has been given this grandfather protection carries on indefinitely even if you alter the original parcel."

Chairperson Paty: "Do you have any thoughts relative to your recommendation 6, that the Chair consider reviewing other aspects not covered by the review, such as staff workload, to develop the monitoring system imposed by the land board?"

Mr. Ono: "This is really the Board's prerogative, I would, if asked point blank, I would suggest that some kind of a review be conducted."

Chairperson Paty: "You know obviously that relative to the question of the Contested Case, it would be moot if your recommendation was adopted." Mr. Ono replied, "That is correct."

Mr. Arisumi: "Mr. Ono when you had your interview with Mr. Evans and Mr. Lembeck, was everything confirmed as to your findings?"

Mr. Ono: "The interviews conducted of Mr. Evans and Lembeck, did not really go directly into the forming of my recommendation. I just wanted to make sure of what their role was at that particular point in time and if they had any opinions as to what led to the process or the application, up to that point that the case was reassigned. I just wanted to pick up how far they had gone and why."

Chairperson Paty: "I would like to think the results of your report would vindicate any concerns expressed by certain people, relative to your integrity and your ability to do a fair and impartial review."

Chairperson then called Mr. Ed Henry to come forward to do the review of staff's report and recommendation and subsequently will have the applicant and others present to come forward with testimony.

Mr. Henry: As Mr. Ono relayed to you we were directed by the chairman's office to prepare an overview of subject application to include the analysis of the available public record and all processing operations managed by the department in this regard. Mr. Ono has given you his presentation and I'd like to clarify that Mr. Ono's assignment was directed at reviewing internal department processes pertaining to the subject application.

This staff member cooperated in that effort and affirms Mr. Ono's findings and recommendations as being appropriate and accurate. This board submittal prepared by myself is distinct from Mr. Ono's analysis, in that it serves to elaborate the background items analyzing necessary applications, departmental processing matters and forwarding staff recommendations on the the subject for Board consideration and decision making. It also will address the submitted contested case petitions that are on the record.

The background is available in the submittal and essentially the matter is resolved in the analysis section on page 6. He then read through the analysis items and petitions. The Recommendation came in three parts: Application, Contested Case and Violations as listed on pages 7, and 8 which he read to the Board.

Ms. Himeno asked what specifically staff would be doing during the 90-day period.

Mr. Henry replied that there were concerns regarding the driveway. There were Board actions relative to the action in February 1989 which told the applicant he needed to submit construction plans to identify the house at mid-level position and to try to take the upper portions of the illegal driveway out as well as some grading considerations and landscaping considerations. Staff needs to come to some understanding about what the applicant is going to do after this Board decision, if he's going to come back with another application, staff will have to look and see.

Staff needs to make it clear that there is no land use approval on the subject property. Nothing else will be done, but they will try to ascertain what do they need to do to process another application if any and what they need to do with the violations. They'll bring that report back to the Board in 90-days for consideration.

Ms. Himeno: Within that 90-day period of time, is that when you would explore the option of conflict mediation with, I guess Mr. Fazendin and those who are opposed to his construction of his home.

Mr. Henry: That's right.

Mr. Apaka: What I understand is that all our Board proceedings at the February 24, 1990 are null and void, is that true?

Mr. Henry: Well, the action that, what staff did is bring to you a matter before you in March of 1990. The permit had already become null and void because of the time consideration. So your question, that any action after February 24, 1990, yes.

Mr. Apaka: So we're back to square one. What you're asking is start the proceedings all over again, but with the public information meeting to start with.

Chairperson Paty: With respect to the question of appropriateness of the department's acceptance and processing of the non-conforming conditional use...

Mr. Henry: I concur with Mr. Ono. There's been a lot of consideration about what non-conforming use is and what kind of legal procedures and legal evidence should be given to us for non-conforming use. This is an unusual case in that it was accepted as conditional and went to non-conforming. There are considerations in this unique case where there were two parcels next to each other as Mr. Ono explained to you and I concur with Mr. Ono's recommendation that we work with the Attorney General to clarify this matter once and for all to give us some guidelines as to how we process applications under non-conforming statutes.

Chairperson Paty: Then under your recommendation 3, in the event the applicant submits a new application, the board authorize a public informational meeting and/or Public Hearing on the matter.

Mr. Henry: You've done that before on Maui and on a recent application in Kahului, Maui. The Board directed the staff because of community interest, that if they came in for a house on the property, that we hold a public information meeting and that way the general community can make comments but it would not be a decision-making meeting.

It is an option of the board and it's not required for a single family house, that we hold a public meeting.

The Chair called on the applicant, Mr. David Fazedin if he wished to come forward.

Mr. Fazedin: The first time I heard about this was about a week ago yesterday and I tried to get legal counsel for this. The firm that I had picked is tied up for a given period of time for two weeks or a little longer. He was advised to ask for an extension. He read the following request as advised, "You can ask for a continuance of the matter until as such time you obtain legal counsel to apprise you of your rights. And ask for further time to respond to the staff's submittal after you have obtained legal counsel for this matter. There's no pending deadline for the Board to make such a decision, therefore no damage to any party should this matter be put off. Ask the board if you can have further time to respond to the submittal and for the Board to wait to make its decision till you have responded." He said he was advised by at least four people to take this route and get a really qualified counsel who knows more about this in this area.

Mr. Fazedin continued presenting his problems and said it confused him to find that the first one lapsed. They were in a desperate situation, they had a six months lease on the home they were living in and they found out they made a mistake early when the plans were not submitted on time. We called and apologized and was told that's no big problem, bring'um in. We brought them in and it was shortly after that we tried everything to comply to staff's recommendations but just found delay, after delay.

A case in point, we were supposed to show up a meeting and we weren't told till three days before the meeting that we had to have land engineering plans and architect plans for that meeting and I called and

said how will I get these plans there in time. So we go to another meeting which we weren't prepared for. Then we got our plans done by Park Engineering and our architect. Then we didn't know but we went to get Dept of Health plans at later date when instructed to. Started review of the two lots as soon as possible. Took 8-9 months at DLU. They were paying lease rent which ran up to about \$45,000.00 so they weren't dragging their feet on this project, they were trying to do whatever they could to meet the deadlines.

After the second one was approved, the first thing he did was bring in his architect and land engineer to meet with Mr. Roger Evans and that was within a week after it was approved. Asking if they needed anything to meet the conditions. They gave us three conditions that we were supposed to meet within that 60 day period. That was in March and in April they received the letter. They answered it the very next day and the three issues were the landscaping, which staff had gone over twice with the landscape architect, the height of the house which was still conforming, it was going to be under the garage pad level, which was one of the requirements, and the other to change the color of the house, which we submitted color swatches. That was almost four months ago and we haven't heard anything from anybody. I do hope that the Board would grant the request of an extension so that I can get some help on this thing as I really don't or am not qualified to do it myself.

Chairperson Paty: I appreciate your position Mr. Fazendin, the Board will take that request under advisement, subsequent to hearing some of the rest of the testimony.

Mr. Apaka: Just like to make a comment, Mr. Fazendin, your application came to an end on February 29, 1990. The Board did not make that decision. The application you signed, made it end. We're just here to listen to different comments and the Board is here just to approve it.

Mr. Fazendin said that he understands and he tried to comply with everything the Board requested and he understands that the first one was so fouled up and denied, so they made a second request. The second application, was done mostly because of some erroneous information out of the records that it was a three-story house which it's not.

Mr. Apaka said that he just wanted to remind him that's not the Board decision, it's already completed.

Chairperson then asked for testimony from the audience.

Mr. Michael Wilson, member of the Save Mount Olomana Association, thanked the Board for allowing them to testify and for taking the time to re-examine the question of the Fazendin permit.

Mr. Wilson continued that there has been a real concern of the people of the community regarding this application and whether the Land Board would be able to protect the lands in conservation. There have been studies done by a consultant and the staff and there are questions of the study by Save Mount Olomana.

He said that on March 23, 1990 many people never thought there was going to be a reconsideration of the Board's decision, not to allow a house on the ridgeline. What happened at that meeting, not only did the Board reconsider a decision that it had made over a year ago and allow the house to be built on the ridgeline but it allowed it to be enlarged. He brought up the question of the previous violation and fine imposed. He said the people of the community could not understand the Board changing their minds and allowing the reconsideration.

Should the recommendation of Mr. Ono and staff in their report be allowed, to void the permit, Mr. Fazendin's free to come in with another application and why shouldn't we believe that he will be given authority to put the house back on the ridgeline. They want some information on what happens so that they can help analyze what to do in the future.

He brought up the questions of the illegal grading on adjacent State land, a memorandum from the Department of Accounting and General Services file that shows there was permission to go on the property, reassignment of planner on the case, OEQC's comments, non-conforming use of property and what's going to happen to Mount Olomana in the future.

He said their group is appreciative that the Board is now scrutinizing these questions. His group is thanking the Board for their attention and the extra work being done. He pointed out that there are questions yet to be answered. (A copy of Michael Wilson's testimony has been placed in file with the Departmental Board Folder August 24, 1990.)

Ms. Himeno: "Mike, from your last comment, am I correct that you would not be interested in any type of mediation, not arbitration, mediation proceedings where parties can sit down and talk, if in fact the Board is inclined to follow staff's recommendation of allowing staff a period of time to figure out what to do with the violations. Would you be willing to sit down and talk it out with staff and perhaps with Mr. Fazendin. Assuming he would be willing, staff would be willing, would you folks be willing to sit down and initiate some kind of talk in a mediation process.

Mr. Wilson: We would be anxious to meet with Mr. Fazendin, members of the Board, members of the staff at any time that the Board felt it was appropriate. However, to enter into a formal mediation process, raises questions about whether the house should be there at all, and naturally that's something that we do not want to conceive.

Chairperson Paty: Let me say that the Board is well aware of the matters that you brought up relative to the process, relative to the way this particular case was handled. We also want you to note that we intend to review the conservation district boundaries in due course. We are examining the procedures, there were some shortcomings in this particular case and the Board has had a long record of dealing with a great number of issues, not all of them easy and they've in every case tried to approach them with a genuine sincerity in trying to work out something equitable and fair. It's regrettable that this case came about the way it did. It has indicated, I think, at least the staff has indicated where they feel the Board should go. If the board decides to accept the recommendations, you have the assurance that this office we will continue to work with the Mount Olomana group to try to address the problems that you've brought before us.

I'd like to say as the others come forward, I think Mr. Wilson has done a fine job of calling to our attention the procedures, shortcomings and the issue before us, is the recommendation here. We don't mind hearing further testimony but we suggest that from this point forward try to address the extent possible to the issues before the Board. There are others waiting to have their items come up on the agenda.

Councilman John Henry Felix said that he appreciated the opportunity to appear before the Board to voice his views that pertain to a very important subject. He said he hoped the board would approve and accept several key recommendations of Mr. Ono and Mr. Henry contained in their August 24, 1990 report to this Board in the review of the Fazendin permit application.

For the record he wished to state that at no time did he question the integrity of Mr. Susumu Ono. He has had the distinct pleasure of working with Mr. Ono for almost a decade and has always respected his integrity and his high principles and his dedication to the very effective public servant.

A copy of Councilman Felix's testimony has been placed in the Departmental Board folder, filed in the Chairperson's office of DLNR.

Chairperson Paty: I think the Chair should comment, we have legal obligations with respect to an individual's rights, and your comment relative to Mr. Fazendin not being permitted to process a further CDUA, I think it's something that is a matter of law. Regardless of how you feel about an individual's position on it, I think you have to recognize that they too are entitled to protection of whatever is available. Whatever feelings we have, we have to keep that very much in mind. Secondly, with respect to your comments, the Board does not subscribe to concerns relative to the visual impacts of projects. You may argue that in this particular case, but as a matter of fact in dozens and dozens of applications relative to telecommunication projects, where we have towers on hillsides, you don't see anybody showing up at any of these meetings and yet the Board will show pictures showing how this would fit against the skyline. In any number of cases we've talked about color schemes, so you're calling our attention to individual concerns, the visual impact of the project may be well taken, but I want to assure you that it's not something that the Board has ignored in any way, shape or form.

Mr. Hopkins: Mr. Chairman, Members of the Board, my name is Ben Hopkins, I'm a resident of Oahu with a deep concern for the protection of our conservation and other lands. My testimony will be short. (Mr. Hopkins then read his one-page testimony of which a copy has been placed in file in the Departmental Board Folder.)

His closing line read: The best way to express this change of direction would be to prohibit development on conservation lands--to conserve them, as the law intends, for future generations.

Ms. Thielen: My name is Cynthia Thielen, a member of the steering committee of the Save Mount Olomana Association. I want to thank you and your staff for the incredible amount of time you have put into this issue and the concern that you are giving are deeply appreciated. What I am doing today is a procedural matter. In the event Mr. Fazendin obtains an attorney and whatever this Board's decision is issued today to challenge that decision, I am resubmitting a petition for a contested case which I would like to remain with the Board pending the outcome with whatever occurs today and following.

The petition for the contested case is on behalf of the Save the Mount Olomana Association, Jack Hitchcock, Vice President of Save Mount Olomana Association, and Karen Kiefer. We would like to be in there procedurally in the event that unforeseen circumstances take us back to square one as it did with the Engelstadt project...Therefore I am submitting that. I also would like to suggest that the Environmental Assessment that I believed the Board would require were the Fazendin's to resubmit an application, that EA should under Chapter 343 our Environmental Disclosure Law mandate that a full EIS be prepared. That's where the data and the information that the community has been saying, would be put before the Board. That's where the soil instability, the drainage problems, the visual impact, all of those impacts would be fully disclosed and then the Board would be able to have that information on which to make an informed decision.

On the final point is, I've submitted a letter to the Board of Land and Natural Resources requesting the procedure to follow to place a request



on behalf of Save Mount Olomana Conservation area in a more restrictive subzone. I've been informed informally that the Board has no rules for procedure for submitting a petition or request and that it may conclude that only the landowner could submit that kind of request. That makes no sense. If it's the landowner that could request to place his or her property in a more restrictive subzone, the request would never come before the Board. So, I would like to renew my request to the Board with the way that the same kind of standing be afforded for a petition or request to place property in a more restrictive subzone and the same type of standing would be afforded to a community organization. That's extremely important. Our courts are very liberal with their standing for community organizations where their members use the surrounding area, the trails and where they have a specific interest in that property. So, I would renew my request to you, Chairman for some procedure that we could put forth on a timely matter because the Mount Olomana Association wants to put in that request to change the designation of the subzone.

Ms. Heim: Ms. Bonnie Heim, Chair of the Kailua Neighborhood Board said she was asked by the Board to speak on their behalf in this matter. She spoke on how they have always tried to preserve Mount Olomana. (A copy of her testimony has been filed in the Departmental Board Folder.)

Mr. Weil: "Chairman Paty and Board I thank you for this opportunity, my name is John Weil and I am a spokesperson for the Save Mount Olomana Association. I was hoping perhaps if Mr. Fazendin seeing all the thousands of us people living in the community, wants to build a house, would have on his own, withdrawn his application. Evidently he's not going to do that and is seeking further legal counsel and now asking for a delay." (Mr. Weil then read from his testimony, a copy of which has been placed in file in the Departmental Board Folder.)

Ms. Miller: "I'm Hope Miller speaking for the Outdoor Circle. For many years the Lanī-Kailua Outdoor Circle has spearheaded or supported community efforts to Save Mt. Olomana from desecration of its conspicuous beauty by construction of any kind." (She continued to read from her written testimony, a copy has been filed in the Departmental Board Folder.)

Ms. Kiefer: "My name is Karen Kiefer and I am a member of the Save Mount Olomana Association and a contested case applicant. And I'm just going to read directly from my testimony." She spoke of the application and of the reports of Mr. Ono and Mr. Henry and their recommendations. She spoke of illegal grading, erosion and how she was strongly against construction on Mount Olomana. (Ms. Kiefer read from her three and a-half pages testimony and a copy has been filed in the Departmental Board Folder.)

Mr. Yanoviak: "My name is Andrew Charles Yanoviak...I am here today to testify as President of the Save Mount Olomana Association and I have brought with me some graphics that I would like to present to the Board."

Mr. Yanoviak then proceeded to his graph speaking of the subzones for the Mount Olomana area and spoke of the areas on the Fazendin property referring to the different slopes of the property. He also referred to the pad on which the house was to be built, saying there were a lot of cracks in it and expressed concern.

Ms. Beyer: "My name is Dawn Beyer and a member of the Save Mount Olomana Association. I have grown up in Waimanalo surrounded by the majestic Koolau range and the Pacific. ..." Ms. Beyer expressed her concerns of the subject application and read her five-page testimony into the record. A copy has been filed in the Departmental Board Folder.

Mr. Yanoviak then submitted to Chairperson and members of the Board a copy of a memo from the DAGS file, dated May 16, 1990, addressed to the Chairperson from Paul Nuha, Land Surveyor showing the parcel of State land which had been cleared beyond the Fazendin property line.

(Testimony not read but submitted for the record were submitted by Victoria S. Creed, Ph.D., President of Maunawili Community Association and Ms. Brenda Lumeng, resident of the area. Copies have been filed in the Departmental Board Folder of August 24, 1990.)

**EXECUTIVE  
SESSION:**

Mr. Arisumi moved that the Board go into Executive Session to review with counsel questions relative to legal issues involved. Seconded by Mr. Apaka, motion carried.

10:50 am to 11:14 am

Chairperson Paty called the regular meeting back to order. He said that in the Executive Session the Board discussed the request of Mr. Fazendin relative to an extension or deferment of action today and the Board did not concur with that request as they feel no real purpose would be served by extending this matter further. The Board is now prepared to proceed with the decision-making on this issue.

**ACTION**

Ms. Himeno made a motion that the Board affirm the staff recommendation; seconded by Mr. Apaka, motion carried unanimously.

**ITEM H-8**

CDUA FOR THE INSTALLATION OF MOORINGS, ETC., ON SUBMERGED LANDS IN 'ANAHO'OMALU BAY, OFFSHORE FROM THE WAIKOLOA BEACH RESORT, COUNTY OF HAWAII; OFFSHORE TMK 6-9-07:11; APPLICANT: WAIKOLOA DEVELOPMENT COMPANY

Mr. Evans explained that the applicant was required to provide an Environmental Impact Statement (EIS). After staff reviewed the Final EIS, staff found that it was a non-acceptable document. As such, the applicant was notified of the non-acceptance of the EIS and applicant has asked that he be allowed what the OEQC rules provide for in resulting issues of a non-acceptable document, the request for an extension of 90-days on the CDUA.

**ACTION**

Unanimously approved as submitted. (Arisumi/Apaka)

**ITEM F-2**

RESUBMITTAL--STAFF RECOMMENDATION FOR SALE OF A LEASE AT PUBLIC AUCTION COVERING GOVERNMENT LAND OF PIIHONUA, SO. HILO, HAWAII, TAX MAP KEYS 2-3-31:1 (POR.) AND 2-3-32:1 (POR.)

Mr. Young pointed out in the submittal that this matter was deferred by the Board at its meeting on August 10, 1990 asking for clarification on how the \$3.5 million minimum improvement requirement was determined and how certificate of need is obtained from the Department of Health. Clarification is listed in the submittal.

Mr. Young said that there were two more items that applicant has asked staff to reconsider: 1) On page 2, under the heading "Annual Statement," because of the percentage rental be assessed the lessee, they asked that the "60 days be changed to "120 days." This is needed for ample time for them to get their accounting done to get their report submitted. 2) In the event they go ahead under the right-of-entry to obtain subdivision from the County and there are conditions attached with the subdivision which will require them to comply and they are not the successful bidder, they want to assure, whomever is the successful purchaser will be required to comply to those conditions. 3) recommending to add under Recommendation, paragraph B, "Condition 17. Successful purchaser shall comply with all applicable laws, rules ordinances of the Federal, State and County governments pertaining to permits, building requirements or other approvals necessary."

Mr. Tom Yeh, attorney for applicant, Mr. Jerry Merrill, said that they had been able to work out with staff the conditions to a mutual agreement.

Mr. Arisumi questioned Mr. Yeh if it were at the Maui meeting that they had first made their presentation.

Mr. Yeh said, "That was correct."

Mr. Arisumi addressing Mr. Young, said he just wanted to make a correction on page 3 of the submittal in the fifth paragraph, "July 27, 1990" should be "August 10, 1990."

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM F-9 DIRECT SALE OF RECLAIMED LAND TO ALFRED AND VALERIE MEDFORD AT KANEOHE BAY, OAHU, TAX MAP KEY 4-5-58:45

Presentation of Item F-9 with explanation to the Board was done by Mr. Young.

Mr. Ken Splicer, neighbor of the Medfords said he was here because the Medfords were presently on the mainland and didn't know of the board meeting.

Mr. Splicer addressed the Board saying that he felt the way the division is set up now is an all-lose situation. The State is planning to convey property to the City and County along with the drainage canal. The way the State is proposing to break it up, they're taking part of the area in front of his house. He said that Medford isn't really asking to have his property, but he would like the property that the State is trying to convey to the City and County. If it's divided the way it is right now, he loses a boat ramp, because then it will be divided in half. It becomes unusable for himself or Medford. The City loses because the State is conveying land to them which they have to maintain and the liability that goes along with the land. This beach, this whole area is very susceptible to rubbish washing up, a tremendous rubbish problem that the City and County would then have to maintain. The State loses because they would have to convey the land instead of selling it to Medford. Medford and he would like to propose, instead of conveying the land to the City and County, that area be sold to Medford and he in turn will issue to the City and County an easement for canal clean-up. This takes care of the City and County problem, it takes the liability off the City. The State gains because they will get money from selling to the Medfords.

Mr. Young: There's going to be a problem here. The area is not abutting Mr. Medfords property, not adjoining it. The City and County wants to own it in fee rather than to deal with someone in getting an easement to get in there. They want the area for a work area to get to the drainage and maintain it. It's a low-lying area and there are problems with flooding.

DEFERMENT Ms. Himeno moved for a deferment of the matter so that staff can meet with the Medfords and the County. Also so that they can confer with the Attorney General's office for legal advice in this matter. Seconded by Mr. Arisumi, motion carried.

Chairperson suggested that Mr. Evans take up all three items together, Items H-3, (H-2320), H-4, (H-2351), and H-5, (H-2341).

Mr. Evans said the three items then would be 1) A CDUA for an After-the-Fact Commercial Moorings by the applicant, Hana Like, Inc., from Captain Cook on State land in the Protective Subzone, CDUA H-2320;

2) A CDUA by Hawaiian Cruises, for An After-the-Fact Commercial Mooring in the Protective Subzone, CDUA H-2351; and 3) A CDUA for an After-the-Fact Commercial Mooring by William Blok in the Protective Subzone, CDUA H-2341.

ITEM H-3

RESUBMITTAL-CDUA FOR FIVE AFTER-THE-FACT COMMERCIAL MOORINGS, PLUS TRANSITING BEACH, AS PART OF COMMERCIAL FISHING OPERATION, KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: HANA LIKE, INC. (MR. CHARLES LESLIE)

Mr. Evans said that this application was deferred at the last meeting of the Board to provide the opportunity for everyone involved to review the rather lengthy submittal.

Results of staff's review result in a recommendation that is the same as concluded earlier. There is a question of violations in one part and the question of the Conservation District land use. On the question of violations, they find that it is State owned submerged lands, that the land is in violation of Chapter 171, this is State lands. That the applicant be fined and directed to pay \$2500.00, \$500.00 for each of the five moorings, making up the one mooring system. That failure to comply within 30 days, the matter will be turned over to the State's Attorney General for appropriate action.

Relative to the conservation district land, staff feels it is a violation again of the conservation district, that the applicant is fined and be directed to pay \$2500.00, \$500.00 for each of the five moorings making up the one system and again failure to comply within 30 days, it be turned over to the Attorney General's office for appropriate action. So there is a total recommended fine at \$5000.00.

There is also the question of removal. However, relative to the application itself, if compliance with the Boards' action on the violation occurs, then we would recommend approval of this proposed boat mooring on these submerged lands in Kealakekua Bay based upon a number of conditions within the submittal.

There is one caveat to it, this would be an approval for use of the land only. There would be a subsequent follow-up land disposition aspect. Based upon that follow-up of the disposition aspect, the Board may desire to delete condition no. 9 which is listed on page 15. We feel there may be questions relative to this condition being a part of the land use proposal.

Ms. Himeno: Is this the one that is in subzone B?

Mr. Evans: "That's correct, Commissioner, this is in subzone B and to bring us up to date, the bay is divided into two sections, A and B. The primary purpose of the division was that section A had a bottom that consisted of primarily coral and section B's bottom consisted primarily of sand, that's not to say there aren't some sandy parts in A and some coral in B. The primary substrate is coral in A and sand in B. This one is located in B.

Ms. Himeno: Why are you recommending that they be fined, the moorings be removed and then you authorize the moorings be put back in place. That seems like a wasted effort.

Mr. Evans: Our recommendation to the Board is based on two parts. One the violation, let's clean up the violation. As a part of that cleaning up of that violation, we recommend that the moorings be removed. There's a caveat, if they comply with everything else, then we're suggesting that the moorings could stay.

Mr. Apaka: Mr. Evans, I'm still in favor of removing all the existing moorings, however, about the long use of certain people within the area, I believe the Division of Aquatic Resources (DAR) should be involved. They have done work at Molokini too, addressed the problem of anchoring by providing a design for pins that are placed in the ocean floor. With the use of those pins imbedded in the coral or rock the people would be able to moor their boats there. Under that type of design I believe it should be used here not what the people have or Hana Like has with the five pins or whatever. The aquatic designs should be used for a pin for this particular purpose. I think there should be some kind of standard. For the reason that these ocean floors are ceded lands. I think they should have revenues derived from it. By using pins and allowing people to use it on a fee basis, I think that is something that should be looked into. But I still would want the existing mooring out.

Mr. Evans said that in past precedence, there was a problem at Molokini because the people were going to anchor and what was done there, was that the DAR got involved in an oversight. I'm not sure if they themselves put the pins in but they certainly were involved in overseeing them being put in.

Mr. Apaka again stated that the DAR should be involved with any placing of pins and they should be the ones to advise how it should be done.

Mr. Gordon Leslie said he was with Pacific Consultant, the preparer of the application for the applicant. He addressed Mr. Apaka's questions or suggestions regarding installing pins opposed from the traditional mooring or anchoring system. The DAR has only accepted and developed this method of mooring probably within the last ten years. This method has not been proven beyond the reasonable doubt that it will be able to sustain rough seas and open waters such as Kealakekua Bay. He said that such method has been used in Honokahau Harbor and during regular hurricane seasons these pins have pulled out of the ocean bottom floor. He stated that it is impractical to install pins in the sandy bottoms of subzone B. The moorings that are there have been installed by his family as far back as 1911.

He said that pins are used to protect the ecosystems, the coral formations on the ocean bottom and is not used for sandy bottoms. The second question or suggestion of the location as made by Mr. Apaka, should be left up to the DAR. Being a life-long residence of Kealakekua Bay, the son of probably the oldest commercial fisherman in the State of Hawaii, they have carefully since 1911 selected the most favorable spot to moor their vessels in and have not had any loss of any vessels until this present location.

Mr. Arisumi: To answer your question, they mentioned that we should leave the method of mooring to the DAR, in other words you're saying that the DAR feels that the pins can be put into subzone B. So are you saying that anything that the DAR recommends to the Board, you will go along with it?

Mr. Leslie said that he did not make that statement. He felt that the DAR should work with the kamaainas of the area or the applicants. He said that he was not convinced that pins could be secured in the sandy bottom.

Mr. Arisumi asked if the DAR makes a study, will they agree with what they recommend.

Mr. Leslie said that he didn't want to be on record to say that they will accept the recommendation of the DAR as they are concerned with the safety of their boats. If the DAR finds a way that the pin system will not endanger the vessels while on the mooring, yes, they will comply.

Ms. Himeno had questions relating to the fines. Addressing Mr. Leslie, she said there was some indication in the record that says you were in that area way back before the subzones and since 1911 and that you were told by some people from the State, "Don't worry, you'll be grandfathered in."

Mr. Leslie said that was correct. He said when they decided to make Kealakekua Bay into Conservation area in the years 1968-1971, there were many public hearings and public meetings. Questions were brought up at the that time by the community and by his family if this took place, what would happen to their industry. At that time Lt. Governor Tom Gill and his dad established subzones A and B at one of those meetings. The community and the family were assured that because they were there since 1911 the conservation district would not affect their operation. Up to this point they have not received any formal or informal reprimanding from the State agencies that they were not supposed to be there.

Ms. Himeno asked Mr. Evans about staff's recommendation of the fines, if it were based on the fact that these boats and moorings were in the subzone B area where they were not supposed to be or were they warned like 50 times to leave the area and they refused.

Mr. Evans replied, "No."

Ms. Himeno addressing the Chair, wished to express her thoughts on the fine issue. In light of the circumstances, it would be her personal opinion that it would be unfair to fine them and for the amount that staff recommended.

Mr. Leslie said that he had tried to get an opinion from the Office of Hawaiian Affairs but they haven't responded.

Mr. Apaka: "Mr. Leslie, you are aware that the Board already made a decision that all the moorings should be out. On one Board meeting it was decided that all moorings be removed, however, those that wish to moor, come up with a Conservation District Use Application (CDUA) and this is the process, you are coming for a mooring with this CDUA. If this is not passed, that mooring should be out, it's already passed by the Board."

Mr. Leslie said, "I stand corrected, I do remember that..that was a decision. We had eight months to file a CDUA, at the time the decision was made our CDUA was already submitted.

Mr. Apaka again stated that for any mooring he would like to see the DAR get involved in using a pin for mooring.

Mr. Leslie said that he would have no objections to that at all.

**ACTION**

Mr. Arisumi requested to make a motion at this time:

1. Review the whole situation with Division of Aquatic Resources whether we can install pins in subzone B in Kealakekua Bay. Whatever the outcome of the decision from DAR, that the applicant must abide by.
2. The fine recommended sounds too drastic in a situation where this mooring was in place since 1911. Reduce the total recommended fine of \$5000 including the mooring and CDUA, to a total of \$2500.
3. Approve recommendation of staff to have the applicant continue mooring.

Motion was seconded by Mr. Apaka.

DISCUSSION Ms. Himeno said she understands Mr. Arisumi's concern about imposing a fine. She said that she felt that even \$2500 is too much in light of the circumstances. There didn't appear to be any intent to violate the subzone and in fact, the record indicates that these people were informed otherwise, that they could stay there. If the Board feels that some kind of fine is appropriate to be consistent, that the fine be reduced to \$500.00.

Mr. Arisumi said that he honestly feels that he can go with \$500.00 per violation, \$500.00 for the mooring and \$500.00 for the CDUA.

Ms. Himeno said that she thought that was fair and would accept that.

Mr. Apaka asked to hear Mr. Evans' remarks.

Mr. Evans said that regarding the Division of Aquatic Resources requirement, staff could add that as condition no. 15. He also asked if the Board had given any consideration to condition no. 9.

Chairman Paty asked if the applicant had any problems with these conditions.

Mr. Leslie said they would have no problem to abide by these conditions.

QUESTION Chair called for the question and motion carried unanimously.

ITEM H-4 RESUBMITTAL-CDUA FOR AN AFTER-THE-FACT COMMERCIAL MOORING; KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: MR. WILLIAM B. BLOK, III

Mr. Evans said that item H-4 is an after-the-fact commercial mooring CDUA by Mr. William Block, III, of Kealakekua Bay. This is an application in subzone B and staff's recommendation relative to the violation is a fine of a \$1,000.00 for each of the two moorings. Relative to Conservation lands, a fine of a \$1,000.00 and that would be a total of \$2,000.00 in fines. Staff is asking that the applicant remove the moorings unless it's waived by the Board. Relative to the application itself, staff's recommendation is somewhat different. The recommendation on the application is that the Board deny it. We have concerns that were expressed by the Division of State Parks and Land Management Division, comments by the U. S. Army and the State Department of Transportation (DOT) as well as the Division of Aquatic Resources. The applicant shall cease within 30 days all use, to remove the ground tackle and the ownership of the mooring devices shall revert back to the State unless waived by the Board.

Ms. Himeno asked for an explanation of why staff was recommending this one out and the other one in, as both were in the B subzone.

Mr. Evans explained that one of the major concerns was that there was a representation made that the individual was a commercial fisherman. When staff checked with the Division of Aquatic Resources (DAR) people, they had records of the catches of the commercial fishermen, they didn't have any record of this applicant being a commercial fisherman in the past year. The Division of Land Management objected to a proposed use within the sanctuary; the DAR suggested that July '89 to June '90, he was not registered as a commercial fisherman and the Department of the U. S. Army felt they would need a special permit from them.

The State DOT also indicated differently in this application. They say that this application is for a commercial fishing boat that fishes well off-shore and delivers its catch to Kona or Hilo.. They feel it would be more appropriate to moor the vessel in Kailua Bay and they indicate that presently mooring space is available in Kailua Bay and can be assigned to this applicant. So here we have a little different set of comments that came back for this applicant than the other one.

Ms. Himeno: So basically it's based on the fact that he represented that he was a commercial fisherman, when in fact he apparently is not. Is that the distinction?

Mr. Evans said that it was one of the reasons for staff's recommendation.

Mr. Arisumi asked, "In order to moor in subzone B, do you have to be a fisherman?"

Mr. Evans replied, "No."

Mr. Arisumi's next question, "So you're taking this case because of the validity of the fishing license, is that what you're talking about."

Mr. Evans replied, "The DOT's comments, the questions raised relative to the records kept by the DAR on commercial catches, those were variables in this case that were not present in the previous cases. This may, just as a note to extrapolate a little bit, this may be indicative to the Board of why the staff relative to at least our past practice has taken applications on a case by case basis.

Mr. William Blok said he would like to address the question of his fishing license right away since at the past meeting he made a statement and he would to read it. "To answer the question about my fishing license, in July I went to dry dock in '89 and had my engine rebuilt. That took two and a half months. The boat was sold in October and I didn't fish after that in the fiscal year of that year. The year before I landed a \$140,000 worth of fish. It's all documented as far as, like, in my fish report, my catch report are all registered with the State. I don't think Mr. Evans went back far enough to see that I was a commercial fisherman. Also going back farther of the years before that I fished commercially in this State. I don't know what else I can say, I've answered that question at the last meeting. As far as being a fisherman, I've fished there on and off for fifteen years, not straight all the time. I've used it for fifteen years, the bay, the mooring there just as similar to what other people that have dropped a block of cement or some heavy object or anchor in the water and have used it. I'm totally in favor of doing, having that kind of system that's designed by the State or whoever, the DAR to have something aside from a pin. A pin is very applicable in coral areas near the monument in section A where it could be used but a pin in the deep, where the sand is would never work in my opinion."

"After using the mooring for all those years, no one ever told me to get out, no one ever told me there was a fine coming down, the State, after the meeting start going after the summer of '89 encouraged me to apply for the mooring. After I had my application, the staff, Mr. Evans' staff would let me to believe there was hope that I would be getting a mooring."

"I've read all the environmental issues that have been brought up, I've answered. They were, 'it's only a place to moor your boat, it's not a place to fuel, it's not a place where you wash your boat down and also I felt that I was being an economic benefit to the community by selling my fish locally and employing local fishermen. I think I've shown my willingness to cooperate with the Board in good faith and expense. I've made a special trip from the West Coast to be here at this meeting. I was there looking for a fishing boat when I got a frantic call from my wife that this meeting was happening in Maui on the 3rd or 4th of the month and I asked for a deferment. I was waiting for a boat to come back from fishing to take a look at it and I was told that I'd better be at this meeting or I was gonna have some problems."



"As far as these fines, it's hard for me to understand the fines. The State encouraged me to apply and now they say by applying I'm admitting guilt by having a mooring in the bay. All the other moorings in the bay are not being fined. I think that's kinda unfair. Fines were never mentioned in my contract, all my contacts with the State I've never heard anything about fines and all of a sudden I'm being levied a fine that I can ill afford."

"And as far as additional facts, the Department of Health, that question was, waste disposal and fuel handling in the bay and that's been addressed, you know. There's nobody that moors a boat in the bay, a commercial fisherman that would go ahead and transfer fuel in the bay or like take waste from their boat and dump over board, that just isn't done. We care too much for the area and we would never do that. The bay is about the only safe place on the coast to keep a boat."

"The recommendation by the Department of Transportation moving me to Kailua Bay is totally unacceptable. There's boats that go on that reef every winter and there's very few pins in that bay. They have blocks of cement down there to hold it. Some have pins and they've been pulling out. Pins are fine in coral, again it's an unsafe water pattern for a boat that is 50 or 55 feet long and there's no way you could unload fish there which normally I do in Honolulu. There's times when I have small catches and I have to go to the Kailua pier to unload and it's some difficulty. I want to make sure that you understand that a fishing license should not be an issue because I am on record, I could produce a copy of my fishing license and a copy of my fish reports. So I don't think that should be a consideration whether I was a commercial fisherman or not. You can ask the people in town that I was out there giving it a good shot. Also the DLNR has determined that the mooring, my moorings have not had an adverse impact or no harm on the environment or whatever I have down there. An anchor or chain is buried in the sand and is a safe mooring for my small skiff and the bigger boat. I have two giant anchors that have been buried in the sand and they also are something to replace the chain on but they have not disrupted the bottom. They've been buried deep in sand."

Mr. Apaka asked, "When was the sale of your boat?"

Mr. Blok, "It was in October, we entered into a 90-day contract, the boat didn't fish during the 90-day contract. It was paid off in full after the 1st of the year on February 1st."

"I no longer had control of it as I had a minority interest in that boat and I got some money out of it and the general partner he got most of the money so it wasn't my boat after that and I couldn't use it. Before that I have records that will document that I was in Honolulu Harbor, Kewalo Basin and my main engine went out. I had that rebuilt in the month of July and in August I had to rebuild one of my generators. That was done so I made one trip to Kona and one back to Honolulu and I didn't fish so there's no records of my fishing. So I didn't want to go spend a \$100 for a license for group license for a fishermen and I wasn't going to use it. And that was my reason for not having an active license that year."

Mr. Apaka asked, "That mooring you had in Kealekekua Bay, you weren't using that constantly, it was just a mooring that you could use when you wanted."

Mr. Blok answered, "Yes, exactly, it was a mooring that I put down because I live right there by the bay, and I have all my shrimp gear, my flagline gear, everything I have is in the shop of my house, but I do, I just roll it out to the boat, take old gear off and new gear on and when I want to be home for 3-4 or 5 days I could leave the boat and watch it and be aware of it. So we've been very cautious in the water there."

Ms. Himeno requested an Executive Session with counsel as she was a little confused about some legal issues dealing this item. Seconded by Mr. Arisumi, motion carried.

EXECUTIVE SESSION 12:20pm-12:40pm

Chair called the meeting back to order and continued review of item H-4 calling for further questions of Mr. Blok.

Chairperson Paty: Mr. Blok I gather because of your boat situation that last year you did not have a commercial license and you don't have one this year?

Mr. Blok: No, the license expired June 30, 1989. Since I was in repairs I haven't renewed my license, I had no boat to fish on, that's why I was looking for a boat.

Mr. Apaka : Mr. Chairman I would like to make a motion, for this particular application and the interview with the applicant, there is no direct information indicating that there is a very real need for this mooring. This person has used moorings off and on. There was no permission granted originally for the mooring and previously the Board did indicate that and approve that all moorings be removed from Kealekekua Bay. For those that were interested to continue mooring to apply for a CDUA. Mr. Blok has applied for a CDUA, however, he does not have a boat, almost a year now.

ACTION Therefore, Mr. Chairman, I move that we deny the request of the CDUA. In the area of the violation, the statute requires a minimum fine of \$500.00, therefore the violation has been reduced to \$500.00. Motion was seconded by Mr. Arisumi and carried unanimously.

ITEM H-5 RESUBMITTAL-CDUA FOR AN AFTER-THE-FACT COMMERCIAL MOORING; KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: HAWAIIAN CRUISES, LTD. (MR. JOHN R. PYLES)

Mr. Evans said that this application was somewhat similar to the previous application but indicated that it could be looked upon on a case by case basis.

Mr. Evans said that this application is located in a different area, in subzone A. Subzone A has a bottom that is largely coral. Subzone B would be primarily sand.

Staff's recommendation is again in two parts. 1) Violation of State owned land a violation of \$1,000 and relative to Conservation lands, a fine of \$1,000. This is \$500 for each of the two moorings making up the one mooring system; 2) relative to the CDUA, recommending denial, that the applicant cease all use within 30 days and remove the moorings. The rationale for denial is that it's located in subzone A.

Mr. Arisumi: This mooring goes back to 1953, am I right.

Mr. Evans: That's my understanding.

Mr. Arisumi: Mr. Evans, this area was made a Marine Life Conservation District (MLCD) in 1971?

Mr. Evans: Around the time of '69, '70 or '71.

Mr. Arisumi: When this area was designated a sanctuary, at any time were these people told that they could not moor there any longer? I heard the comment earlier that nobody was told, that's why I'm asking.

Mr. Evans: The comment that came out of an earlier application was quite the opposite actually. The people that were involved back in that point in the past who were considering making this a MLCD seemed to indicate at least the one case that the fact they were mooring there would not affect their future.

Mr. Arisumi: I read the submittal and it says that they usually use the area about an hour or half a day and they don't use it at night.

Mr. Evans: That's correct, my understanding is that it is a day-use mooring. We understand that the way it's used, is that people will come, purchase a ticket, take them down to this mooring and then they go off the boat and snorkel and back onto the boat and apparently have some kind of lunch and return to Kona.

Mr. Arisumi: Mr. Chairman, my basic concern with this submittal are the 30 employees this particular company employs.

Chairperson Paty commented that he noticed that the Division of Aquatic Resources had no problems with the submittal.

Mr. Evans said that their comments indicated that they recognized that it existed for a number of years, they know of no significant adverse impacts, the steel chain that is used for anchoring to the bow is not expected to cause significant adverse impact.

Chairperson Paty questioned the responses from the Division of State Parks and the Department of Transportation (DOT).

Mr. Evans said that the Division of State Parks had no objections and the DOT indicated that from their perspective they recognized that its been a continual use and again they have no objections provided that it would be limited to lighted, day-time hours.

Mr. Arisumi had a question of Aquatic Resources: Is there a possibility of putting a pin there instead of this mooring?

Mr. Sakuda responded saying, that the area where the buoy is presently located does have large boulders. This is unlike the flat area that went on previously in Subzone B. There is a possibility that a pin can be inserted in one of those large boulders along the shoreline and that the mooring method would need to be looked at.

Ms. Himeno: Mr. Evans are there any other boats in this area that are doing the same type of activity?

Mr. Evans: We're aware of one other application that has currently come into our office for processing. It is a similar commercial operation where if you will would be competitive. We don't know the difference in the size of the boats or the number of employees of that as well.

Ms. Himeno: How long has this other entity been moored in the bay?

Mr. Evans: I don't know, the CDUA processing has just begun. We would know that when we hold our Public Hearing on it.

Ms. Himeno: So we don't know if they were there before 1954?

Mr. Evans: No, at this point I don't know.

Mr. Sakuda: Maybe I can shed some light on that, the present mooring has been in place since 1953, the other one has been in place since 1960.

Mr. Apaka: Mr. Evans, I have a problem with your denial. For the simple reason that we have a conservation area that's been in effect for about 20 years. I believe the conservation area is primarily to have something kept for viewing or keeping. It develops into something curious for the people, they want to see what it is and Kealakekua Bay is in the same environment, 20 years of no fishing, they have all kinds of species there and people are curious to look at it. I suspect if that's the case, these Hawaiian Cruise people are taking people to view what's in the Conservation area, if it's so, then there's a different light in this thing in allowing the mooring.

Mr. Evans: Our past practice has been what we perceive the statute given us and it's been tested in the H-3 case. If I'm not mistaken that the conservation district is a multi-use concept, not the conservation district historically, preservation per se but it's a multi-use area, so that it would fit in a recreation or recreational uses.

Mr. Apaka: Therefore allowing some kind of mooring for a cruise ship is in a proper light.

Mr. Evans: If it were in an appropriate location, under appropriate circumstances, done with a valid CDUA with conditions put on the application, yes.

Mr. Loui: I'm Steven Loui of Hawaiian Cruises and Susan Matsuura, Vice President, General Manager. The first thing that I would like to try and clear up is the, permit. In our permit, we submitted it as a permitted use rather than a conditional use and we simply did that because there were no other box to check off, non-conforming use. Going through the regulations they were confused so they retained counsel. Their opinion to us was that under the definitions, when the law was enacted setting up these conservation district use, our proper category is non-conforming use which means that we were operating lawfully prior to the adaptation of the conservation rules.

He felt that they should have applied under the non-conforming use.

He then pointed out on DLNR's map showing subzone A and subzone B and the difficulty of reaching those areas by foot or swimming.

The type of mooring was set by one of their employees who was employed since 1967, he set the moorings in the sand bottom, a stern anchor and a bow anchor. He set them there because he didn't want to damage the coral. The other mooring that their commercial boat is on, was set in 1963. They discontinued the use of that and the other competitive boat has been using it since the 1970's. Their employee Jack Keawe set all three. While it's true you can put a pin in this area that has a rock bottom, they believe the sand anchors they have work pretty good. He said that they maintain the moorings for the American Cruise ships, which are 30,000 ton ships that call on Kona and have some pretty good experience with moorings.

Susan Matsuura said that they had come before the Board several times and didn't want to go over the same things but wanted to stress that their business has been in place since 1953 for 37 years. They give jobs to an average of 31 employees although it is seasonal and they have several employees that have been there for years and years. The company is a local business and several generations in the family. They have not been cited for any environmental violations and the moorings were placed environmentally so it wouldn't damage the coral. The Health Department previously had one concern for sanitation facilities. They have Coast Guard certified sanitation holding tanks which are never pumped into the bay. It's only a day-time operation. They do charitable activities and also take the school children out into the bay for a nominal fee.

Mr. Apaka asked what do they do exactly.

Ms. Matsuura explained the activities and how the people board their boats and what takes place in the hour and fifteen minutes. They have under-water viewing because it is a glass bottom boat.

Ms. Himeno: Just for clarification again, you folks were never notified that you weren't supposed to be there and that you'd be fined?

Ms. Matsuura: Like the previous applicant, we were told that there would be no problem, we were continuing to operate there, we would be grandfathered more or less because we were in operation. Receiving staff's report was the first time we had any notification that some kind of fine.....

Mr. Loui said they have a DOT permit that is renewed annually as they leave from Kailua Pier. They report their General Excise revenues monthly.

**ACTION**

Mr. Arisumi moved to approve application HA-2351 with the following amendments:

1. See whether or not Hawaiian Cruise can work with Division of Aquatic Resources or install a pin to make it more workable;
2. Reduce the fine from \$2,000.00 to \$1,000.00; and
3. Instruct the department not to accept any more CDUA's in Subzone A. (So as not to flood the bay with four boats.)

Chairperson questioned whether the provisions for accepting CDUAs is proper within the context of this CDUA. I don't think we can include that in the motion.

Mr. Arisumi inquired of Deputy A. G. Nishioka if this were legal.

Deputy A. G. Nishioka advised that she would suggest that be an issue to refer to the Attorney General's office to look into the legality of prohibiting anymore applications for that certain area. She was not sure if it were legal or illegal at this point but did see a potential problem of it being part of the motion.

Mr. Arisumi said, "I will withdraw that portion of the motion."

Mr. Apaka seconded the motion as amended and corrected.

Mr. Evans asked for clarification of the motion. With respect to the violation, the fines reduced to \$500 each for a total of \$1,000; and if the Board intends to approve it, now relative to conditions. Would it be appropriate to add the same conditions that you approved earlier in the earlier one (HA-2320), and it would cover the Division of Aquatic Resources requirement.

The applicant was given a copy of the conditions to review.

Chairperson asked if condition no. 10 was applicable to this application.

Mr. Evans responded that condition no. 10 would be deleted.

Mr. Loui referred to condition no. 9, saying that their Adventure Seven vessel is about 13 years old and they would be looking at replacing that boat.

Chairperson inquired of counsel regarding the wording in condition 9, whether it would be proper for the Board to be concerned if they sold shares or stocks in the company as this is not an assignment of lease. If they got a larger boat, the Board might want to have a say of it going into Kua Bay.

Counsel Nishioka said, "In response, I guess it's not something, you know you might have concerns about the size of the vessel, but who they sell it to, it would be strictly up to you. You could have them come back to the Board if not."

Applicant said they could live with condition no. 9.

Mr. Evans said that condition 11 would be modified to read, "The applicant shall remove and properly dispose of all mooring devices if it terminates the commercial tourism use of the area." Staff feels it would be reasonable that it would be by attrition, there would be no one there.

Counsel Nishioka said, "Mr. Chairman, are you addressing condition no. 11, about revising it to commercial tourism use of the area, something in that line. So if they replace the boat, as long as they continue using it for commercial tourism, they would be okay."

Mr. Loui said that the language that DOT uses is "Commercial recreation."

**ACTION** There being no further discussion, Chairperson called for the question, and motion carried.

**CONTESTED**

**CASE REQUEST:** Mr. William Blok, III, addressed the chair at this time to request a Contested Case.

Chairperson said that technically he should have made the request before it was heard or before the decision was made. He referred the question to counsel.

Counsel Nishioka responded that she thought it was allowed at a decisional meeting and that we could entertain a request.

Chairperson Paty said that it would be accepted under advisement. If he would submit it in writing, it would be referred to the Attorney General's office for a ruling.

**ITEM H-1** REQUEST FOR A TIME EXTENSION ON CDUA FOR A SINGLE FAMILY RESIDENCE AT HAWEA POINT, KAPALUA, MAUI, TMK 4-2-01:03; APPLICANT: T. P. LIEM

Mr. Evans said that the applicant was present at the beginning of the meeting and had to leave for another meeting. He did not expect the meeting to be so lengthy, but says that he does support the staff's recommendation.

Mr. Evans continued his presentation, reminding the Board that this application was approved in March subject to about 25 conditions of construction of a house within the General Subzone. In response to an oral request for a Contested Case Hearing, the board added a condition no. 24, that the review be conducted by the Attorney General's office for a decision on a Contested Case Hearing. In June of this year, a Contested Case Hearing was approved and a time extension was approved so that the applicant could prepare for the Contested Case. The people that asked for a Contested Case were able to sit down with the applicant and working together, found through the mediation process the ability to reach an agreement. Staff carefully monitored these mediations and feel that a 90-day extension is clearly warranted.

**ACTION** Unanimously approved as submitted. (Arisumi/Himeno)

CONSENT TO ASSIGNMENT OF A PORTION OF LEASE NO. DOT-A-75-6, KAHULUI AIRPORT, MAUI (HEMMETER AVIATION, A DIVISION OF HEMMETER INVESTMENT COMPANY--HEMMETER AVIATION, INC.)

ITEM J-1

DEFERRAL Ms. Himeno addressing the chair, declared a client/applicant conflict and requested to be excused. There being no quorum, the item was deferred.

RESUBMITTAL--PROPOSED SETTLEMENT OF LAND COURT APPLICATION NO. 439 (PIONEER MILL COMPANY) AT PUOU, KUHOLILEA, KUHUA, HAHAKEA AND PUUKI, LAHAINA, MAUI, TAX MAP KEYS 4-5-21:2 & 6 AND 4-5-22:2 & 4

ITEM F-4

Mr. Young presented the resubmittal of a proposed settlement of Land Court Application No. 439 covering some 1,906 acres at Lahaina. Going over the submittal he explained the findings of the Land Court with the recommendation that the Board approve the proposed settlement with Pioneer Mill Company, Limited, (PMCo).

He informed the Board that Mr. Michael Burke of Pioneer Mill Company was present and also Mr. Neal Wu from the Housing Finance and Development Corporation (HFDC). HFDC's involvement is that there are three tank sites that they need for the project in Lahaina, part of the 68 acres which they are developing and this is in the first phase. The matter of the well sites were originally in the submittal at the Kauai meeting and it was withdrawn. After talking to counsel, HFDC would like to have, should the Board approve of this proposed settlement, to have the condition of the approval subject to the A. G.'s review, and Forest review and approval, including the Board's approval of the acquisition of the well sites by HFDC. Therefore the staff is recommending that the Board adopt the settlement as prescribed and described in the submittal and be subject to the review and approval of the Attorney General's office, including the proposal of the acquisition of the well sites by HFDC.

Mr. Arisumi asked if Mr. Johnson Wong, Senior Deputy Attorney was aware of this request as he raised a question at the meeting on Kauai.

Mr. Young said Mr. Wong was aware of today's proceedings.

Chairperson Paty questioned the appraisal that read \$4,000. He asked if that was done in 1919.

Mr. Young clarified that by saying it was not an actual valuation. He said because of the inability to determine a good estimate, they took an aerial view of the usable area and they recently looked at an appraisal of the conservation land at the Ukumehame area. They have a Memo from the A.G.'s office saying they feel that it is a fair settlement and that the valuation is not the question, it's the titleship at question. Here staff has a chance to settle the titleship that has been pending since 1919 and they feel comfortable in recommending to the Board that it be accepted.

ACTION

Mr. Arisumi moved for approval as amended; seconded by Mr. Apaka, motion carried. Amendment to read:

Board approval to proposed settlement subject to review and approval of the Office of the Attorney General including proposed acquisition of well sites by Housing Finance and Development Corporation (HFDC).

RESUBMITTAL--REQUEST FOR A ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI

ITEM E-3

Mr. Nagata informed the Board that action was deferred at the Board's June 22, 1990 meeting pending advice from the Attorney General's office as to the appropriateness of a contested case hearing request tendered by Waiola, Inc. The request has since been withdrawn and the matter is being resubmitted for the Board's action.

Mr. Apaka wanted to clarify what exactly is the issue that the Board needs to act upon. Is it about the conservation district, the public's concern, using the beaches? He said he did not want to discuss things that the Board did not have jurisdiction over.

Mr. Nagata said that the beach itself, the lands are under the jurisdiction of the Department because that is State land. The area from the beach is also of concern to the Department because that, as well as the beach land as well as the submerged land all fall within the State's Conservation District which the Board has purview over. It is a combination of concerns that the Board has interest in.

Mr. Apaka: There is concern that the boating people have on this agenda need CDUAs. Three of them I believe have CDUAs for certain number of boats. Now when the CDUAs were issued, was it based on people crossing the beach?

Mr. Nagata: I would say it was not necessarily issued on people crossing the beach per se but, I think the Board in taking whatever action made the determination realizing how many the boats could carry and the amount of trips the boats might take. So in numbers of people, I believe there was a consideration for that. We're talking about several different CDUA type actions. 1) If we're talking about what's occurring at Tunnels and also reaches in to the Na Pali Coast, Mr. Greff's operation, the CDUA action had to do with two boats. The Board acted on allowing two boats to conduct the activity there. Subsequent there was some communication from the Department with respect to transiting the beach at Tunnels at the time, the Department did not seek to extend any regulatory authority on that issue. As far as Lady Ann Tours, I believe they have a separate CDUA permit. I'm not sure if Mr. Hegarty has a separate CDUA permit, however, we believe his activity along the Na Pali Coast is covered by the State Parks Conservation District for the park.

Mr. Apaka: In the previous submittal on this agenda, I think there was a mention if Mr. Greff wanted to continue with the amount of boats that he has, he needs to apply for a CDUA. Am I correct.

Mr. Nagata: That is correct.

Mr. Apaka: What is that CDUA for as I want to be sure what the issue is.

Mr. Nagata: I'm not sure to what extent that is would impact the State, but we're looking at this particular area in this case and it has been the position of the Department and the Board has not taken any formal action on it but the position of the Department, the level of activity that is occurring at the Tunnels area would require a CDUA for the boats. For operations that are being conducted by the boats that are in excess of what was originally covered by the CDUA that allowed him to operate two boats there.

Mr. Apaka: So we're still talking about people. What people need to cross to get to the boat?

Mr. Nagata: I would say we're talking about both people and the boats that would transport people once they get on the boat.

Mr. Apaka: The boat is under the DOT jurisdiction. For us, it's what transpires over conservation area. If we're talking about people and conservation area, we're not only talking about boating people, we're talking about snorkeling people, talking about tourist people, we're talking about everybody. Are we talking about commercial venture? So, whatever decision is rendered, will be impacting the State. Cause I don't see any requirement for CDUA for people in Hanalei. But we're asking this guy here for a CDUA.



Mr. Nagata: I guess the reason why this came about was, the number of boats expanded from two to eight. On a previous understanding from the Department that he did not need a CDUA for additional boats and those 8 boats supposedly do not take people, drop off people along the Na Pali Coast. These boats may operate out of there but along the Na Pali coast they are essentially operating offshore. The Department has the prerogative or discretion to require a CDUA if it so chooses.

That area has become a major beach use type of location for tourists and residents alike on Kauai and very little or no real infrastructure for this kind activity. What happens there is you have the main road going all the way out to Keel Beach passing the area and along the main road you have houses in the conservation district and in this one are you have a public right-of-way to the beach and what people are doing are they're parking along the right-of-way and where there's a little room along the right-of-way into the adjoining property, these people are parking there. Not necessary Mr. Greff's clientele. Some of them could be residents or tourists who have a rent-a-car, and their wanting to use the beach there. As you mentioned there might be some other type commercial activities there like snorkeling operations. State Parks doesn't really have a handle on that because our involvement has been with the tie that Mr. Greff has had at the Na Pali Coast and as was mentioned earlier, Tunnels Beach isn't even a State Park area. To facilitate matters for the department and the applicant, everything was put into a single permit rather than make him come back for a separate permit from the Land Management Division. These kinds of things are occurring statewide if that's what you were alluding to and it could be described as a problem.

Mr. Apaka: I understand you mentioned that there was no need for a CDUA, could you elaborate.

Mr. Nagata: To the best of my knowledge, in the '83-'85 timeframe the Department asked the Attorney General's office whether or not a CDUA would be required and the question had to do with transiting the beach. The response was back to the department saying essentially the Board or the Department could regulate through the CDUA process transiting the beach if it chooses. I think the communication to Mr. Greff was that a CDUA was not required.

Mr. Apaka: So there was conflicting...

Mr. Nagata: I wouldn't say conflicts because the Attorney General's advice was, DLNR, if you would like to regulate the activities through the CDUA, you may do so. At the time I think the Board or the department chose not to exercise that discretion. However, under the current situation and it doesn't mean that Mr. Greff's operation... Then the problem at Hanalei where boating operations and boats were just proliferating over there. So, in order to also lock in his operation, which was another major operation along the northshore of Kona, his ten boats were included in the permit but only two boats were covered by the CDUA because the other 8 boats merely reflected an expansion of activity under the the guidance of no CDUA for transiting from the Department.

Mr. Apaka: So we're still back, to CDUA for crossing the beach by people. That's what it boils down to, back to us from the A. G.'s office if you want to regulate the transiting the beach.

Mr. Nagata: I think it goes a little more than that, it's a combination, that might be a major factor, but it's also a factor in back, mauka of the beach it's still within the Conservation District. You have all this parking, etc. going on that's creating concern for the public. Now Mr. Greff or the Napali Zodiac operation, in fairness to them did try to mitigate this somewhat by approaching the Board several

years ago to have their customers to go over to Keel, not all the way to the end where there is also a large number of cars parked along the shoulders. We had constructed an overflow dirt area which is somewhat further back from Keel Beach that wasn't being fully utilized. He asked if he could have his people park there and he would bus them from there on the County or State highway back to the Tunnels area. In order to address that situation, the Board did approve of that. Much of his operation in terms of the traffic, the parking, is occurring in the Keel Beach side. An operation of this nature maybe should be fully considered under a CDUA process.

Mr. Apaka said that is why he was having a problem with that. We are covering everything with a CDUA but primarily I believe our concern is the Conservation District. Just happens this whole thing is Conservation, primarily it's on the beach and if we make a decision for the beach uses, it goes for the whole State. What can be done?

Mr. Arisumi: Since they're looking for a one year extension beginning June 22, 1990 and apparently there's a seasonal period up till October. I concur with my fellow commissioner here, something has to be done. I sit on the Board for 2 terms and every year we get this same request for extension, I think we should approve this permit for a year up until June 22, 1990 and in the meantime I would really appreciate the Department going into details and report back to this Board so that we can make out with one conclusion. I can't see how they start with two boats and now operating eight, and whether the CDUA is for 2 or 8 boats, that becomes the real big question. We need to come up with a solution. I don't think we can resolve this and I would be in favor of granting this permit up until June 1991 and study this whole thing and before June 1991, have Mr. Nagata come up with a report to give the Board some direction.

Chairperson called upon Mr. Bronstein if he wished to say something.

Mr. Harold Bronstein said that he felt he couldn't say anything to change Mr. Apaka's or Mr. Arisumi's mind at this time. They've heard his arguments in the past.

He wanted to address Mr. Apaka: "I think we're talking about commercial use, I think commercial use is not permitted without a CDUA on State lands. I think that is the real issue, the issue is commercial use. You're allowing a person to conduct commercial activity on State owned beaches without a CDUA. I think it is elementary that you need a CDUA. I'm not saying you can't grant one, but I'm saying that you have to go through the process. What Mr. Arisumi suggested today, in all due respect to Mr. Arisumi, I heard from Doug Ing last year and that's exactly what Doug Ing said. Let's get a final decision, let's get a report, no more boats, competitive bidding, all the issues are still there and what I hear today from the Board again is, "Well, we'll do it one more year." I'm not saying it's not within your prerogative to do that, I respect your decisions, I may not agree them, but I do respect them. I deal with them the best way I can as an attorney. The real issue is commercial use and I think you ignore that when you say it's people crossing the beach. And I think Mr. Nagata has said to you, all the other impacts that are out there are all commercial use. I haven't seen all the Attorney General things, I had a little trouble getting to the files on occasion. I think the Attorney General said that to the Board that it is a commercial use and the transiting the beach when you have boats, whether you say they touch the beach, six inches away in the water or half a foot away in the water, you're using the beach for commercial purposes. It's not the two boats that were back in the early 80's which were permitted through the CDUA process, no legitimate way. When you do that, then I think you serve the public. When you just allow by special use permit, people to continue commercial

activity, I don't think you serve the public's interest. It's time to get the process straight. I think in this case we've manipulated the process, ignored it and it's time to stop that. I think that's what this Department has said and I whole heartedly agree. Go through the CDUA process, have the application in, let's have a public hearing, Let's have fair comment on that and then we get a decision. But just to extend it, no, it's a mistake. With all due respect we did that last year we got hauled into what I hear today, we'll solve it next year. I wish I could believe that I think it's time to do it now. Mr. Greff has said he was put on notice (I think) last July right after the Board meeting that he was going to need a CDUA and has chose not to file the CDUA, saying 'that acknowledges that I have to have a CDUA'. He's made his decision, I think the Board should make theirs. If he needs a CDUA, then go through the process.

Mr. Apaka: That's why I have a problem, Mr. Bronstein, to determine what is commercial and what is not commercial. Where you have people that snorkel, a commercial venture. People come down here in a tourist package is still a commercial trip because they go through a tour setup and they get out on the beach and enjoy themselves, so I have a difficult time determining commercial.

Mr. Bronstein: It's all commercial.

Mr. Apaka: Then if it's all commercial, then everybody has to have a CDUA. That's why I say, what impact is there, if we make a decision on this, how far will it carry when you talk commercial.

Mr. Bronstein: I understand the law, commercial activity on State owned lands need a CDUA and I think that's simple. That may be overwhelming in some areas and there's not enough assets to enforce and protect the natural assets, I'm well aware off and I know this Board knows that better than me and has dealt with this longer than I have and I don't say that out of disrespect.

Mr. Apaka: I still have a problem, even the tourist sitting outside the hotel on the beach, it's still commercial people, they paid to be there. It's something that has to be defined.

Mr. Bronstein: There's no question in my mind that in this case it's commercial. I think what you're doing is making a decision on a case-by-case basis and that's what your job is today to make a decision on this case. On this basis, if it's commercial, I don't think you can ignore the CDUA process.

Mr. Greff: I'm Clarence Greff, Clancy's dad. He's sorry that he couldn't be here today but he's off the islands on business. I had a little prepared speech but I think I have to digress from it cause I think I don't have to say quite as much I wanted to say earlier.

One point I would like to address the thing brought up by Mr. Bronstein regarding the CDU application. Clancy was asked by the DLNR to submit a CDUA for the additional boats, however on the advice of counsel, Clancy elected not to submit a CDUA. We have a copy of the letter from the Attorney General (A.G.) which said in effect, in their opinion, it was not requiring a CDUA to merely transit the beach. Based on that letter plus the advice of counsel, Clancy elected not to go for the CDUA.

I do think we have been good tenants there for the last 10 to 15 years. We've assisted the State and the County and the people in every way we could. There are countless examples of saving people from drowning to helping boats in distress out there. We've been the right hand of the Coast Guard for years, they call us day or night anytime they have a problem along the Napali Coast and we respond. We have a radio land

based relay station at Tunnels which gives us the ability to communicate up and down the Na Pali and makes us invaluable in terms of being able to respond rapidly to any kind of emergency. Whether its somebody on Kalalau who's broken their leg or whatever. We are able to get in there with our communications coordinated and if not, affect the rescues ourselves.

We've hauled trash out of the Na Pali Coast for 15 years, not our own trash necessarily but any trash that was out there. We know that the Na Pali Zodiac, Clancy knows that there is great pressure from some people for us to move out of Tunnels. We would like to move, but we can't move because there's no place to move, that's one of the problems. If you deny us the permits to Tunnels, I'm afraid we'll go out of business very rapidly.

This is a family business, there are 6 members of the family involved and we employ 60 people. These people, many of them have families, many of them have mortgages on their houses and everything else dependent on the job that they've had with Na Pali Zodiac. I think it would be a real travesty for us to have to go out of business without some thought about the alternatives of what we can do with continuing with our company. We have a large infrastructure built up to support the boats that we have. We have key personnel that we must employ year round and if we were to be out of business for even several months, shut down for several months, we would probably very rapidly have to go out of business.

So, it's all I ask on behalf of Clancy, Captain Zodiac cause if you consider these things in making your decisions as to whether or not to allow us to continue until somehow there's some resolution to some of these boating issues that are going on, particularly the Hanalei boating crises. If that issue is resolved, then that could well be the answer for us to move lock, stock and barrel out of Tunnels. Although with one qualification I do think that from our point of view and the point of view of the community, that there should be some presence at Tunnels. There should always be at least a couple of boats operating out of Tunnels and in order to provide the rescue capability and response to emergency situations that I've talked about.

Thank you on behalf of Clancy and Captain Zodiac for all of your support over the years and we hope that we will be able to continue to serve in the capacity that we have.

Mr. Apaka: I believe you have the information for Clancy that this Board is interested in reducing the operation at Tunnels, it's a matter of how long it take. Recently I was in Hanalei and it seems that the problem of the boating industry is cleared up. I see the boats going up and down the river to Mr. Sheehan's property, loading and unloading. And to me I think if they can do that, you can also go there and load and unload.

Mr. Greff: The problem from the point of view of the environment, the problem with Black Pot Park has been cleared up because the boaters are now in Mike Sheehan's boatyard. That is currently under litigation in the courts. There is right now in place an injunction against all the boaters, precluding them from going out anywhere in the Hanalei River. The final injunction is supposed to be heard but right now they're under a preliminary injunction and there are moves right now to cite some of the companies for operating out of Mike Sheehan boatyard. That is the solution, in our opinion, the boaters opinion, to go out of Mike Sheehan's boatyard in the Hanalei River. We're not interfering with anybody there, he has wash down facilities, he has fueling facilities, has repair and maintenance capabilities there, everything you would need and it's back out of the way, you can't even see it unless you go back

into the compound there. Regrettably a few people, Waiola Inc. and the County administration doesn't see it that way. They want to get the boating off the northshore of Kauai. There's a lot of people, a lot of jobs at stake. I think that boating is of sizable economy at Hanalei.

Mr. Apaka: So my impression of seeing the boats going up and down is still not correct?

Mr. Greff: It's correct in a sense, that is the solution, it's going in and out and not bothering anybody, but it may change tomorrow because there is an injunction in place right now. Even if that injunction carries we will go to the Supreme Court with it, but to shift gears, I am still concerned about the implications of requiring a CDUA to transit the beach.

Mr. Hegarty: I'm Tom Hegarty, one of the other permittees. Needless to say I'm in total support of Mr. Greff and his operations and working side by side for fifteen years. The only thing that I hear and I want to address the Board when they talk about a case by case basis. Well, my CDUP which I have or if it's renewed today, which I'll have again has nothing to do with Tunnels. It has something to do with the landings at NaPali. So, when the Board addresses the permits I think it's fine cause we're all in the same boat, but whether or not that Board decides there needs to be a CDUA for the transiting of the beach does not affect the agreement I have with the State and the landings I've been making for the last, basically 15 years. Much as the same as Mr. Greff and the rest of the boaters, like we want to make the necessary accommodations to the County and to the people and the State and as far as the fuel and the wash down, Mr. Sheehan's yard is the answer. Point is, I'm making is I'd like to see my case be considered as a case-to-case thing and as a matter of fact, this whole issue of Tunnels has nothing to do with me.

Chairman Paty: Where do you land your boats?

Mr. Hegarty: I land my boats at Sheehan's boatyard. My company has been doing the exact same thing as Mr. Greff's for 15 years. Difference is Clancy grew and I stayed the same size as I run two boats which was on my original CDUA permit. The amount of landings that Clancy makes down there is the same amount of landings that I make. However, he's now running boats that don't land down there on the CDUA on which he was issued to land at Na Pali. Getting back to the point, if that is the case, then all boaters need a CDUA cause every other company that's running tours, runs the same type of tour that Mr. Greff does with the eight boats that he has expanded his company with.

Mr. Richard Johnson: General Manager of Lady Ann Cruises said that they consider the utilization of these permits a privilege to their company.

Chairman Paty addressed Mr. Nagata that they were dealing with three separate items, Clancy poses a problem with Tunnels and with respect to item 4 and 5, it is not concerned with the Tunnels aspect per se in the recommendation.

Mr. Nagata: That is correct, they do not operate out of Tunnels, however when Waiola contested this thing earlier, they were talking about the fact that these boating concerns are allowed to land passengers along the Na Pali Coast as well as, I think there was some concern that at least one other of these does operate out of Hanalei and Waiola is also concerned about the boating concerns at Hanalei.

Could I try to address some of the things that the Board brought out, Mr. Arisumi mentioned that we need to back and review this matter, I tried to do that in our submittal, I didn't go over it with you this time but the questions that were brought up by the Board at the last

meeting, I tried to address those things. What the Board may need to do today, would be to affirm the Department CDUA stance on the matter or if as Mr. Apaka states, because of potential statewide application, there is a problem in that. I would feel that State Parks wouldn't be the appropriate agency to address the entire CDUA application question if that needs to be addressed and we did try to address it. Like in the case of Kealakekua Bay, I recall the Board informed the applicant that if they want to have an opportunity, they must go through the CDUA process. I don't think this is what we're telling Mr. Greff's application. We're merely saying that if you want your other eight boats to be considered in the future, that you need a CDUA for the area. Now the Board may want to possibly consider telling Mr. Greff that it concurs with the Department's decision on the CDUA requirement, but because of the past practice, would not enforce it, say till next year. That's another potential option for the board.

Chairman Paty: What you're saying then Mr. Nagata, is that we would, suggesting that we move to approve this, two boats would continue for the balance of the season and then any additional boats in the upcoming season, he would file a CDUA and at the time the question relative to the application of a CDUA with respect to this kind of a situation and a simplification possibly Statewide could then be addressed?

Mr. Nagata: Yes, but I guess on the other hand, making such a requirement, some may view it as a precedent that this is the precedent for a Statewide requirement and I think this is what Mr. Apaka was concerned about.

Mr. Arisumi: The other concern, Mr. Nagata, Mr. Greff plans to operate with ten boats now and to tell him to cut down to two boats, you know, what is he going to do with the number of people that he probably committed as such time from ten to two comes to a problem. Somewhere, somehow we have to do what we have to do. My suggestion, although I was sort of criticized by counsel previously about a year ago, I'm seriously thinking that we should approve this and from now until June we set the record and we say that as of June 1st it's going to be like this. That you have to get a CDUA, you'll just have to get a CDUA.

Mr. Nagata: As Mr. Apaka says, if we wait till next year then it will be decision-making time again next year, whereas it's possible that without addressing the CDUA issue, the Statewide issue, the Board may make a stronger statement this year than they did last year.

Mr. Arisumi: I fully agree with you, but my suggestion is, if I were in business and I have to cut my business down from 100% to 20% business, it's impossible. Especially this kind of business, since it's seasonal. What I'm saying here for this time around, it's going to end pretty soon, October-November and comes back next year around April. From now we review this thing, see whether or not we're going to require a CDUA and these people know, come January 1990, if they don't have a CDUA they cannot operate, then we'll not let them operate because they don't have the proper CDUA to operate the boat. But if they want to operate the 10 boats they have, they have to come in with a CDUA. It depends on what the law requires. That's the problem I'm getting.

Mr. Apaka: Ralston, it's easy to turn down anything, it's also easy to approve anything. Mr. Greff mentioned something about an injunction going on, litigation. If litigation has something to do with SMA requirement, then all the boaters will need a SMA and that is controlled by the County. Therefore if we ask for a CDUA today, I feel we would be jumping the gun as we don't have all the info. I would rather wait another year, sure we would look like the bad guys but in the long term we would see what this is all about. Where is the boating industry heading for, whether it's going to die because of lack of SMA or

whatever it is. To me, I rather see it go till 1991. It's easy to say you need a study, but who's going to do it. Now it's more than a study.

ACTION

Mr. Apaka moved that this whole situation continue as is, permits remain in place, Mr. Greff continue to operate as he's doing now till end of June 1991. Motion seconded by Mr. Arisumi.

Mr. Arisumi then commented that he would like to see something done so that the faster we do it and inform the boat owners that it's up to them to plan come June 1991, if they have to get a CDUA or not to operate.

Chairperson commented that he felt the trafficking at Tunnels is unconscionable already and would prefer to see the Board take some action to reduce the traffic and trafficking down there. Concerned that two years ago, Doug Ing told Mr. Zodiac that he had to look some other alternate site to run his operation and here we are two years later and we're not any farther down that flight than we are today and we're looking to another year. He said he didn't have a great deal of problem in okaying the permit as is or extending it to the end of the season, but he did have a problem with taking a look at this whole thing. What do we look at, Mr. Nagata was designated and asked to look at it two years ago and he's back here now with as much information as we're going to get. It seems to me another two years we're going to do the same thing unless something happens on the SMA or happens with the injunction or some legal thing.

The permit before us is for two boats, and that's really technically what's before us, is that correct?

Mr. Nagata: In our recommendation in item 3, we're saying operation of two commercial boats. But that has to do with the CDUA question. An alternative suggestion is maybe the CDUA question can still be looked at during the course of the year, the Board could possibly give a sense to Mr. Greff's operation, that regardless of the CDUA question, because of all this traffic and trafficking as Mr. Paty mentions that the Board, rather than consider alternatives, that maybe next year do not expect any more than two boats and maybe during the interim from now and next year, since the bulk of the season, the major portion of the season is nearly over, that the board would during this interim till June 30, 1991, allow him to operate his ten boats. But come July 1, 1991, regardless of the CDUA question, it's so many boats and maybe he doesn't even have to fool around with the CDUA next year.

Chairman Paty: It seems that we ought to make some progress in reducing the activity out of this situation pending the resolution of this rather involved boating problem.

Mr. Nagata: That's the other alternative. We like our phase down idea, so next year, maybe there would be six boats.

Mr. Apaka said that his motion concurs with staff's direction, as far as approval for staff's submittal, however amending to allow Clancy to continue his operation till end of June 1991. By that time I suspect many things will happen and when that happens, regardless of what we put in here, might be forfeited, because of the possibility of what the law will be.

Chairman Paty: So what you're saying, Mr. Apaka, is keep it going until the beginning of the next season's almost finished and pick it up at the beginning of the next season since the permit runs till that time. At that point in time, we'll examine the whole thing.

Mr. Apaka: By that time we should have some direction as far as commercial operation crossing beaches. Right now we really don't have a handle on it. We've banged it around but what is it, what do we talk about, numbers, or just talking about packages, certain type of operations?

Chairperson called for further discussion on the motion.

Mr. Arisumi: Mr. Apaka, you are talking about operating the ten boats until June 1991. What about thereafter?

Mr. Apaka: Yes, until June 1991, I don't want to go beyond 1991.

Mr. Arisumi: Then am I to understand that July 1991, Mr. Clancy can operate only two boats?

Mr. Apaka: That's a possibility, yes.

Mr. Arisumi: I think we should put the numbers in now.

Mr. Apaka: I feel it's premature right now because the run down, as proposed by Mr. Greff is not to go down to two right away but was graduated. However, if they can operate in a different area, then they might take the whole operation.

AMENDED  
ACTION

Mr. Arisumi requested to amend the motion, in the Tunnels area, come July 1st, 1991, not more than five boats will be considered. Mr. Apaka said he had no problem in accepting the amendment.

Chairperson called for the question, motion carried.

RECESS: 2:29pm - 2:37pm

Chairperson Paty called the regular meeting back to order.

State Attorney General Nishioka requested to make an announcement. For the record, regarding item H-5, an inquiry was made of her regarding whether it was a timely request made by Mr. Blok. She has reviewed the record and apparently there was a public hearing in this matter. Under the Contested Case Proceedings, Section 13-1-29, "If a public hearing is required, then the request must be made no later than after the public hearing." She would like to review the record, but she would like to put on the record that there is an issue, whether that contested case hearing request is timely and it will be dealt with in the standing letter will come back to the Board.

REQUEST THE EXTENSION OF AN EXISTING SHORT-TERM LEASE FOR THE OPERATION OF PUBLIC CAMPING AND CABIN RENTALS AT MALAEKAHANA STATE RECREATION AREA, KAHUKU, OAHU

ITEM E-2

ACTION Unanimously approved as submitted. (Himeno/Apaka)

REQUEST AUTHORIZATION TO COMMENCE EMINANT DOMAIN PROCEEDINGS TO ACQUIRE AN ACCESS AND UTILITY EASEMENT OVER GENERAL LEASE NO. S-4906 AT MAUNALAHA, OAHU, TAX MAP KEY 2-5-24:22

ITEM F-7

Mr. Young asked for deferment as he had spoken to Mr. Ka'ai'ai and his family and it appears they would be willing to work out a solution together with staff.

DEFERMENT Ms. Himeno moved to approve staff's recommendation to defer item F-7. Seconded by Mr. Apaka, motion carried.



SECOND RESUBMITTAL--CANCELLATION OF REVOCABLE PERMIT NO. S-6405 TO OAHU INTERIORS, INC., ET AL AT SAND ISLAND, HONOLULU, OAHU, TAX MAP KEY 1-5-41:260

ITEM F-8

Mr. Young said that item F-8 was a resubmittal pertaining to the cancellation of Revocable Permit No. S-6405 to Oahu Interiors, Inc., et al. While staff was attempting to correct several situations, they subsequently found additional violations occurring on the permit premises. Staff is recommending cancellation of the permit, evict the tenant and take over the improvements on the property.

At the last meeting there was indication in the discussion the possibility of not cancelling but real concern of a possibility of a fine on this issue. Chair asked staff if something was developed in this area.

Mr. Young said, "If you were to take the time which this happened, which was approximately January 26, 1990, and take it up to the time which the permittee got out the illegal tenants, thereto, it would encompass about a 175 days and by the statutes, we can assess the \$500 fine for each violation, which would be a \$1,000.00 over a period of 175 days would amount to \$175,000.00. These are the fines that the staff is working and recommending in the event it is the desire of the Board to rescind the action of the staff for cancellation and impose the fine.

Mr. Apaka then asked how staff derived at \$1,000.00 per day.

Mr. Young said that because there were two illegal tenants at \$500.00 each, that's \$1,000.00 per day which amount to \$175,000.00.

Mr. Apaka asked if the permittee was aware of the tentative fine.

Mr. Young answered that the permittee was informed and was present.

Mr. Ernie Jackson said that he had learned of the thrust of the situation this morning. He respectfully requested of the Board if this be the situation, that he be allowed to pay this amount over a 48 month period in equal installments.

Mr. Young reminded the Board that the staff's recommendation would be cancelled if it's the desire of the Board to impose the fine.

ACTION

Mr. Arisumi entertained a motion to allow the permittee to remain and that he be fined \$175,000.00 as recommended by staff. Seconded by Ms. Himeno, motion carried.

Mr. Arisumi suggested that Mr. Jackson make an initial down-payment of \$50,000.00 and be given 48 months to pay the balance on a monthly basis.

Mr. Jackson said that as far as the down payment, and as far as the Board being assured that the payments were made, his permit is constantly at stake and could be revoked immediately if any payment were missed or not made. He said that \$50,000 up front is an awful lot of money and he would request that the Board allow him to pay this in equal payments over 48 equal installments.

SECOND ACTION

Mr. Arisumi withdrew his recommendation and made a motion that Mr. Jackson be given the opportunity to pay his obligation in 48 months with the understanding that if he becomes delinquent, that his permit will be at stake. Seconded by Ms. Himeno, motion carried unanimously.

ITEM H-6 CDUA FOR ASTRONOMY-THMED COMMERCIAL TOURS AT MAUNA KEA, HAWAII, TMK 4-4-15: 1 & 9: APPLICANT: HYATT REGENCY WAIKOLOA

Mr. Evans said the applicant proposes to conduct tours for the guests of the Hyatt Regency to the summit of Mauna Kea and to Hale Pohaku on Fridays and Saturdays when weather conditions are favorable. He then went over details of the tours.

Mr. Edward Mahoney, Astronomy Manager for the Hyatt Regency, Waikoloa said that his original understanding was that they would not be allowed to use the facilities at the Ellison Onizuka Center for International Astronomy except on Friday and Saturday evenings. Then it was decided, those facilities would be opened seven days a week and that they would not be allowed to do their star watch program at that site because they were non-paying members of the community. He was then informed by Thomas Kreiger, the director of the Mauna Kea Support Services that he would make available the picnic area just a quarter mile away called Kilohana. They have agreed to clean the area and maintain it in pristine condition. He asked if they could change their request from the use of Hale Pohaku to the Kilohana picnic area and eliminate the clause about Fridays and Saturdays only.

Mr. Evans said that this could be done on page 7 under Recommendation, Condition No. 1, staff could insert Kilohana on Mauna Kea and relative to the second possible request, condition No. 12 on page 7 could be deleted.

ACTION Mr. Arisumi moved to approve Item H-6 as amended. Seconded by Mr. Apaka, motion carried unanimously.

ITEM B-1 REQUEST FOR DUTY STATUS FOR OUT-OF-STATE TRAVEL FOR ERIC ONIZUKA OF THE DIVISION OF AQUATIC RESOURCES TO ATTEND THE NATIONAL SPORT FISH AND WILDLIFE RESTORATION CONFERENCE, OCTOBER 1-4, 1990

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM C-1 OUT-OF-STATE TRAVEL REQUEST FOR RONALD L. WALKER, WILDLIFE PROGRAM MANAGER, DIVISION OF FORESTRY AND WILDLIFE

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ADDED ITEM C-2 FILLING OF POSITION NO. 13327, GENERAL LABORER I, ISLAND OF OAHU

ACTION The Board unanimously approved the appointment of Ms. Maile Sakamoto as a Temporary General Laborer I, Position No. 13327 on the island of Oahu. (Himeno/Arisumi)

ITEM D-1 PERMISSION TO HIRE ENGINEERING CONSULTANTS TO PROVIDE CONSTRUCTION MANAGEMENT FOR VARIOUS DWRM PROJECTS STATEWIDE

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM D-2 APPROVAL FOR THE AWARD OF CONSTRUCTION CONTRACTS--TWO DRWM OAHU PROJECTS

As a matter of technicality, Mr. Akita asked that item D-2 the awarding of construction contracts be taken before item D-1.

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM D-3 PERMISSION TO HIRE CONSULTANTS FOR JOB NO. 48-HW-G, KOHALA WATER SYSTEM DEVELOPMENT, HAWAII

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM D-4 PERMISSION TO HIRE ENGINEERING CONSULTANTS TO PROVIDE CONSTRUCTION MANAGEMENT FOR JOB NO. 32-ML-A, HONOPOU BRIDGE, MAUI

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM D-5 APPROVAL FOR THE AWARD OF CONTRACT-JOB NO. 83-OP-E, ROYAL MAUSOLEUM IMPROVEMENTS, OAHU

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM D-6 APPROVAL TO ATTEND NFIP STATE COORDINATORS WORKSHOP IN SAN FRANCISCO, CALIFORNIA

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM E-1 REQUEST FOR PERMISSION TO CONDUCT A TREE PLANTING CEREMONY AT DIAMOND HEAD STATE MONUMENT, OAHU

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM E-2 REQUEST THE EXTENSION OF AN EXISTING SHORT-TERM LEASE FOR THE OPERATION OF PUBLIC CAMPING AND CABIN RENTALS AT MALAEKAHANA STATE RECREATION AREA, KAHUKU, OAHU

See page 32 for action.

ITEM E-3 RESUBMITTAL--REQUEST FOR A ONE-YEAR EXTENSION FOR THREE SPECIAL USE PERMITS TO MAKE COMMERCIAL TOUR BOAT LANDINGS AT NA PALI COAST STATE PARK AND/OR HAENA POINT, KAUAI

See page 31-32 for action.

ITEM F-1 DOCUMENTS FOR CONSIDERATION:

Item F-1-a ISSUANCE OF REVOCABLE PERMIT TO COUNTY OF MAUI, DEPARTMENT OF FIRE CONTROL AT THE IRWIN HEALTH CENTER SITE IN PUKOO, MOLOKAI, TAX MAP KEY 5-7-07:16

Before beginning his presentation, Mr. Young requested to amend item F-1-a, under the Land Area it should be revised from 1.607 acres to 1.673 acres and permit area to the County of Maui would be approximately 5,000 square feet. There was an error in the calculation.

Item F-1-b LICENSE AGREEMENTS FOR THE WAIKIKI COMMUNITY CENTER LESSEE/LICENSOR AT FORMER ST. AUGUSTINE SCHOOL PROPERTY, WAIKIKI, OAHU, TAX MAP KEY 2-6-25:2 AND 8

Item F-1-c ASSIGNMENT OF GENERAL LEASE NO. S-3165, LOT 32, OCEAN VIEW LOTS, WAIAKEA, SO. HAWAII, TAX MAP KEY 2-1-07:31

Item F-1-d REVOCABLE PERMIT FROM DEPARTMENT OF HEALTH TO THE HAWAII MEDICAL ASSOCIATION FOR LANAKILA HEALTH CENTER OFFICE SPACE, HONOLULU, OAHU, TAX MAP KEY 1-6-09:5

Item F-1-e ISSUANCE OF REVOCABLE PERMIT TO CITY PRODUCE AT IWILEI PRODUCE CENTER SITE, HONOLULU, OAHU, TAX MAP KEY 1-5-07:14

ACTION Mr. Apaka moved that Items F-1-a, as amended, F-1-b, F-1-c, F-1-d and F-1-e be approved, seconded by Mr. Arisumi, motion carried.

- RESUBMITTAL--STAFF RECOMMENDATION FOR SALE OF A LEASE AT PUBLIC AUCTION COVERING GOVERNMENT LAND OF PIIHONUA, SO. HILO, HAWAII, TAX MAP KEYS 2-3-31:1 (POR.) AND 2-3-32:1 (POR.)
- ITEM F-2
- See page 11 for action.
- DIRECT SALE OF A TERM, NON-EXCLUSIVE LANDSCAPING, MAINTENANCE AND ACCESS EASEMENT AT UKUMEHAME, WAILUKU, MAUI, TAX MAP KEY 3-6-01:24
- ITEM F-3
- ACTION Unanimously approved as submitted. (Arisumi/Apaka)
- RESUBMITTAL--PROPOSED SETTLEMENT OF LAND COURT APPLICATION NO. 439 (PIONEER MILL COMPANY) AT PUOU, KUHOLILEA, KUHUA, HAHAKEA AND PUUKI, LAHAINA, MAUI, TAX MAP KEYS 4-5-21:2 & 6 AND 4-5-22:2 & 4
- ITEM F-4
- See page 23 for action.
- AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 27, 1989 (ITEM F-28), DIRECT SALE OF AN ACCESS EASEMENT TO ROBERT AND NANCY EDWARDS AT HOOLAWA-MOKUPAPA, MAKAWAO, MAUI, TAX MAP KEY 2-9-02:12 (POR.)
- ITEM F-5
- ACTION Unanimously approved as submitted. (Arisumi/Apaka)
- DIRECT SALE OF FEE TITLE ON LOT 31 OF WAIOHULI-KEOKEA HOMESTEADS TO ELIZA K. NAKOOKAA, AT MAKAWAO, MAUI, TAX MAP KEY 2-2-04:18
- ITEM F-6
- Mr. Young made the presentation of F-6 to the Board with the recommendation that should the Board entertain an approval that the Board delete condition no. 3 on page 3 of the submittal.
- ACTION Unanimously approved as amended, deleting condition no. 3. (Arisumi/Himeno)
- REQUEST AUTHORIZATION TO COMMENCE EMINANT DOMAIN PROCEEDINGS TO ACQUIRE AN ACCESS AND UTILITY EASEMENT OVER GENERAL LEASE NO. S-4906 AT MAUNALAHA, OAHU, TAX MAP KEY 2-5-24:22
- ITEM F-7
- See page 32 for action.
- SECOND RESUBMITTAL--CANCELLATION OF REVOCABLE PERMIT NO. S-6405 TO OAHU INTERIORS, INC., ET AL AT SAND ISLAND, HONOLULU, OAHU, TAX MAP KEY 1-5-41:260
- ITEM F-8
- See page 33 for action.
- DIRECT SALE OF RECLAIMED LAND TO ALFRED AND VALERIE MEDFORD AT KANEOHE BAY, OAHU, TAX MAP KEY 4-5-58:45
- ITEM F-9
- See 11 page for action.
- PETITION FOR CONTESTED CASE HEARING ON REJECTION OF SHORELINE CERTIFICATION APPLICATION OF ROBERT SCURICH AT SUNSET BEACH LOTS, PUPUKEA, KOOLAULOA, OAHU, TAX MAP KEY 5-9-20:39 & 40
- ITEM F-10
- Mr. Young said that staff was asking the Board's approval of the Contested Case Hearing petition of Mr. Robert Scurich. There were two corrections on page two, under Recommendation Condition No. 2., the Attorney General's Office has asked that the first word "Acknowledge" be changed to "Admit", and under 2. b. After "State Land Survey Administrator," add, "respondent (represent Department of Land and Natural Resources."
- ACTION Unanimously approved as amended. (Himeno/Apaka)

ITEM F-11 RESCIND PRIOR BOARD ACTION OF APRIL 22, 1988 (ITEM F-1-B), ASSIGNMENT OF GENERAL LEASE NO. S-5046 AT WAIMEA, KAUAI, TAX MAP KEY 1-4-04:48

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM G-1 REQUEST FOR LEAVE WITHOUT PAY FOR POSITION NO. 156, CLERK TYPIST I

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ADDED

ITEM G-2 OUT-OF-STATE TRAVEL FOR SANDRA N. S. FURUKAWA

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM H-1 REQUEST FOR A TIME EXTENSION ON CDUA FOR A SINGLE FAMILY RESIDENCE AT HAWEA POINT, KAPALUA, MAUI, TMK 4-2-01:03; APPLICANT: T. P. LIEM

See page 22 for action.

ITEM H-2 OVERVIEW OF CDUA FOR SINGLE FAMILY RESIDENCE AND OTHER PROPERTY DEVELOPMENT ITEMS, INCLUDING REQUEST FOR CONTESTED CASE HEARING, MOUNT OLOMANA, KAILUA, OAHU; APPLICANT: DAVID E. FAZENDIN

See page 10 for action.

ITEM H-3 RESUBMITTAL-CDUA FOR FIVE AFTER-THE-FACT COMMERCIAL MOORINGS, PLUS TRANSITING BEACH, AS PART OF COMMERCIAL FISHING OPERATION, KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: HANA LIKE, INC. (MR. CHARLES LESLIE)

See pages 14-15 for action.

ITEM H-4 RESUBMITTAL-CDUA FOR AN AFTER-THE-FACT COMMERCIAL MOORING; KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: MR. WILLIAM B. BLOK, III

See page 18 for action.

ITEM H-5 RESUBMITTAL-CDUA FOR AN AFTER-THE-FACT COMMERCIAL MOORING; KEALAKEKUA BAY, SOUTH KONA, HAWAII; APPLICANT: HAWAIIAN CRUISES, LTD. (MR. JOHN R. PYLES)

See pages 21-22 for action.

ITEM H-6 CDUA FOR ASTRONOMY-THEMED COMMERCIAL TOURS AT MAUNA KEA, HAWAII, TMK 4-4-15: 1 & 9; APPLICANT: HYATT REGENCY WAIKOLOA

See page 34 for action.

ITEM H-7 REQUEST FOR A TIME EXTENSION ON CDU PERMIT FOR SHORELINE PROTECTION AT SAND ISLAND STATE RECREATION AREA, (SUBMERGED LAND OFFSHORE) OAHU; APPLICANT: DIVISION OF STATE PARKS, DEPARTMENT OF LAND AND NATURAL RESOURCES

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM H-8 CDUA FOR THE INSTALLATION OF MOORINGS, ETC., ON SUBMERGED LANDS IN 'ANAHEHO'OMALU BAY, OFFSHORE FROM THE WAIKOLOA BEACH RESORT, COUNTY OF HAWAII; OFFSHORE TMK 6-9-07:11; APPLICANT: WAIKOLOA DEVELOPMENT COMPANY

See page 10 for action.

- ITEM J-1** CONSENT TO ASSIGNMENT OF A PORTION OF LEASE NO. DOT-A-75-6, KAHULUI AIRPORT, MAUI (HEMMETER AVIATION, A DIVISION OF HEMMETER INVESTMENT COMPANY--HEMMETER AVIATION, INC.)
- See page 23 for action
- ITEM J-2** APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4694 AND 4696, AIRPORTS DIVISION
- Due to a client conflict, Ms. Himeno excused herself from acting on Revocable Permit No. 4696.
- ACTION** Ms. Himeno moved to approve issuance of revocable permit only for No. 4694, Hawaii Island Hoppers, Inc., Hilo International Airport, seconded by Mr. Arisumi, motion carried.
- ITEM J-3** RENEWAL OF REVOCABLE PERMITS 2884, ETC., AIRPORTS DIVISION
- Due to client conflict, Ms. Himeno excused herself from acting on R. P. No. 4030, 4391, 4561, 4576, and 4579.
- ACTION** With the exception of R.P.'s 4030, 4391, 4561, 4576 and 4579, Ms. Himeno moved for approval, seconded by Mr. Apaka, motion carried.
- ITEM J-4** AMENDMENT NO. 2 TO LEASE NO. DOT-A-84-26, HAWAII DISTRICT AIRPORTS, HAWAII (ALAMO RENT-A-CAR, INC. (ALAMO))
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-5** AMENDMENT NO. 1 TO LEASE NO. DOT-A-84-32, KEAHOLE AIRPORT, HAWAII (AUTO RENTAL COMPANY, LTD.)
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-6** AMENDMENT NO. 2 TO LEASE NO. DOT-A-84-27, KEAHOLE AIRPORT, HAWAII (AVIS RENT A CAR SYSTEMS, INC. (AVIS))
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-7** AMENDMENT NO. 3 TO LEASE NO. DOT-A-84-25, KEAHOLE AIRPORT (BUDGET RENT A CAR SYSTEMS, INC. (BUDGET))
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-8** AMENDMENT NO. 2 TO LEASE NO. DOT-A-84-29, KEAHOLE AIRPORT, HAWAII NATIONAL CAR RENTAL HAWAII, A JOINT VENTURE
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-9** AMENDMENT NO. 5 TO LEASE NO. DOT-A-84-28, KEAHOLE AIRPORT, HAWAII (PACIFIC INTERNATIONAL SERVICES CORPORATION (PISC))
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-10** AMENDMENT NO. 2 TO LEASE NO. DOT-A-84-31, KEAHOLE AIRPORT, HAWAII (ROBERT'S HAWAII RENT-A-CAR SYSTEMS, INC. (ROBERT'S))
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.
- ITEM J-11** AMENDMENT NO. 3 TO LEASE NO. DOT-A-84-36, KEAHOLE AIRPORT, HAWAII (TROPICAL RENT-A-CAR SYSTEMS, INC.)
- DEFERRED** Due to client conflict, Ms. Himeno requested to be excused.

ITEM J-12 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEWALO BASIN, HONOLULU, OAHU (PARADISE CRUISE, LTD.)

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-13 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HILO HARBOR, HAWAII (SUISAN COMPANY, LTD.)

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

ITEM J-14 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 33, HONOLULU HARBOR, OAHU (HAKIM PROPERTIES, INC.)

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-15 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40, HONOLULU HARBOR, OAHU (OCEAN SURVEYS AND MANAGEMENT COMPANY)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-16 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, HONOLULU, OAHU (ED YAMASHIRO, INC.)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM J-17 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, HONOLULU, OAHU (LARRY'S CONTRACTING SERVICE, INC.)

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ADJOURNMENT There being no further business the meeting adjourned at 3:30 p.m.

Respectfully submitted,

  
Dorothy Chun  
Secretary

APPROVED FOR SUBMITTAL

  
WILLIAM W. PATY, Chairperson