

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

DATE: FRIDAY, MARCH 27, 1998
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Chairperson Michael D. Wilson called the meeting of the board of Land and Natural Resources to order at 9:03 A.M. The following were in attendance:

Members: Michael D. Wilson
Chris Yuen
William Kennison
Colbert Matsumoto
Lynn McCrory
Kathryn Inouye

Staff: Dean Uchida
Edwin Kamauoha
Kim Keliihoomalu
Michael Buck

Others:

Bill Olson	Harold Ashida	Dr. Chip Fletcher
Lynn Higashi	Bob McLaren	Rick Wilson
Rob Pacheco	Blake Oshiro	Rick Bernstein
Jerry Silva	Dr. Hans Krock	Dr. Gordon Edlin
Sylvia Wied	Heidi Ho	Edward Pskowski
George Downing	Diane Stanley	Linda Engelberg
David Frankel	Roger Mosely	Dr. Frans Gerritson
Edwin Noh	Miriam Noh	Dr. Calvin Kam
Shirley Kam	Bill Olson	Dr. Bruce Anderson
David Williams	Peter Garcia	

APPROVAL OF MINUTES

Minutes of November 22, 1996 unanimously approved as submitted.
(McCrory/Yuen)

Minutes of January 23, 1997 unanimously approved with amendment to correct name of Amy Esaki on page 13. (McCrory/Yuen).

Minutes of February 14, 1997 unanimously approved as submitted.
(McCrorry/Yuen).

Minutes of March 14, 1997 unanimously approved with amendment on page 5, second line from bottom of the paragraph, should read, "a cushion of sand". (McCrorry/Yuen).

Minutes of February 13, 1998 unanimously approved as submitted.
(McCrorry/Yuen).

Minutes of February 27, 1998 unanimously approved as submitted.
(Inouye/Yuen).

Unanimously approved to add Item D-33 to agenda. (Yuen/McCrorry).

D-32 CONSERVATION DISTRICT USE APPLICATION (OA-2874) TO CONSTRUCT TWO GROINS EXTENDING FROM THE WAIKIKI NATATORIUM, TO IMPROVE WATER CIRCULATION AND QUALITY WITHIN THE POOL TMK: SEAWARD OF 1-3-28: 11

Dean Uchida, Acting Administrator, Land Division said this item is a request for a Conservation District Use Application (CDUA) by the City & County of Honolulu Building Department for restoration of sea groins in an effort to restore the Waikiki Natatorium.

The proposed project is located within the Conservation District Protective Subzone on the Waikiki side, and the Fisheries Management Area on the Diamond Head side. The Natatorium itself is not in the Conservation District and the proposal before the Board today are the 2 groins. The City proposes to construct 2 groins which would theoretically improve circulation and water quality in the swimming pool. The proposed groins total 5,358 square feet in area at the base.

In response to Chairperson Wilson's question, Uchida said the area of construction in the Marine Life Conservation District is approximately 2,500 square feet.

Uchida said the CDUA was sent to various Divisions for input. The Division of Aquatic Resources (DAR) indicated strong concern over the restoration project because the activity would take place within the Waikiki Fisheries Management Area (FMA) and the Waikiki Marine Life Conservation District (MLCD), and would directly affect the aquatic resources in these areas. DAR focused their analysis on the impacts within the footprint of the groins, and indicated that the groins are not expected to have long-term adverse impacts to aquatic resource values in the area. It is noted however, that the project does involve construction and dredging offshore and these activities could have short-term impacts on aquatic resources, such as temporary turbidity and biota displacement and disturbance.

Uchida said the Department of Health (DOH) indicated that the reconstructed pool will not meet the health and safety standards defined in their swimming pool rules. Consequently, even if the construction of the "jetties" (their terminology for the groins) is approved, they cannot approve construction and operation of the pool under the existing rules. The Director of DOH states, "I raise these issues in order to help ensure that scarce public funds be allocated to projects with a high likelihood of success; without clear resolution of the problems raised in the Department's testimony, we will not be in a position to approve operation of a rebuilt flow-through pool. Additionally, although the proposed jetties are not likely to directly cause major long-term water quality changes in the affected areas, they are likely to trap sand moving alongshore." The applicant recommends a sand-bypass operation to keep the circulation vents clear of sand and maintain optimal water exchange rates in the pool.

Uchida said a public hearing was held, and of the 22 people who testified, there were 16 in support and 6 who opposed this project. Written testimonies were received also.

Dr. Hans Krock, Ph.D., University of Hawaii's Look Laboratory of Oceanographic Engineering, notes that after reviewing an extensive record of the background studies for the project, he believes the hydraulic scale models conducted for the project was not of a scale or design to give a quantitative answer to the water exchange questions or to evaluate any sand transport changes.

Dr. Charles Fletcher, University of Hawaii's Coastal Geology Group, is convinced that the Diamond Head groin will trap sand that would otherwise flush offshore. He believes beach sand will be carried toward this groin, where it would accumulate on the inshore side. "This build-up of sand could easily raise the level of the sea floor and restrict pool water circulation out of the two outflowing vents. The need to periodically dredge this deposit to clear these vents has not been budgeted and would likely present a considerable operating expense, perhaps equaling or exceeding the existing maintenance budget".

Dr. Gordon Edlin, Ph.D., John Burns School of Medicine, indicated that bacteria and other disease causing microorganisms will flourish in the sediments that accumulate at the bottom of the pool and in the animal and plant organisms that will attach to the walls and surfaces of the pool.

Uchida gave a summary of how the analysis staff reviewed some of the issues and the discussion evaluating the merits of the proposed land use by applying the criteria established in Hawaii Administrative Rules (HAR), Section 13-5-30. To the question of whether the groins will perform as anticipated, Uchida said the staff was unable to find that the parts will promote long-term

sustainability within the Conservation District. The second question, "Is the proposed land use consistent with the objectives of the subzone?". The objective of the Protective Subzone is to protect valuable resources which include significant historic sites. The groins are intended to improve water quality and not protect the Natatorium. The staff does not believe that the consistency with the subzone objective has been established. The third question, "Will the proposed land use cause substantial adverse impacts to existing natural resources within the surrounding areas?". There are several concerns, one is the impact to the MLCD. There are prohibited activities in the MLCD and the Board has the power to permit them. Uchida said staff was concerned about the precedent for approving such a large scale project. Other staff concerns were the potential alterations or destabilization of the existing stable sand beach resources at San Souci Beach caused by this design, that the Diamond Head groin may trap sand and block the pool's outfall openings, thus the bypass method or peering at the sand may be necessary, the lack of consideration of alternatives such as mechanical pumping, and the visual and aesthetic impact of proving this type of facility in an area that is heavily used by both visitors and residents in the Waikiki area. Uchida said the final area for staff review was the impact on public health and safety. The DOH has serious concerns about this project and has stated unequivocally that, as currently proposed, the restored pool will not conform with the State's administrative rules established to protect public health and safety, and they could not approve the construction and operation of the pool under their current rules. The staff is also concerned about the effluent from the pool being discharged into the waters off San Souci Beach which is heavily-used.

Uchida said based on their analysis, the staff's recommendation is that the Board deny the application. He clarified that the staff is not denying the restoration of the Natatorium but denying what is before the Board today which is the two groins. Uchida said the staff believes the proposal creates a substantial risk of the following significant adverse impacts to highly valued Conservation District resources:

- 1) The alteration of the littoral occurrence in sand transport mechanisms that have lead to the establishment of a stable sand beach that experiences high levels of public use could lead to the potential destabilization and degradation of the beach resource,
- 2) The likely degradation of coastal water quality at a widely-used recreation area,
- 3) The damage to reef and other marine life within an established Marine Life Conservation District and Fisheries Management Area,
- 4) The distinct likelihood that a problematic sand clearing mechanism will be required at this beach to prevent sand from accumulating and blocking the pool's outfall openings, and
- 5) The visual impairment of well-appreciated scenic view and open space values

in the area.

Uchida said due to lack of information on this project, the staff could not properly analyze or mitigate potential impacts and cannot confidently determine that the impacts are justifiable and acceptable. He said the staff is aware of the serious problem with this proposal due to DOH's strong concerns about the project and their statement about not permitting the operation of the pool even if the groins are built. Uchida said the staff believes it would be irresponsible to commit Conservation District resources of this scale when the success and impacts of the project have not been thoroughly evaluated.

There was discussion about whether there was legislation to fund the Environmental Impact Statement (EIS) and did the Legislators designate an alternative that was supposed to be pursued in the Legislature. Member Chris Yuen said it looks according to the engineering design, that it would require groins to be built offshore to the Natatorium, not necessarily in the MLCD but at least in the FMA. Uchida referred to page 6 on the project alternatives that parts of the Natatorium's seawalls would be removed and two detached groins would be constructed to help stabilize the sand beach.

There was discussion on whether the Department opposed to the construction of seawalls or groins in either the FMA or MLCD. Uchida said the Land Division staff had not looked at that alternative as a part of this application but the principal is on the precedent that the Division will be setting by allowing construction of any type of facility in a Conservation District. He said the Land Division staff is saying that without considering all the alternatives, looking at whether mechanical pumping is an alternative or not, it is difficult to commit to this type of facility in a MLCD without fully exploring all the alternatives that may be available. Uchida said the staff looked at different ways of achieving the end result which is improving the water quality in the Natatorium but the fact that the applicants ruled on the mechanical flushing early on, limited the Division's ability to look at viable alternatives for this project. He said there is not enough information on the table to even select the two alternatives. One alternative is the proposal before the Board today. Uchida said the mechanical flushing which the Staff thought was a viable idea, is a similar type of mechanical flushing situation which the Board approved for the Hilton Lagoon on the other side of Waikiki.

Uchida said if the applicant is able to come up with additional information regarding the impacts, the staff would reconsider construction of the groins. He explained that timing is a problem because the CDUA's 180th day review expires on April 12, 1998.

He said the staff met with the City staff this past Monday and felt that they could provide information that would address the concerns raised by the staff but since time is limited, they are requesting a deferral.

Jerry Silva of the City Managing Director's Office introduced himself and said he was representing the Building Department Director, Randy Fujiki. He introduced the design team, Edward Pskowski of Leo A. Daly who designed the project, the principal in charge of the War Memorial Restoration Project; architect Sam Ustare and Fransiscus Gerritsen, Ph.D., professor of Ocean of Engineering at the University of Hawaii, the major designer of the restored memorial pool and the groins that support it.

Silva said they were surprised when they received their copy of the staff report Monday morning because they believed that all of the staff's concerns were addressed. He said they have not had an opportunity to meet with the Land Division staff to provide them with answers to those concerns but that meetings have been scheduled. Silva said the staff report provides an unbalanced presentation because it does not adequately include supportive information about the project. Those who supported the project at that hearing are not listed. For the record, they include Roger Fujioka, Ph.D. of the University of Hawaii's Water Resources Research Center; Richard Brock, Ph.D. who provided information on Marine Biota; Bruce Carlson, Ph.D., Director of the Waikiki Aquarium; Samuel J. Freeze, President of the International Swimming Hall of Fame; and Dr. Don Hibbard of DLNR's Historic Preservation Division.

Silva said there is information in the report from an early design that does not apply and other information such as concerns about the effluence from the Waikiki Aquarium are not accurate, for which the Aquarium Director was not contacted to verify. He further commented that there was a page and a half of questions in the report that the City answered in detail, but that the report generalizes their detailed responses in five lines. Silva said for these reasons, they feel that it is important that their staff have an opportunity to work with the DLNR staff to address concerns and ensure that the staff report adequately explains the project.

Silva explained why the groins are an important part of an engineering solution that corrects design deficiencies in the original structure. 1) The Waikiki War Memorial Natatorium is the oldest and one of the most revered memorials of veterans in Hawaii. It was built in 1927 to commemorate the 101 men and women from Hawaii who died in World War I. The memorial includes its wall, its arch, and its pool, 2) The complex is on both the State and National Register of Historic Places which DLNR nominated to be "the first living war memorial in the United States", 3) The complex has been a sporting and recreational

venue for decades. On opening day, August 24th, 1927, it was the site of the National Swimming Championships and has become a focal point for recreation where thousands have learned to swim, 4) This project including the groins was initiated by DLNR who recognized the historic significance and recreational value of the complex. The EIS was finalized by DLNR and signed by Governor Cayetano in January 1995. In 1997, the State turned the project over to the City for completion which the City accepted and budgeted for the full restoration. The proposed groins that will be reviewed today are an important part of that engineering solution to correct a flaw in the original design of the Memorial's pool. The groins will ensure appropriate water quality in the pool.

Member Yuen asked, when the Legislature appropriated the funds for the EIS, did the Legislature mandate a full restoration of the project. He wanted to understand what levels of decision-making have come up with regard to the full restoration as being the preferred alternative.

After a five minute break, Chairperson Wilson reconvened the meeting.

Edward Z. Pskowski introduced himself as the principal in charge of the War Memorial Restoration for Leo A. Daly Company since 1988. He listed accomplishments leading up to the project; a user's survey, a planning study looking at alternatives, design in engineering, the final EIS accepted by Governor Cayetano in 1995, and final plans and specifications completed by DLNR in 1996. Pskowski said there has been scrutiny of the project with input from many government agencies, individuals, and interest groups. He said since the City & County of Honolulu took over the project last year, there has been a similar emphasis on input from any and all parties. Pskowski showed slides and explained the project in perspective to the environment and the groins. He said the groins are 35 feet wide at the base and 10 feet wide at sea level. Pskowski said at most high tides, the groins barely break the surface of the water. The Ewa groin extends 60 feet, the Diamond Head groin extends 75 feet outward. The groins are required to facilitate adequate circulation and pool volume turnovers and to protect the stabilized War Memorial. Pskowski explained how the use of silk curtains would minimize impact and the schedule for the work to take place during periods of low tides. He also explained how maintenance would be accomplished by using a flexi-flow platform for sand build up.

Pskowski said at the CDUA public hearing on January 29, 1998, Dr. Bruce Carlson confirmed and noted that the area to be directly impacted by the groins does not contain significant concentrations of living coral and thus the groins would only have a minor impact on the coral. He further stated that the proposed project would not impact the Aquarium's reef walks.

Pskowski stated that in addition to the presently proposed pool restoration, both the previously proposed partial restoration and the beach creation scenarios all required groins. He said if there should be future beach creation on the project, the ewa groin would facilitate any beach creation but not San Souci Beach.

Dr. Frans Gerritsen introduced himself as a retired professor of the University of Hawaii. He talked about the design aspect of the restoration and said the most significant element is the flushing of the swimming base or the natural flushing which is the concept of a design. Gerritsen then talked about the design components of a large entrance and exit openings in the 2 opposing walls. The flow-guard structures will guide in-flow and out-flow conditions of reef protection and have stabilizing effluence from the beach with sand traps in between. Gerritsen said the proposed system, the structures on the beaches on either side of the Natatorium, and the water quality will remain. He said his calculations were done based on standard formulas. He used a drawing to explain the circulation as it existed approximately 20 years ago. Gerritsen said supposedly the original Natatorium had natural flushing but that it did not work because of a design problem.

There was discussion about the minimum turnover to maintain the water quality and Gerritsen said that the minimum would be 2 times a day, 2 volumes per day. He said the volume of the pool is 1.8 million gallons and depending on time of day, waves and various other conditions, twice a day would be the minimum.

There was brief discussion about the success of the Ko'Olina lagoons project.

A discussion about why the DOH would not approve the pool with this proposal took place. Turbidity and water quality are the other concerns, along with the amount of clouding in the water. Dr. Gerritsen said the double wall system creation of sand traps will mitigate that and the installation of a backwash system with PVC pipes beneath the sand will allow water to be pumped up to dislodge any accumulated sediment. Another concern is the administrative problem. Although the Natatorium has been in place for 70 years, there are no State rules for salt water pools. The State considers this to be a swimming pool but there are no rules for the operation. DOH pool rules are for chlorinated fresh water pools.

Dr. Bruce Anderson, Deputy Director, DOH, clarified the water clarity issue. He stated that the circulation was restricted in the pool and that the swimmers actually influenced the bottom of the pool stirring up the sediments. In the old pool, turbulence caused the bottom sediments to be resuspended and the pool became very cloudy, almost a murky color. Dr. Anderson talked about a

missing child who was found at the bottom of the pool, 20 minutes later. The court record indicates that the lifeguards and others who swept the pool, simply couldn't see anything at the bottom of the pool. He said a safety issue is to be able to see the bottom of the pool. Dr. Anderson's concern is that this pool, if not properly designed, would be a sediment basin. He felt that the natural flushing that is being proposed would help improve the water quality.

Dr. Anderson said he cannot address the issue of bacterial water quality and bacterial problems but that there is evidence of problems in the old pool. He said salt water acts as a disinfectant, it kills many other types of bacteria and viruses but not staph. Dr. Anderson said this would be the most serious public health concern that DOH has and unfortunately, there are no standards in place to deal with staph specifically. He said the water quality standards of offshore water have more to do with sewage contamination. The indicators that DOH is using to deal with recreational water quality is underneath the sewage designed to pick up other types of problems, so some measure of potential staph accumulation needs to be developed. Dr. Anderson said measuring directly for staph would probably be the best way to do it but there aren't good ways of quantifying staph in salt water. He said flowing water through the pool and flushing it through might be a potential solution to that but other concern he had was in the accumulation of sand along the Diamond Head end of the groin. He suspects that the accumulation of sand would be a significant amount that will obstruct the flow through the pool and unless it is kept clear and the flow through is continued, there is likely to be staph problems in the pool.

Dr. Anderson said there are 2 significant concerns related to water quality, one is the problem with the Administrative Rules in that they were not designed with the Natatorium in mind and the other is the safety issue. He said if the pool is cloudy to the point where the bottom cannot be seen, DOH will enforce closing the pool.

Dr. Chip Fletcher commented that there is an accretion history of San Souci Beach and his estimation is that it is 75 cubic meters per year toward the seaward growth of the beach next to the Natatorium. He said he is not sure where the sediment source is but the beach is building up against the Diamond Head wall and is building up at approximately 75 cubic yards [7 dump truck loads] per year. Dr. Fletcher pointed out that to maintain turbidity and water quality are mutually exclusive. He said a siltation basin works by the fact that quiet water allows the sediment to fall to the bottom and so turbidity is achieved by quiet water whereas flushing is achieved by active water. It was unclear to him as to how these two were going to relate. He was also concerned about the aspect of the engineering with respect to the EIS and any mention of sand traps or pumping or the back washing.

Dr. Fletcher said no wall in a coastal setting has clear water in front of it. The groins in the rubble mound being proposed have high turbidity on the seaward side because of wave impact against the groins reflecting off and interacting with waves coming in so there will be some degree of washing machine action on the seaward side of the groins. He said there will be some quiet time during the year and may be quiet enough that some algae and limu may grow on the rubble but during those times of the year when the energy goes back up, the high wave action will rip off the limu and there will be high turbidity on the seaward face of these groins. Dr. Fletcher said the Ko'Olina lagoons are not an example of high state of perfection in the art of engineering because of problems and that it is turning into a beach rock.

Dr. Fletcher's other concern is that the Diamond Head groin will trap sand that is moving in the offshore direction and that it will trap sand at exactly the place where the outflow is located. His concern is that there will be a significant volume of sand trapped by the Diamond Head groin and that the cost of dredging and maintaining clear outflow is not included in the annual budget for the Natatorium. He said the EIS does not offer any treatment as to how this sand build up is going to be taken care of.

Dr. Fletcher explained how the breaking waves would move at a slight angle creating a shadow zone for the wave energy and how it would be nearly zero on the other side of the Ewa groin. This would affect the intake, removing the factor from the flushing and the circulation system. Dr. Fletcher noted that he and Dr. Gerritsen have a difference of opinion on this issue, in that Dr. Fletcher felt that by putting in an engineering beach at the Natatorium location, there would be no need for groins. Dr. Fletcher was also concerned about the wastewater discharge from the Aquarium which goes into the dredged channel which will then flow into the Natatorium.

A break was taken and the meeting was reconvened at 12:45 p.m.

Dr. Gordon Edlin introduced himself and briefed the Board on his credentials. He explained that in science, there are two hard sciences, physics and chemistry. Physics is making an accurate measurement in very accurate predications, chemistry is mixing two things together, predicting accurately what the product will be. Dr. Edlin said his field is biology or soft science, based on chemistry and physics but that the predictions are much more variable.

Dr. Edlin said he has testified before the City Council that there are serious health and safety problems that will not be addressed or solved by any tinkering with the current solutions. His objections are the groins and believes that the groins will exacerbate what's already a problem with the proposed Natatorium

construction. The groins on the Ewa side will channel water into the Natatorium and the afflux from the Aquarium puts out nitrogen and other nutrients into the waters which will be funneled into the new Natatorium. Dr. Edlin said those nutrients promote the growth of microorganism and algae, and will encourage the palification of all kinds of organisms. He said the flushing will to some extent get rid of these organisms and some will attach to the surface and cause a buildup on the walls of the Natatorium. The Diamond Head side is a more serious problem because they have to come out somewhere and so the buildup of all those materials will either tend to clog the gates or the afflux and will also build up at San Souci Beach. Dr. Edlin said these infections are particularly serious today more so than in the past because many bacteria are now resistant to a wide range of treatments and antibiotics are no longer effective on these microorganisms. He said this pool as proposed will be used by visitors from all over the world who come from environments where all kind of diseases are endemic, that do not exist in Hawaii. There will be unpredictable diseases which Dr. Edlin feels would be disastrous.

Dr. Edlin said although there are new technologies to identify particular microorganisms, it is very costly and emphasized that it will not solve the problem and that the diseases or infections will occur anyway. He explained that the healthy human being has healthy immune systems so might not be affected but that they can be sloughed off in water and that salt water is a good environment for staphylococcus. The bacteria can grow and people who are most affected and susceptible to infections are people whose immune systems are compromised like people with AIDS, the elderly, people undergoing chemotherapy for cancer, very young children or anyone who has an open wound. Dr. Edlin believes that the health and safety of this pool cannot be corrected and that a beach could be reconstructed without groins. He hoped that the Board will support the staff and deny the permit for the groins.

Dr. Edlin didn't think that cleaning the pool would be a feasible alternative. He said the plan is to put a surface on the walls and do periodic scraping and felt that since the walls are made of concrete, it will erode and destroy the pool.

Rick Bernstein introduced himself as a member of the Kaimana Beach Coalition. He said he represented them and said the Kaimana Beach Coalition recommends and supports the restoration of the beach, the memorial arch in remembrance of the veterans who died in World War I, the establishment of restrooms and shower facilities which are sorely needed at the facility.

Sylvia Wied said the restoration of the Natatorium pool and the construction of the groins will threaten, if not end the unequal recreational opportunities of this unique resource. It's

preservation and protection deserves full consideration of support.

Heidi Ho said she opposed the granting of the CDUP because building the groin will destroy reef and marine life. She asked that the Board deny the application and to restore the beach and the arches.

George Downing submitted testimony and asked that the Board deny the permit and build a beach instead.

David Frankel representing the Sierra Club said they have concerns on the impact the groins' will have on the marine environment and the MLCD.

Linda Engleberg introduced herself and said she opposed the restoration of the Natatorium but in favor of restoring the memorial arch and creating the beach. She also expressed fear of commercialization in the area.

Dr. Anderson assured the Board that DOH will look at the issues objectively. He also wanted to express concerns as a private citizen on the public benefit issue and felt that the idea of alternative uses needs to be explored in depth. Dr. Anderson said the facility is deteriorating, an eyesore and a disgrace to the veterans. Dr. Anderson felt that many people who support the facility are doing so because of its historical value and feel that they need to preserve and restore the facility because it was a monument to the veterans. He said it is a lousy, unfriendly place to swim.

Blake Oshiro introduced himself in behalf of the Sierra Club. He said they represent over 3,000 members on the island of Oahu and are against the CDUP. Oshiro said the impact will not be a small impact as implied by the applicant as the ocean floor (of the Natatorium) is over 5,300 square feet. He talked about the Section 13-36-2, HAR prohibiting injury, killing, possessing or removing any marine life. Oshiro, addressing the criteria under 13-5-30 HAR that were not met by the applicants, felt that the permit should be denied.

Jerry Silva said that Act 15 of 1921 Legislature created the Memorial. In the Act, the requirement for the Memorial included a swimming course of at least 100 meters in length. He said the Memorial is the pool, not the arch, and not the wall. Silva addressed the handicap accessibility and parking situation. He said Belt Collins is near completion on a traffic and parking study that will address the problems and safety issues. He clarified that the pool that exists today is not the pool that was designed in 1927. This pool is shallower, has no diving boards and slides. Silva said City swimming pool rules apply to it and that it requires two lifeguards for every 120 people. He

said they also plan to require people who use the pool to shower with soap and water.

Silva said their goal is to continue to listen to people to improve the design prior to construction, to have a memorial that's fitting for the veterans and have a safe swimming environment for everyone. He asked the Board to look at today's design and not what sits there now. Silva said they believe that groins are essential for a coherent engineering solution.

Silva said the incorporation of the bleachers is part of the historic restoration. He said there is a good possibility that there could be water polo matches and salt water swimming meets at the pool.

Chairperson Wilson said the City and County has requested for a deferral to continue to work with the Department staff. In order to meet the 180 day deadline, a decision on the CDUA has to be made at the next Land Board meeting which will be held in Maui. The applicant was asked whether they were willing to withdraw and resubmit the application as Board members felt that the issues should be addressed on Oahu. The applicant said no, that this project has been going on for 10 years and would like to come to a resolution.

Unanimously approved to defer Item D-32 to the next Land Board meeting in Maui. (Inouye/McCrory).

D-31 NEGATIVE RECOMMENDATION ON A REQUEST FOR VARIANCE OR WAIVER OR RESTRICTIVE COVENANTS OF LAND OFFICE DEED NO. S-24, 334, ISSUED TO EDWIN CHA SON NOH AND MIRIAM CHUN NOH, LOT 44, DIAMOND HEAD VIEW LOTS, KAPAHULU, HONOLULU, OAHU, TMK: 1ST/3-1-48: 49

Uchida said in August 1995, the applicants, the Nohs, were the successful bidders in the purchase of one of the Diamond Head view lots. The Land Office Deed (LOD) contained a height restriction on any structure built which applied to all of the lots sold in the Diamond Head view subdivision to protect the views from the lots, as well as to protect the view of Diamond Head. Uchida said several years ago, the City approved a building permit to the Nohs for construction of a second story to their home without the approval of DLNR. Litigation ensued and this matter went to the Circuit Court which ruled in favor of the Nohs. The matter was then taken to the Supreme Court which overruled the Circuit Court. The Circuit Court then ruled in favor of the Department saying that the Department had a right to keep the height restriction imposed on the property.

Uchida said the Noh's requested this matter be brought before the Board as they are trying to exceed the height restriction of the deed. The Attorney General's opinion is that it is a matter that

the Board can't consider in waiving restrictions on any of the LODs. Uchida said the staff does not want to see any kind of waiver or variances to the height restriction in this area.

Uchida said Shirley Kam, a neighbor of the Nohs, who initially filed the complaint with the Building Department called to request that the matter be deferred. She would like to have the opportunity to address the Board if the Board is going to consider approving the request of the Nohs to grant the variance. Uchida said the staff recommendation is that the Board deny the request for the height limitation variance and adhere to the intent of preserving the Diamond Head view lots.

Uchida said in the LOD, the applicant can request that the matter be waived by the Board and the Board can consider the waiver of the height restriction.

Roger Moseley introduced himself as the attorney for the applicants, Edwin and Miriam Noh. He presented the Board members with a binder of additional information and reviewed the contents of the folder. He talked about the height, the view, and the building requirements. Moseley pointed out in a survey that was conducted, there were approximately 28 other houses in the subdivision that exceeded the height limit.

Moseley clarified for the record that the Noh's had the opportunity to review the exhibits of the submission and they concurred that it is true and correct.

Miriam Noh testified that they are disappointed and wished to have the breeze and the view as they dreamed.

Edwin Noh testified that they were once able to see the ocean and now they have the view of the hedge or the roof of their neighbor.

Moseley briefed the Board on the Exhibits. He said the Noh's are not asking that the neighbors tear it down or to move it, but that they would like to take their own measures that would not affect any of the neighbors. Moseley commented that from 1983 to 1988, the City did not send plans to DLNR for approval. He reviewed for the Board the different court determinations that were made with regards to the house. The Noh's confirmed that they were aware of the building restrictions for the original house.

Shirley Kam testified that when the Noh's built the addition, it made an impact on their lives because their privacy was taken away and so was the view of Koko Head. The Noh's are able to look into the Kam's living room, the dining room and the bedroom. She asked that the variance be denied.

Dr. Calvin Kam testified in opposition to the variance.

Moseley addressed the privacy issue and said the Noh's would have no objections to not having any windows on the third floor on the shared boundary side with the Kam's. He said on the issue of the view from the Noh's terrace, the court has decided that there is no impact on the view.

Member Kathryn Inouye commented on her difficulty of finding justification for the granting of the variance because ~~it is~~ *applicant had* burdensome and impractical and that the applicants were well aware of the building restrictions. The other concern she had was the ~~deed restriction~~ *not prevent deed restriction* for all adjacent homeowners.

Unanimously approved as submitted. (*purchased property reference on deed restrictions*) (Inouye/Matsumoto)

ITEM D-9 ISSUANCE OF A REVOCABLE PERMIT TO MANUEL RAPOZO AT KALOPA, HAWAII, TMK: (3) 4-4-3-47

Uchida said this property is presently vacant and was part of the proposed Oji lease. He said this property will be subject to compliance with the Department of Agriculture (DOA) for the irrigation water system. The staff recommendation is that the Board authorize the issuance of a new revocable permit to Manuel Rapozo covering State lands subject to terms and conditions.

Member Yuen felt that this property and other lots of this size should be put up for public auction for long-term tenure, as intensive agriculture lots because of high value use. An appraisal shows that the rent for a farming lot would be fifteen times greater in comparison to a pasture lot. There was brief discussion about the accessibility to the property. Member Yuen wanted to clarify that a revocable permit is a month-to-month tenancy and that it would not turn into a long term lease.

Motion made to approve the issuance of a revocable permit but that the land agent is supposed to determine whether the State does have access and if the State does have access, the State would then look at converting pasture leases to long-term leases for intensive agricultural purposes. (Yuen/Kennison).

There was discussion about the access issue, water accessibility and fencing the property for pasture use. Chairperson Wilson suggested that since the May meeting is scheduled to be in Hilo, that the access issue could be researched in the meantime.

Members Yuen and Willie Kennison withdrew the motion to approve submittal.

Unanimously approved to defer item. (Yuen/Matsumoto).

ITEM D-4 ISSUE MAUNA KEA COMMERCIAL PERMITS, KAHOE, HAWAII, TMK:
(3) 4-4-15-9 AND -12

Uchida said this is a follow up to a series of board meetings where a decision had been made to clear up the commercial use permits controversy on Mauna Kea. The last action allowed for the Land Division to issue up to 12 permits. Uchida explained the screening process reviewing past records and whether they had a Public Utilities Commission (PUC) license or variance from the PUC. Uchida said the Land Division would like to amend the number of permits allowed from 12 to 13 to accommodate all 5 applicants who have PUC licenses in order to allow them to operate on Mauna Kea. The staff recommendation is that the Board authorize the issuance of 5 Mauna Kea commercial revocable permits, increase the allowable Mauna Kea commercial revocable permits number from 12 to 13, with the permit document being the same as those 9 issued by the Department and including those changes authorized by the Land Board, subject to terms and conditions.

Rob Pacheco, President of Hawaii Forest and Trails, said they currently hike on private property and have applied for permits with DLNR's Division of Forestry and Wildlife (DOFAW) for hiking purposes. They do not intend to go up to the summit of Mauna Kea. He said his tours are not necessarily hiking tours but that they are natural history tours. The nature of their tour incorporates visiting the Visitor Center and to stargaze.

Rick Wilson of Pacific Rim Tours introduced himself and described their tours as eco-tourism tours and astronomy tours to Mauna Kea to the Visitor Center and not to the top of the summit since November, 1996. He was advised that he did not need a permit since he was only going to the Visitor Center but has since found out that he would need a permit. Wilson said they do not have any intention of going to the summit and requested granting of a permit for the Pacific Rim Tours. Wilson said they are continuing bringing tours to Mauna Kea as they were given a waiver by IPS Sports Services until the Department makes a decision on the permits. Uchida was not aware of this.

There was discussion about transporting tourists from one point to another and how it differed from a tour service. Wilson and Pacheco said they are not "transportation providers" but that they provide astronomy tours and natural history tours respectively.

Bob McLaren, Interim Director of the Institute for Astronomy, University of Hawaii (UH) introduced himself. He said UH through its Mauna Kea Support Services, has the responsibility of managing the Visitor Center. McLaren said UH is in support of granting the additional permits with recommendation to the Board to include two conditions: 1) If it is clear that the applicant

simply wants to visit the visitor information station, that it be stipulated on the permit, and 2) A requirement be made for any visits after sunset, that the operator be required to make an advance reservation with Mauna Kea Support Services. He said the reason for that is their concern to avoid overcrowding and conflict for the limited space. McLaren said they also want to protect and continue to provide the free public program that is conducted four nights a week.

There was discussion about the permits issued to the commercial operators and the limits of the summit permits. Member Yuen felt that permits should be required for commercial operators to go to Hale Pohaku but should not be subject to the 12 permit limit that is presently in force.

Motion made to approve the staff submittal with amendment to limit summit tours to 12 operators, including the snow play permittees, and allow for other additional tour operators to access Hale Pohaku only. Hawaii Forest and Trails would be limited to tours at Hale Pohaku only. For any visit after sunset, the operator shall make arrangements with the Mauna Kea Support Services to avoid overcrowding of the facilities with limited space. (Yuen/Kennison).

Member Colbert Matsumoto had concerns about issuing permits to non PUC licensed operators for safety considerations. He felt it was incumbent on the Board that the permittees are properly licensed transportation providers and felt that the requirement of the PUC license should be a condition of the issuance of the permit and should not be deviated from. Pacheco clarified that although they do not have PUC license, they are required to comply with Department of Transportation (DOT) regulation for carrying passengers. Member Lynn McCrory concurred with Member Matsumoto on requiring PUC licenses. Discussion took place regarding the requirement of the PUC license for the permittees.

Vote: 4 in favor, 2 oppose (Matsumoto & McCrory).

ITEM D-3 CONSENT TO ASSIGNMENT OF LOD S-26996 AND DIRECT SALE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES AT PUAKO, HAWAII, TMKs: (3) 6-2-9-PORTION -9 AND -10

Uchida said this involves an assignment of lease from the Behrens to the Association of Apartment Owners of the Whale's Tail. The Behrens built 2 units on the property and expanded the drive-way beyond what was given to them in the easement. Today's amended recommendation is to approve consent to the assignment, amend the existing easement to withdraw a portion of an area, to request authorization to sell another portion of the easement adding to the existing driveway, impose a \$500 fine for the encroachment of the driveway and authorize the direct sale of the additional area

subject to terms and conditions.

Lynn Higashi, attorney for the Association of Apartment Owners of the Whale's Tail introduced herself and said she was available to answer any questions.

Unanimously approved with recommended amendment to approve consent to the assignment, amend the existing easement to withdraw a portion of an area, to request authorization to sell another portion of the easement adding to the existing driveway, impose a \$500 fine for the encroachment of the driveway and authorize the direct sale of the additional area.
(Yuen/Kennison).

D-21 ISSUANCE OF REVOCABLE PERMIT TO PI'IHONUA 'EA, INC. FOR ORGANIC AGRICULTURE AT PIIHONUA, SOUTH HILO, HAWAII, TMK: 3RD/2-3-30: 07

Uchida said the area is in the Conservation District and the applicant received a CDUA from the Board last year. The applicant intends to conduct an organic gardening project on the property and the harvest will be distributed to local churches and non-profit organizations. The applicant states that none of the produce will be sold commercially. Uchida said it was recently discovered that 2 of the principals have pending criminal cases and past citations on violations of the Department's regulations. He said the information of the citations were not received by the Land Division when the CDUA was being processed. Uchida said the staff's recommendation due to staff's uncertainty as to the applicant's ability to responsibly comply with the terms and conditions of the revocable permit and other departmental laws and rules, is that the Board deny the issuance of a revocable permit to Pi'ihonua 'Ea, Inc.

Uchida said Ms. Diane Stanley has asked that the issuance of revocable permit be changed to a direct lease because she received word that she will be receiving a 501C3 designation from the Internal Revenue Service by July 1998.

Ms. Stanley said she requested for a deferral because of hardship. She could not understand why the submittal had to contain the pending criminal cases and past citations. Stanley addressed some of the citations and discussion took place on some of her pending citations and activities. She insisted that the actions was prejudice to her company.

Since Ms. Stanley was unable to find materials she wanted to present to the Board, Chairperson Wilson suggested giving her more time to look through her materials while the Board moved on to the next agenda item.

ITEM D-11 RESCIND PRIOR BOARD ACTION FOR FORFEITURE OF GENERAL LEASE S-3631, WAIAKEA, HAWAII, TMK: (3) 2-2-50-79

Uchida briefed the Board on; the cancellation of the General Lease due to failure of the lessee to post the required performance bond on March 14, 1997, the rescinding of the cancellation due to good faith effort on June 24, 1997, and the authorized cancellation of the General Lease due to failure on the part of the lessee to keep lease rental payments current on January 16, 1998. On February 11, 1998, the Lessee made his rent payment and requested that the Land Board rescind its prior authorization. Uchida said the staff recommendation is that the Board rescind Land Board authorization of January 16, 1998 under terms and conditions.

Harold Ashida apologized for his tardiness in the past and assured the Board that he would not let that happen again.

Unanimously approved as submitted. (Yuen/Kennison).

Chairperson Wilson brought back Item D-21. Ms. Stanley presented letters, By-laws of her organization, tax clearances, a restraining order and her Conservation Plan to the Board. She said that, "people are innocent until proven guilty" and felt that the listing of the citations were prejudiced against her organization.

Item D-21 was unanimously approved as submitted. (Yuen/McCrory).

Ms. Stanley requested for a contested case hearing. Chairperson Wilson said the request will be made known to the Department of the Attorney General but that a contested case hearing does not apply in this case.

ITEM D-2 STAFF REQUEST FOR ONE-YEAR HOLDOVER OF GENERAL LEASE NO. S-4875 AND ISSUANCE OF REVOCABLE PERMIT, KOKEE VENTURE, INC., WAIMEA

Uchida said the conceptual master plan has not been completed yet and the lease is scheduled to expire next week. The staff recommendation is that the Board authorize a one-year holdover of the term of the General Lease beginning April 1, 1998 and ending on March 31, 1999 and stipulate the minimum monthly rent and percentage rents during the holdover at current rates. If a new lease is not ready for disposition by March 31, 1999, authorize issuance of a month-to-month revocable permit to Kokee Ventures subject to terms and conditions.

Bill Olson introduced himself as President of Kokee Ventures. He testified in favor of the holdover before the lease expires. Olson said he has not seen the draft conceptual plan.

Unanimously approved as submitted. (McCrory/Yuen).

ITEM D-25 REQUEST FOR AUTHORIZATION TO CANCEL REVOCABLE PERMIT NO. S-6687 AND THE REISSUANCE OF A NEW REVOCABLE PERMIT TO MOBILE ONE, INC. FOR MOBILE TELEPHONE AND VOICE PAGER SERVICE PURPOSES ON GOVERNMENT LANDS, IDENTIFIED BY TMK: 2-2-07: PORTION 09 SITUATE AT WAIAKOA AND PAPAANUI, MAKAWAO, MAUI

Uchida said the Revocable Permit was issued to Dr. Mark Goldman, dba Communication Center of Hawaii and Island Radio Phone and has since sold the business to Mobile One, Inc. who continues to use the services. The staff recommendation is that the Board authorize the cancellation of Revocable Permit to Dr. Goldman, dba Communication Center of Hawaii and Island Radio Phone and authorize the issuance of a revocable permit to Mobile One, Inc. subject to terms and conditions.

Member Yuen stated that Dr. Goldman had been his client in the past but not in the last 6 or 7 years so will not disqualify himself.

David Williams introduced himself as the engineer for Mobile One, Inc.

Unanimously approved as submitted. (Kennison/Matsumoto).

ITEM D-29 PERMISSION TO HIRE CONSULTANT FOR LAND DIVISION COMPUTERIZATION PROJECT

Uchida said the Land Division desires to hire a consultant for the computerization of the Division. He requested that the Board authorizes the Land Division to hire a consultant to prepare work plans for the project, conduct a project definition study, identify project design alternatives and define project specifications stages, and authorize the Chairperson to sign the necessary documents pertaining to this project.

Unanimously approved as submitted. (McCrorry/Kennison).

ITEM D-12 FORFEITURE OF GENERAL LEASE NO. S-4790, LOT 10, PAPA HOMESTEADS, PAPA 1ST, SOUTH KONA, HAWAII, TMK: 3RD/8-8-04: 10

Uchida asked for the withdrawal of this item.

Unanimously approved to withdraw Item D-12. (Yuen/Matsumoto).

ITEM D-13 ASSIGNMENT OF GENERAL LEASE NO. S-5072, LOT 4, PUU KA PELE PARK LOTS, WAIMEA (KONA), KAUAI, TMK: 1-4-2: 30

Uchida asked for the withdrawal of this item.

Unanimously approved to withdraw Item D-13. (McCrorry/Matsumoto).

ITEM C-1 REQUEST FOR APPROVAL OF A CONTRACT WITH THE HAWAII AGRICULTURE RESEARCH CENTER (HARC), TO CONDUCT SERVICES RELATING TO KOA TREE IMPROVEMENT RESEARCH

Michael Buck, Administrator of DLNR's Division of Forestry and Wildlife briefed the Board on the Koa research. The staff recommendation is that the Board authorize the Chairperson to execute the subject contract with the Hawaii Agriculture Research Center in the amount of \$40,000, pending modification and approval by the Department of the Attorney General (AG's).

Unanimously approved as submitted. (Matsumoto/McCrory).

ITEM C-2 REQUEST FOR APPROVAL OF DLNR RADIO SYSTEM MAINTENANCE CONTRACT WITH PACIFIC SERVICE TECHNOLOGIES

Buck said the staff recommendation is that the Board authorize the Chairperson to approve and, subject to final AG's approval, execute the radio maintenance contract for the DLNR "green net".

Unanimously approved as submitted. (Inouye/Kennison).

ITEM K-1 ISSUANCE OF LEASE BY NEGOTIATION, PIER 18, HONOLULU HARBOR, ISLAND OF O'AHU (PIER 18 DEVELOPMENT, INC. DBA PIER 18 MARINE SERVICE)

Peter Garcia representing the Department of Transportation briefed the Board. He said there was prior Board approval but that it was for a different location.

Unanimously approved as submitted. (McCrory/Kennison).

ITEM K-2 CONSENT TO ASSIGNMENT OF LEASE, NAWILIWILI HARBOR, LIHUE, KAUAI (GASCO, INC./CITIZENS UTILITIES COMPANY)

Garcia said this lease is for a term of 25 years.

Unanimously approved as submitted. (McCrory/Inouye).

ITEM K-3 CONSENT TO THE ASSIGNMENT AND ASSUMPTION OF SUBLICENSEE'S INTEREST IN SUBLICENSE AGREEMENT, LICENSE NO. 124, KAWAIHAE HARBOR, ISLAND OF HAWAII (UNION OIL COMPANY OF CALIFORNIA CORPORATION, A CALIFORNIA CORPORATION/TOSCO CORPORATION, A NEVADA CORPORATION)

Unanimously approved as submitted. (Matsumoto/McCrory).

- ITEM K-4 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION,
KAWAIHAE HARBOR, ISLAND OF HAWAII (HT & T COMPANY)
ITEM K-5 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION,
KAWAIHAE HARBOR, ISLAND OF HAWAII (HT & T COMPANY)

Items K-4 and K-5 were unanimously approved as submitted.
(Mastumoto/Kennison).

- ITEM K-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION,
NAWILIWILI HARBOR, LIHUE, KAUAI (TOMRA PACIFIC, INC.)


Unanimously approved as submitted. (McCroory/Kennison).

Meeting was adjourned at 5:58 p.m.

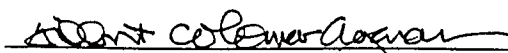
The following items were deferred: B-1, B-2, B-3, D-1, D-5, D-6,
D-7, D-8, D-10, D-14, D-15, D-16, D-17, D-18, D-19, D-20, D-22,
D-23, D-24, D-26, D-27, D-28, D-33, and J-1.

NOTE: ALL MATERIALS LISTED ON THIS AGENDA ARE AVAILABLE FOR
REVIEW IN THE DLNR CHAIRPERSON'S OFFICE

Transcribed by:


Barbara E. Kameda

Approved for submittal:


MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources