

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	Docket No. DR <u>08-36</u>
)	
KO OLINA DEVELOPMENT, LLC)	KO OLINA DEVELOPMENT, LLC
)	
To Amend The Agricultural Land Use)	
District Boundary into the Urban Land)	
Use District for approximately 642 acres)	
At Honouliuli, Ewa, Oahu, Tax Map)	
Keys: 9-1-14: Portion of Parcel 2; 9-1-15:)	
3, 6, 7, 10, Portion of Parcel 4; 9-2-03: 3,)	
7, Portion of 2)	
_____)	

LAND USE COMMISSION
 STATE OF HAWAII
 2008 MAR 24 P 3:53

KO OLINA DEVELOPMENT, LLC'S PETITION FOR DECLARATORY ORDER

MEMORANDUM IN SUPPORT OF PETITION

EXHIBITS "1" - "28"

AND

VERIFICATION

OF COUNSEL:
 MATSUBARA, LEE & KOTAKE
 A Law Corporation

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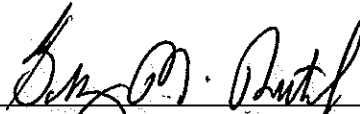
KO OLINA DEVELOPMENT, LLC'S PETITION FOR DECLARATORY ORDER

Comes now, Petitioner KO OLINA DEVELOPMENT, LLC ("Petitioner"), by and through their attorneys, Matsubara - Kotake and hereby respectfully request that this Land Use Commission ("LUC") issue a declaratory order that the Petitioner is in substantial compliance with the Findings of Fact, Conclusions of Law, and Decision and Order filed September 12, 1985 and the Order Granting Petitioner's Motion To Amend Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 12, 1985 filed may 3, 1994 in the above-referenced docket.

This petition is brought pursuant to Title 15 Department of Business, Economic Development, and Tourism Subtitle 3 State Land Use Commission ("LUC Rule") §§15-15-98-104, Hawaii Revised Statutes §205-6 and is based upon the attached Memorandum in Support of Petition and the records and files of this case.

Dated: Honolulu, Hawai'i 24 MAR 2008.

OF COUNSEL:
MATSUBARA, LEE & KOTAKE
A Law Corporation



BENJAMIN M. MATSUBARA
CURTIS T. TABATA
WYETH M. MATSUBARA
Attorneys for Petitioner
KO OLINA DEVELOPMENT, LLC

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MEMORANDUM IN SUPPORT OF PETITION

Comes now, Petitioner KO OLINA DEVELOPMENT, LLC ("Petitioner"), by and through their attorneys, Matsubara - Kotake, and hereby respectfully submit their Memorandum in support of their Petition for Declaratory Order.

I. INTRODUCTION

Petitioner hereby submits their Petition for Declaratory Order on the basis that Petitioner is in substantial compliance with the September 12, 1985 Land Use Commission of the State of Hawai'i, Findings Of Fact, Conclusions Of Law, And Decision And Order ("Decision and Order") and the Land Use Commission of the State of Hawai'i, Order Granting Petitioner's Motion To Amend Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 12, 1985 ("Amended Decision and Order") and therefore requests the State Land Use Commission

("Commission") make a determination in favor of Petitioner that they are in substantial compliance with the Commission's Decision and Order and Amended Decision and Order. True and correct copies of the Findings Of Fact , Conclusion Of Law And Decision And Order filed herein on September 12, 1985 and the Order Granting Petitioner's Motion To Amend Findings of Fact, Conclusions of Law, And Decision And Order Dated September 12, 1985 filed herein on May 3, 1994 are attached hereto and incorporated herein by reference as Exhibit "1" and Exhibit "28", respectively.

The facts will clearly demonstrate that at all times Petitioner has substantially complied with their representations to the Commission from building a boat ramp in the Marina, to working through the required City and County entitlement process, to working with boaters' concerns at the time, to eventually having the boat ramp moved to Kalaeloa Harbor.

II. DISCUSSION

A. Facts Relating To The Ko Olina Public Boat Launch Ramp And The Kalaeloa Harbor Public Boat Launch Ramp

1. Background

On December 21, 1983, Petitioner's predecessor in interest, West Beach Estates, filed the Petition for District Boundary Amendment to reclassify approximately 642 acres of land located at Honouliuli, Ewa, Oahu, Hawai'i from the State Land Use Agricultural District ("Property") to the State Land Use Urban District to develop resort, commercial area, and a planned residential community ("Petition").

The Petition proposed to develop a resort, commercial and residential community on the Property that would include 4,000 hotel rooms and/or resort condominium units; 5,200 residential units; a championship golf course, four new lagoons with swimming beaches; a marina, commercial areas, including one shopping center, four new parks, two transit stations, a Hawaiian Cultural Center, beach and yacht clubs and tennis facilities ("Project").

On September 12, 1985, the Commission filed its Findings of Fact, Conclusions of Law and Decision and Order reclassifying the Property from the State Land Use Agricultural District to the State Land Use Urban District ("Decision and Order"). Within the Decision and Order three (3) Finding of Facts and one Condition that are relevant to this instant motion; Finding of Facts No.'s 33, 52 and 87 and Order Condition No. 4. Finding of Fact No. 33 provides the following:

Petitioner proposes to develop a 36 acre recreational and commercial marina with a public boat launch ramp, and to develop pump out facilities, a fueling and drydock facility, other public conveniences and parking adjacent to the Deep Draft Harbor. Commercial use of the marina facilities will include sightseeing, charter fishing, dinner cruises and other excursions. (emphasis added).

Finding of Fact No. 52 provides the following:

Portions of the Property are within the County Special Management Area. Petitioner **will** need to obtain the appropriate permits prior to developing any portions of the Property in the Special Management Area. (emphasis added.)

Finding of Fact No. 87 provides the following:

Petitioner will also open to public use parks and open areas ... Petitioner will provide boating and other marina-related recreational facilities and beach rights-of-way in coordination with the County Department of Parks and Recreation requirements. (emphasis added.)

Order Condition No. 4 provides the following:

Petitioner shall dedicate to the City and County public easements for shoreline access to the beach and lagoon areas to be developed on the Property from all internal roadways, and easements for recreational purposes for the use of such beach and lagoon areas. . . . The City and County of Honolulu Department of Land Utilization¹ shall determine the location of the easements and number of parking stalls. (emphasis added).

On or around 1988, Petitioner West Beach Estates constructed a public boat launch ramp in the marina area, which was not then opened to the public because the other areas of the future marina were not yet developed.

On May 3, 1994, the Commission filed its Order Granting Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order dated September 12, 1985 ("Order"). The Order deleted Condition No. 10 of the Decision and Order to release the partial building restriction of residential portions of the Project and added three new Conditions numbered 13, 14 and 15. Condition No. 13 imposed by the Order provides the following:

¹ All functions of the City and County of Honolulu Department of Land Utilization are now under the City and County of Honolulu Department of Permitting and Processing ("DPP") since the City reorganization in 1998.

Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

On August 20, 1998, Ko Olina Development, LLC and affiliated entities succeeded to the interest of West Beach Estates in the Property.

2. Marina Public Boat Launch Ramp

As mentioned above, a marina public boat launch ramp ("Marina Ramp") was built in or around 1988 by West Beach Estates but was not then opened to the public apparently because the surrounding area that was to become the future marina was not yet developed.

In April of 1999, Petitioner began maintenance dredging of the marina, and construction of the marina commenced in July of 1999. A true and correct copy of Petitioner's Fourteenth Annual Progress Report dated August 27, 1999, reporting such activity is attached hereto and incorporated herein by reference as Exhibit "2".

On May 27, 1999, Petitioner, pursuant to its obligations to follow the Commission's FOF Nos. 52 and 87 and Condition No. 4, submitted its request with the City and County of Honolulu ("County") to revise the approved site plan for the Ko Olina Marina Dock Master Facility.

On August 26, 1999, Petitioner provided the County with the Preliminary Access Plan, Hours of Operation and Rules for the Ko Olina Boat Ramp. The preliminary plan provided, *inter alia*, that "[t]he boat launch ramp and boat trailer parking lot will be

open from sunrise to sunset to allow boaters to launch and retrieve their boats." A true and correct copy of the August 26, 1999 Preliminary Access Plan, Hours of Operation and Rules for the Ko Olina Boat Ramp is attached hereto and incorporated herein by reference as Exhibit "3". At this time it was clearly Petitioner's intent, as confirmed by its submittal to the County, to have a boat ramp in the Marina.

On September 20, 1999, the County approved Petitioner's May 27, 1999 request to revise the approved site plan for the Ko Olina Marina Dock Master Facility as a Minor Modification to the previously approved Conditional Use Permit ("CUP"), Type 1, File Number 95/CUP1-82, as modified subject to conditions. Condition 1 provides that "[p]rior to the submittal of applications for building or grading permits for the Ko Olina Ocean Club facility, the [Petitioner] shall submit a Public Access Master Plan ("PAMP") for the review and approval of the Department of Planning and Permitting ("DPP"). One of the elements of the required PAMP was "[a]n operations plan for the boat launch ramp that includes appropriate measures to ensure access to the ramp for the general public, including recreational deep sea fishing users." A true and correct copy of the September 20, 1999 Minor Modification to CUP is attached hereto and incorporated herein by reference as Exhibit "4".

On September 23, 1999, Petitioner requested to amend the conditions of the Minor Modification to CUP, and that request was approved on November 5, 1999 by DPP. A true and correct copy of the November 5, 1999 amendment to the Minor

Modification to CUP is attached hereto and incorporated herein by reference as Exhibit "5".

On October 22, 1999, Petitioner provided to Harbors Division, Department of Transportation, State of Hawai'i ("Harbors Division") a draft of Ko Olina Marina's Boat Launch Ramp and Parking Policies. The draft policy stated, *inter alia*, that "[t]he boat ramp and trailer parking will be open from sunrise to sundown." A true and correct copy of the October 22, 1999 Fax Memorandum and transmittal and attached draft Ko Olina Marina Boat Launch Ramp and Parking Policy is attached hereto and incorporated herein as Exhibit "6". Petitioners, again confirm their intent to the State, to open a boat ramp in the Marina.

On or around November 10, 1999, Harbors Division provided its response to the draft of Ko Olina Marina's Boat Launch Ramp and Parking Policies. A true and correct copy of the November 10, 1999 Transmittal and Harbors Division's response is attached hereto and incorporated herein by reference as Exhibit "7".

On December 7, 1999, Petitioner, pursuant to the standard protocols of providing information to the community, informed the Waianae Coast Neighborhood Board on the status of Petitioner's project. At this meeting Waianae Harbormaster William Aila informed Petitioner that he was not pleased with the presentation and warned that he and the Kupuna on the coast strongly disagree with Petitioner's intent to limit use of the

Marina Ramp to daylight hours and he would personally lead the effort against it if and when it happens.

On or about March 9, 2000, Petitioner again went to the community and updated the Waianae Coast Neighborhood Board on Petitioner's progress and activities, including the Marina Ramp. At the meeting, William Aila raised three issues. First, the Marina Ramp should be opened 24 hours per day, and that he and other fishermen will fight hard for 24 hour access. Mr. Aila was informed that the Marina Ramp will be open from sunrise to sunset like the lagoons. Second, insurance requirements for all boats is financially onerous. Mr. Aila was informed that the insurance was to minimize liability for the land owner and that coverage for the boat and trailer may exist under car and/or home insurance policies. Third, restrictions on commercial boats are unacceptable. Mr. Aila was informed that the restrictions would need to be confirmed. Mr. Aila's wife, Melva Aila, also voiced concern over Petitioner's \$25.00 registration fee. Mrs. Aila was informed that the \$25 fee was a nominal administration fee for an annual pass for paper work, decal and other costs associated with tracking the permits.

By letter dated March 28, 2000 from William J. Aila, Jr. and Melva N. Aila to Mayor Jeremy Harris, issues relating to the operations of the Marina Ramp were raised. The letter states in pertinent part the following:

We and many other boaters and fishermen object to the following rules that your Department Agreed to:

1. Hours of operation, should be 24 hours, like all other public ramps.
2. Insurance requirements are not required at all other public ramps.
3. U.S. Coast Guard Auxiliary Sticker is optional at all public ramps. Koolina is making it mandatory.
4. Additional Fee for use of Launch ramp. Koolina requires an additional \$25.00 fee for use of a launch ramp at its Marina. This Launch ramp is supposed to be public. The Boating public already pays an annual launch ramp fee to the State of Hawaii.

A true and correct copy of Mr. and Mrs. Aila's March 28, 2000 letter to the Mayor is attached hereto and incorporated herein by reference as Exhibit "8".

In March of 2000, construction of Phase I of the marina was completed and operations commenced. A true and correct copy of Petitioner's Twenty First Annual Progress Report dated September 12, 2006 is attached hereto and incorporated herein by reference as Exhibit "9".

On April 12, 2000, Petitioner transmitted its final Public Access Master Plan for the Ko Olina Development to the DPP pursuant to condition 1 of the CUP. As the PAMP was required by DPP, its purpose was "to implement the conditions of the Unilateral Agreement attached by reference to the zoned change ordinance (Ordinance No. 86-09) and the Special management Area Use Permit and Shoreline Setback Variance (Resolution No. 86-61, . . .)" (emphasis added.)

The PAMP included the following pertinent part concerning the Marina Ramp operating hours:

Marina boat launch ramp and parking: These areas will be open to the public from sunrise to sunset. Vehicles with boat trailers and decals remaining in the marina parking lot after sunset will be allowed to remain overnight. However, vehicles with trailers remaining in the lot for the second night will be subject to towing.

A true and correct copy of the April 12, 2000 letter from Petitioner to DPP and enclosed PAMP is attached hereto and incorporated herein by reference as Exhibit "10". Petitioner, again demonstrating its intent to provide a boat ramp in the Marina in its submittal to DPP.

On April 19, 2000, at the request of the County a meeting was held at the Mayor's conference room on the third floor of City Hall to discuss issues raised by Mr. Aila. The meeting was attended by the Mayor, the County's Managing Director, Mr. Aila and representatives of DPP, DLNR, Harbors Division and Petitioner. At this meeting Petitioner was encouraged to provide public boat launch ramp 24 hour access. A true and correct copy of Ko Olina Community Association's Memorandum dated April 13, 2000 is attached hereto and incorporated herein by reference as Exhibit "11".

Subsequent to the April 19, 2000 meeting, at the recommendation of the County, Petitioner and Mr. Aila explored possible solutions to the 24 hour access issue. Petitioner did not believe that it was feasible to provide 24 hour access at the Marina Ramp. Allowing 24 hour access at the Marina Ramp would conflict with the sunrise to sunset operating hours of the adjacent lagoons and parking areas and create potential safety and security problems associated with 24 hour access. This concern is shared by

both the State and the County as evidenced by the several State and County parks that are closed from sunset to sunrise due to concerns of liability, noise and vandalism. Petitioner had the same concerns for liability and in addition, there were concerns regarding excessive noise during evening hours in a residential and resort area due to traffic and the running of boat motors while boaters wash down their boats.

As a result, Petitioner and Mr. Aila sought other options including the donation of funds to other public boat launch ramps, including Waianae Harbor, but such ideas were rejected in favor of having Petitioner provide a public boat launch ramp closer to central Honolulu. This conclusion led to efforts at providing a public boat launch ramp in Kalaeloa Harbor.

On April 24, 2000, the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34, the community representatives, wrote to the Mayor in support of the sun up to sun down hours at the Ko Olina Marina and objected to extending the public operating hours citing concerns involving possible loitering, unnecessary noise at late hours and safety hazards. A true and correct copy of the April 24, 2000 letter from Neighborhood Board No. 34 to the Mayor is attached hereto and incorporated herein by reference as Exhibit "12".

On May 5, 2000, DPP partially approved Petitioner's final PAMP submitted on April 12, 2000. DPP's partial approval stated the following in pertinent part:

The Plan proposes to allow public access to the boat launch ramp and trailer parking from sunrise to sunset, in addition to other special

requirements. However, we understand that the applicant is negotiating with the State Department of Land and Natural Resources and other interested parties to revise the boat launch access plan. **Accordingly, our review excludes that portion of the Plan referring to the boat launch ramp and trailer parking access plan.**

The Plan, with the exception of the section described above, is accepted as the Public Access Master Plan for the Ko Olina Resort. **Please note that until the access plan for the boat launch ramp and trailer parking is finalized, building permits will not be issued for the Ko Olina Clubhouse.** (emphasis added)

A true and correct copy of DPP's May 5, 2000 letter is attached hereto and incorporated herein by reference as Exhibit "13".

On June 1, 2000, Petitioner responded to DPP's May 5, 2000 letter and stated the following in pertinent part:

[A]ccording to your letter, the permits to the Ko Olina Clubhouse will be withheld until such time that the boat launch ramp access can be resolved. We strongly disagree that the boat launch ramp should be a 24 hour facility. Clearly, there is no such requirement imposed on the landowner in any documentation, City or otherwise. Indeed, the State has imposed hours of operation on a couple of its own boat launch ramps for security purposes. This boat launch ramp is unique. Not only is it within a resort, but it is in close proximity to residences and hotel alike, and therefore, other concerns such as noise need to be addressed. Furthermore, the Kapolei Neighborhood Board strongly supports the ramp hours proposed by Ko Olina Companies. (see attached letter)

In order to resolve this matter expeditiously, however, we have met with Mr. William Aila, representative of the Waianae Fishermans and have agreed to modify the boat ramp access plan as follows:

- 1) For a period of one year ("interim period") Ko Olina Companies will work diligently with the State Department of Land and Natural Resources and Marisco Shipyard to construct a public boat

launch ramp in Kalaeloa Harbor. Ko Olina Companies will contribute to the cost of said boat ramp;

2) Within 6 months of the approval of this boat ramp access plan, Ko Olina Companies will provide a status report to DPP regarding the Kalaeloa Harbor boat ramp;

3) For the interim period, the Ko Olina boat ramp will be open to the public from sunrise to sunset;

4) For the interim period, boaters without insurance will be required to execute an indemnity and waiver of liability;

5) For the interim period, there will be no \$25 annual fee for licensing;

6) At such time that the substitute boat launch ramp is constructed and opened to the public, Ko Olina Companies shall have the right to permanently close its boat ramp or limit its use to resort guests.

A true and correct copy of the June 1, 2000 letter from Petitioner to DPP is attached hereto and incorporated herein by reference as Exhibit "14".

On June 15, 2000, DPP responded to Petitioner's June 1, 2000 letter and accepted the six modifications stated in Petitioner's June 1, 2000 letter as the remaining portion of the Ko Olina PAMP, and indicated that Petitioner may submit building permit plans for the Ko Olina Clubhouse. A true and correct copy of the June 15, 2000 letter from DPP to Petitioner is attached hereto and incorporated herein as Exhibit "15".

3. Kalaeloa Harbor Public Boat Launch Ramp

Having received approval from the DPP to proceed with efforts to provide a public boat launch ramp at Kalaeloa Harbor, Petitioner began formal discussions with

The Phoenician, LLC ("Phoenician") in constructing a public boat launch ramp at Kalaeloa Harbor.

On September 18, 2002, the Department of Transportation, State of Hawai'i ("DOT") responded to Phoenician's request to allow the public to use its proposed boat ramp situated on the east side of the entrance channel to Kalaeloa Harbor. The DOT stated that it had no objections to allow the general public to use the boat ramp, subject to conditions that would be incorporated into Phoenician's lease for the area designated for the proposed boat ramp and haul-out slip and to the DOT's review and approval of the proposed construction plans of the boat ramp and haul-out slip. A true and correct copy of the September 18, 2002 letter from the Department of Transportation to Phoenician is attached hereto and incorporated herein by reference as Exhibit "16".

On October 18, 2002, Petitioner requested that the DOT release Petitioner from any obligation imposed by the DOT to provide a public boat launch ramp at its marina in light of the DOT's approval of Phoenician's proposed boat launch ramp at Kalaeloa Harbor. A true and correct copy of the October 18, 2002 letter from Petitioner to the Department of Transportation is attached hereto and incorporated herein by reference as Exhibit "17".

On October 28, 2002, the DOT responded to Petitioner's October 18, 2002 letter and agreed to release Petitioner from any and all obligations imposed by the DOT to provide a public boat launch ramp and related facilities at the Ko Olina Resort. A true

and correct copy of the October 28, 2002 letter from the Department of Transportation to Petitioner is attached hereto and incorporated herein by reference as Exhibit "18".

By letter dated February 11, 2004, Petitioner memorialized a meeting between William Aila, Fred Anawati of The Phoenician, LLC and Jeffrey Stone of Ko Olina regarding the proposed 24 hour public boat launch ramp at Kalaeloa Harbor, which would include at least 12 parking spaces, tie up area, bumpers and a ladder within the ramp area for boater's protection and use. A true and correct copy of the February 11, 2004 letter from Petitioner to William Aila is attached hereto and incorporated herein by reference as Exhibit "19".

On March 16, 2004, Waianae Boat Harbor, Harbor Master William Aila responded to Mr. Stone's letter as follows:

Thank you for your letter to me concerning our meeting with Fred Anawati last month. I appreciated the opportunity to see Fred's facility and to hear his plans for the Kalaeloa Boat ramp along with you. As you know, we look forward to the 24 hour access and 15 parking stalls at the Kalaeloa ramp as it is very important to our fishermen. We understand that upon the opening of the Kalaeloa Boat ramp, Ko Olina will be closing the ramp at the Ko Olina Marina.

We look forward to the opening of this new public facility.

A copy of the March 16, 2004 letter from William Aila to Petitioner is attached hereto and incorporated herein by reference as Exhibit "20".

On September 8, 2004, Petitioner confirmed with DPP its follow through regarding representations to open a substitute boat ramp at Kalaeloa Harbor and to

notify DPP of the upcoming closure of the Marina Ramp. A true and correct copy of the September 8, 2004 letter from Petitioner to DPP is attached hereto and incorporated herein by reference as Exhibit "21".

On September 30, 2004, Phoenician and Petitioner and West Honolulu Attractions, LLC (collectively "KOD") entered into that certain Agreement For Use of Facility whereby Phoenician grants to KOD the non-exclusive privilege of using the parking (not less than 12 stalls) and boat launch ramp facilities of Phoenician located within Phoenician's small boat repair yard at the Kalaeloa Deep Draft Harbor ("Facility").

The non-exclusive privilege granted by Phoenician to KOD extends to the Ko Olina Resort & Marina association members, residents, and to those members of the public granted the right and/or privilege of access and use of Ko Olina's small boat marina, parking and boat launch ramp facility located at the Resort, which was operated in accordance with the PAMP for the Ko Olina Development, dated April 12, 2000, which was attached to the Agreement For Use of Facility. Phoenician acknowledges in the Agreement For Use of Facility that the Facility shall be a public boat ramp, open 24 hours a day, seven days a week, and agrees to operate the Facility in such a manner.

KOD agreed to pay to Phoenician the sum of \$455,150.00 in exchange for the installation of the boat ramp at Phoenician's site and the privilege granted to KOD and the public by Phoenician to use the ramp.

On September 30, 2004, KOD's affiliate paid to Phoenician the sum of \$227,575.00. A true and correct copy of the \$227,575.00 check dated September 30, 2004 is attached hereto and incorporated herein by reference as Exhibit "22".

In February of 2005, construction of the Kalaeloa Harbor public boat launch ramp was completed and opened to the public.

On April 7, 2005, Petitioner transmitted the installment payment of \$115,000.00 to Phoenician with the understanding that final payment would be made upon the satisfaction of three conditions: 1) the ramp shall remain open in accordance with the Agreement For Use of Facility; 2) Phoenician will complete construction of the boat ramp; and 3) Phoenician shall provide Petitioner with an executed lease with the State that allows use of the ramp by the public as outlined in the Agreement For Use of Facility. A true and correct copy of the April 7, 2005 letter from Petitioner to Phoenician and \$115,000.00 payable to Phoenician is attached hereto and incorporated herein by reference as Exhibit "23".

On June 7, 2005, Harbors Division confirmed with DPP that due to mitigating circumstances there is a delay of the completion of the lease for easement to permit Phoenician to operate a boat ramp from private lands adjoining the Kalaeloa Harbor.

Harbors Division further confirmed that Phoenician has since undertaken and completed construction of the facility and established operational procedures for the use of the ramp that are acceptable to the State, and that in recognition of these circumstances and knowing that the delay in completion of the lease was not solely due to the applicant, the State granted their use of the easement. A true and correct copy of the June 7, 2005 letter from Harbors Division to DPP is attached hereto and incorporated herein by reference as Exhibit "24".

On or about November 15, 2005, Petitioner was informed in writing that the Commission sought further clarification on Petitioner's compliance with Condition No. 13, the facts contained in Finding of Fact 33, and additional representations made by the Petitioner to provide a public boat launch ramp as a component of Petitioner's marina in the Project. Petitioner was further informed that Petitioner would be required to appear at the Commission's January 5-6, 2006 meeting to provide a status report on Petitioner's compliance with representations made to the Commission.

On January 6, 2006, the Commission held its meeting at Leiopapa A Kamehameha, Conference Room 405, 235 South Beretania Street, Honolulu, Hawai'i, at which time Petitioner provided its status report with respect to Petitioner's compliance with Condition No. 13 and Finding of Fact 33 as they relate to a representation to provide a marina with a public boat launch ramp as a part of Petitioner's project. At this meeting, questions were raised concerning the closing of the public boat launch

ramp at the Ko Olina Marina, the selection of Kalaeloa Harbor as the site of a replacement public boat launch ramp, concerns relating to the Kalaeloa public boat launch ramp, and other issues relating to Petitioner's compliance with conditions contained in the Findings of Fact, Conclusions of Law and Decision and Order filed September 12, 1985 and as amended by the Order Granting Petitioner's Motion to Amend the Findings of Fact, Conclusions of Law and Decision and Order dated May 3, 1994.

On January 22, 2007, Petitioner filed its Supplement to the Twenty First Annual Progress Report ("2007 Supplement") for the Commission's February 2, 2007 status hearing to address those issues and concerns raised at the Commission's January 6, 2006 meeting by providing the background information explaining why Petitioner closed the Ko Olina Marina public boat launch ramp and selected Kalaeloa Harbor as the site of the replacement public boat launch ramp. Additionally, the 2007 Supplement described proposed improvements to the Kalaeloa Harbor public boat launch ramp to address the public's concerns, and provided requested information relating to questions raised regarding Petitioner's compliance with other conditions imposed by the Commission during the January 2006 hearing. A true and correct copy of the Transcript Of Proceeding held on February 2, 2008 is attached hereto and incorporated herein by reference as Exhibit "24".

On February 2, 2007, Petitioner attended the status hearing to address the concerns raised by the Commission. Testimony provided by William Aila confirmed that there was a demand for 24 hour access by some community members and “[t]hat prompted some fishermen coming forward to me and initiated the discussions about another facility.” (Transcript pg. 81, lines 7-9). The testimony from Mr. Aila further confirmed that the fishermen who wanted 24 hour access were acceptable to the Kalaeloa location despite the surge and haul out facility as 24 hour access was the main concern. (Transcript pg. 87, lines 2-11 and pg. 88, lines 2-4).

Furthermore, at the February 2, 2007 status hearing DPP’s counsel stated that, “with respect to condition LUC No. 13 the Department’s position is that the developer is in compliance with that particular condition.” (Transcript pg. 114, lines 16-18) (emphasis added).

On February 21, 2008, Petitioner filed its Supplement to the Twenty Second Annual Progress Report (“2008 Supplement”) for the Commission’s February 28, 2008 status hearing to provide a summary of the relevant factors and background information explaining why Petitioner closed the Ko Olina Marina public boat launch ramp and selected Kalaeloa Harbor as the site of the replacement public boat launch ramp. At the status hearing Petitioner asked and received permission from the Commission to file a Petition for Declaratory Order.

III. ARGUMENT

A. Petitioner Is In Substantial Compliance With The September 12, 1985 Land Use Commission of the State of Hawai'i, Findings of Fact, Conclusions of Law, and Decision and Order

Petitioner is in substantial compliance with the September 12, 1985 Land Use Commission of the State of Hawai'i, Findings of Fact, Conclusions of Law, and Decision and Order as they have complied with the Commission's Conditions to work with the City and County of Honolulu in regards to shoreline access, specifically the boat ramp access and therefore has substantially complied with its proposed representations in the Decision and Order.

1. Decision and Order Condition Requires that Petitioner Work with the Responsible Agency, the City and County of Honolulu, Regarding its Proposed Boat Ramp

As evidenced by FOF Nos. 52 and 87 and Condition No. 4. which all require the Petitioner to work with the City and County of Honolulu, the Commission recognized that following the Commission's action on any project or development the Petitioner is required to go through the City entitlement process and follow all appropriate requirements the City has in regard to developing the project site. The Commission's FOF No. 52 recognized that portions of the property are within the County SMA and that Petitioner will need to go to the County and work with the County to obtain the appropriate permits prior to developing any portions of the Property in the SMA. As petitioner followed through on FOF No. 52, the County placed further requirements

upon Petitioner, such as requiring the PAMP which further implemented the conditions of the Unilateral Agreement to the zoned change ordinance (Ordinance No. 86-09) and the Special management Area Use Permit and Shoreline Setback Variance (Resolution No. 86-61). It is within the City's jurisdiction to determine the shore line access and boat ramp access, which is something the Commission's Decision and Order recognized.

Clearly from the facts stated above Petitioner followed the Commission's conditions and its own representations established in FOF 52 and 87 to work with the City regarding the SMA, marina related recreational facilities, beach rights-of-way and location of easements. The facts above also show that the Petitioner did follow up on its proposal stated in FOF No. 33 which was to propose to develop a marina with a public boat launch ramp as evidence by its submissions to the City, State of Hawai'i and neighboring communities of Wai'anae and Makakilo, Kapolei and Honokai Hale regarding its intent to open the Marina with a boat ramp. However, it was during this process that Petitioner was required by the City to address the concerns raised at that time in regards to the fishermen's requests. The County, based on a strong letter from the community boaters, requested a meeting with Petitioner along with top representatives of the City; the Mayor and Managing Director, Director of DPP, State DLNR, State DOT and fishermen representatives. The County strongly urged Petitioner to address the boaters concerns.

The facts also show that although Petitioner submitted to DPP its Public Access Master Plan ("PAMP") with its intent to open the Marina boat launch ramp, DPP only partially approved Petitioner's PAMP, stating in its letter to Petitioner, "Please note that until the access plan for the boat launch ramp . . . is finalized, building permits will not be issued for Ko Olina Clubhouse." This partial approval further confirmed the fact that DPP wanted Petitioner to address the fishermen's concerns, which is exactly what Petitioner then sought to accomplish.

During April of 2000, Petitioner worked with boaters to find a solution to the fishermen's access concerns. Mr. Aila, a respected community leader, boater and fisherman testified that "some fishermen coming forward to me and initiated the discussions about another facility." (Transcript Pg. 81, lines 7-8). Mr. Aila further stated that "there were other fishermen that wanted 24-hour access and were willing to accept conditions under which 365-day-a-year access was not going to be expected, discussions continued with [Petitioner] in trying achieve some sort of agreement between the folks looking for 24 hours." (Transcript Pg. 82, lines 6-10).

Mr. Aila further testified that Petitioner tried several things such as proposing to help Waianae boat harbor as due to the deterioration of the piers. Petitioner, although not discussed in Mr. Aila's testimony, also sought out other potential locations for a boat ramp to either build up or contribute to its repair and maintenance. Finally, a location that was just across the Marina was chosen at Kalaeloa Harbor. The distance

between the Kaleloa Harbor public boat launch ramp and the dry dock shipyard is approximately 200 yards at its maximum point and both facilities intersect with each other.

It was not until after Petitioner worked out a resolution with the concerns raised by fishermen at the time based upon the strong urging of DPP, that DPP accepted Petitioners PAMP in its letter dated June 15, 2000, by stating in relevant part:

By previous correspondence dated May 5, 2000, we accepted the Public Access master Plan for the Ko Olina Resort, excluding that portion of the boat launch ramp, and pending your negotiations with State agencies and other interested parties on this matter.

In your letter of June 1, 2000, you propose a modified boat launch ramp access plan, as a result of these negotiations, with six modifications. We have reviewed the six modifications and find them satisfactory.

. . . We will, therefore, accept this remaining portion of the Ko Olina Public Access Master Plan, and you may submit building permit plans for the Ko Olina Clubhouse when you complete them. (emphasis added).

Petitioner, as the letter from DPP states above worked with the State, "other interested parties" (which were the fishermen) and City to ensure its compliance with the City access requirements placed upon Petitioner. It is absolutely clear that as no time did Petitioner attempt to unilaterally move the ramp to Kalaeloa. The moving of the ramp involved the Petitioner working with the State, City and community concerns at the time over a six (6) month period.

Petitioner also worked with the State and in September 18, 2002 the State DOT accepted the proposed public boat ramp at Kalaeloa Harbor and further the State DOT on October 28, 2002 submitted a letter to Petitioner stating that:

We concur with your request and hereby agree to release [Petitioner] from any and all obligations imposed by the Department of Transportation for a public boat ramp and related facilities at Ko Olina Resort.

Petitioner has in every instance worked with the proper authority to ensure proper compliance in order to fulfill its representations and comply with the guidance of the State, City and community. Petitioner, as the letter from DPP stated above worked with the State, "other interested parties" and City to ensure its compliance with the City access requirements placed upon Petitioner.

2. Petitioner is in Substantial Compliance with the Decision and Order

Petitioner is in substantial compliance with the Commission's Decision and Order as it relates to the boat launch ramp. Condition No. 13 provides that "Petitioner shall develop the Property in substantial compliance with the representations made to the commission. . ." Finding of Fact 33 provides that "Petitioner proposes to develop a 36 acre recreational and commercial marina with a public boat launch ramp. . ."

The issue is whether Petitioner has substantially complied with its representation that it "proposes to develop a commercial marina with a public boat launch ramp," by providing for the Kalaeloa Harbor public boat launch ramp even though it is not located in the marina.

Substantial compliance is not the same as exact or literal compliance. "Substantial compliance means compliance with the essential requirements, whether of a contract or of a statute." Wentworth v. Medellin, 529 S.W.2d 125, 128 (Civ.App.Tex. 1975). In the seminal substantial compliance case of Jacob & Youngs v. Kent, 230 N.Y. 239, 129 N.E. 889 (Ct.App.N.Y. 1921), Judge Cardozo defined substantial compliance as follows:

We must weigh the purpose to be served, the desire to be gratified, the excuse for the deviation from the letter, the cruelty of enforced adherence. Then only can we tell whether literal fulfillment is to be implied by law as a condition. This is not to say that the parties are not free by apt and certain words to effectuate a purpose that performance of every term shall be a condition of recovery. That question is not here. This is merely to say that the law will be slow to impute the purpose, in the silence of the parties, where significance of the default is grievously out of proportion to the oppression of the forfeiture.

Jacob & Youngs v. Kent, 230 N.Y. at 243-244.

In the present context, Petitioner attempted to provide a public boat launch ramp in the marina from sunrise to sunset. Finding of Fact 33 did not state that the boat ramp was to be open 24 hours a day and there was no such requirement imposed by law or regulation. Other public access facilities at the Resort were only open from sunrise to sunset. Nevertheless, Petitioner received vigorous community opposition from fishermen to the sunrise to sunset hours for the boat ramp and was encouraged if not instructed by the County to accommodate concerns over the Marina Ramp being accessible only between sunrise to sunset hours. Permitting 24-hour access to the Marina Ramp, however, was not compatible with the surrounding residential and

resort community or the surrounding Makakilo Honokai Hale and Kapolei neighborhood communities. Petitioner had no choice but to develop a public boat launch ramp outside of the marina to address the needs of the fishermen and the County.

After weighing available alternatives, Kalaeloa Harbor was chosen as the best suited replacement site for the Marina Ramp, and Petitioner agreed to pay \$455,150.00 for the construction of the replacement boat ramp.

Stronger confirmation that Petitioner is in substantial compliance is that the responsible agency in determining shoreline access and the boat ramp access, the City and County of Honolulu DPP, has stated that Petitioner is in compliance with the Commission's Condition No. 13. As stated above the Commission recognized that following the Commission's action on any project or development that the petitioner would be required to work with the City and follow all the requirements the City has in regards to developing the project site. The Commission in its Decision and Order imposed upon the Petitioner to work with the City, because it is within the City's jurisdiction to determine shoreline access and the boat ramp access. The Petitioner followed up on its representations and the Condition's imposed upon them in regards to the boat ramp and during the process it was determined through joint efforts of the City, State and fishermen that the location at Kalaeloa would better suit the needs of the fishermen.

a. Proposed Improvements To The Kalaeloa Harbor Public Boat Launch Ramp to Address Safety Concerns

Petitioner is aware of boaters concerns regarding the use of Kalaeloa ramp and is sensitive to these concerns. Petitioner, to address these concerns, intends to increase the boat ramp slope to ease the launching of boats by shortening the distance needed for reversing trailers into the water since the increased slope will add approximately two feet of depth at the end of the ramp. The added depth of the ramp will also discourage the growth of seaweed on the ramp surface. Petitioner also proposes to install a new concrete walkway with tie-ups which would allow boaters to tie-up their boats on boat-cleats and to easily directly into their boats. The new concrete walkway would be located on the left side (Makai side) of the ramp and is designed to be fifty-three feet and four inches long and four feet and eight inches wide. A true and correct copy of the plans for the increased slope and new concrete walkway and illustration showing the increased slope and new concrete walkway are attached hereto and incorporated herein by reference as Exhibit "26".

Furthermore, Petitioner, based on the recommendation of a boater hired an independent expert, Gordon R. Fulton, Principal and Regional Vice President of TranSystems which is located in Oakland, California who has 30 years experience of consulting on marina and harbor facilities internationally for private businesses as well as government to do an independent review of Petitioners proposed boat ramp improvements.

Mr. Fulton reviewed the proposed improvements and visited the Kalaeloa ramp site and made the determination that the proposed improvements, if installed in accordance with the plans and materials he reviewed would meet all reasonable operational requirements and standards. (See Exhibit "27").

Petitioner is committed to installing the planned improvements to the boat launch if the Commission confirms Petitioners belief that Petitioners are in substantial compliance with the Decision and Order and Amended Decision and Order.

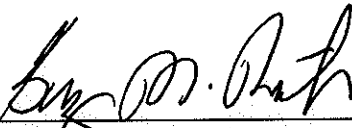
With the proposed changes to the Kalaeloa boat ramp, Petitioner believes that it has fulfilled its responsibilities to its community by providing a 24 hour public boat launch ramp and is in substantial compliance with Condition No. 13 of the Amended Decision and Order and Finding of Fact No's. 33, 52 and 87 and Condition No. 4 of the Decision and Order.

IV. CONCLUSION

For the above stated reasons, Petitioners respectfully request that the Land Use Commission issue a declaratory order that the Petitioners are in substantial compliance with the Findings of Fact, Conclusions of Law, and Decision and Order issued by the Commission on September 12, 1985 and the Order Granting Petitioner's Motion To Amend Findings Of Fact, Conclusions Of Law, And Decision And Order Dated September 12, 1985.

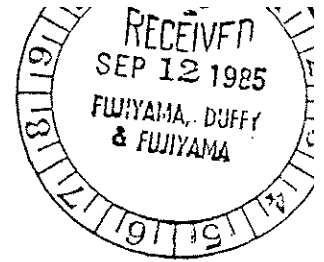
Dated: Honolulu, Hawai'i 24 MAR 2008.

OF COUNSEL:
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A Law Corporation



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CURTIS T. TABATA
WYETH M. MATSUBARA
Attorneys for Petitioner
KO OLINA DEVELOPMENT, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



In the Matter of the Petition of)
WEST BEACH ESTATES)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
642 acres at Honouliuli, Ewa, Oahu,)
Tax Map Keys: 9-1-14: Portion of)
Parcel 2; 9-1-15: 3, 6, 7, 10,)
Portion of Parcel 4; 9-2-03: 3, 7,)
Portion of 2)

DOCKET NO. A83-562
WEST BEACH ESTATES

This is to certify that this is a true and correct copy of the Decision and Order on file in the of the State Land Use Commission, Honolulu Ha

SEP 12 1985
Date by Edward Lee
Executive Officer

FINDINGS OF FACT, CONCLUSION OF LAW
AND DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
2000 MAR 24 P 3:57

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
WEST BEACH ESTATES)	DOCKET NO. A83-562
To Amend the Agricultural Land Use)	WEST BEACH ESTATES
District Boundary into the Urban)	
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Portion of Parcel 4; 9-2-03; 3, 7,)	
Portion of 2)	
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FINDINGS OF FACT, CONCLUSION OF LAW
AND DECISION AND ORDER

West Beach Estates, (hereinafter "Petitioner"), a Hawaii general partnership, filed this Petition on December 21, 1983, and an amendment to the Petition on May 15, 1984, pursuant to Hawaii Revised Statutes Section 205-4, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundaries of approximately 642 acres of land, Oahu Tax Map Key Nos: 9-1-14: portion of parcel 2; 9-1-15: 3, 6, 7, 10, portion of parcel 4; 9-2-03; 3, 7, portion of parcel 2, situate at Honouliuli, Ewa, Oahu, State of Hawaii, (hereinafter the "Property") from the Agricultural to the Urban District to develop resort, commercial area, and a planned residential community. The Land Use Commission (hereinafter referred to as the "Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the hearings, and the proposed findings of fact and conclusions of law, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS.

1. The Commission held hearings on the Petition on May 23-24, 1984, June 12-13, 1984, August 14-15, 1984, September 19-20, 1984, October 17-18, 1984, December 11-12, 1984, January 16-17, 1985, February 6-7, 1985, March 5-6, 1985, April 3, 1985, and April 30-May 1, 1985, at Honolulu, Hawaii, pursuant to notice published in the Honolulu Star Bulletin on April 13, 1984, June 1, 1984, July 19, 1984, August 10, 1984, September 14, 1984, November 10, 1984, December 7, 1984, January 30, 1985, February 6, 1985, March 13, 1985, and March 29, 1985.

2. On April 30, 1984, Angel Pilago, Eric M. Enos, Liwai Kaawa, David K. Cullen, Na Opio Aloha Aina and the Waianae Land Use Concerns Committee (hereinafter "Intervenor") filed a Petition to Intervene. The Commission granted the Petition to Intervene by motion adopted on May 23, 1984.

3. On May 11, 1984, the Commission held a pre-hearing conference at which time the parties exchanged exhibit lists and witness lists. On the same day, Petitioner filed a motion for Site Inspection which Site Inspection the Commission conducted on May 24, 1984.

4. Representative Peter Apo, Charles Dick Beamer, Kermit Brown, Koco Bungo, Elroy Chun, Archie Cox, Frank Commendador, Charles Rasmussen, George Domen, Avis Kiyabu-Saballa, George Kaeo, Representative Michael Crozier, William Crabbe, Robert Hoffman, George Ishida, Senator James Aki, Manuel Matthias, Glenn Oamilda, Scott Robertson, Ann Usugawa, Polly Grace, Samuel Mokuahi, Wallace Lean, Kihei Niheu, and John Kelly testified as public witnesses on May 23, 1984.

5. On May 23, 1984, Intervenor made oral motions to waive the requirements of Rule 2-3, (4) requiring the filing of 15 copies of exhibits and for the Commission to conduct a hearing in the Leeward area in the evening. The Commission denied the motion on May 24, 1984, filing the order of denial on July 2, 1984.

6. On October 17, 1984, Intervenor filed its motion to continue hearings. The Commission denied the motion on October 18, 1984.

7. On April 29, 1985, Intervenor filed a Motion to Admit Additional New Evidence. The Commission denied the motion on April 30, 1985, filing the order of denial on June 4, 1985.

8. Petitioner is a Hawaii general partnership comprised of Horita Corporation, a Hawaii corporation which holds a 40% interest in the partnership, and SKG Properties, a Hawaii general partnership which holds the remaining 60% interest in the partnership. Horita Corporation is the managing partner.

SKG Properties is comprised of three general partners: TSK, Inc., a Hawaii corporation which holds 8% interest in the partnership; Kumagai International Limited, a Hong Kong corporation, which holds 40% interest in the partnership; and T.S.O., Inc., a Hawaii corporation which holds the remaining 12% interest of the West Beach Estates general partnership.

Kumagai Gumi Co., Ltd., a Japan corporation, owns 99.8% of Kumagai International Limited. Kumagai Gumi Co., Ltd. will provide all necessary financing to meeting Kumagai International Limited's obligation in the West Beach Estates partnership to complete the entire West Beach Development.

DESCRIPTION OF PROPERTY

9. The Property comprises approximately 642 acres situate at Honouliuli, District of Ewa, Oahu, Hawaii, identified by the following Tax Key Numbers:

<u>TAX MAP KEY NOS.-</u>	<u>PROPERTY TAX MAP KEYS AND AREAS</u>	<u>APPROXIMATE AREA IN ACRES</u>
9-1-14: portion 2		93.0
9-1-15: 03		190.1
9-1-15: portion 4		288.0
9-1-15: 06		2.7
9-1-15: 07		17.2
9-1-15: 10		41.1
9-2-03: 03		7.0
9-2-03: 07		.9
9-2-03: portion 2		<u>2.2</u>
	TOTAL	<u>642.2</u>

10. The Property is located on Oahu's southwest coast. The northern boundaries of the Property generally follow Farrington Highway and the eastern boundaries of the Property abut sugarcane and undeveloped lands. The southern boundaries of the Property abut the 92-acre Barbers Point Deep Draft Harbor (hereinafter referred to as the "Deep Draft Harbor"), while the western boundaries follow the shoreline from the Deep Draft Harbor to Farrington Highway. Existing residential subdivisions Honokai Hale and Nanakai Gardens lie north of the Property and south of Farrington Highway.

11. The Trustees of the Estate of James Campbell, Deceased, (hereafter the "Campbell Estate") own the Property in fee simple. Petitioner acquired the right to purchase and develop the Property pursuant to a Development Agreement dated April 22, 1983. The Campbell

Estate has authorized the Petitioner to process this Petition for land use boundary amendment.

12. The Campbell Industrial Park complex is located to the south of the Property across the Deep Draft Harbor. Petitioner proposes to create an open space buffer consisting of a golf course, marina and parks between the Deep Draft Harbor and the proposed West Beach structures.

13. The Property is presently undeveloped and vacant except for about ten (10) acres of land, formerly the residence of Alice Kamokila Campbell (the "Kamokila Campbell Estate"). This residence is now used as a site for luaus.

14. The Property is located on a coastal plain, which begins with the easternmost elevation of 100-feet. Lands adjacent to Farrington Highway have a slope of five percent. The makai lands have a slope of one percent to less than one percent near the shoreline. The coastline along the Property is characterized by calcareous reef with limited pockets of sand.

15. The U.S. Department of Agriculture, Soil Conservation Service Soil Survey, classifies the soils of the Property as follows: Coral Outcrop (CR); Ewa silty clay loam, moderately shallow, 0 to 2% slopes (EmA); Jaucas sand, 0 to 15% slopes (JaC); Keaau clay, 0 to 2% slopes (KmA); Keaau clay, saline, 0 to 2% slopes (KmbA); Lualualei extremely stony clay, 3 to 35% slopes (LPE); Lualualei clay, 2 to 6% slopes (LuB); Lualualei stony clay, 0 to 2% slopes (LvA); Lualualei stony clay, 2 to 6% slopes (LuB); Mamala stony silty clay loam, 0 to 12% slopes (MnC). These soils are characterized by slow runoff with slight erosion hazard, except for a narrow band of Mamala stony silty clay loam (MnC) near the southern boundary of the Property and a small area of Lualualei extremely stony

clay (LPE) near the northern boundary of the Property along Farrington Highway.

16. The Land Study Bureau Detailed Land Classification for Oahu identifies the overall master productivity rating of lands in the Property as follows: "A"-11% (71 acres), "B"-37% (238 acres), "C"-9% (58 acres), and "E"-43% (275 acres). The agricultural suitability of land with a master productivity rating of "A" is very good, "B" is good, "C" is fair, "D" is poor, and "E" is very poor.

17. The State Department of Agriculture's "Agricultural Lands of Importance to the State of Hawaii" classification system classifies lands in the Property as follows: "Prime"-34% (215 acres), "Other"-21% (140 acres). Forty-five percent (287 acres) of the Property is not classified. The Prime agricultural lands are located mainly in the northern and eastern portions of the Property.

18. The average annual precipitation for the entire Ewa Plain is approximately 20 inches and the average temperature ranges from 72^oF to 80^oF. Winds are predominately from a northeasterly direction (tradewinds). Winds from a southeasterly direction (Kona wind) may be expected five percent (5%) to eight percent (8%) of the time.

19. The Flood Insurance Study conducted by the Federal Insurance Administration for the City and County of Honolulu designates the coastal strip along the Property as Zone A4, subject to tsunami hazard. The present 100-year tsunami elevation along the coast of the Property is approximately 7 to 9 feet above mean sea level. The 100-year event means there is a one percent likelihood of a flood equalling or exceeding this elevation in any given year.

DEVELOPMENT PROPOSAL

20. Petitioner proposes to develop a resort, commercial and residential community on the Property that will include a total of 4,000 hotel rooms and/or resort condominium units; 5,200 residential units; a championship golf course, four new lagoons with swimming beaches; a marina, commercial areas, including one shopping center, four new parks, two transit stations, a Hawaiian Cultural Center to be privately owned and operated but open to the public (hereinafter the "Cultural Center"), beach and yacht clubs, and tennis facilities. The proposed West Beach Development (hereinafter the "Development") will include the following land uses:

SUMMARY OF USES, ACREAGE, AND UNITS

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>
Low Density Apartment	108.0	1,500
Medium Density Apartment	78.9	3,700
Hotel/Resort	86.5	4,000
Commercial	17.8	
Beach Club	2.2	
Hawaiian Cultural Center	21.8	
Marina	36.3	
Lagoons	13.1	
Golf Course	170.5	
Park	51.4	
School	6.9	
Transit Stations	2.7	
Circulation	46.1	
TOTAL	<u>642.2</u>	<u>9,200</u>

21. Petitioner estimates the total cost for the on-site and off-site construction work, in 1983 dollars, to be approximately \$71,209,000.00.

22. Petitioner proposes to build or cause to be built the proposed 4,000 resort units including eight hotels and resort condominiums located on the oceanfront sites designated "Resort" on the Petitioner's proposed masterplan. Petitioner will cause a majority of the 4,000 resort units to be built as full-service hotel facilities or as condominium units placed in mandatory full-service hotel rental pool facilities.

23. The resort units will consist of mid-rise buildings with densities ranging from 32 to 66 units per acre. Petitioner proposes to limit building heights up to 150 feet and to require shoreline setbacks usually exceeding 300 feet. Petitioner proposes to undertake an overall urban design study that will impose the precise height, setback, and bulk controls on the building sites to create appropriate view planes.

24. Petitioner proposes to build or cause to be built 5,200 residential units, of which 1,500 residential units will be built in areas designated for Low Density Apartments and 3,700 residential units in areas designated for Medium Density Apartments on Petitioner's master plan.

25. Petitioner proposes to offer residential units for sale at average sale prices ranging from \$75,000 for studio units to \$175,000 or more for 4-bedroom units.

26. Petitioner proposes to offer off-site affordable housing opportunities for low and moderate income families by building and offering for sale a number of residential units affordable to families of such income groups equivalent to ten percent of the Development's planned residential units (520 units), assuming full build out. Petitioner intends to determine guidelines for qualification, and to determine options for the location of the units on-site or off-site, and timing of their construction, all to be approved by the City and County of Honolulu (hereinafter the "County").

27. Petitioner proposes to include two commercial sites of 2.0 and 15.8 acres to provide amusements, attractions, restaurants and shops for tourists, as well as a convenience shopping area for residents.

28. Petitioner proposes to preserve and maintain the existing natural lagoons and continue the existing luau operation on the Kamokila Campbell Estate as part of the Cultural Center. In addition, Petitioner proposes to develop four new ocean lagoons along the shoreline, ranging in size from 1.4 acres to 5.3 acres, to provide about 13.1 acres of sheltered, safe, swimming areas.

29. Petitioner will undertake an extensive analysis of the water and soil conditions at the four new proposed lagoon sites and the existing Kamokila Campbell Estate lagoons in order to determine the size, depth and configuration of the proposed lagoons.

30. Petitioner proposes to design the lagoons, like the marina, to take advantage of the location of the existing calcareous reef shoreline. Petitioner proposes to make cuts in the present shoreline in order to permit fresh sea water to flush these new lagoons to be created behind the calcareous barrier. The lagoons will have maximum depths of eight feet below mean sea level.

31. Petitioner proposes to use sand behind the calcareous shoreline to line the bottoms of the new lagoons and to create the sandy beaches.

32. Petitioner proposes to dedicate easements for shoreline access and recreational purposes, to construct a continuous pedestrian walkway along the shoreline, to dedicate a minimum of four mauka-makai public pedestrian access easements to these newly created beaches and lagoons, and to construct approximately 150 public parking spaces on the Property for public beach parking.

33. Petitioner proposes to develop a 36 acre recreational and commercial marina with a public boat launch ramp, and to develop pump out facilities, a fueling and drydock facility, other public conveniences and parking adjacent to the Deep Draft Harbor. Commercial use of the marina facilities will include sightseeing, charter fishing, dinner cruises and other excursions.

34. The marina basin will be approximately 2,900 feet long (including a 900 foot entrance channel) and 900 feet wide at the widest point, for a total area of 36 acres. The basin will be about 15 feet deep at Mean Low or Low Water ("MLLW") and have a minimum channel width of approximately 200 feet.

35. Petitioner proposes to create a "buffer zone" around the Deep Draft Harbor by precluding any permanent residential uses within the "buffer zone" and aboard vessels within the planned marina area.

36. Petitioner is considering three alternative marina entrances: an entrance inside the existing Deep Draft Harbor; separate traffic lanes in an enlarged, combined entrance channel for both the Deep Draft Harbor and marina; and separate entrances for the Deep Draft Harbor and the marina.

37. Petitioner proposes to develop an 18-hole golf course, a driving range and clubhouse. Petitioner will design the golf course to run throughout the residential areas to create and preserve open space and view-planes. The golf course will be open to the general public with priority given to the residents of West Beach and tourists visiting the Development.

38. In addition to the shoreline easements described in paragraph 32, Petitioner will improve and dedicate to the public two large beach park sites, one at the primary entrance to West Beach and the other adjacent to

the marina. Petitioner will also improve and dedicate a passive park site adjacent to and oriented towards the Deep Draft Harbor, and a neighborhood park site within the residential area adjacent to the proposed elementary school site.

39. Petitioner will dedicate a school site in an area acceptable to the State Board of Education.

40. Petitioner will dedicate two transit station sites along the location of an existing railroad right-of-way, centrally located for access from the major residential areas.

TIMETABLE FOR DEVELOPMENT

41. Petitioner intends to complete the following within five years of the date of the Commission's approval of this Petition:

- a. Construction of necessary off-site infrastructure, including water and sewerage improvements and the Farrington Highway interchange.
- b. Mass grading of the entire Property to prepare all resort, commercial and residential sites for construction of buildings.
- c. Construction of all roadway and utility infrastructure within the Property so that roads, sewerage facilities, water lines, utilities and the drainage system are available to all resort, commercial and residential building sites.
- d. Construction of all major recreational amenities, including the lagoons, marina, parks, beach and yacht club and golf course.
- e. Construction or completion of approximately fifty percent of the residential units.
- f. Construction or completion of all of the commercial buildings.
- g. Completion of four to five hotels and/or resort condominium apartment buildings with the balance under construction.

42. Petitioner proposes to complete construction of the entire Development by the end of the fifth year except for the construction and sale of approximately half of the residential units. Petitioner proposes to stage development in order to complete construction of the balance of the 5,200 residential units within five to seven years from the date of the Commission's approval.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

43. Petitioner's balance sheet as of August 31, 1984, lists total assets of \$6,590,601.17, stockholder's equity of \$2,535,848.23 and liabilities of \$4,054,752.94.

44. Kumagai Gumi Co., Ltd.'s 1983 Annual Report lists total assets of \$3,272,107,000, stockholder's equity of \$616,239,000 and liabilities of \$2,655,868,000.

STATE AND COUNTY PLANS AND PROGRAMS

45. The Property is situate within the State Land Use Agricultural District.

46. The City and County of Honolulu General Plan designates the Ewa West Beach-Makakilo area as the secondary urban center.

47. One of the objectives in the General Plan is to "maintain the viability of Oahu's visitor industry" (Objective B). The General Plan further states that its objectives and policies are to "permit the development of secondary resort areas in West Beach, Kahuku, Makaha and Laie" (Objective B, Policy 6).

48. The General Plan limits further development in the Waikiki area by discouraging "further growth in the permitted number of hotel and resort condominium units in Waikiki" (Objective B, Policy 5) and "major increases in permitted development densities in Waikiki" (Objective B, Policy 4).

49. The County Development Plan for the Ewa area (Ordinance No. 83-26, as amended)(hereinafter the "Ewa Development Plan") designates the entire Property as the "West Beach Special Area." The Ewa Development Plan characterizes the Property as:

"West-Beach Special Area"

"The West Beach Special Area shall be an integral part of the central core of the West Beach-Makakilo Secondary Urban Center. The area, containing approximately 640 acres of land, lies on the shoreline between Kahe Point Beach Park and the site of the Barbers Point Deep Draft Harbor. It shall be a water-oriented residential and resort community containing a mixture of Low Density Apartment, Medium Density Apartment, Resort, Commercial (comprised of a major shopping complex and a smaller neighborhood shopping area), Public Facility, Park, and Preservation uses, as indicated on the land use map. A marina in the area adjoining the deep draft harbor shall also be established" (emphasis added).

50. Petitioner's development proposal conforms to the Ewa Development Plan in area, location and proposed uses.

51. The County's Comprehensive Zoning Code ("CZC") designates the Property in the AG-1 Agricultural Zoning District, except for a tiny area classified in the I-2 Industrial Zoning District adjacent to the Deep Draft Harbor.

52. Portions of the Property are within the County Special Management Area. Petitioner will need to obtain the appropriate permits prior to developing any portions of the Property in the Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

53. Resort Need. Petitioner's consultant Pannel Kerr Forster (hereinafter "PKF") projects a need for approximately 5,400 additional transient full service hotel rooms by 1990 based on 75% occupancy for the island of Oahu; 10,700 rooms by 1995; and 13,500 rooms by year 2000. At 80% occupancy PKF also projects transient room needs to be approximately 2,900 units by 1990; 7,900 units by 1995; and 10,500 units by 2000.

54. The County in its Waikiki Special Design District and its Primary Urban Center Development Plan, limits the number of hotel rooms and other visitor accommodations to 30,000 units. The City's resort policy gives preference to development of new hotels in the Kapiolani, Downtown, and Airport areas, and outside the Primary Urban Center at Makaha, Laie and Kuilima which areas could collectively accommodate a maximum of 2,000 additional hotel units.

55. Housing Need. Chaney, Brooks & Company (hereinafter "CBC"), in its Housing Study dated November 15, 1983, projects an average demand for additional housing of 4,000 units per year on Oahu, or a cumulative demand between now and the year 2000 of 68,000 new housing units.

Other proposed developments in the Ewa Development Plan Area may provide an estimated 26,650 units by the year 2000, resulting in a shortage of approximately 41,350 units.

56. The County's General Plan allocates between nine and ten percent of Oahu's projected residential population (to the year 2000) to the Ewa District. Based upon the State Department of Planning and Economic Development's Series II-f population projections for Oahu of 917,000 persons by the year 2000, this would mean a range of 82,600 to 91,700 additional persons for Ewa in year 2000.

57. The County's Department of General Planning ("DGP"), in its "Land Supply Review: Population Implications of the Development Plans" (July, 1983), points that the Development will accommodate an additional 10,000 persons of the additional 82,357 persons to be accommodated in the Ewa District.

ECONOMIC IMPACTS

58. Petitioner estimates that after completion, the Development will create approximately 5,100 direct jobs and 1,000 indirect jobs. In addition, the Development will create a substantial number of jobs during the construction phases of the Development.

59. In addition to employment opportunities, the proposed Development will generate direct revenues for the State. Petitioner estimates that the entire Development (when completed and operating at a stabilized level) should generate a total of approximately \$24.3 million (in 1983 dollars) in tax revenues (exclusive of general excise taxes) of which \$850,000 will be in unemployment taxes, \$8 million in gross income taxes, \$4.7 million in State personal income and \$10.7 million in real property taxes.

SOCIAL IMPACTS

60. The Development will create additional urban development and increase population in the Ewa area.

61. The Commission rejects the Intervenor's contention that urbanization of West Beach will have significant adverse impact on the existing lifestyles of the Waianae residents. The evidence adduced does not substantiate that the proposed Development would in of itself, create significant adverse impacts on the Hawaiian lifestyle of the Waianae residents.

IMPACTS UPON RESOURCES OF THE AREA

AGRICULTURAL RESOURCES

62. Petitioner is not presently using the Property for intensive agricultural use.

63. Due to rising costs and lower yields, and the Property's distance from the millsite, Oahu Sugar Company, Ltd., terminated sugarcane production on the Property in 1983 with no other crops planted since then. Oahu Sugar Company, Ltd., determined that sugarcane production within the Property was not profitable and that production needs could be more economically satisfied on other lands where the yields are higher and/or the production costs are lower.

64. Oahu Sugar Company, Ltd., concluded that the Property's soil quality is poor due to large quantities of field stones, coral outcroppings, and irrigated by slightly saline water.

AQUATIC RESOURCES

65. The area immediately off-shore from the Property has been described as an unperturbed coastal region. The coastal waters have excellent water clarity, low turbidity and excellent diving conditions. The State Department of Health classifies these coastal waters as Class AA. The coral reef system supports a diversity of fish and other marine life which are important parts of the diet of subsistence gatherers and fishermen who utilize this area in the tradition of ancient Hawaiian subsistence fishing.

66. Petitioner has designed the proposed marina and channel configurations in order to mitigate and minimize the potential damage to the offshore environment.

67. The lagoons and marina will be dredged "in the dry" prior to the opening of the lagoons and marina to the sea to minimize siltation problems.

68. Petitioner will control runoff by incorporating a drainage system for the entire area. It is anticipated that most of the flow will be directed into a settling basin. From the settling basin, the runoff will enter the marina and be discharged from the marina channel entrance. Calculations of maximum volume flow during storms indicate that the volume of the marina is sufficient to receive all surface flow without overflow. The total sediment discharge in the runoff is expected to be less than those of the natural streams on the Property since the flow will be over non-eroding surfaces or well-grassed areas.

69. Petitioner proposes to divert the runoff to the southern area of the Development in order to lessen the runoff into the north end which has one of the richest biotopes found along the adjacent coastline.

FAUNA

70. Dr. Andrew J. Berger conducted a bird and mammal survey of the Property on October 26 to November 18, 1973; April and May of 1979; October 3, 1979; and on May 16, 1984. Dr. Berger observed no endangered or endemic birds or animals that would be significantly or adversely affected by the proposed Development.

FLORA

71. Winona P. Char conducted a field survey of the Property from April through May of 1977 and on March 9, 1984. On the March 9, 1984 survey, Ms. Char found the Property to be uncultivated, consisting mainly of fallow sugar

cane fields and smaller areas of kiawe forest or thickets. Vegetation on the Property is predominantly introduced species such as Prosopis (kiawe), Leucaena (haole koa) and Chloris (swollen fingergrass).

72. Ms. Char observed Euphorbia skottsbergii var. kalaeloana (" 'Akoko"), which is officially listed on the Federal Register of Endangered and Threatened Plants on the Property during Petitioner's botanical consultant's 1977 survey. In 1984, Ms. Char found no 'Akoko within the Property. Petitioner has agreed to transplant any 'Akoko plants found during construction to appropriate sites. Ms. Char has observed that 'Akoko plants have been relocated successfully from the Property to the Campbell Industrial Park site and the Waimea Arboretum.

NOISE

73. Construction activity, including blasting to dredge the marina and lagoons will generate noise above ambient levels.

74. Federal agencies have determined that exterior vehicular traffic noise levels for residential housing areas should not exceed $65 L_{dn}$ (day-night noise level). Petitioner should take noise attenuation measures such as air conditioning, forced ventilation or noise barrier construction as well as building setbacks 100 feet from centerline of roadways and with speed limits at 25 mph to reduce vehicular traffic noise for residential housing built in areas where ambient noise exceeds $65 L_{dn}$.

75. Excessive traffic noise will not affect the majority of the tourist and resident population on the Property because Petitioner proposes to build most of these units away from the major source of vehicular traffic noise from Farrington Highway. Additionally, Petitioner proposes to build the golf course to run parallel to Farrington Highway between the two entrance roads to the Property to serve as a "buffer".

76. Federal agencies have determined that exterior aircraft noise levels for residential housing areas should not exceed 65 L_{dn} . Darby-Ebisu & Associates, Inc., the Petitioner's noise consultant, has recommended and Petitioner has agreed to design the Development to meet an even stricter standard of 60 L_{dn} for aircraft noise.

77. Darby-Ebisu & Associates, Inc., has testified that 93 percent of the Development would probably experience an aircraft noise level of 55 L_{dn} or below with the remaining 7 percent of the Development experiencing a 55-60 L_{dn} aircraft noise level. The highest aircraft noise levels (57 to 59 L_{dn}) will probably occur over the non-residential areas of the Development.

78. Petitioner anticipates that combined aircraft and vehicular traffic noise levels within the Property will not exceed acceptable standards.

AIR QUALITY

79. Petitioner's air quality expert, Mr. Barry Root, considered four scenarios in order to determine the carbon monoxide levels in the Property up until the year 2002:

- a. No building
- b. Building, with surface arterial over route other than Farrington Highway
- c. Building, with additional traffic lane on Farrington Highway
- d. Building, with no change to Farrington Highway

80. The projected results indicate that alternatives b and c would result in increased carbon monoxide levels.

81. Petitioner has designed mitigative measures to reduce traffic-related pollutant levels below limits set by Federal and State agencies as follows:

(1) Petitioner's highway design will minimize "stop and go" traffic, a major contributor to air pollution, and (2) Petitioner will plant dense and thick foliage to screen particulates during the approximately ten-year construction period and minimize the flow of particulates from outside sources into the Development.

WATER RESOURCES

82. The Department of Land and Natural Resources has restricted total water extraction from the Pearl Harbor Groundwater Control Area to 225 million gallons per day (MGD). Petitioner plans to extract its water from the Pearl Harbor Groundwater Control Area, and Petitioner's water requirement, when combined with the water allocation for other users of water in this area, must remain within the 225 MGD limit.

83. Oahu Sugar Company, Ltd., the largest water user in the Pearl Harbor Basin, recently reduced its water allotment by 22.5 MGD as a result of the reduction of sugar production.

84. Prior to the reduction of Oahu Sugar Company, Ltd.'s allotment, the Board of Water Supply has planned several alternatives to further decrease the amount of water being drawn against the 225 MGD limit for the Pearl Harbor Groundwater Control Area.

85. Petitioner does not expect construction of the proposed Development to significantly affect the groundwater resources beneath the Property inasmuch as the Development does not require construction of any injection wells or cesspools.

RECREATIONAL RESOURCES

86. Presently, public access to the shoreline boundary of the Property can be accomplished only by boat since access from the northern and southern ends of the shoreline is blocked by rock cliffs and the Deep Draft Harbor respectively. Petitioner will provide open access to the shoreline fronting the proposed parks and resort/residential areas. Both visitors and residents will have access, via designated easements, to the newly created shoreline and the lagoons in addition to use of the parks, golf course and marina.

87. Petitioner will also open to public use parks and open areas, including the 18-hole golf course and sandy beaches, and recreational support facilities not presently on the Property such as comfort stations, showers and 150 parking spaces. Petitioner will provide boating and other marina-related recreational facilities and beach rights-of-way in coordination with the County Department of Parks and Recreation requirements.

HISTORIC/ARCHAEOLOGICAL RESOURCES

88. The abandoned railroad track right-of-way owned by the State of Hawaii runs through the northern half of the Property and has been designated on the National Register of Historic Places, and is not part of the proposal for reclassification. Petitioner will cooperate with individuals and organizations proposing to restore the railway system.

89. A portion of the Property is within the Barbers Point Archaeological District, and eligible for designation on the National Register of Historic Places. However, this area has never been nominated for designation. The National Register require the landowner's consent prior to nomination.

90. In 1979, and again in 1984, Chiniago, Inc. completed an archaeological survey of the Property to record the presence and age of

archaeological sites, assess their significance, and make recommendations. The archaeological surveys located, among others, a fishing shrine, an L-shaped wall, various stone enclosures, three midden sites, a lime kiln structure, and various sinkholes along the southeastern shoreline.

91. The fishing shrine, identified as Site 1433, is an important site which the State Historic Preservation Office has recommended for preservation.

92. Petitioner will perform the mitigative and other actions recommended by Petitioner's archaeological consultant and will work with the State Historic Preservation Office and the U.S. Advisory Council on Historic Preservation.

93. The fossils of a bird (described as a flightless goose) have been found in limestone sinkholes in the Barbers Point area. Some of the paleontological remains represent Hawaiian species which are extinct. These remains, which can be of significant importance for future research, reveal a great deal about early Hawaiian habitation and practices in the area.

94. Petitioner proposes to survey the Property in order to locate all limestone sinkholes. Petitioner will retain qualified personnel to systematically test pit 50 percent of all sinkholes larger than a meter in diameter and fully excavate all sinkholes found to contain fossil bones. Petitioner proposes to place the fossil remains on permanent loan to the Bishop Museum, Smithsonian Institute or other appropriate institution for further examination and study.

SCENIC RESOURCES

95. Petitioner proposes to modify the undeveloped shoreline for the Development to include the lagoons, the marina and the proposed resort hotels. Petitioner will take into consideration the shoreline's scenic quality in

planning and placing the hotels, landscaping and locating the lagoon in order that the Development be harmonious with the Property's natural beauty.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES

WASTEWATER DISPOSAL

96. Petitioner proposes to dispose the estimated 2.5 MGD average daily sewage flow to be generated by the Development through the Honouliuli Wastewater Treatment Plant (hereinafter "HWTP").

97. Petitioner proposes to construct collector sewerage lines within the Development's roadways. The collector lines will then convey sewage through two pump stations within the Property, which would boost the sewage through force mains primarily along the railroad right-of-way up to an interceptor sewerage line located at a higher elevation off-site. Petitioner proposes to convey sewage by gravity from the interceptor sewerage line to the HWTP through a trunk sewerage system built by the Petitioner.

98. Petitioner will pay for all the on-site improvements, the collector lines, the off-site sewage pump station, the force main and the trunk sewerage gravity main segment to the HWTP.

99. Petitioner will design and build the proposed improvements to County standards in order to dedicate the improvements to the County for operation and maintenance which the County has agreed to accept.

WATER SERVICES AND FACILITIES

100. Petitioner proposes to develop a dual water system with brackish water for irrigation and potable water for household uses. When the Development is completed, the Development will require approximately four and

one-half MGD based upon the Water System Standards of the Board of Water Supply dated March 19, 1977. Two and one-half MGD of the four and one-half MGD water requirement must be potable, while two MGD are for irrigation and could be brackish.

101. Petitioner proposes to satisfy potable water requirements of up to two and one-half MGD for the Development by drilling ten new wells by the year 2000 in the Kunia well field, and cooperating with other developers of the Ewa area pursuant to the Ewa Water Master Plan in designing, constructing, or improving existing and proposed well pumps, transmission mains, appurtenances, and water storage reservoirs to transport the potable water from the Kunia wells to the various projects.

102. Petitioner will pay its proportionate share of the costs to construct the improvements required by the Ewa Water Master Plan. Petitioner has also committed to pay for all other improvements necessary to bring potable water to the Property.

103. Petitioner and other developers will design and build the water system proposed in the Ewa Water Master Plan to County and the Board of Water Supply (hereafter "BWS") standards and dedicate the water supply to the BWS upon completion. Thereafter, the BWS will maintain the system. All users will pay a service fee to BWS for potable water consumed from this system.

104. Petitioner will attempt to meet the Development's two MGD brackish water requirement by drilling up to five new wells and possibly tapping into the existing Gilbert-Pump 10 well. Four wells mauka of Farrington Highway will service the Development's irrigation needs exclusive of the golf course. Petitioner proposes to irrigate the golf course either by using water from a new on-site well within the golf course or the existing Gilbert-Pump 10 well. The off-site wells will be located above the 200-foot elevation mauka of Farrington Highway.

105. Petitioner will construct and design the brackish water system, including the new wells, water lines, and storage tanks, and will dedicate it to the BWS upon completion. Thereafter, the BWS will maintain the system. All users will pay a service fee to BWS for brackish water consumed from this system.

106. The non-potable water system for irrigation of the golf course will be privately maintained by the Petitioner.

DRAINAGE

107. Petitioner plans to mass grade the entire Property to control the flow of surface waters during storms, and use the golf course and green belt areas as drainageways, with the flatter portions of the course designed to retain runoff from intense storms. Petitioner will channel the majority of the run-off into the marina, with the balance flowing into the ocean through the existing drain outlet at the north end of the Property. The completed drainage system should lessen the present soil erosion that is probably taking place because of the sparse groundcover.

Petitioner requires designation for the entire Property in the Urban District in order to obtain permits necessary to complete this grading.

108. During construction of the Development, erosion control measures will be incorporated in the grading plan to reduce dust and soil erosion in accordance with the County's Chapter 23, Grading, Soil Erosion and Sediment Control (1978).

Petitioner proposes to raise shoreline areas to drain surface water run-off away from the shoreline and lagoons and back towards the Development's loop road where the water can be conveyed by ditch and pipe systems to the discharge outlets at the marina.

SOLID WASTE DISPOSAL

109. The County's Division of Refuse and private refuse collection companies will collect solid waste from the Development and transport it to a public landfill site or the landfill at the Palailai Quarry. The County plans to implement new landfill facilities in Leeward Oahu which can serve the Development.

HIGHWAY AND ROADWAY FACILITIES

110. Petitioner's traffic consultant, Community Planning, Inc., prepared a Traffic Impact Analysis for the Development, in cooperation with the State Department of Transportation (hereinafter the "DOT") and the County's Department of Transportation Services (hereinafter the "DTS").

Petitioner projects that the Development will require a total of three Honolulu-bound lanes on Farrington Highway to handle peak-hour traffic. Petitioner will either (1) add a third Honolulu-bound lane on the existing Farrington Highway or (2) build a "surface arterial" from the Property to the Palailai Interchange and H-1.

111. The DOT plans to widen H-1 Interstate Highway from four to six lanes between the Palailai and Kunia Interchanges by 1990, to accommodate increased traffic generated by anticipated growth in the Ewa district.

112. Petitioner will dedicate land for and build a structural interchange and an at-grade crossing to Farrington Highway at the Waianae and Honolulu ends of the Development for access and egress. Both interchanges will be of the free-flow-type, without traffic lights, to maximize traffic flow.

113. Petitioner will facilitate traffic circulation within the Development by constructing an internal loop system. A series of cul-de-sac roads will branch off the loop road to the resort, residential, commercial and

recreational facilities. The cul-de-sac roads which connect to shoreline-oriented areas of the Development will also provide public access and parking to the continuous shoreline walkway system.

114. Petitioner will develop a system of pedestrian and bicycle ways for non-vehicular circulation in the Development.

115. Petitioner will provide two mass transit station sites within the Development. These stations could function as terminals in a future rapid transit corridor into Honolulu.

SCHOOLS

116. The Department of Education (hereinafter the "DOE") anticipates that Ilima Intermediate and Campbell High School can accommodate the projected increased enrollment of 110 to 310 intermediate school students which the Development may generate. Barbers Point and Makakilo Elementary Schools can accommodate the estimated 150 to 350 elementary students to be generated by the proposed Development.

117. Petitioner has agreed to provide a school site with adjacent park space to the DOE. The school site would be developed by the DOE when the Development's population has enough students to justify a new school facility.

POLICE AND FIRE PROTECTION

118. The fire stations at Nanakuli and Makakilo can provide fire protection services to the Development. In addition, the proposed fire station at the Campbell Industrial Park will provide additional fire protection.

119. The Honolulu Police Department will provide police protection services to the Development.

HEALTH CARE FACILITIES

120. Health and medical care facilities in Waianae, Ewa Beach and Waipahu, and the Wahiawa General Hospital are adequate to serve the needs of the future residents of the Development. Emergency medical services can be provided by the ambulance service located at the Waipahu Fire Station. In the future, ambulance service would also be provided from the proposed Campbell Industrial Park Fire Station.

ELECTRICITY AND TELEPHONE SERVICES

121. Hawaiian Telephone Company and Hawaiian Electric Company have reviewed preliminary plans for the Development and indicated the availability of their respective service. Petitioner will furnish all necessary support structures within the Development, including underground ducts and buried cable trenches.

INCREMENTAL DISTRICTING

122. Petitioner proposes to achieve substantial completion of full urban development of the entire area of the Property within five years of the date of the Commission's approval of the redistricting.

Petitioner must massgrade the entire property in order for Petitioner to carry out its proposed drainage plan to minimize adverse impact of surface water runoff to the coastal areas.

123. Petitioner has demonstrated that within five years of the above date, Petitioner shall reasonably complete substantial development of the Property in accordance with State Land Use Regulation 6-2 if Petitioner shall complete within five years mass grading of the entire area of the Property, construction of all on-site and off-site infrastructure improvements, building

all on-site and off-site infrastructure improvements, building pads for all hotel sites, various phases of construction of all hotel and resort-condominium buildings, including completion of a number of building superstructures, completion of all commercial buildings, and various phases of construction of at least fifty percent (50%) of the residential units.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT POLICIES AND OBJECTIVES

124. The Petition is in conformance with the following policies of the Coastal Zone Management Program as follows:

Petitioner will satisfy Policy 2a by providing additional coastal recreational resources in the form of four swimming lagoons, two public shoreline parks and a marina. Linking all of these features will be a shoreline public access easement. Public restrooms and shower facilities will also be provided.

Petitioner will satisfy Policies 2c, 2d, 2e, 2g and 2h by constructing two public shoreline parks and four swimming lagoons for public recreational use. Public parking stalls will also be provided. Public access easements will lead from these public parking areas to the public shoreline areas and swimming lagoons. The public access easement and the two shoreline parks will be dedicated to the County for recreational use.

Petitioner will satisfy Policy 2, 3 and 4 by developing four new lagoons to create additional habitat area within each lagoon.

Petitioner's proposed drainage improvements are designed to control terrestrial runoff and minimize disruption or degradation of coastal water ecosystems. All runoff from the parcels adjacent to the new lagoons will be directed away from the lagoons into the proposed drainage system.

Petitioner's proposed drainage system is designed to limit drainage discharge to two primary areas; the existing drainage outlet near the northern end of the Property and the marina. Petitioner's consultant, Dr. Paul Bienfang, anticipates that effluent flowing from the marina will be of slightly lower salinity than receiving waters, and that the impact on the affected environment will be relatively insignificant. Petitioner predicts that offshore waves will provide sufficient mixing action.

CONFORMANCE WITH THE HAWAII STATE PLAN

125. Petitioner's Development is consistent with the Objectives, Policies and Priority Directions of the Hawaii State Plan in the following respect:

Petitioner proposes to satisfy Sections 6(a)(1), 6(a)(11) and 9(b)(6) by providing employment of approximately 5,100 direct jobs and 1,000 indirect jobs when fully operational. In addition, Petitioner proposes to generate a large number of temporary jobs during the construction phases. If completed, the Development will also provide an estimated \$24,354,000 to the State from state unemployment tax, gross income tax, state personal income tax and real property tax.

Petitioner proposes to satisfy Sections 8(b)(5) by providing parks, marina, and lagoons on the southern end of the Property in compliance with the recommendations of the Barbers Point Harbor Safety Buffer Zone Committee. Design of the Development has also taken into consideration the Air Installation Compatible Use Zone (AICUZ) of the Barbers Point Naval Air Station. The Development lies outside the Accident Potential Zones, and only portions of the marina and park areas lie within the 60 L_{dn} noise contours. The Petitioner is coordinating joint use of the Deep Draft Harbor entrance with both the DOT and the U.S. Corps of Engineers.

Petitioner proposes to satisfy Sections 11(b)(9), 105(a) and 23(b)(4) by developing four new ocean lagoons with sandy beach areas which will be available for public use. Petitioner proposes to dedicate a continuous walkway along the shoreline fronting the resort portion as well as public access to the newly created beaches and shoreline. Petitioner proposes to set resort structures back 300 feet from the shoreline, and to slope the grade upward from the beach to promote coastal views.

Petitioner proposes to satisfy Section 11(6) by undertaking efforts to protect and conserve the 'Akoko which is listed on the Federal Register of Endangered and Threatened Plants, if found within the Property.

Petitioner proposes to satisfy Sections 12(b)(1) and 103(b)(5) by implementing recommendations and mitigative actions recommended by its archaeologist, subject to the review of the State Historic Preservation Office. Petitioner has also agreed to preserve a fishing shrine; to test pit 50 percent (50%) of all sinkholes and to salvage information from all of the sinkholes which yield archaeologically significant information.

Petitioner has addressed Sections 16(b)(1) and 104(b)(2) by proposing a Water Plan for dual water service to serve the Development and Campbell Industrial Park areas in cooperation with Campbell Estate and developers for the Ewa area, which has been approved by the BWS.

Petitioner proposes to satisfy Section 19(1) by providing 5,200 new residential units. Based upon the tentative price ranges for the residential units and Petitioner's commitment to provide increased housing opportunities for families with low and moderate incomes, the Development will assist in providing reasonably priced housing for the people of Hawaii.

Petitioner proposes to address Section 19(b)(2) by providing affordable housing opportunities for low and moderate income families equivalent to ten percent (520 units) of the proposed residential units.

Petitioner proposes to address Section 23(b)(1) by including in the Development a Hawaiian Cultural Center, privately owned and operated and open to the public, where the arts and crafts of the Hawaiian culture will be practiced and perpetuated.

Petitioner proposes to satisfy Section 104(c)(7) by developing lagoons and shoreline walkways within the Development area which will be available for public use, and dedicate park sites to the County.

Petitioner also proposes to make and bear the costs of offsite infrastructure improvements which include improvements at the Farrington Highway intersection, sewerage and water systems.

CONFORMANCE WITH THE STATE TOURISM FUNCTIONAL PLAN

126. The Petition is consistent with the Objectives, Policies and Implementing Actions of the State Tourism Functional Plan in the following manner:

Petitioner proposes to satisfy Section B(3)(e) by discharging sewage from the Development into the HWTP. The HWTP will be able to accommodate such additional sewage.

Petitioner proposes to satisfy Section B(4)(b) by setting back structures at the Development approximately 300 feet from the shoreline. The precise setback to be determined by an overall urban design study. A continuous walkway along the shoreline fronting the resort, as well as public access to the newly created beaches and shoreline will be provided.

Petitioner proposes to satisfy Section B(4)(c) by providing for

affordable housing opportunities for low and moderate income families equivalent to ten percent (520 units) of the proposed residential units.

Petitioner proposes to satisfy Sections B(4)(d) and B(4)(e) in that the Development will be within the visitor destination area designated by the General Plan and the Ewa Plan.

Petitioner proposes to satisfy Section C(1) by providing employment of approximately 6,100 direct and indirect jobs when fully operational. In addition, the Development will provide a large number of temporary construction jobs.

Petitioner proposes to satisfy Section D(3)(b) by including in the Development a Cultural Center on the Kamokila Campbell Estate. It will be open to the public, and the arts and crafts of the Hawaiian culture will be practiced and perpetuated. Petitioner has also conducted archaeological reconnaissance surveys of the Property and proposes to implement recommendations and mitigative actions recommended by its archaeologist, subject to the review of the State Historic Preservation Office.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

127. The Development is reasonably necessary to accommodate the projected need for additional resort and residential units.

128. The Development will represent an urban environment characterized by "city-like" concentrations of people, structures, streets and urban level of services.

129. The Development conforms to the General Plan, which designates the Property as part of the West Beach-Makakilo secondary urban center, and the Ewa Development Plan, which is identical to the Petitioner's Master Plan.

130. The Development is contiguous to existing Urban District and would not result in a "spot" urban district.

131. Petitioner will provide approximately 6,100 direct and indirect jobs.

132. Petitioner will also provide approximately 5,200 residential units.

Based upon the tentative price range for the residential units and Petitioner's commitment to provide for increased housing opportunities for families with low and moderate incomes, the Development will assist in providing a balanced housing supply for all economic and social groups.

133. Adequate public services and facilities are now available, or will be made available at Petitioner's expense, to the Property.

134. The Property does not have any geographic or topographic constraints which would impede or endanger the Development.

135. The Property is presently not in intensive agricultural use, nor does the Property have a high capacity for intensive agricultural use.

136. The Development will not have any significant adverse effect upon the agricultural, natural, recreational, scenic, historic, environmental, or other resources of the area.

137. Petitioner has substantiated its financial capability to carry out the Development.

RULING ON PROPOSED FINDINGS OF FACT AND PROCEDURAL MATTERS

Any of the proposed findings of fact submitted by the Petitioner or the other parties not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of evidence that the reclassification of the Property, which is the subject of the Petition, Docket No. A83-562 by West Beach Estates, consisting of approximately 642 acres of land from the Agricultural District to the Urban District at Honouliuli, Ewa, Oahu, Hawaii, Tax Map Keys 9-1-14: portion of 2; 9-1-15:3, 6, 7, 10, and portion of 4; 9-2-3:3, 7 and portion of 2, for the West Beach Development, subject to the conditions stated in the Order below, conforms to the standards established in the State Land Use District Regulations, is reasonable and non-violative of Section 205-2, Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, which is the subject of the Petition Docket No. A83-562 by West Beach Estates, consisting of approximately 642 acres situate at Honouliuli, Ewa, Oahu, Hawaii, and more particularly identified by Tax Map Keys 9-1-14: portion 2, 9-1-15:3, 6, 7, 10, and portion of 4, 9-2-3: 3, 7, and portion of 2, and more particularly identified on Exhibit A attached hereto and incorporated herein, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the State Land Use District Boundaries are amended accordingly.

IT IS FURTHER HEREBY ORDERED that the reclassification of the Property shall be subject to the following conditions:

1. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its fee simple interest to be acquired in the Property by offering for sale, on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu, a number of residential units equal to ten percent (10%) of the residential units, plus ten percent (10%) of the resort residential condominium units not operated as full-service hotel facilities to be developed on the Property, or in the alternative on other land to be acquired by the Petitioner, to residents of the State of Hawaii of low or moderate family income as determined by standards promulgated by the Hawaii Housing Authority and/or the City and County of Honolulu from time to time. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State-assisted financing (e.g. Act 105 or Hula Mae) or Federally-insured or assisted financing (e.g. FHA Section 245 Program) intended to encourage home ownership for low and moderate income families.

2. Petitioner shall, in coordination with the fee owner, Estate of James Campbell, lessees of the Estate of James Campbell, other developers in the Ewa region and appropriate State and County agencies, develop and implement an overall Ewa water master plan to assure that potable and non-potable water will be available to the Property in a timely and coordinated manner. This overall Ewa water master plan shall include provisions for accommodating residential and agricultural water needs of Waianae coast farmers and the residents in order that the City and County of Honolulu Board of Water Supply Class III designation shall be removed for the Waianae area.

3. Petitioner shall at its expense construct all offsite infrastructure improvements as may be required by the appropriate State and County agencies.

4. Petitioner shall dedicate to the City and County public easements for shoreline access to the beach and lagoon areas to be developed on the Property from all internal roadways, and easements for recreational purposes for the use of such beach and lagoon areas and shall improve and dedicate areas for public parking stalls. The City and County of Honolulu Department of Land Utilization shall determine the location of the easements and number of parking stalls.

5. Petitioner shall preserve the Fishing Shrine (Site 1433) located in the park area on the northern portion of the Property.

6. Petitioner shall test pit fifty percent (50%) of all sinkholes found on the Property larger than a meter in diameter and shall fully excavate all sinkholes in which fossil bird bones are found during such tests. Petitioner shall loan the fossil remains to an appropriate historical, educational, or archaeological institution for investigation and/or preservation.

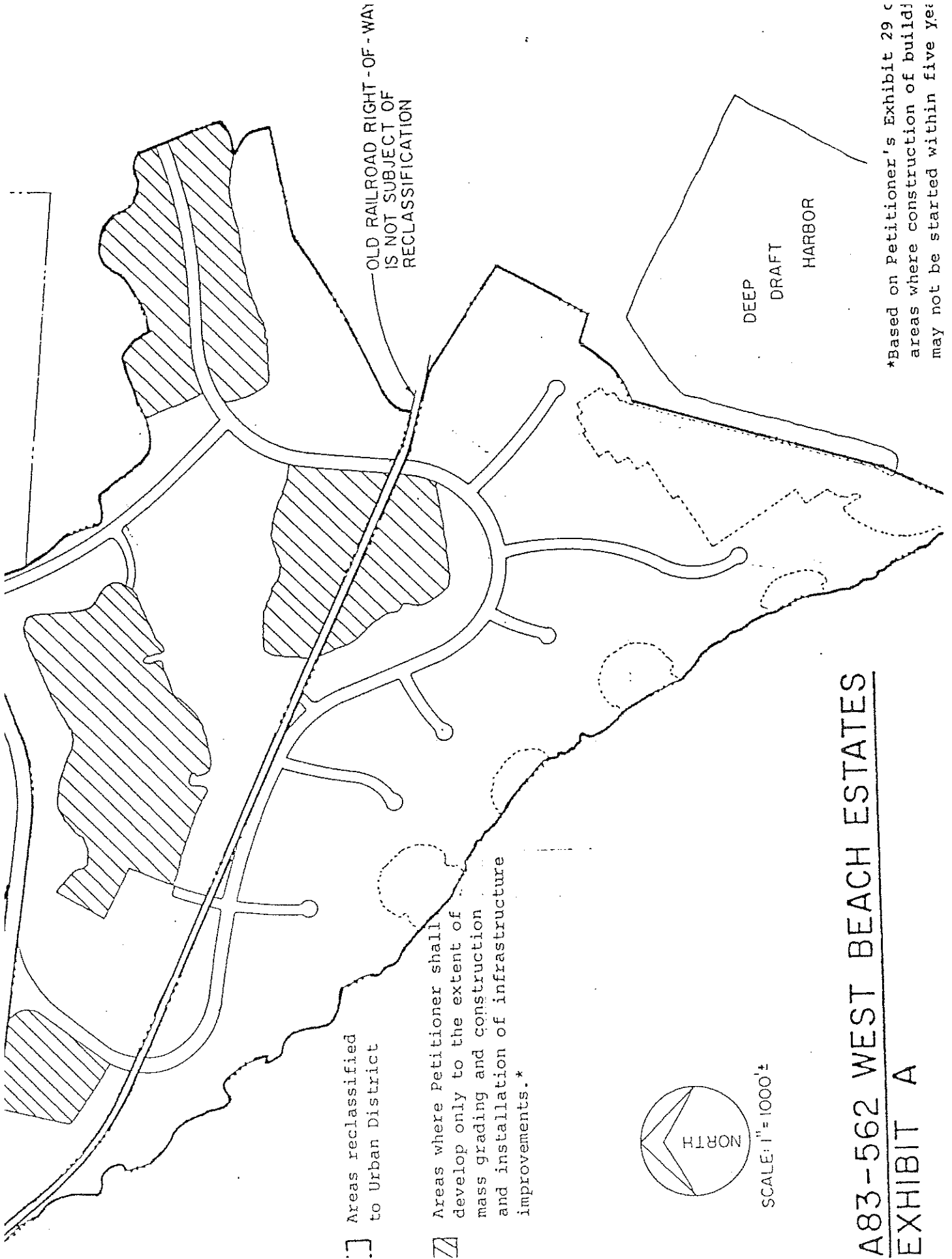
7. Petitioner shall submit its completed archaeological findings to the State Historic Preservation Office for review and comment before commencing with the proposed development of the Property. Petitioner shall comply with the State Historic Preservation Office recommendations in implementing Petitioner's archaeological plan.

8. Petitioner shall construct or cause to be constructed at least 4,000 hotel rooms and resort hotel condominium apartment units on the Property. Petitioner shall operate or cause to be operated at least fifty percent (50%) in number of such hotel rooms and condominium apartment units as full service hotel facilities.

9. Petitioner shall apply or cause to be applied sound attenuation on all residential units that are subject to aircraft noise contours greater than $60 L_{dn}$. Petitioner shall include in all conveyances of apartments, townhouses, or single family lots, in areas subject to aircraft noise contours greater than $60 L_{dn}$, appropriate noise covenants approved by the State Department of Transportation.

10. With respect to the cross hatched areas on Petitioner's Exhibit 29, identified as areas where construction of buildings may not be started within five years from the date of this approval, and more particularly identified on the map attached hereto as Exhibit A, and incorporated herein, Petitioner shall develop said lands only to the extent of mass grading and construction and installation of infrastructure improvements. Upon substantial completion of construction on the remainder of the Property, areas outside the cross hatched areas on Exhibit A, Petitioner shall file a motion with the Commission to request the Commission's release of a restriction on building on cross hatched areas reflected on Exhibit A. Upon satisfactorily demonstrating to the Commission that Petitioner can substantially complete development of remaining area, the Commission shall allow construction on the cross hatched areas and release the building restriction.

11. The Petitioner shall submit annual progress reports to the Land Use Commission, the Department of Planning and Economic Development and the Department of General Planning as to its progress in the development of the Property.



[] Areas reclassified to Urban District

[/] Areas where Petitioner shall develop only to the extent of mass grading and construction and installation of infrastructure improvements.*

OLD RAILROAD RIGHT-OF-WAY IS NOT SUBJECT OF RECLASSIFICATION

DEEP DRAFT HARBOR



SCALE: 1" = 1000' ±

A83-562 WEST BEACH ESTATES
EXHIBIT A

*Based on Petitioner's Exhibit 29 c areas where construction of buildings may not be started within five years

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
WEST BEACH ESTATES) DOCKET NO. A83-562
) WEST BEACH ESTATES
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
642 acres at Honouliuli, Ewa, Oahu)
Tax Map Keys: 9-1-14: Portion of)
Parcel 2; 9-1-15: 3, 6, 7, 10,)
Portion of Parcel 4; 9-2-03; 3, 7,)
Portion of 2)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

DONALD A. Clegg, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813


ESTATE OF JAMES CAMPBELL
Suite 500
828 Fort Street Mall
Honolulu, Hawaii 96813

HERBERT K. HORITA
2024 North King Street
Honolulu, Hawaii 96819

WALLACE S. FUJIIYAMA, ESQ.
MILES B. FURUTANI, ESQ.
Fujiyama, Duffy & Fujiyama
Suite 2650, Pacific Tower
Bishop Square
Honolulu, Hawaii 96813

ANGEL PILAGO, ERIC M. ENOS,
LIWAI KAAWA, DAVID K. CULLEN
NA OPIO ALOHA AINA
WAIANA E LAND USE CONCERNS COMMITTEE
c/o Alan T. Murakami, Attorney
Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1102
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 12th day of September 1985.



ESTHER UEDA
Executive Officer

DOCKET NO. A83-562 - WEST BEACH ESTATES

Done at Honolulu, Hawaii, this 12th day of
1985, per motions on July 23, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By *T. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

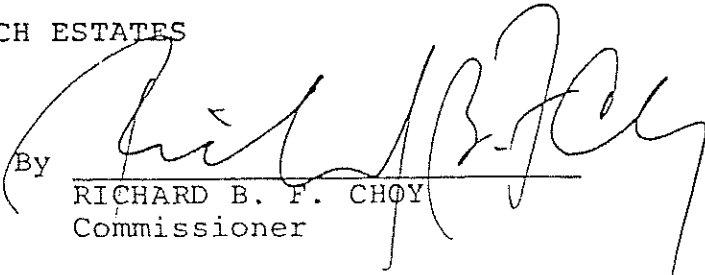
By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

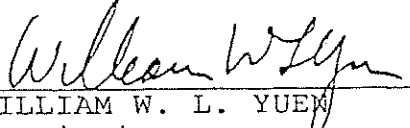
By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner


By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Everett L. Cuskaden*
EVERETT L. CUSKADEN
Commissioner

DOCKET NO. A83-562 - WEST BEACH ESTATES

By 
RICHARD B. F. CHOY
Commissioner

By 
WILLIAM W. L. YUEN
Commissioner

By 
WINONA E. RUBIN
Commissioner


KO OLINA
Lagoons • Resort • Marina

FILE

August 27, 1999

Ms. Esther Ueda, Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

2008 MAR 24 P 3:58
LAND USE COMMISSION
STATE OF HAWAII

SUBJECT: FOURTEENTH ANNUAL PROGRESS REPORT
STATE LAND USE COMMISSION DOCKET NO. A83-562

Dear Ms. Ueda:

Ko Olina Development, LLC submits this Fourteenth Annual Progress Report (original and 2 copies) to the Land Use Commission ("LUC") pursuant to Condition 11 of the September 12, 1985 LUC Order in Docket No. A83-562. Copies are also being submitted to the Office of State Planning (1 copy) and the City & County of Honolulu Department of Planning and Permitting (9 copies).

I. Project Status

LUC Reclassification. On September 12, 1985, the LUC approved reclassification of approximately 642 acres at Honouliuli, Ewa, Oahu, Tax Map Key Nos. 9-1-14: portion of Parcel 2; 9-1-15: 3, 6, 7, 10, portion of Parcel 4; and 9-2-03: 3, 7, portion of Parcel 2 for development of a master planned community.

Zoning. On February 21, 1986, the City Council of the City and County of Honolulu approved the zone change set forth in the Unilateral Agreement and Declaration of Conditional Zoning, recorded in the State of Hawaii Bureau of Conveyances as Document No. 1354687. Ordinance 4300 approved the zone change from AG-1 Restricted Agricultural District to A-1 Low Density Apartment, A-2 Medium Density Apartment, H-1 Resort Hotel, B-2 Community Business and P-1 Preservation Districts.

SMP/SV. On March 12, 1986, Resolution No. 86-61 was issued for a Special Management Area Use Permit and a Shoreline Setback Variance (85-SMA-89 and 85/SV-14), for development of a master planned resort community, including the dredging of a marina and four swimming lagoons.

Conservation District Use Application. On March 14, 1986, the Board of Land and Natural Resources approved a Conservation District Use Application for 1) dredging of swimming lagoon channels; 2) installing of paths and viewing platforms; and

3) landscaping and shoreline modification on state-owned submerged lands adjacent to the West Beach.

Corps of Engineers Permit. On September 9, 1986, the Department of Army, Corps of Engineers ("COE"), authorized a permit for the proposed marina and four swimming lagoons.

Subdivision Approval. On May 5, 1988, approval was granted to the revised proposed West Beach Resort Subdivision No. 2 of the Land Court Application 1069.

Governmental Approvals for Infrastructure Construction. All of the requisite infrastructure construction plans have received approval by the appropriate County agencies.

Ko Olina Golf Course. In June 1988, construction commenced for the 18-hole championship golf course, clubhouse, pro shop and the Niblick Restaurant. The golf course opened for business in January 1990. The clubhouse, pro shop and Niblick Restaurant have been open since February 1991.

Ko Olina Visitor Center. The Visitor Center, in operation since November 1989, was closed in December, 1998. Operations were transferred to the Ko Olina Sales Center which opened that same date.

Ihilani Resort & Spa. In August 1990, construction commenced on the Ihilani Resort & Spa, a 390-room resort hotel. Construction was completed and the Ihilani Resort & Spa was opened for business in December 1993.

Ko Olina Fairways. In June 1994, construction of the Ko Olina Fairways, a 280-unit townhouse project, commenced. To date, all 280 units have been completed. A number of units have been closed and are occupied, and sales of the units are ongoing.

Ko Olina Chapel. Construction commenced in December, 1998 and it opened for business in April, 1999.

Ko Olina Marina. Maintenance dredging commenced in April 1999. Docks are being fabricated for installation in October 1999. Dockmaster building commenced construction in July 1999.

II. Commission Conditions

Condition 1: Low and Moderate Income Housing

Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its fee simple interest to be acquired in the Property by offering for sale, on a preferential basis on its own or in

cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu, a number of residential units equal to ten percent (10%) of the residential units, plus ten percent (10%) of the resort residential condominium units not operated as full-service hotel facilities to be developed on the Property, or in the alternative on other land to be acquired by the Petitioner, to residents of the State of Hawaii of low or moderate family income as determined by standards promulgated by the Hawaii Housing Authority and/or the City and County of Honolulu from time to time. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State-assisted financing (e.g. Act 105 or Hula Mae) or Federally-insured or assisted financing (e.g. FHA Section 245 Program) intended to encourage home ownership for low and moderate income families.

Status: Petitioner has developed and sold 136 affordable multi-family townhomes at Westloch Fairways and 256 affordable multi-family townhomes at Kulalani Village and Pae Ko Gardens within Villages of Kapolei 5 and 6, prices at 80% of median and below.

Condition 2: Ewa Water Master Plan and Removal of Class III Designation

Petitioner shall, in coordination with the fee owner, Estate of James Campbell, lessees of the Estate of James Campbell, other developers in the Ewa region and appropriate State and County agencies, develop and implement an overall Ewa water master plan to assure that potable and non-potable water will be available to the Property in a timely and coordinated manner. This overall Ewa water master plan shall include provisions for accommodating residential and agricultural water needs of Waianae coast farmers and the residents in order that the City and County of Honolulu Board of Water Supply Class III designation shall be removed for the Waianae area.

Status: Petitioner, in coordination with the Estate of James Campbell, other developers in the Ewa region and appropriate State of Hawaii ("State") and County agencies have developed and begun implementation of an Ewa Water Master Plan to assure that potable and non-potable water will be available to the Property in a timely and coordinated manner. The County Board of Water Supply ("BWS") has approved the Ewa Water Master Plan. The Ewa Plains Water Development Corporation has dedicated the first six (6) wells and related 6.72 million gallons per day storage and transmission facilities to the BWS.

Condition 3: Off-Site Infrastructure

Petitioner shall at its expense construct all off-site infrastructure improvements that are required by the appropriate State and County agencies.

Status: At its own expense, Petitioner has completed most of the off-site infrastructure improvements that are required by the appropriate State and County agencies. Construction has been completed for the sewer line from the project site to the Barber's Point Naval Access Road. A joint sewer line continuing to Honouliuli Wastewater Treatment Plant is pending. All other off-site infrastructure has been completed.

Condition 4: Shoreline Access, Easements, and Parking

Petitioner shall dedicate to the City and County public easements for shoreline access to the beach and lagoon areas to be developed on the Property from all internal roadways, and easements for recreational purposes for the use of such beach and lagoon areas and shall improve and dedicate areas for public parking stalls. The City and County of Honolulu Department of Land Utilization shall determine the location of the easements and number of parking stalls.

Status: Construction plans have been approved and construction has been completed for approximately 20 acres of shoreline public parkway which provide for public recreation use along the shoreline and lagoons. This area includes four public access easements which provide public access from cul-de-sac roads to the parkway which borders the lagoon areas. Each public access easement includes a minimum of 20 parking stalls for public use, as required by the County Department of Land Utilization. WBE has opened all four lagoons and the shoreline area to the public. Dedication to the County is pending.

Condition 5: Fishing Shrine

Petitioner shall preserve the Fishing Shrine (Site 1433) located in the park area on the northern portion of the Property.

Status: The Fishing Shrine (Site 1433) will be preserved in place in a future public park area located on the northern portion of the Property.

Condition 6: Sinkholes

Petitioner shall test pit fifty percent (50%) of all sinkholes found on the Property larger than a meter in diameter and shall fully excavate all sinkholes in which fossil bird bones are found during such tests. Petitioner shall loan the fossil remains to an appropriate historical, educational, or archaeological institution for investigation and/or preservation.

Status: Archaeological mitigative measures, including the testing of sinkholes, were completed in November 1987 in accordance with a Data Recovery Plan which was reviewed and approved by the State Historic Preservation office ("SHPO"),

National Advisory Council on Historic Places ("ACHP") and the COE. The fossil remains shall be loaned to an appropriate historical, educational, or archaeological institution for investigation and/or preservation.

Condition 7: State Historic Preservation Office

Petitioner shall submit its completed archaeological findings to the State Historic Preservation Office for review and comment before commencing with the proposed development of the Property. Petitioner shall comply with the State Historic Preservation office recommendations in implementing Petitioner's archaeological plan.

Status: All of the archaeological mitigative field work has been completed in coordination with the SHPO. The final archaeological report has been submitted to COE, SHPO and ACHP. The SHPO has asked for revisions, which are in process.

Condition 8: Hotels

Petitioner shall construct or cause to be constructed at least 4,000 hotel rooms and resort hotel condominium apartment units on the Property. Petitioner shall operate or cause to be operated at least fifty percent (50%) in number of such hotel rooms and condominium apartment units as full service hotel facilities.

Status: All of the resort hotel parcels have been sold and present plans call for the construction of at least 4,000 hotel rooms and resort hotel condominium apartment units. The Ihilani Resort & Spa, which includes 390 hotel rooms, was opened for business in December 1993.

Condition 9: Noise

Petitioner shall apply or cause to be applied sound attenuation on all residential units that are subject to aircraft noise contours greater than 60 Ldn. Petitioner shall include in all conveyances of apartments, townhouses or single family lots, in areas subject to aircraft noise contours greater than 60 Ldn, appropriate noise covenants approved by the State Department of Transportation.

Status: Present plans call for sound attenuation measure to be applied on all residential units that are subject to aircraft noise contours greater than 60 Ldn and for appropriate noise covenants, approved by the State Department of Transportation, to be included in all conveyances of apartments, townhouses, or single family lots in areas that are subject to aircraft noise contours greater than 60 Ldn.

Condition 10: Incremental Zoning

With respect to the cross hatched areas on Petitioner's Exhibit 29, identified as areas where construction of buildings may not be started within five years from the date of this approval, and more particularly identified on the map attached hereto as Exhibit A, and incorporated herein, Petitioner shall develop said lands only to the extent of mass grading and construction and installation of infrastructure improvements. Upon substantial completion of construction on the remainder of the Property, areas outside the cross hatched area on Exhibit A, Petitioner shall file a motion with the Commission to request the Commission's release of a restriction on building on cross hatched areas reflected on Exhibit A. Upon satisfactorily demonstrating to the Commission that Petitioner can substantially complete development of remaining area, the Commission shall allow construction on the cross hatched areas and release the building restriction.

Status: This condition was deleted by the LUC's Order Granting Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order Dated September 12, 1985, filed May 3, 1994, in In the Matter of West Beach Estates, Docket No. A83-562, Land Use Commission of the State of Hawaii.

Condition 11: Annual Progress Report

The Petitioner shall submit annual progress reports to the Land use Commission, the Department of Planning and Economic Development and the Department of General Planning as to its progress in the development of the Property.

Status: This Fourteenth Annual Progress Report, which will be submitted to the Commission, Office of State Planning, Department of Business Economic Development & Tourism and the Department of Planning and Permitting describes the progress in the development of the Property.

Condition 12: Reclassification of Marina Water Ways to the Conservation District

Petitioner shall petition the Commission to reclassify the lands actually developed for the marina water ways to the Conservation District within two years of completion of construction of the marina.

Status: Petitioner intends to petition the Commission to re-classify the lands actually developed for the marina water ways to the Conservation District.

Condition 13: Development in Substantial Compliance with Representations Made to the Commission

Status: Petitioner intends to develop the Property in substantial compliance with the representations made to the Commission.

Condition 14: Notice to the Commission of Intent to Sell

Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Status: By letter dated August 28, 1998, West Beach Estates advised the Commission of the sale of its real property interests in Ko Olina and that the successor declarant is Ko Olina Development, LLC. Petitioner will give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Property, prior to its development.

Condition 15: Recordation of Conditions

Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

Status: The conditions were recorded via an Amendment, Certificate and Authorization, dated July 20, 1994 and filed in the Bureau of Conveyances of the State of Hawaii as Document No. 94-120723.

Sincerely,
Ko Olina Development, LLC
By Ko Olina Company, LLC, its sole member
By Ko Olina Partners, LLC, its sole manager


Kevin Showe
Manager

KS:co

c: Office of State Planning
Department of Planning & Permitting, City and County of Honolulu (9 copies)



KO OLINA
Lagoons • Resort • Marina

Via Fax 527-6743

August 26, 1999

Ms. Jan Naoe Sullivan, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Ms. Sullivan:

**Subject: Preliminary Access Plan, Hours of Operation and
Rules for the Ko Olina Boat Ramp**

As the owners of the boat launch ramp, we are providing this preliminary access plan, hours of operation and rules for use of the boat ramp.

Access Plan

Boaters will access the Boat Ramp from Waipahe Street, through the public parking lot provided for the Park near the marina. Approximately 30 boat trailer parking stalls will be provided for public use.

Hours of Operation

The boat launch ramp and boat trailer parking lot will be open from sunrise to sunset to allow boaters to launch and retrieve their boats.

Rules

Boaters will be required to have the approved necessary communication equipment to obtain clearance to enter and exit the channel to the marina and Kalaeloa Barbers Point Harbor.

2008 MAR 24 P 3:58
LAND USE COMMISSION
STATE OF HAWAII

EXHIBIT "3"


Ms. Jan Naoe Sullivan
Page 2

Boaters must also comply with other rules established by the Department of Transportation, Harbors Division and the marina operator.

Emergency accommodations will be made for boaters who are unable to return to the boat launch ramp within a one-hour grace period after sunset.

Should you have any further questions, please call me at 531-9761.

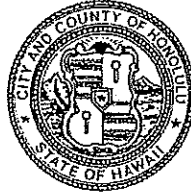
Very truly yours,


Jeffrey R. Stone
Manager

Cc: Kusao & Kurahashi, Inc.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743



JEREMY HARRIS
MAYOR

JAN NAOE SULLIVAN
DIRECTOR

LORETTA K.C. CHEE
DEPUTY DIRECTOR

1999/CLOG-3547
95/CUP1-82

September 20, 1999

Mr. Keith Kurahashi
Kusao & Kurahashi, Inc.
Interstate Building
1314 South King Street, Suite 1263
Honolulu, Hawaii 96814

Dear Mr. Kurahashi:

Minor Modification to
Conditional Use Permit
File No. 95/CUP1-82
Ko Olina Marina Dock Master Facility
End of Waipahe Place - Ewa
Tax Map Key 9-1-057: 018 and Por. 019

2000 MAR 24 P 3:58
LAND USE COMMISSION
STATE OF HAWAII

Your May 27, 1999 request to revise the approved site plan for the Ko Olina Marina Dock Master Facility has been APPROVED. The proposed modifications should have no significant impacts on surrounding land uses. Therefore, your request has been granted as a MINOR MODIFICATION to the previously approved Conditional Use Permit, Type 1, File Number 95/CUP1-82, as modified, subject to the following conditions:

Condition 1: Master Public Access Plan

Prior to the submittal of applications for building or grading permits for the Ko Olina Ocean Club facility, the applicant shall submit a public access master plan for the review and approval of the Department of Planning and Permitting. The plan must address public access to coastal recreational resources throughout the entire Ko Olina community, and must include the following elements:

- An operations plan for the boat launch ramp that includes appropriate measures to ensure access to the ramp for the general public, including recreational deep sea fishing users. The operations plan should also specify the types of

EXHIBIT "4"

Mr. Keith Kurahashi
Page 2
September 20, 1999

communication and safety equipment and procedures which the public must maintain and follow in order to be in compliance with U.S. Coast Guard and Ko Olina requirements.

- Identification of the locations of all facilities to be made accessible to the public, including any pedestrian paths, off-street parking and boat trailer parking.
- A master signage plan, identifying the locations of signs to be used to identify the locations of public pedestrian paths, boat ramp and parking (for boats and vehicles), and samples of proposed signs.

Explanation: Public access to the Ko Olina community's coastal recreation resources should be facilitated, as well as ensured. Although the Ko Olina community encompasses a wider land area than covered by this permit, it is appropriate to address and resolve issues related to community-wide public access at this time, since public use of the Ko Olina marina is an integral element of the public access plan.

Condition 2: Revised Site Plan

Prior to the submittal of applications for building or grading permits for the Ko Olina Ocean Club facility, the applicant shall submit a revised site plan for the review and approval of the DPP showing the following:

- Vehicle access to the boat launch ramp and parking area provided through Parcel 18; and
- The swimming pool, structures identified on the June 30, 1999 site plan as "Ko Olina Ocean Club" and "Fitness Facility" (2 structures), as well as all structures associated with the Ko Olina Ocean Club, located entirely within Parcel 19 and set back a minimum of 15 feet from the southeast property line between Parcel 19 and Parcel 18.

Explanation: The June 30, 1999 site plan shows that the fitness facility, spas, and massage areas, and parking lot cross the property line of Parcel 18, and are a minimum of 3 feet from the right side property line. The proposed relocation of these structures will eliminate the access driveway to the boat launch ramp and marina parking, shown in the site plan originally approved under 95/CUP1-82. Furthermore, although not a part of the CUP, the site plans show vehicle access to the boat launch ramp over Parcel 17 (the proposed public parking lot and future public park). This

involves the joint development of Parcels 17 and 18. Such an encumbrance to a future park site is not acceptable to the Department of Parks and Recreation and raises issues related to public access to the park and boat ramp.

Condition 3: Departments of Design and Construction and Parks and Recreation

The applicant must submit, to the Department of Planning and Permitting, written confirmation of the Departments of Design and Construction's and Parks and Recreation's prior approval of any improvements constructed or installed on the future public park site (Parcel 17).

Explanation: The future park site is intended to be dedicated to the City at an unspecified date.

Condition 4: Quiet Hours

The Ko Olina Ocean Club shall observe quiet hours from 11 p.m. to 6 a.m., daily. Activities and/or uses which may generate noise impacts to surrounding residential properties, such as use of amplified music and/or sound systems, organized social functions, and deliveries, shall not be permitted during the stipulated quiet hours.

Explanation: This condition is imposed in anticipation of the future build-out of the Ko Olina community. The large size of the clubhouse facility and its proximity to future residential areas indicates the potential for noise impacts on nearby residences.

Condition 5: Any modification to the approved plan shall be subject to the review and approval of the Director of the DPP. Major modifications to the plan will require a new Conditional Use Permit.

Explanation: Standard condition imposed on all discretionary land use permits.

Condition 6: Except as modified herein, Conditions of 95/CUP1-82 shall remain in force.

Explanation: Standard condition imposed on all discretionary land use permits.

Mr. Keith Kurahashi
 Page 4
 September 20, 1999

Background and Additional Analysis

A clubhouse facility was originally approved under 95/CUP1-82 as a 7,500-square foot structure situated adjacent to the Marina. Under the proposed modification, the facility will total 10,545 square feet of floor area and 4,270 square feet of related club facilities, primarily recreational amenities, outside of the main building. Most of the additional floor area is on the second floor, within the roof loft area. The proposed clubhouse is also proposed to be set back further from the marina than earlier approved, but instead of being wholly contained within Parcel 19, will cross the property line between Parcels 19 and 18.

The proposed facility meets the Land use Ordinance minimum development standards for the P-2 General Preservation District as follows:

STANDARD	LUO PROVISION	*MODIFICATION
Minimum Lot Area	5 Acres	54.84 Acres
Depth/Width	200 ft.	1,150 ft./2,700 ft.
Yards		
Front	30 ft.	71 ft.
Side	15 ft.	235 ft. (Spa)
Rear	15 ft.	255 ft. (Gazebo)
Maximum Building Area (Percent of zoning lot)	5% (119,442 sq. ft.)	0.82% (19,624 sq. ft.)
Maximum Height	25 ft.	25 ft.

*Reflects joint development of Parcels 17, 18, and 19 approved on September 3, 1999 (see File No. 1999/CUP1-44). However, the land area covered by permit 95/CUP1-82 remains applicable only to Parcel 18 and portion of Parcel 19.

The parking requirements for the marina facility have been revised as follows:

USE	LUO REQUIREMENT	PARKING REQUIRED
KO OLINA OCEAN CLUB		
Dining (assembly) Area @ 2,535 sq. ft.	1 per 75 sq. ft.	33.8
Kitchen @ 790 sq. ft.	1 per 400 sq. ft.	1.9
Offices @ 2,030 sq. ft.	1 per 400 sq. ft.	5.1

Mr. Keith Kurahashi
Page 5
September 20, 1999

USE	LUO REQUIREMENT	PARKING REQUIRED
Women's Locker Room @ 1,195 sq. ft.	Accessory	0
Men's Locker Room @ 1,130 sq. ft.	Accessory	0
Women's Sauna @ 120 sq. ft.	1 per 400 sq. ft. (Personal services)	0.3
Men's Sauna @ 120 sq. ft.	1 per 400 sq. ft. (Personal services)	0.3
Restaurant Restrooms @ 370 sq. ft.	Accessory	0
Lobby @ 620 sq. ft.	Accessory	0
Retail @ 225 sq. ft.	1 per 400 sq. ft.	0.6
Corridors & Stairs @ 805 sq. ft.	Accessory	0
Massage Cabanas @ 400 sq. ft.	1 per 400 sq. ft. (Personal services)	1.0
Spas @ 180 sq. ft.	1 per 400 sq. ft. (Personal services)	0.5
Ice Pool @ 25 sq. ft.	1 per 400 sq. ft. (Personal services)	0.1
Showers @ 260 sq. ft.	Accessory	0
Waiting Room @ 205 sq. ft.	Accessory	0
Fitness Facility - Weight Room @ 1,620 sq. ft.	1 per 200 sq. ft.	8.1
Fitness Facility - Aerobics @ 1,670 sq. ft.	1 per 200 sq. ft.	8.4
Swimming Pool @ 1,875 sq. ft.	1 per 200 sq. ft.	9.4
Restrooms @ 250 sq. ft.	Accessory	0
Gazebo @ 280 sq. ft.	Accessory	0
Basketball Court @ 1,800 sq. ft.	3 per court	3.0
Laundry Building @ 450 sq. ft.	Accessory	0
HARBOR MASTER FACILITY		
Offices @ 1,090 sq. ft.	1 per 400 sq. ft.	2.7
Retail @ 1,217 sq. ft.	1 per 400 sq. ft.	3.0
Workshop @ 812 sq. ft.	1 per 500 sq. ft.	1.6

Mr. Keith Kurahashi
Page 6
September 20, 1999

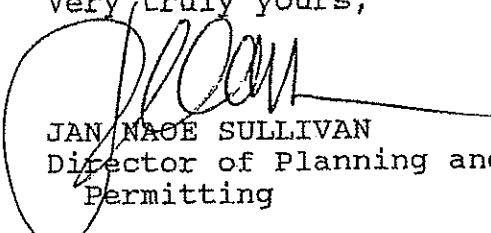
USE	LUO REQUIREMENT	PARKING REQUIRED
Restrooms, Trash Enclosure, Storage, & Electrical Room @ 1,536 sq. ft.	Accessory	0
Observation Room @ 453 sq. ft.	Accessory	0
TOTAL		79.8

The parking required for the Ko Olina Ocean Club and the Harbor Master Facility is 79.8 or 80 parking spaces. The marina (boat slips) and boat launch ramp require a total of 145 parking stalls, based on the 270 slips (Phase I) at 1 per two moorage stalls and 1 boat ramp at 10 spaces per ramp. The total parking required for the entire project is 225 parking spaces. The applicant is providing 217 marina parking stalls and 35 boat trailer parking stalls for a total of 252 parking stalls.

The LUO loading space requirements are based on the total floor area. The 19,923-square foot ocean club, harbor, and marina facility requires 2 loading spaces. Two loading spaces are provided.

Please contact Jeff Lee at 527-6274 if you have further questions.

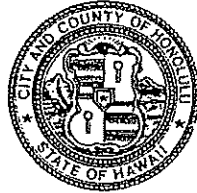
Very truly yours,


JAN NACE SULLIVAN
Director of Planning and
Permitting

JNS:lg
DN5395

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743



JEREMY HARRIS
MAYOR

JAN NAOE SULLIVAN
DIRECTOR

LORETTA K.C. CHEE
DEPUTY DIRECTOR

November 5, 1999

1999/CLOG-6256
95/CUP1-82

Mr. Keith Kurahashi
Kusao & Kurahashi, Inc.
Interstate Building
1314 South King Street, Suite 1263
Honolulu, Hawaii 96814

Dear Mr. Kurahashi:

Minor Modification to
Conditional Use Permit
File No. 95/CUP1-82
Ko Olina Marina Dock Master Facility
End of Waipahe Place - Ewa
Tax Map Key 9-1-057: 018 and Por. 019

2008 MAR 24 P 3:58
LAND USE COMMISSION
STATE OF HAWAII

Your September 23, 1999 request to amend the conditions of the above minor modification for the Ko Olina Marina Dock Master Facility has been APPROVED. The proposed amendments should have no significant impacts on surrounding land uses. Therefore, your request has been granted as a MINOR MODIFICATION to the previously approved Conditional Use Permit, Type 1, File No. 95/CUP1-82, as modified. The conditions have been modified as follows:

Condition 1: Master Public Access Plan

Prior to the submittal of applications for building [or grading] permits for the Ko Olina Ocean Club facility, the applicant shall submit a public access master plan for the review and approval of the Department of Planning and Permitting. The plan must address public access to coastal recreational resources throughout the entire Ko Olina community, and must include the following elements:

- An operations plan for the boat launch ramp that includes appropriate measures to ensure access to the ramp for the general public, including recreational deep sea fishing users. The operations plan should also specify the types of

Mr. Keith Kurahashi
Page 2
November 5, 1999

communication and safety equipment and procedures which the public must maintain and follow in order to be in compliance with U.S. Coast Guard and Ko Olina requirements.

- Identification of the locations of all facilities to be made accessible to the public, including any pedestrian paths, off-street parking and boat trailer parking.
- A master signage plan, identifying the locations of signs to be used to identify public pedestrian paths, boat ramp and parking (for boats and vehicles), and samples of proposed signs.

Explanation: Requiring the completion of the Master Public Access Plan prior to approval of building permits for the Ko Olina Ocean Club Facility will allow the developer to continue with the construction of the marina, boat ramp and park facilities in a timely manner, in accordance with commitments made to the public and City Council.

Condition 2: Revised Site Plan

Prior to the submittal of applications for building [or grading] permits for the Ko Olina Ocean Club facility, the applicant shall submit a revised site plan for the review and approval of the DPP showing:

- [Vehicle access to the boat launch ramp and parking area provided through Parcel 18; and]

Explanation: The Departments of Parks and Recreation and Design and Construction have approved the site plan dated 6/30/99 showing vehicle access to the boat trailer parking lot over Parcel 17 and through the public parking lot.

- The swimming pool, structures identified on the June 30, 1999 site plan as "Ko Olina Ocean Club" and "Fitness Facility" (2 structures), as well as all structures associated with the Ko Olina Ocean Club, located entirely within [Parcel 19 and set back a minimum of 15 feet from the southeast property line between Parcel 19 and] Parcel 18.

Explanation: Prior to sign-off of the grading permit for the marina facility, the applicant was required to locate all structures associated with the club facility within Parcel 18. The revised site plans for 95/CUP1-82 should be consistent with these approved grading plans.

Mr. Keith Kurahashi
Page 3
November 5, 1999

A 15-foot building setback was initially required as a condition of the September 20, 1999 minor modification to 95/CUP1-82 to ensure that a vehicle access could be developed on Parcel 18, as indicated in the previously-approved site plan for the facility. However, the site plan approved in September 1999 (through the approval of the grading permit for the facility) allowed vehicle access through the public parking area on Parcel 17, thereby eliminating the need for a driveway on Parcel 18. The proposed public parking lot on Parcel 17 will serve as a distance and visual buffer between the Ocean Club and the public park area. Therefore, the requirement for the 15-foot building setback from the southeast property line between Parcel 19 and Parcel 18 has been removed.

- The Boat Trailer Parking lot re-labelled "Public Boat Trailer Parking".

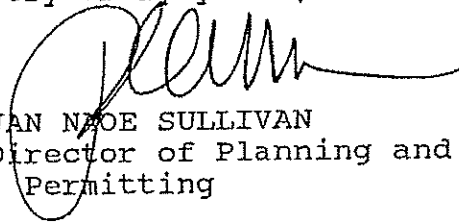
Explanation: Designation of the boat trailer parking lot for "public" use was required prior to DPP sign-off on the grading permit for the marina facility. The revised site plans for 95/CUP1-82 should be consistent with these approved grading plans.

Note: bracketed material to be deleted; underscored material to be added.

Except as modified herein, Conditions of 95/CUP1-82 shall remain in force.

Enclosed is your receipt for the application fee. Please contact Jeff Lee at 527-6274 if you have further questions.

Very truly yours,


JAN NOE SULLIVAN
Director of Planning and
Permitting

JNS:lg
Encl.
DN12654

FILE

FAX MEMORANDUM



**KO OLINA
OCEAN MARINA,
LLC**

92-101
Mauloa Place
Kapolei, Hawaii
96707

Phone:
(808) 673-7678
Facsimile:
(808) 673-7670
E-Mail:
blaisdell@koolina.om

TO: Barry Kim
Harbors Division – Oahu District

FAX NO.: 587-2065

FROM: Bill Blaisdell *WB/co*

NO. OF PAGES: 1

DATE: October 22, 1999

SUBJECT: KO OLINA MARINA
PARKING & BOAT LAUNCH RAMP

LAND USE COMMISSION
STATE OF HAWAII
2008 MAR 24 P 3:58

Pursuant to our earlier meeting, please find attached a draft of Ko Olina Marina's boat launch ramp and parking policies. We would appreciate your and your staff's review and comments.

Please call me if you have any questions.

WB:co
Attachment

If you do not receive legible copies of all pages, please call (808) 673-7678 as soon as possible.

EXHIBIT "6"



Draft

Ko Olina Marina Boat Launch Ramp and Parking Policy

Ko Olina Resort and Marina is equipped with a launch ramp and 30 parking stalls for vehicles and trailers. The above facilities are located on *PRIVATELY Owned Property* with allowed public use and is provided for non-commercial recreational boat use.

Ko Olina Marina leases an access easement over the deep draft channel for Barber's Point Harbor from the State of Hawaii, therefore the following procedures and Coast Guard regulations must be observed by all vessels:

1. An annual boat launch ramp pass will be issued by the Ko Olina Harbor Master upon verification of the following documents and requirements:
 - a) Owner Information Form and a signed copy of operational requirements.
 - b) Copy of current registration, driver's license and insurance.
 - c) Compliance with all State and Coast Guard regulations.
 - d) Communications gear, marine VHF-FM and/or HF transceiver(s).
2. Hours of operation: The boat ramp and trailer parking will be open from sunrise to sundown. Transient dockage at the Ko Olina Marina will be available for overnights or late returnees at the posted rate.



TRANSMITTAL

LAND USE COMMISSION
STATE OF HAWAII
2000 MAR 24 P 3:58

TO: Keith Kurahashi
KUSAO & KURAHASHI

FROM: Bill Blaisdell *COB/bb*

DATE: November 10, 1999

SUBJECT: MARINA PARKING & BOAT LAUNCH RAMP

- ITEM:**
1. October 22, 1999 Fax Memorandum to Barry Kim, DOT Harbors w/Draft of Ko Olina Marina's Boat Launch Ramp and Parking Policies.
 2. Copy of Harbor's Response:
 - a. Clean Copy w/out Harbor's Identification.
 - b. Copy w/Harbor's (Sender's) Identification

REMARKS: As requested. Sent you the two copies of Harbor's response as I was not sure if you wanted the sender's information blocked out as well. Call me should you have any questions.

KO OLINA
OCEAN MARINA,
LLC

92-101
Mauloa Place
Kapolei, Hawaii
96707

Phone:
(808) 673-7678
Facsimile:
(808) 673-7670
E-Mail:
blaisdell@koolina.com

EXHIBIT "7"

Post-It™ brand fax transmittal memo 7671 # of pages = 1

To: Bill Glarsdell	From: Craig Fukuda
Co: Koolina	Co: Harbor
Dept:	Phone # 597 2156
Fax # 673 7670	Fax # 587 2075

Bill,

As per our conversation, the following are modified items out of the Harbormasters Notice regarding recreational vessels in Kalaeloa Barbers Point Harbor that would apply to Ko Olina's use of the entrance channel

1. Monitor VHF Channel 16, the calling, safety and distress frequency and Channel 12, the Honolulu Harbor and Kalaeloa Barbers Point Harbor vessel traffic working station prior to and while transiting the channel
2. Vessels are not permitted to tie up to any pier including Pier 1, cruise nor anchor within Kalaeloa Barbers Point Harbor basin without prior permission from the Honolulu Harbor Masters Office or the Aloha Tower Marine Traffic Controller.
3. Vessel traffic entering and departing Ko Olina Marina must yield to commercial shipping traffic in the entrance channel.
4. Sailing and other vessels must be under auxiliary power while transiting the entrance channel. Sailing vessels must have their sails lowered while in the entrance channel.
5. Vessels transiting the entrance channel are required to comply with Nautical Rules of the Road.

Any questions call me at 587 2056

Craig Fukuda

cc: Kevin Stone

Jeff Stone (via fax)

Mayor Jeremy Harris
530 South King Street, Room 300
Honolulu, Hawaii 96813

Post-it® Fax Note	7671	Date	4/5/00	# of pages	3
To	KEITH KURAHASHI	From	JEFF LEE		
Co./Dept.		Co.	DPD		
Phone #		Phone #	527-6274		
Fax #	521-4292	Fax #			

Dear Mayor Harris:

During the week of March 6-10, I made several phone calls to your office to determine and clarify your position on public access to the Koolina Launch ramp. To date, I have not received a telephone response.

On March 10, 2000 I spoke with Laurie Chee of your Planning and Permitting Department. During our conversation she shared that her department was currently considering a public access plan for Koolina. I brought to her attention a reference within the FINDINGS OF FACT, CONCLUSION OF LAW AND DECISION AND ORDER (Docket No. A83-562). This land use commission decision referenced item No. 33, "Petitioner proposes to develop a 36 acre recreational and commercial marina with a public boat launch ramp...".

In addition, I also pointed out two State Land Board submittals that also refer to "The applicant will construct a public launching ramp within the West Beach (Koolina) Marina which shall be opened to the tenants of the marina and the boating public".

March 22, 2000 I received a telephone call from Jeff Lee of the Planning and Permitting Department. He informed me that your department has decided to concur with Koolina's proposed rules for Public Access to the Launch Ramp. I reiterated to him the State documents and what they direct the developer to do. He told me that the City and County of Honolulu cannot enforce State of Hawaii agreements.

0 MAR 29 10:41 AM
MAYOR'S OFFICE
CITY & COUNTY
HONOLULU

2000 MAR 24 3:58 PM
LAND USE COMMISSION
STATE OF HAWAII

Page 2
William and Melva Aila
3/28/00

We agree that there may be some jurisdictional questions here but we are shocked and surprised that the City and County of Honolulu would disregard the intent of the State of Hawaii documents.

We believe that Koolina resort bought into the legally binding agreements that West Beach Estates made in order to obtain the zoning changes for its development and as such are bound to them. Specifically, that it would construct a "public launch ramp". NOT a private launch ramp that is open to the public and requires restrictive rules.

We and many other boaters and fishermen object to the following rules that your Department Agreed to:

1. Hours of operation, should be 24 hours, like all other public ramps.
2. Insurance requirements are not required at all other public ramps.
3. U.S Coast Guard Auxiliary Sticker is optional at all public ramps. Koolina is making it mandatory.
4. Additional Fee for use of Launch ramp. Koolina requires an additional \$25.00 fee for use of the launch ramp at its Marina. This Launch ramp is supposed to be public. The Boating public already pays an annual launch ramp fee to the State of Hawaii.

We ask that you review all of the documents pertaining to Koolina development, including all state zoning documents from the State Land Use Commission and Right of Entry and Grant of Easements, from the State Land Board. Then we ask that you reconsider your department's concurrence with Koolina's rules for the launch ramp.

Page 3

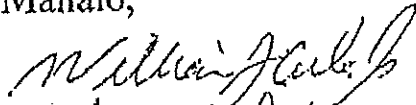
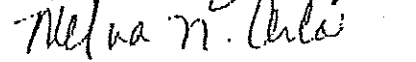
William and Melva Aila

3/28/00

We understand that the developer has liability concerns regarding the use of the launch ramp but, we also believe that an agreement is an agreement and that Koolina should live up to its agreements and operate the launch ramp within its Marina as agreed to, as a "public launch ramp". The Public Access Plan for Koolina should be revised to reflect the rules at other public launch ramps. We also are concerned that there was no opportunity for the public to comment on these rules while your department was considering them. Why no provisions for public comment?

We look forward to your response. If you have any further questions or would like copies of the documents that we refer to please call us at 696-9921.

Mahalo,

William J. Aila Jr.

Melva N. Aila

86-630 Lualualei Homestead Road

Wai'anae, Hawaii 96792

Ph# (808) 696-9921

Fax#(808)696-1117

Cc: Tim Johns, Chairman, BLNR,DLNR.

cc: James Gonser, Honolulu Advertiser

2008 MAR 24 P 3: 58



September 12, 2006

Mr. Anthony Ching
Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

SUBJECT: TWENTY FIRST ANNUAL PROGRESS REPORT
STATE LAND USE COMMISSION DOCKET NO. A83-562

Dear Mr. Ching:

Ko Olina Development, LLC submits this Twenty First Annual Progress Report (original and 2 copies) to the Land Use Commission ("LUC") pursuant to Condition 11 of the September 12, 1985 LUC Order in Docket No. A83-562. Copies are also being submitted to the Office of State Planning (1 copy) and the City & County of Honolulu Department of Planning and Permitting ("DPP") (9 copies).

I. Project Status

LUC Reclassification. On September 12, 1985, the LUC approved reclassification of approximately 642 acres at Honouliuli, Ewa, Oahu, Tax Map Key Nos. 9-1-14: portion of Parcel 2; 9-1-15: 3, 6, 7, 10, portion of Parcel 4; and 9-2-03: 3, 7, portion of Parcel 2 for development of a master planned community.

Zoning. On February 21, 1986, the City Council of the City and County of Honolulu approved the zone change set forth in the Unilateral Agreement and Declaration of Conditional Zoning, recorded in the State of Hawaii Bureau of Conveyances as Document No. 1354687. Ordinance 4300 approved the zone change from AG-1 Restricted Agricultural District to A-1 Low Density Apartment, A-2 Medium Density Apartment, H-1 Resort Hotel, B-2 Community Business and P-1 Preservation Districts. Subsequently on March 11, 2003, the City Council rezoned Ko Olina parcels 6a and 31 to B-1.

SMP/SV. On March 12, 1986, Resolution No. 86-61 was issued for a Special Management Area Use Permit and a Shoreline Setback Variance (85-SMA-89 and 85/SV-14), for development of a master planned resort community, including the dredging of a marina and four swimming lagoons.

Conservation District Use Application. On March 14, 1986, the Board of Land and Natural Resources approved a Conservation District Use Application for 1) dredging of swimming lagoon channels; 2) installing of paths and viewing platforms; and 3) landscaping and shoreline modification on state-owned submerged lands adjacent to the West Beach.

Corps of Engineers Permit. On September 9, 1986, the Department of Army, Corps of Engineers



("COE"), authorized a permit for the proposed marina and four swimming lagoons.

Subdivision Approval. On May 5, 1988, approval was granted to the revised proposed West Beach Resort Subdivision No. 2 of the Land Court Application 1069.

Governmental Approvals for Infrastructure Construction. All of the requisite infrastructure construction plans have received approval by the appropriate County agencies.

Ko Olina Golf Course. In June 1988, construction commenced for the 18-hole championship golf course, clubhouse, pro shop and the Niblick Restaurant. The golf course opened for business in January 1990. The clubhouse, pro shop and Niblick Restaurant opened in February 1991. In the last year, Niblick Restaurant was closed, redesigned, and renovated. It reopened in July 2004 as Roy's Ko Olina.

Ko Olina Visitor Center. The Visitor Center, in operation since November 1989, was closed in December, 1998. Operations were transferred to the Ko Olina Sales Center which opened that same date, and has since been sold to Marriott Vacation Club in 2000.

Ko Olina Chapel. Construction commenced in December, 1998 and it opened for business in April, 1999.

Ihilani Resort & Spa. In August 1990, construction commenced on the Ihilani Resort & Spa, a 390-room resort hotel. Construction was completed and the Ihilani Resort & Spa was opened for business in December 1993. A 20,000 sq ft pavilion addition was completed in October 2003 as part of a program to attract more incentive travel business.

Ko Olina Fairways. In June 1994, construction of the Ko Olina Fairways, a 280-unit townhouse project, commenced. To date, all 280 units have been completed and sold.

Ko Olina Marina. Construction of Phase I of the Marina was completed and commenced operations in March 2000. Because of the better than expected absorption, construction of Phase II-Inwater was given a Notice to Proceed in July 2004. Installation of 63 new boat slips is ongoing. The planning and design of Phase III which will include additional inwater work and necessary landside support facilities have also been initiated.

The Coconut Plantation. In August, 2000, sitework commenced on the 270-unit Coconut Plantation. It is a 270-unit, lowrise, multi-family condominium project developed by Brookfield Homes. Models opened in May 2001. Initial occupancy was in November 2001 and to date, all 270 units are occupied. The project was completed in December 2004.

Marriott's Ko Olina Beach Club. Planning and design continues on Marriott's 750-unit timeshare project. Sitework commenced in October 2000, and construction of Phase I Building A commenced in April 2001. A Sales Center and temporary parking facility opened in October,



2001. The initial phase, which includes 105 units and a grille/bar and a large recreation complex, was completed and occupied in January 2003. Phases 2 & 3 (Building B) construction started in April 2004. Phase 2 was completed and occupied in December 2005, and Phase 3 was completed and occupied in June 2006. Phases 4 & 5 (Building C) construction started in July 2006. Phase 4 occupancy is expected in 3rd quarter 2008 and Phase 5 occupancy in 1st quarter 2009.

Kai Lani. This 116-unit lowrise, multi-family condominium project, a joint venture of Armstrong Builders and Alexander & Baldwin, opened its sales office in December, 2001. Sitework commenced in May, 2002, the models opened in August 2002 and construction of the production units started shortly thereafter. Initial occupancy occurred in February 2003. Currently all 116 units are occupied. This project was completed in March 2004.

Ko Olina Ocean Club. The feasibility is being studied but it appears there may not be enough development yet to warrant construction of this facility at this time.

Aquarium. As a result of State legislation, planning and design for a world class aquarium attraction at Ko Olina is ongoing.

Ko Olina Kai. Centex Homes, one of the nation's largest homebuilders, is developing a 324 unit low density residential (villas and single family homes) project at Ko Olina. Construction commenced February 2004. Sales commenced in April 2004. Initial occupancy was in January 2005 and to date 243 units have been occupied.

Ko Olina Hillside. Centex Homes is also developing Ko Olina Hillside, a 174 unit low density residential project at Ko Olina. Construction commenced February 2005 and initial occupancy was in March 2006 and to date 54 units have been occupied.

Ko Olina Beach Villas. Centex Homes is also developing a 247 unit mid-rise condominium with the option of condo/hotel use at Ko Olina. Construction commenced February 2006, and initial occupancy is expected the 1st quarter 2008.

Entry. Construction of a new entry to the Resort commenced in June 2004 and was completed in January 2005. The new improvements enhance the entry experience, commensurate with the quality and ambience of Ko Olina.

Marina Support ECHO Offices. Offices to accommodate the subject project in vicinity of the Ko Olina Marina were completed in December 2004 and are currently occupied.

Ko Olina Tennis Complex. A CUP was prepared, submitted and approved on August 11, 2004 for a tennis complex in vicinity of the Ko Olina Golf Club. It includes two tennis courts and a 1000± sq.ft. clubhouse facility. Construction commenced in March 2005 and was completed in November 2005.



Ko Olina Station. The HONU Group is planning to develop a 95K+ sf commercial complex at Ko Olina. Design is underway and construction is expected to start in 1st quarter 2007 and opening in 3rd quarter 2008.

Ko Olina Parcel 55. Crescent Heights is planning to develop a 500± unit hotel at Ko Olina. Design is currently underway and construction mobilization and sales should commence late 2006 or early 2007.

II. Commission Conditions

Condition 1: Low and Moderate Income Housing

"Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its fee simple interest to be acquired in the Property by offering for sale, on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu, a number of residential units equal to ten percent (10%) of the residential units, plus ten percent (10%) of the resort residential condominium units not operated as full-service hotel facilities to be developed on the Property, or in the alternative on other land to be acquired by the Petitioner, to residents of the State of Hawaii of low or moderate family income as determined by standards promulgated by the Hawaii Housing Authority and/or the City and County of Honolulu from time to time. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State-assisted financing (e.g. Act 105 or Hula Mae) or Federally-insured or assisted financing (e.g. FHA Section 245 Program) intended to encourage home ownership for low and moderate income families."

Status: Petitioner has developed and sold 136 affordable multi-family townhomes at Westloch Fairways and 256 affordable multi-family townhomes at Kulalani Village and Pae Ko Gardens within Villages of Kapolei 5 and 6, prices at 80% of median and below.

Condition 2: Ewa Water Master Plan and Removal of Class III Designation

"Petitioner shall, in coordination with the fee owner, Estate of James Campbell, lessees of the Estate of James Campbell, other developers in the Ewa region and appropriate State and County agencies, develop and implement an overall Ewa water master plan to assure that potable and non-potable water will be available to the Property in a timely and coordinated manner. This overall Ewa water master plan shall include provisions for accommodating residential and agricultural water needs of Waianae coast farmers and the residents in order that the City and County of Honolulu Board of Water Supply Class III designation shall be removed for the Waianae area."

Status: Petitioner, in coordination with the Estate of James Campbell, other developers in the Ewa region and appropriate State of Hawaii ("State") and County agencies have developed and begun implementation of an Ewa Water Master Plan to assure that potable



and non-potable water will be available to the Property in a timely and coordinated manner. The County Board of Water Supply ("BWS") has approved the Ewa Water Master Plan. The Ewa Plains Water Development Corporation has dedicated the first six (6) wells and related 6.72 million gallons per day storage and transmission facilities to the BWS.

Condition 3: Off-Site Infrastructure

"Petitioner shall at its expense construct all off-site infrastructure improvements that are required by the appropriate State and County agencies."

Status: At its own expense, Petitioner has completed most of the off-site infrastructure improvements that are required by the appropriate State and County agencies. Construction has been completed for the sewer line from the project site to the Barber's Point Naval Access Road. A sewer line continuing to Honouliuli Wastewater Treatment Plant, a joint effort of area developers, commenced construction in March 2004, was completed in 7/05, and is currently in service. All other off-site infrastructure has been completed.

Condition 4: Shoreline Access, Easements, and Parking

"Petitioner shall dedicate to the City and County public easements for shoreline access to the beach and lagoon areas to be developed on the Property from all internal roadways, and easements for recreational purposes for the use of such beach and lagoon areas and shall improve and dedicate areas for public parking stalls. The City and County of Honolulu Department of Land Utilization shall determine the location of the easements and number of parking stalls."

Status: Construction plans have been approved and construction has been completed for approximately 20 acres of shoreline public parkway which provide for public recreation use along the shoreline and lagoons. This area includes four public access easements which provide public access from cul-de-sac roads to the parkway which borders the lagoon areas. Each public access easement includes a minimum of 20 parking stalls for public use, as required by the County Department of Land Utilization. WBE has opened all four lagoons and the shoreline area to the public, pursuant to a Public Access Master Plan approved by DPP. Dedication to the County is pending.

Condition 5: Fishing Shrine

"Petitioner shall preserve the Fishing Shrine (Site 1433) located in the park area on the northern portion of the Property."

Status: The Fishing Shrine (Site 1433) has been preserved in place.

Condition 6: Sinkholes

"Petitioner shall test pit fifty percent (50%) of all sinkholes found on the Property larger than a meter in diameter and shall fully excavate all sinkholes in which fossil bird bones are



found during such tests. Petitioner shall loan the fossil remains to an appropriate historical, educational, or archaeological institution for investigation and/or preservation."

Status: Archaeological mitigative measures, including the testing of sinkholes, were completed in November 1987 in accordance with a Data Recovery Plan which was reviewed and approved by the State Historic Preservation office ("SHPO"), National Advisory Council on Historic Places ("ACHP") and the COE. The fossil remains have been loaned to an appropriate historical, educational, or archaeological institution for investigation and/or preservation.

Condition 7: State Historic Preservation Office

"Petitioner shall submit its completed archaeological findings to the State Historic Preservation Office for review and comment before commencing with the proposed development of the Property. Petitioner shall comply with the State Historic Preservation office recommendations in implementing Petitioner's archaeological plan."

Status: All of the archaeological mitigative field work has been completed in coordination with the SHPO. The final archaeological report was accepted by the SHPO on June 18, 2001.

Condition 8: Hotels

"Petitioner shall construct or cause to be constructed at least 4,000 hotel rooms and resort hotel condominium apartment units on the Property. Petitioner shall operate or cause to be operated at least fifty percent (50%) in number of such hotel rooms and condominium apartment units as full service hotel facilities."

Status: The Ihilani Resort & Spa, a full service resort hotel of 390 hotel rooms, opened for business in December 1993. The Marriott timeshare, which operates as a full service hotel, has completed 302 of 750 planned units. An affiliate of Crescent Heights is presently designing a 500± unit hotel at Ko Olina. An affiliate of Centex Homes is presently developing 247 resort condominiums and is not currently expected to operate as a full service hotel facility.

Condition 9: Noise

"Petitioner shall apply or cause to be applied sound attenuation on all residential units that are subject to aircraft noise contours greater than 60 Ldn. Petitioner shall include in all conveyances of apartments, townhouses or single family lots, in areas subject to aircraft noise contours greater than 60 Ldn, appropriate noise covenants approved by the State Department of Transportation."

Status: Present plans call for sound attenuation measure to be applied on all residential units that are subject to aircraft noise contours greater than 60 Ldn and for appropriate noise covenants, approved by the State Department of Transportation, to be included in all



conveyances of apartments, townhouses, or single family lots in areas that are subject to aircraft noise contours greater than 60 Ldn.

Condition 10: Incremental Zoning

"With respect to the cross hatched areas on Petitioner's Exhibit 29, identified as areas where construction of buildings may not be started within five years from the date of this approval, and more particularly identified on the map attached hereto as Exhibit A, and incorporated herein, Petitioner shall develop said lands only to the extent of mass grading and construction and installation of infrastructure improvements. Upon substantial completion of construction on the remainder of the Property, areas outside the cross hatched area on Exhibit A, Petitioner shall file a motion with the Commission to request the Commission's release of a restriction on building on cross hatched areas reflected on Exhibit A. Upon satisfactorily demonstrating to the Commission that Petitioner can substantially complete development of remaining area, the Commission shall allow construction on the cross hatched areas and release the building restriction."

Status: This condition was deleted by the LUC's Order Granting Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order Dated September 12, 1985, filed May 3, 1994, in In the Matter of West Beach Estates, Docket No. A83-562, Land Use Commission of the State of Hawaii.

Condition 11: Annual Progress Report

"The Petitioner shall submit annual progress reports to the Land use Commission, the Department of Planning and Economic Development and the Department of General Planning as to its progress in the development of the Property."

Status: This Twenty First Annual Progress Report, which will be submitted to the Commission, Office of State Planning, Department of Business Economic Development & Tourism and the Department of Planning and Permitting describes the progress in the development of the Property.

Condition 12: Reclassification of Marina Water Ways to the Conservation District

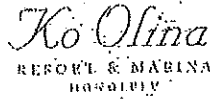
"Petitioner shall petition the Commission to reclassify the lands actually developed for the marina waterways to the Conservation District within two years of completion of construction of the marina."

Status: Within 2 years of completion of construction of the marina, Petitioner will comply with this condition.

Condition 13: Development in Substantial Compliance with Representations Made to the Commission

"Petitioner shall develop the Property in substantial compliance with the representations made to the commission. Failure to so develop the Property may result in reversion of the

Mr. Anthony Ching
September 12, 2006, Page 8



Property to its former classification, or change to a more appropriate classification.”

Status: Petitioner intends to develop the Property in substantial compliance with the representations made to the Commission.

Condition 14: Notice to the Commission of Intent to Sell

“Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.”

Status: As mentioned above, (i) an affiliate of Centex Homes purchased and is developing a resort parcel; (ii) an affiliate of the HONU Group has leased and is developing a commercial complex, and (iii) an affiliate of Crescent Heights is developing a resort parcel.

Condition 15: Recordation of Conditions

“Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.”

Status: The conditions were recorded via (1) a Certificate and Authorization, dated October 8, 1985 and filed in the Bureau of Conveyances of the State of Hawaii as Document No. 85-115381, and (2) an Amendment, Certificate and Authorization, dated July 20, 1994 and filed in the Bureau of Conveyances of the State of Hawaii as Document No. 94-120723.

Sincerely,

Ko Olina Development, LLC
By Commercial Property Advisors, Inc., Manager

A handwritten signature in black ink, appearing to read "Jeffrey R. Stone".

Jeffrey R. Stone
President

JS:co

c: Office of State Planning
Department of Planning & Permitting, City and County of Honolulu (9 copies)

LAND USE COMMISSION
STATE OF HAWAII

2000 MAR 24 P 3:58

KUSAO & KURAHASHI, INC.

Planning and Zoning Consultants

INTERSTATE BUILDING
1314 S. KING ST., SUITE 1263
HONOLULU, HAWAII 96814

~~TEL (808) 536-8800~~
~~FAX (808) 531-4222~~

April 12, 2000

Mr. Randall K. Fujiki, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Mr. Fujiki:

Subject: Public Access Master Plan for the Ko Olina Development

Enclosed please find the final Public Access Master Plan for the Ko Olina Development which incorporates the elements of the Ko Olina Marina Boat Launch Ramp and Parking Access Plan to reflect all the changes and clarifications of the Plan that we have agreed on, as discussed in your letter, dated March 7, 2000.

Should you have questions please call me.

Very truly yours,

Keith Kurahashi

Keith Kurahashi

Encl.

cc: Ko Olina Company, LLC

EXHIBIT "10"

PUBLIC ACCESS MASTER PLAN FOR
THE KO OLINA DEVELOPMENT
APRIL 12, 2000

I. PURPOSE

The purpose of the public access master plan is to implement the conditions of the Unilateral Agreement attached by reference to the zoned change ordinance (Ordinance No. 86-09) and the Special Management Area Use Permit and Shoreline Setback Variance (Resolution No. 86-61, adopted March 12, 1986).

II. AFFECTED AREAS

Areas covered by the master plan includes two park sites (at the south end at Kahe Point and at the north end at the marina) and lagoon areas (Exhibit A) and the marina boat launch ramp, boat trailer parking and public access parking areas (Exhibit B). The publicly-owned lands makai of the certified shoreline, which are under the jurisdiction of the State Department of Land and Natural Resources (DLNR) are not covered by the provisions of this plan.

III. VEHICLE ACCESS

Access to the resort is provided on a 24-hour basis through the main gate on Alii Nui Drive, on the north end of the development. Vehicles proceed to public access parking areas (subject to operating hours outlined in Section VII herein) after passing a guard booth. The public is not required to obtain visitor passes to enter the resort, at this time.

IV. PEDESTRIAN ACCESS

Pedestrian access ways to the lagoon areas are at the ends of cul-de-sacs located on the makai side of Alii Nui Drive. The first two cul-de-sacs provide access to Lagoon No. 1. The third and fourth cul-de-sacs provide access to Lagoons Nos. 2 and 3, respectively. The fifth cul-de-sac provides access to the park near the marina.

Access easements to the parks and lagoons have been designated through the subdivision process, but have not been recorded, in accordance with Condition L of the Special Management Area Use Permit, Council Resolution No. 86-61.

Recordation of the easements will occur within six months of the date of the final public access master plan.

V. LAGOONS

The four lagoons and the sandy beach areas surrounding them are privately-owned but open to the public. Buoyed lines within the lagoon waters delineate areas subject to stronger currents. Swimming beyond the buoyed lines is prohibited for safety reasons.

VI. PARKING

Four parking lots, each containing 20 parking stalls, are located at the end of the four cul-de-sacs on the makai side of Alii Nui Drive which provide access to Lagoon Nos. 1, 2, and 3 (Exhibit A). A 105-stall parking lot has been provided for the park near the marina and Lagoon No. 4.

VII. OPERATING HOURS

Public access hours are provided at the following areas and are equally applicable to the general public and hotel guests as follows:

- A. Park areas near the Ko Olina Marina and at the Kahe Point end of the Ko Olina development: The park areas will be open from sunrise to sunset. Access to the park area at the Kahe Point end is obtained from the public parking stalls provided at the Campbell Estate property adjacent to the park. The rocky shoreline areas at these two park sites are used primarily by fishermen. Although the parks will be open from sunrise to sunset, pedestrian access to the rocky shoreline areas for fishermen will be provided on a 24-hour basis.
- B. Pedestrian access ways to the shoreline: Generally limited to sunrise to sunset hours (about 6:00 a.m. through 7:00 p.m. during summer months) for safety purposes and to allow for watering and maintenance.
- C. Beach areas around the lagoons and the lagoons themselves: Closed after sunset and reopened at sunrise for safety purposes and to allow for watering

and maintenance. The only exception to these hours pertains to the beach area surrounding Lagoon No. 1, which will remain open to the public and hotel guests until 10:00 p.m.

- D. Public access parking lots: Open to the public from sunrise to sunset. After sunset, the public is allowed to park for a fee and on a space available basis in the hotel parking lot.
- E. Marina boat launch ramp and parking: These areas will be open to the public from sunrise to sunset. Vehicles with boat trailers and decals remaining in the marina parking lot after sunset will be allowed to remain overnight. However, vehicles with trailers remaining in the lot for a second night will be subject to towing.

VIII. SIGNAGE

Signs identifying the locations of public pedestrian access ways and parking areas, and the marina boat ramp and trailer and vehicle parking areas are depicted in and will be installed at the locations identified in Exhibit C.

IX. SPECIAL REQUIREMENTS FOR USERS OF MARINA FACILITIES

Ko Olina Resort and Marina is equipped with a launch ramp and 30 parking stalls for vehicles and trailers. The above facilities are located on private property with allowed non-commercial public use.

Ko Olina Marina leases an access easement over the deep draft channel for Kalaeloa/Barber's Point Harbor from the State of Hawaii, therefore the following procedures, State rules, and Coast Guard regulations must be observed by all vessels operating in the harbor channel:

- A. An annual boat launch ramp decal for boats and trailers will be issued by the Ko Olina Harbor Master upon verification of the following documents and requirements:
 - 1. Owner Information Form and a signed copy of operational requirements.

2. Copy of current registration, driver's license and insurance.
3. Compliance with all State and Coast Guard regulations.
4. Communications gear, marine VHF transceiver with Channel 16 and Channel 71.

Boats and trailers must display annual decals in order to use the Ko Olina marina boat ramp and trailer parking facilities. Decals will be issued for all boats and trailers upon verification of the documents and equipment listed above.

The decals can be obtained at the Harbor Master facility during operating hours. The \$25.00 annual fee will cover the cost of the decal and inspection fees. No limits will be placed on the number of decals issued.

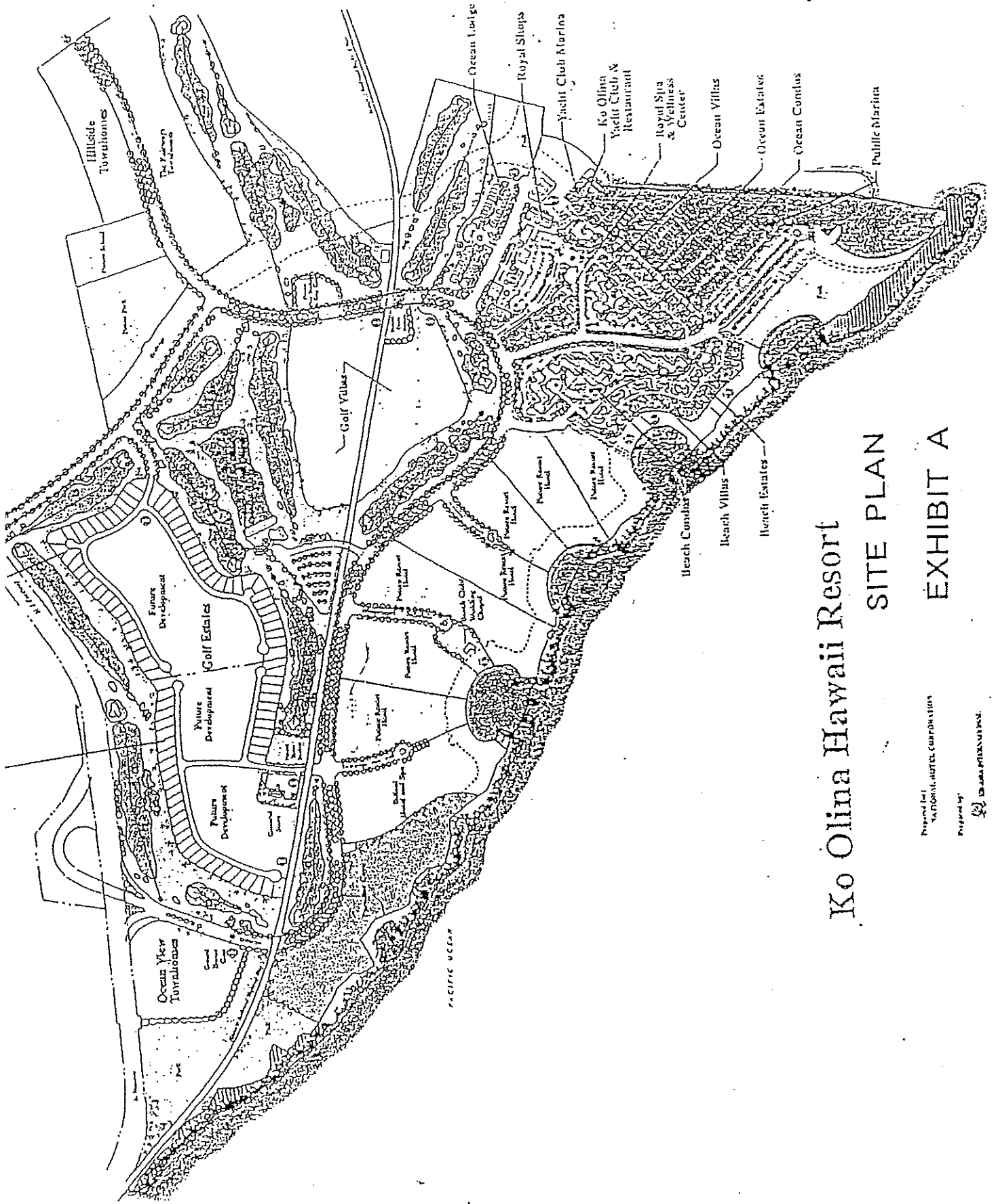
- B. Hours of operation: The boat ramp and trailer parking will be open from sunrise to sunset. Transient dockage at the Ko Olina Marina will be available for overnighters or late returnees at the posted rate.
- C. Monitor VHF Channel 71, vessel traffic working frequency, prior to and while transiting the channel.
- D. Vessels are not permitted to tie up to any pier including Pier 1, cruise nor anchor within Kalaeloa Barbers Point Harbor basin without prior permission from the Honolulu Harbor Master's Office or the Aloha Tower Marine Traffic Controller.
- E. Vessel traffic entering and departing Ko Olina Marina must yield to commercial shipping traffic in the entrance channel.
- F. Sailing and other vessels must be under auxiliary power while transiting the entrance channel. Sailing vessels must have their sails lowered while in the entrance channel.
- G. Vessels transiting the entrance channel are required to comply with Nautical Rules of the Road.

- H. Vessel traffic entering and departing Ko Olina Marina must follow visual warning and traffic control signals, as well as directions and commands from the chase boat provided by Ko Olina Marina.

X. FUTURE PLAN AMENDMENTS

This "Public Access Master Plan for the Ko Olina Development" may be modified upon a finding that circumstances related to the approved development have significantly changed so as to warrant a modification to the plan. Any modification to the plan shall implement the public access requirements established by Ordinance No. 86-09 (Conditional Zoning for the Ko Olina Development) and Resolution No. 86-61 (Special Management Area Use Permit and Shoreline Setback Variance for the Ko Olina Development).

The park areas at the Kahe Point and marina ends of the Ko Olina development may be dedicated to the City at an as-yet undetermined date. Once dedication is complete, the provisions related to the use of these parks may change.



Ko Olina Hawaii Resort

SITE PLAN

EXHIBIT A

Prepared for
 THE KOHALA HOTEL CORPORATION
 Prepared by

 ENGINEERING FIRM

KEYVISION
DATE:
JUNE 10, 2013

PROJECT:
Ko Olina Marina
Parking & Ocean Club
Master Plan

OWNER:
KO OLINA OCEAN
ASSURANCE LLC
1111 East Street
Honolulu, Hawaii
96813

ARCHITECTURAL
INTERIORS & PLANNING
122 ALDRICH ST., SUITE 1100
HONOLULU, HAWAII 96813
TEL: (808) 531-0141
FAX: (808) 531-0411
WWW.KOIP.COM

SHEET 0100
MASTER
PLAN

THE SHOWN ARE SUBJECT TO THE
REQUIREMENTS OF THE HAWAIIAN
STATE DEPARTMENT OF LAND AND
NATURAL RESOURCES AND THE
HAWAIIAN STATE DEPARTMENT OF
HEALTH AND HUMAN SERVICES.

LANDSCAPE ARCHITECTURE
DATE: 06/10/13
PROJECT: KO OLINA MARINA
PARKING & OCEAN CLUB
MASTER PLAN
SHEET 0100
MASTER PLAN

BOAT RAMP AND
BOAT TRAILER
PARKING BY PERMIT
ONLY, PERMITS
ISSUED TO THE
GENERAL PUBLIC AT
THE HARBOR
MASTER FACILITY

PUBLIC PARKING
ACCESS TO BOAT RAMP
AND BOAT TRAILER
PARKING BY PERMIT
ONLY, PERMITS ISSUED
TO THE GENERAL
PUBLIC AT THE HARBOR
MASTER FACILITY

KO OLINA OCEAN CLUB, HARBOR MASTER, & MARINA PARKING MASTER PLAN
JUNE 10, 2013

EXHIBIT B

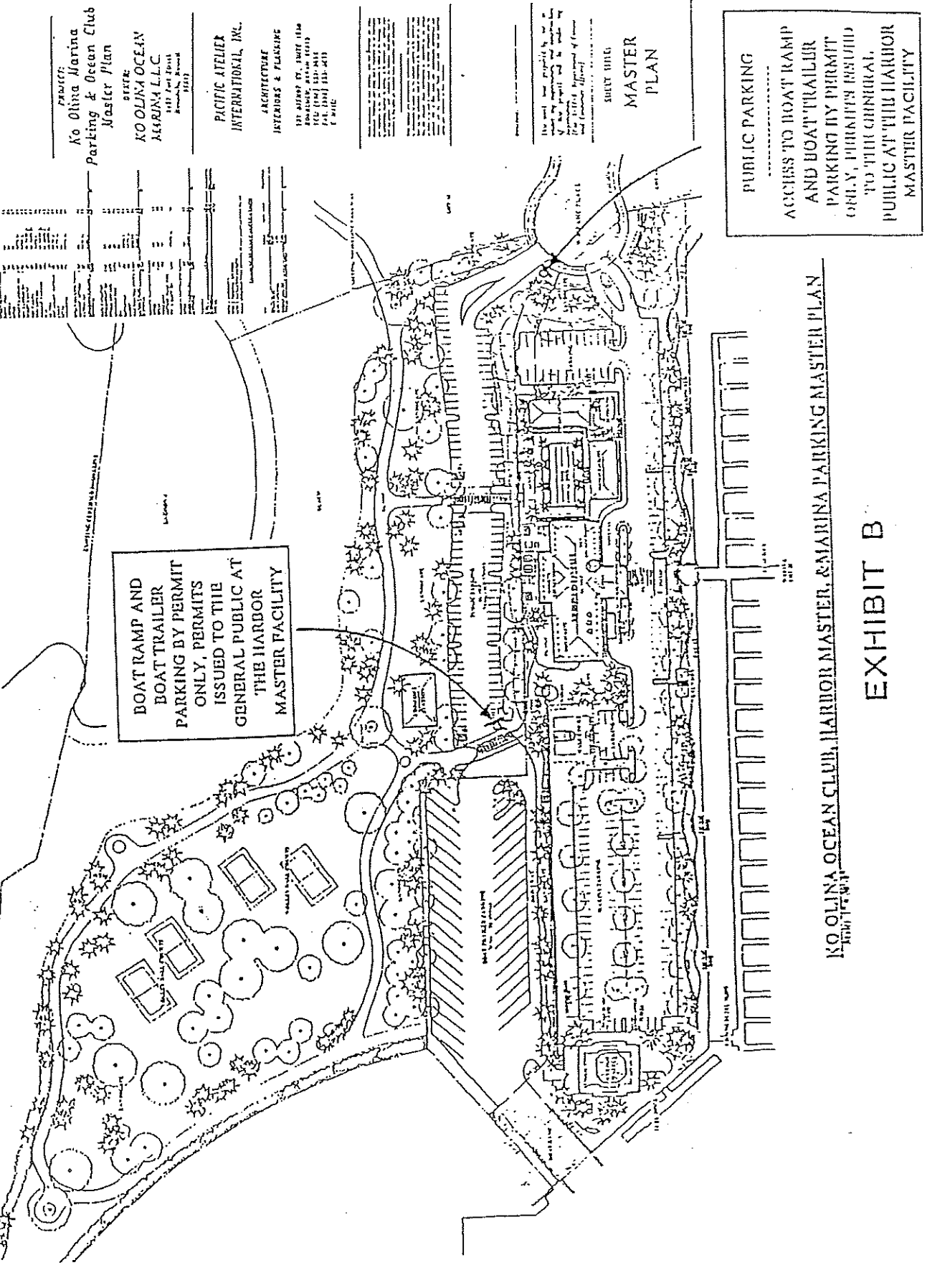
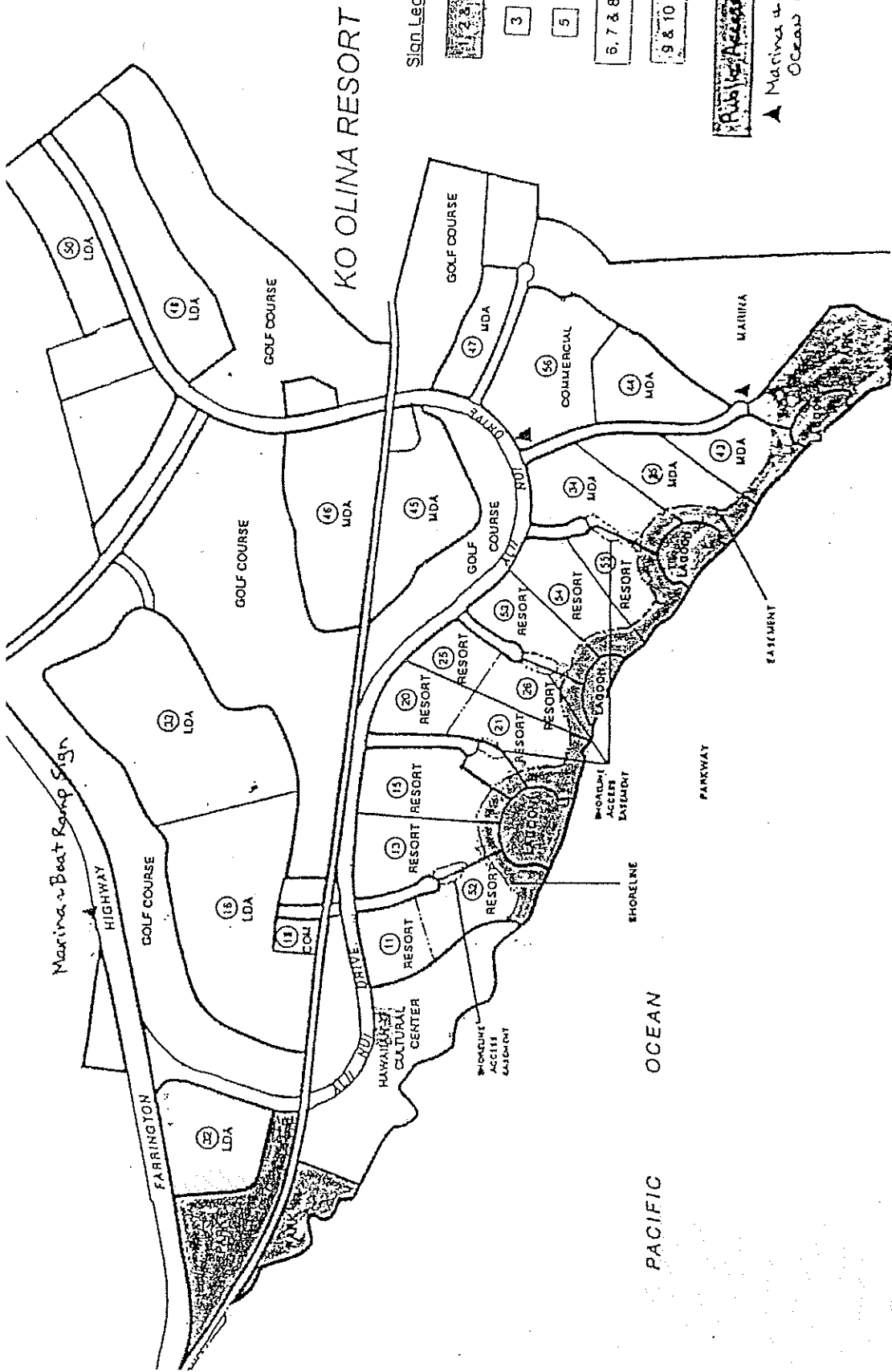


EXHIBIT C
KO OLINA SIGNS



Sign Legend



3

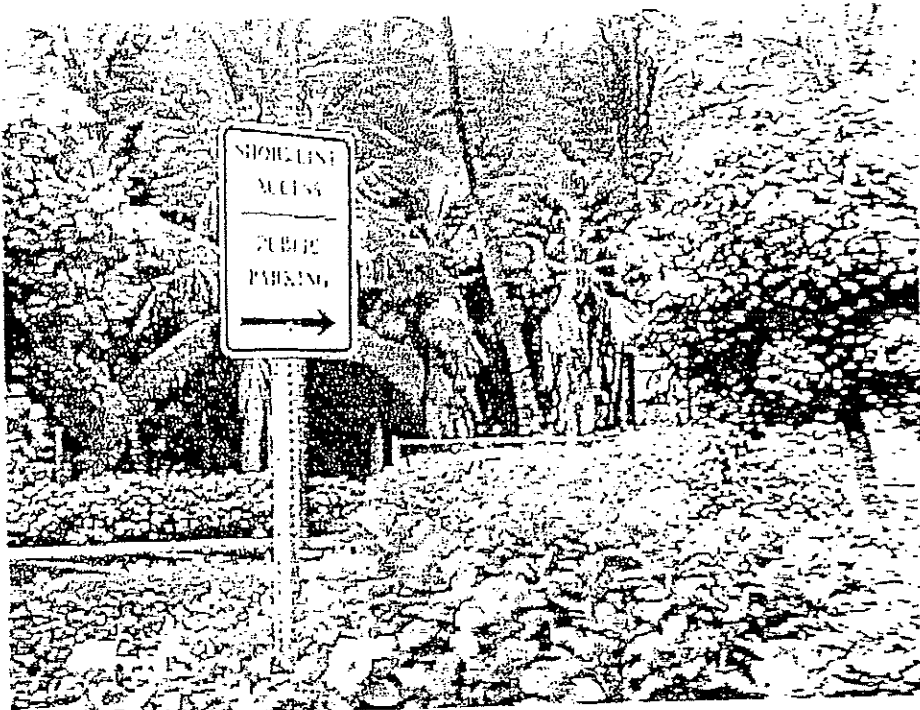
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6, 7 & 8

9 & 10



▲ Marina & Boat R
Ocean Club Swinck



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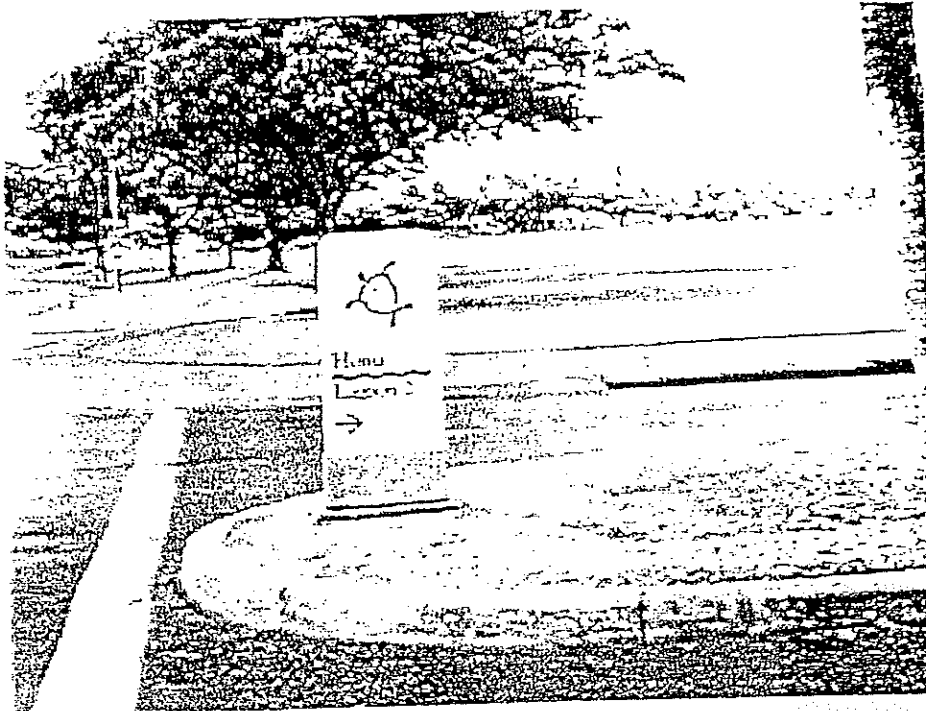
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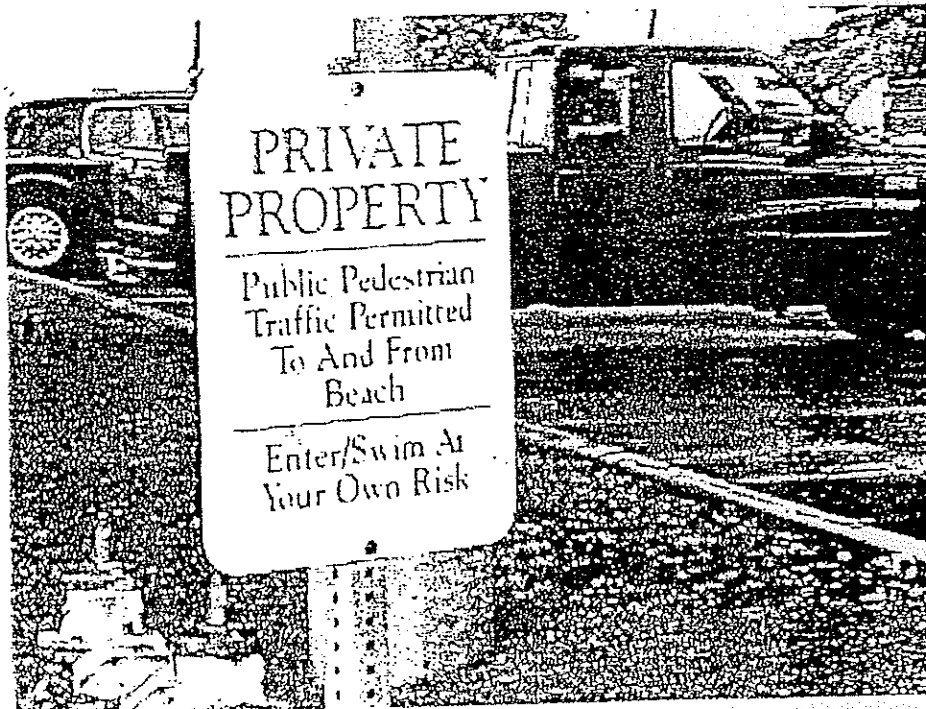
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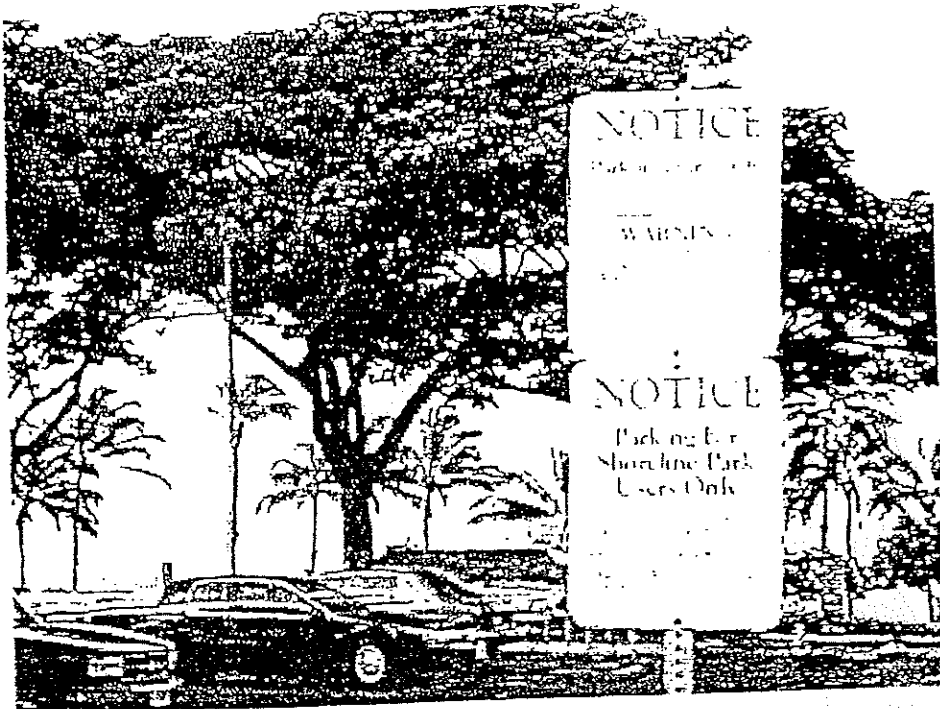
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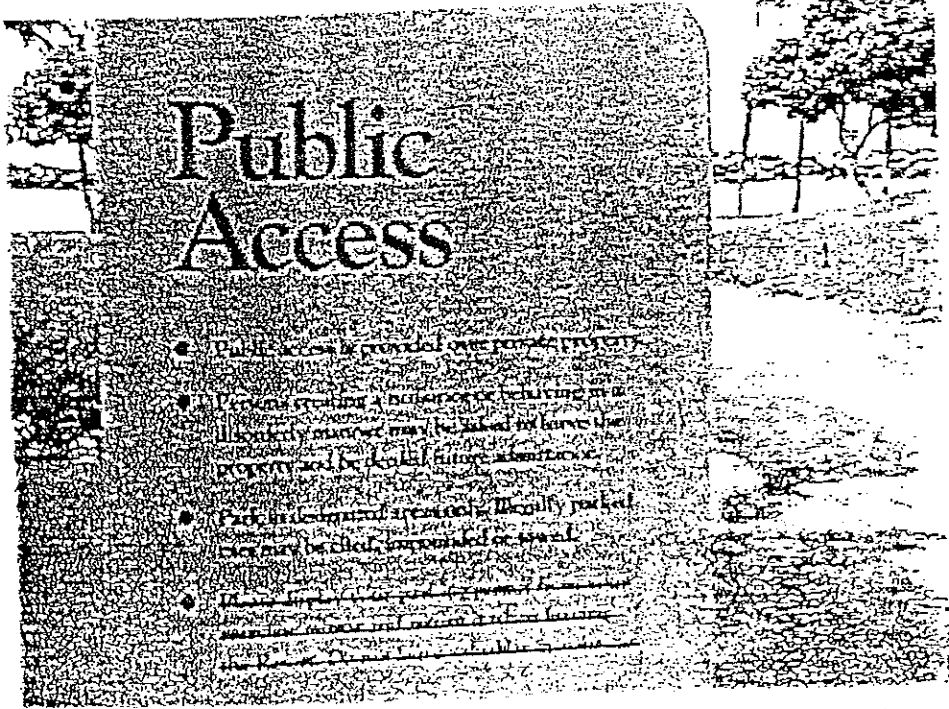
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28

Notice

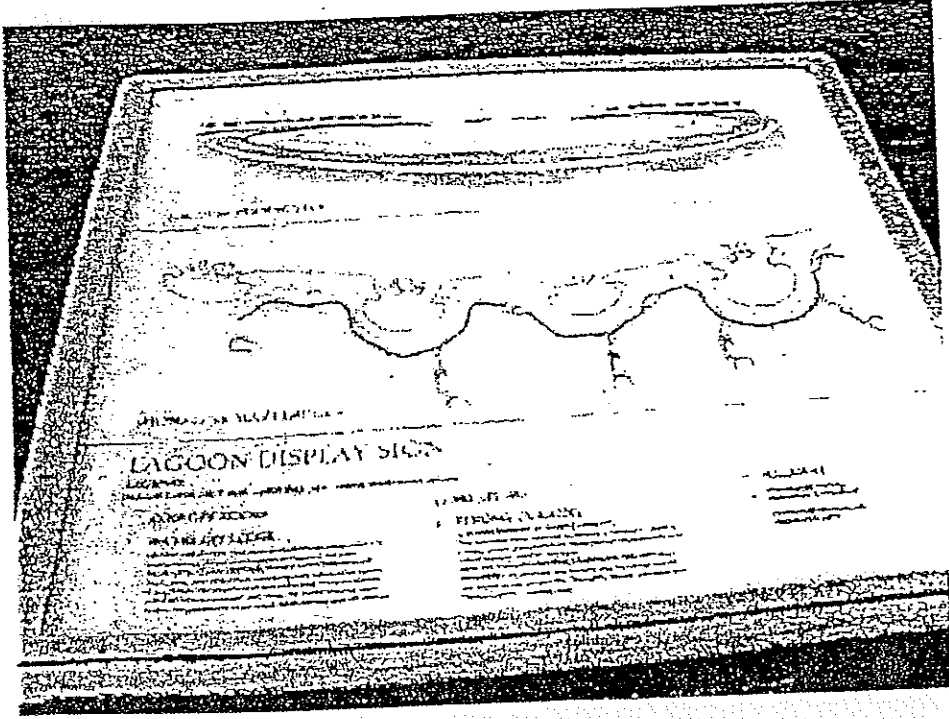
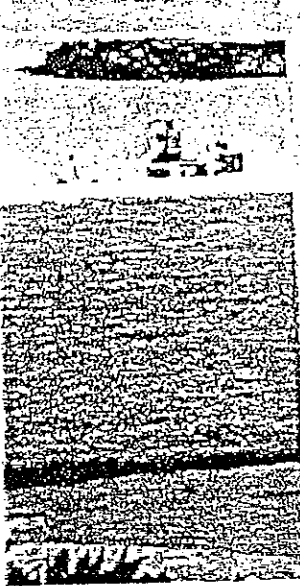
#9

• NO LIFEGUARD ON DUTY.
SWIM AT YOUR OWN RISK.

• Lifeguard is responsible to assist.
• Swimming beyond the marked area is prohibited
because of strong currents.

• We would like to mention a beautiful clean
environment but you are always aware to be playing
all rules as applicable possible.

• PROHIBITED along the beach area
see the following: privately owned
Marked boundaries for ball or playground game
the ground, food, clothing, tools, materials, etc.
also should be aware of the area boundaries in the
area, ball playing, water, machinery, or
other restrictions.




#10

KO OLINA COMMUNITY ASSOCIATION
92-619 Farrington Highway
Ko Olina, Hawaii 96707
Phone: (808) 671-2512, Facsimile: (808) 671-3640

April 13, 2000

Memo To: Jeffrey Stone
Kevin Showe

From: Ken Williams 

Subject: Boat Ramp – Mayor’s Meeting

LAND USE COMMISSION
STATE OF HAWAII
2000 MAR 24 P 3:58

The meeting at the Mayor’s conference room on the third floor of City Hall set for Wednesday, April 19, 2000 at 2:30 p.m. will be attended by:

- Mayor Harris
- Ben Lee
- Randy Fujiki (DPP)
- Dave Parsons (DLNR)
- Tom Fujikawa (DOT – Harbors)
- William Aila
- Ko Olina

Bill Thayer (Waldron Steamship and BP Advisory Council) is trying to clear his calendar in order to attend. However, he informed me that he will be meeting with the Mayor on other issues this afternoon and will talk to him about keeping our boat ramp closed at night. Lorrie is providing him a position paper today which he will edit and put on his letterhead to discuss with the Mayor.

He also agreed to fax his position to Kazu Hayashi today since he is not able to attend the DOT meeting tomorrow at 8:00 a.m.

- c: Lonie Stone
- Keith Kurahashi

Ko Olina Boat Ramp Meeting
 Wednesday, April 19, 2000

NAME	ORGANIZATION	ADDRESS	TELEPHONE NUMBER
RANDALL FUJIKI	CTC DPP	650 S. KING ST HONOLULU HI 96813	523-4432
Alex Williams	Ko Olina Community Assoc.	92-619 Farrington Hwy Koloa, HI 96707	671-2512
TOM FUJIKAWA	DOT - HARBOURS	79 S. NIMITZ	587-1927
DERRICK LIVING	DOT - HARBOURS PROPERTY MANAGEMENT	79 S. NIMITZ	587-1944
William J Aike Jr.	Fisherman	86-630 Luakulei Honolulu HI 96813	696-9921 587-1939
Keith Kurabashi	Kusao Kurabashi, Inc	1314 So. King St #1263 Honolulu, HI 96814	538-6652
Kevin Shorne	Ko Olina	1157 Ford Street Honolulu HI 96813	531-9761
Jeff Stone	Ko Olina	" "	" "
DAVID PARSONS	DNR/DOROR	333 QUEEN ST. #300 Hon HI 96813	582-1975



MAKAKILO/KAPOLEI/HONOKAI HALE NEIGHBORHOOD BOARD NO. 34

NEIGHBORHOOD COMMISSION - CITY HALL ROOM 403 - HONOLULU, HAWAII 96813

April 24, 2000

Mayor Jeremy Harris
City and County of Honolulu
Honolulu Hale
530 So. King St.
Honolulu, HI 96813

Re: Operating Hours of Ko Olina Marina

Dear Mayor Harris:

It has come to our attention that there are some that would like to extend the public operation hours of the Ko Olina Marina.

The Makakilo/Kapolei/Honokai Hale/ Neighborhood Board strongly opposes such a change. At our regular meeting on April 19th, the vote was 8-1 supporting the sun up to sun down hours. As a Board representing the Ko Olina area, we have been working with the Ko Olina developers as the long awaited build up of our area blossoms. They have kept us informed, and welcome community input.

Support of the existing hours was primarily because of possible loitering, unnecessary noise at late hours and safety hazards.

We ask that you too support the existing hours and if they are any proposed changes we are notified immediately.

Thank you for your continued support of the City of Kapolei.

Sincerely,

Macda C. Timson
Chair

MCT:ak
Cc: Kevin Showe, Ko Olina
Councilmember John De Soto

EXHIBIT "12"

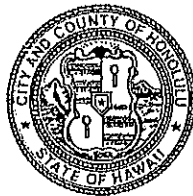


LAND USE COMMISSION
STATE OF HAWAII
2000 MAR 24 P 3:58

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-4414 • FAX: (808) 527-6743 • INTERNET: www.co.honolulu.hi.us/planning

JEREMY HARRIS
MAYOR



RANDALL K. FUJIKI, AIA
DIRECTOR

LORETTA K.C. CHEE
DEPUTY DIRECTOR

May 5, 2000

2000/CLOG-2304 (jml)
95/CUP1-82

Mr. Keith Kurahashi
Kusao & Kurahashi, Inc.
1314 South King Street, Suite 1263
Honolulu, Hawaii 96814

Dear Mr. Kurahashi:

Conditional Use Permit No. 95/CUP1-82
Ko Olina Marina Dock Master Facility
End of Waipahe Place - Ewa
Tax Map Key 9-1-57: 18 and Por. 19

2008 MAR 24 P 3:59
LAND USE COMMISSION
STATE OF HAWAII

We have reviewed the final Public Access Master Plan (Plan) for Ko Olina Resort (including the Ko Olina Marina Boat Launch Ramp and Parking Access Plan) dated April 12, 2000.

The Plan proposes to allow public access to the boat launch ramp and trailer parking from sunrise to sunset, in addition to other special requirements. However, we understand that the applicant is negotiating with the State Department of Land and Natural Resources and other interested parties to revise the boat launch access plan. Accordingly, our review excludes that portion of the Plan referring to the boat launch ramp and trailer parking access plan.

The Plan, with the exception of the section described above, is accepted as the Public Access Master Plan for the Ko Olina Resort. Please note that until the access plan for the boat launch ramp and trailer parking is finalized, building permits will not be issued for the Ko Olina Clubhouse.

If you have any questions, please contact Jeff Lee of our staff at 527-6274.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Randall K. Fujiki".

RANDALL K. FUJIKI, AIA
Director of Planning and
Permitting

EXHIBIT "13"

RKF:lg
DN35202

ROHLFING & STONE
ATTORNEYS AT LAW

LAND USE COMMISSION
STATE OF HAWAII
2008 MAR 24 P 3:59

Ambac Center
Hawaii Tower
745 Fort Street
Suite 333
Honolulu, Hawaii
96813-3803
t: (808) 534-1188
f: (808) 531-8511
x: (808) 525-7507

June 1, 2000

Mr. Randall K. Fujiki, AIA
Director of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

RE: Ko Olina Public Access Master Plan

Dear Mr. Fujiki:

Our office represents Ko Olina Companies in the above-referenced matter. We are in receipt of your letter dated May 5, 2000. Thank you for approving a portion of Ko Olina's Public Access Master Plan. As you know, we have recently completed a 270 slip, state-of-the-art Marina, which we envision as a catalyst for new projects within the resort. Two major projects in particular, the Marriott timeshare units and the Brookfield Homes subdivision will likely commence this year. In addition, although not required, Ko Olina Companies have made over \$1,000,000 in public improvements, including the construction of a public restroom facility adjacent to lagoon 4.

It is our desire to continue this pace of development at Ko Olina, which would include the construction of the Ko Olina Clubhouse. However, according to your letter, the permits to the Ko Olina Clubhouse will be withheld until such time that the boat launch ramp access can be resolved. We strongly disagree that the boat launch ramp should be a 24-hour facility. Clearly, there is no such requirement imposed upon the landowner in any documentation, City or otherwise. Indeed, the State has imposed hours of operation on a couple of its own boat launch ramps for security purposes. This boat launch ramp is unique. Not only is it within a resort, but it is in close proximity to residences and hotel units alike, and therefore, other concerns such as noise need to be addressed. Furthermore, the Kapolei Neighborhood Board strongly supports the ramp hours proposed by Ko Olina Companies. (see attached letter)

June 1, 2000

Mr. Fujiki

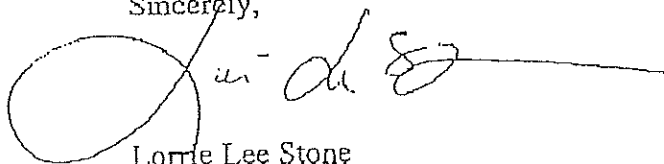
Page 2 of 2

In order to resolve this matter expeditiously, however, we have met with Mr. William Aila, representative of the Waianae Fishermans and have agreed to modify the boat ramp access plan as follows:

- 1) For a period of one year ("interim period") Ko Olina Companies will work diligently with the State Department of Land and Natural Resources and Marisco Shipyard to construct a public boat launch ramp in Kalaeloa Harbor. Ko Olina Companies will contribute to the cost of said boat ramp;
- 2) Within 6 months of the approval of this boat ramp access plan, Ko Olina Companies will provide a status report to DPP regarding the Kalaeloa Harbor boat ramp;
- 3) For the interim period, the Ko Olina boat ramp will be open to the public from sunrise to sunset;
- 4) For the interim period, boaters without insurance will be required to execute an indemnity and waiver of liability;
- 5) For the interim period, there will be no \$25 annual fee for licensing;
- 6) At such time that the substitute boat launch ramp is constructed and opened to the public, Ko Olina Companies shall have the right to permanently close its boat ramp or limit its use to resort guests.

Approval of this modification would allow immediate use of the boat ramp and trailer parking while allowing Ko Olina Companies to commence construction of its clubhouse. Should you have any questions or require further information, please feel free to call me anytime.

Sincerely,



Lorrie Lee Stone

cc: Client

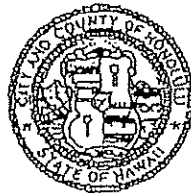
DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 527-4414 • FAX: (808) 527-6743 • INTERNET: www.cc.honolulu.hi.us/planning

LAND USE COMMISSION
STATE OF HAWAII

2000 MAR 24 P 3:59

JEREMY HARRIS
MAYOR



RANDALL K. FUJIKI, AIA
DIRECTOR

LORETTA K.C. CHEE
DEPUTY DIRECTOR

2000/CLOG-3357 (BAM)

June 15, 2000

Ms. Lorrie Lee Stone
Rohlfing & Stone
Amfac Center
Hawaii Tower
745 Fort Street, Suite 333
Honolulu, Hawaii 96813

Dear Ms. Stone:

Ko Olina Public Access Master Plan

This is in response to your letter of June 1, 2000, regarding Ko Olina's Public Access Master Plan. We are also in receipt of a copy of an April 24, 2000 letter, forwarded by you from the Makakilo/Kapolei/Honokai Hale Neighborhood Board supporting your public access proposals.

By previous correspondence dated May 5, 2000, we accepted the Public Access Master Plan for the Ko Olina Resort, excluding that portion of the boat launch ramp, and pending your negotiations with State agencies and other interested parties on this matter.

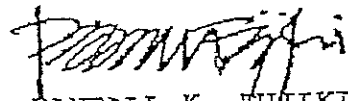
In your letter of June 1, 2000, you propose a modified boat launch ramp access plan, as a result of these negotiations, with six modifications.

We have reviewed the six modifications and find them satisfactory. We will, therefore, accept this remaining portion of the Ko Olina Public Access Master Plan, and you may submit building permit plans for the Ko Olina Clubhouse when you complete them.

Ms. Lorrie Lee Stone
Page 2
June 15, 2000

If you should have questions or wish additional information on this matter, please contact Barbara Moon of my staff at 527-6096.

Sincerely yours,



RANDALL K. FUJIKI, AIA
Director of Planning
and Permitting

RKF:fm

possc doc. 41881

SEP-24-2002 TUE 03:36 PM MARISCO, LTD.

FAX NO. 0 LAND USE COMMISSION STATE OF HAWAII P. 02/03

ENJAMIN J. CAYETANO GOVERNOR



2008 MAR 24 P 3:59

STATE OF HAWAII
LAND USE COMMISSION
DIRECTOR
DEPUTY DIRECTOR
LEAH W. OOLITO
LADNEY Y. LOPEZ

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:
HAR-PM
2084.05

September 18, 2002

*Follow up
by Phoenician*

Mr. Fred Anawati
The Phoenician, LLC
91-607 Malakole Road
Kapolei, Hawaii 96707

Fred
Dear Mr. Anawati:

Subject: Proposed Public Boat Ramp, Phoenician LLC, Kalaeloa Barbers Point Harbor, (KBPH) Oahu

Thank you for your letters dated July 15 and August 8, 2002 concerning your request to allow the public to use your proposed boat ramp to be situated on the east side of the entrance channel to Kalaeloa Barbers Point Harbor, Oahu.

We have reviewed the conditions you stated in your August 8, 2002 letter and have no objections to allow the general public to use the boat ramp. These conditions will be incorporated in your lease for the area designated for the proposed boat ramp and haul-out slip.

With regard to item number 1, we have concerns how Phoenician, LLC will provide visual monitoring of the entrance channel during vessel movements. We would like the addition of "or through arrangements with the State's Honolulu Harbor Master for the following day's schedule" on item number 2. In regard to item number 6, we would like to add "Providing and maintaining a day and night warning signal, observable prior to entering the entrance channel and from the boat ramp which will be activated to require small boat traffic to stand clear and allow arriving or departing commercial vessels the right of way through the KBPH entrance channel as determined by the State's Honolulu Harbor Master.

We suggest the addition of the Department of Land and Natural Resources (DLNR) to item number 8, as the Division of Boating and Ocean Recreation is under the DLNR pursuant to Act 272 of the 1991 Legislature. Public trailer parking needs to be within Phoenician, LLC's property and should not obstruct vehicle traffic on Malakole Road.

Mr. Fred Anawati
Page 2
September 18, 2002

*Plans
revised
lease?*

HAR-PM
2084.03

Please submit your proposed construction plans of the boat ramp and haul-out slip for our review and approval. These plans shall be prepared by an engineer licensed to do business in the State of Hawaii.

Should you have any questions, please call Mr. Derrick Lining, Property Manager, at 587-1944.

Very truly yours,

Brian K. Minaai
BRIAN K. MINAAI
Director of Transportation



LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3:59

October 18, 2002

Mr. Brian Minaai, Director
Department of Transportation
State of Hawaii
869 Punchbowl Street
Honolulu, HI 96813

SUBJECT: KO OLINA BOAT LAUNCH RAMP

Dear Mr. Minaai:

We have been made aware of the Department of Transportation's approval of Phoenician LLC's proposed boat launch ramp at Kalaeloa Harbor as a public boat ramp. In light of this recent approval, we ask that any obligation imposed by the State Department of Transportation on Ko Olina Resort and Marina to provide a public boat launch ramp at its marina be relieved.

As you are aware, the current location of the Ko Olina boat ramp is a traffic hazard to, and poses a danger for the general public and pedestrian recreational users of Ko Olina's oceanfront park. The location at Kalaeloa Harbor, on the other hand, is conducive to this type of use as the area is solely devoted to maritime users and even equipped with boat repair facilities.

We thank you in advance for your favorable response. Should there be any questions, please feel free to contact me at 531-9761.

Sincerely,

Ko Olina Ocean Marina, LLC
By Pacific Northwest, Ltd., its sole member

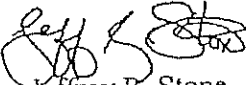
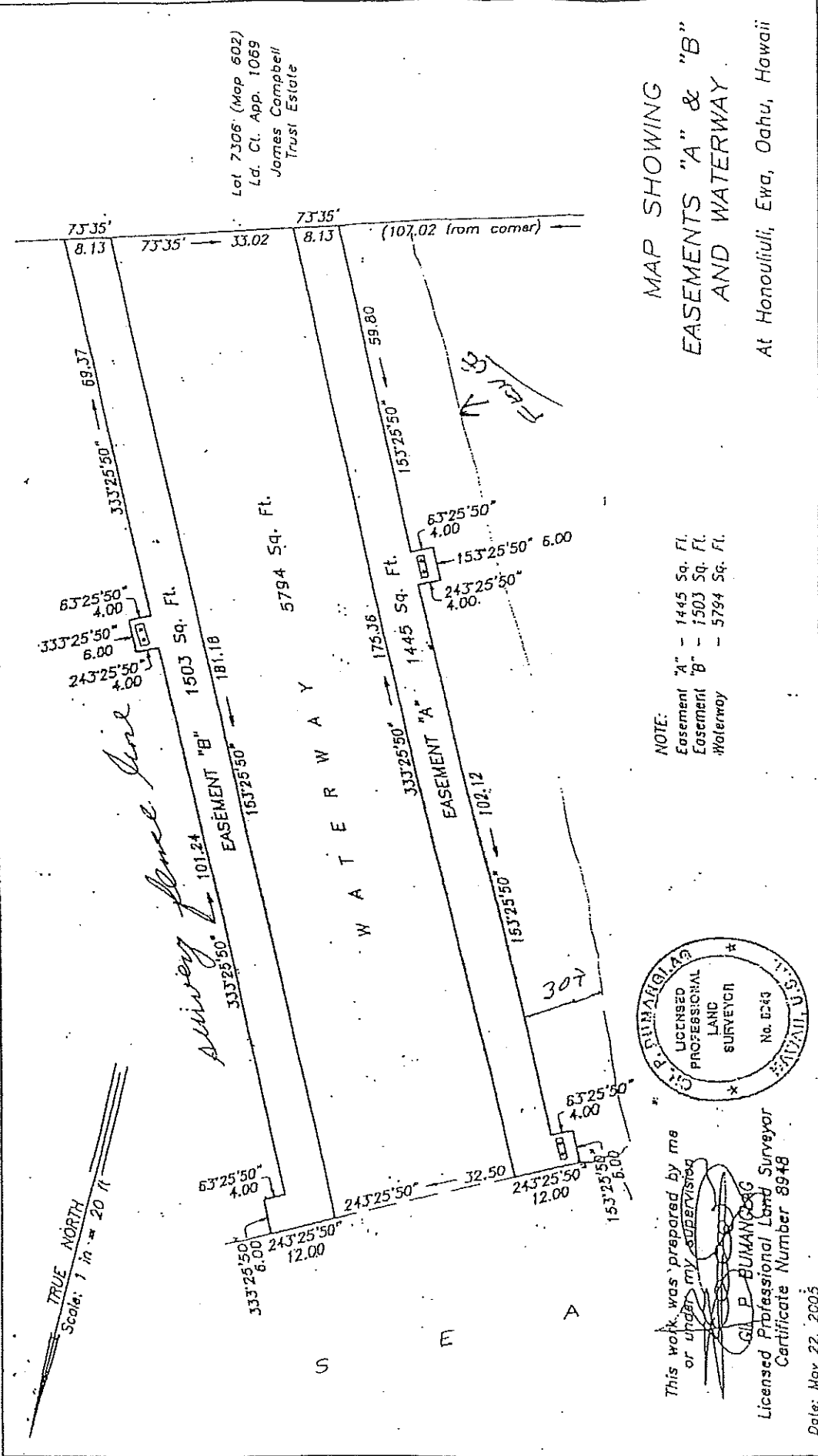

By: Jeffrey R. Stone
Its: President

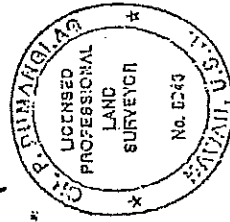
EXHIBIT "17"



MAP SHOWING
 EASEMENTS "A" & "B"
 AND WATERWAY

At Honouliuli, Ewa, Oahu, Hawaii

NOTE:
 Easement "A" - 1445 Sq. Ft.
 Easement "B" - 1503 Sq. Ft.
 Waterway - 5794 Sq. Ft.



This work was prepared by me
 or under my supervision
 Gil P. BUMANN
 Licensed Professional Land Surveyor
 Certificate Number 8948

Date: May 22, 2005
 Tax Map Key: 1st Div. 9-1-14: 25 (Part.)

8.5" x 14" = 0.83 Sq. Ft.
 FB No. G-238: 39
 c:\sask\proj\5093\marisco

GIL SURVEYING SERVICES, INC.
 1442 UILA STREET HONOLULU HAWAII 96818

WIN J. GAYETANO
DIRECTOR



LAND USE COMMISSION
STATE OF HAWAII
BRIAN K. MINAII
DIRECTOR
CHOUHONG LEE
CLARENCE M. SKIMOTO
JACINE Y. URASAKI

2008 MAR 24 P 3:59

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

DIR 1.102

October 28, 2002

Mr. Jeffery R. Stone
Ko Olina Resort and Marina
55 Merchant Street, Suite 1500
Honolulu, Hawaii 96813

Dear Mr. Stone:

Subject: Ko Olina Boat Launch Ramp

Thank you for your October 18, 2002 letter concerning our recent approval of the planned Kalaheo Harbor boat ramp for public use by Phoenician LLC. We concur with your request and hereby agree to release Ko Olina Resort and Marina from any and all obligations imposed by the Department of Transportation for a public boat launch ramp and related facilities at Ko Olina Resort.

Very truly yours,

Brian K. Minaai
BRIAN K. MINAII
Director of Transportation



February 11, 2004

Mr. William Aila
Waianae Boat Harbor
Farrington Highway
Waianae, Hawaii 96792

Re: Kalaeloa Boat Ramp

Dear William:

Thank you for meeting with us and Fred Anawati last Tuesday to discuss the Kalaeloa Boat ramp being built by The Phoenician, LLC, a division of Marisco, Ltd. We are glad that Fred's plans for the Kalaeloa facility meet your and the community's needs for a boat ramp. At our meeting, Mr. Anawati confirmed that the ramp will be open 24 hours, that it will include at least 12 parking spaces and that he will install a tie up area, bumpers and a ladder within the ramp area for boater's protection and use. We believe that the increased access and greater space for boaters will make this a welcomed facility.

As you know, in accordance with our previous discussions with you and with our Public Access Master Plan agreement with the City, we will be closing the Ko Olina boat ramp upon the opening of the new ramp. We were glad to serve the leeward coast boating community with our ramp facility during this interim period, and are proud of the fact that we are contributing substantially to help build and open the new Kalaeloa Ramp for area fishermen and boaters. As you confirmed in our discussion, we believe that the new ramp will better serve the boating community, as we all await the opening of the Haseko multi-ramp public facility.

We are finalizing our agreement with Phoenician hope to have the new boat ramp completed in mid-March. When we have a specific opening date for the Kalaeloa Ramp, we will begin informing boaters of the new facility and its location.

William, thank you again for all of your work and support for Ko Olina and for the entire leeward coast community. You serve as a wonderful role model and community leader for the region. We look forward to our continued joint efforts to improve the West Honolulu region.

Sincerely,

Jeffrey R. Stone

c. Mr. Fred Anawati

LAND USE COMMISSION
 STATE OF HAWAII
 2004 MAR 21 P 3:59

March 16, 2004

Mr. Jeffrey R. Stone
Ko Olina Resort & Marina
55 Merchant Street, Suite 1500
Honolulu, Hawaii 96813

LAND USE COMMISSION
STATE OF HAWAII
2008 MAR 24 P 3:59

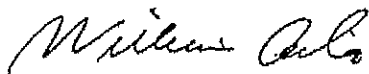
Re: Kalaeloa Boat Ramp

Dear Jeff:

Thank you for your letter to me concerning our meeting with Fred Anawati last month. I appreciated the opportunity to see Fred's facility and to hear his plans for the Kalaeloa Boat ramp along with you. As you know, we look forward to the 24 hour access and 15 parking stalls at the Kalaeloa ramp as it is very important to our fishermen. We understand that upon the opening of the Kalaeloa Boat ramp, Ko Olina will be closing the ramp at the Ko Olina Marina.

We look forward to the opening of this new public facility.

Sincerely,



William Aila
Harbor Master
Waianae Boat Harbor

2008 MAR 24 P 3:59

September 8, 2004

737 Bishop Street

Suite 1520

Honolulu, Hawaii

96813-3213

Tel: (808) 531-8511

Fax: (808) 525-7507

Mr. Eric Crispin, AIA
Director
Department of Planning and Permitting
650 South King Street, 7th floor
Honolulu, Hawaii 96813

RE: Boat Ramp at Ko Olina

Dear Mr. Crispin,

Thank you for meeting with Keith Kurahashi and myself regarding the above-referenced matter. As we discussed in our meeting with you, Kathy Sokagawa, Barbara Moon, and Eileen Mark, we are following through with our representations to you to open a substitute boat ramp in Kalaeloa Harbor, located just on the other side of Ko Olina Marina and to notify you of the upcoming closure of the Ko Olina boat launch ramp. This is consistent with DPP accepted modifications to the public access agreement as pertains to said boat launch ramp, which reads as follows:

"At such time that the substitute boat launch ramp is constructed and opened to the public, Ko Olina Companies shall have the right to permanently close its boat ramp or limit its use to resort guests." *

There is no City condition which requires public use of the private Ko Olina boat ramp. Any condition to provide a boat ramp for public use placed on the previous owner pursuant to a temporary right of entry agreement with the State Department of Transportation has long since been released by the DOT (see letter from Brian Minaai dated 10/28/2002). In spite of this, Ko Olina has continued to keep its boat ramp open to the public from sunrise to sunset as an accommodation to the fishermen in the area and to fulfill the interim agreements it made with DPP (see June 1, 2000 letter).

With the new ramp opening shortly, we are beginning our notification process for closure of the Ko Olina boat ramp and providing written notice (via flyers) to the current users of the ramp as well as to the general public. These informational flyers will include a map to the new boat ramp location and also provide a telephone number for questions regarding same. Once the new ramp opens, we will delete reference to the "Ko Olina boat ramp" on the directional signage posted along Farrington Highway.

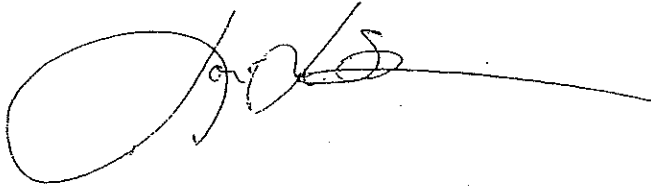
EXHIBIT "21"

* This condition was proposed to DPP in a letter dated June 1, 2000 from myself to then director Randy Fujiki and subsequently accepted as the final component of Ko Olina's public access master plan by Mr. Fujiki in a letter to me dated June 15, 2000. (Both letters are attached for your review.)

Ko Olina is making a substantial financial contribution (almost \$500,000) towards the construction and operation of the new ramp.

As all other conditions have been satisfied, this letter will serve as an addendum to the public access master plan for the Ko Olina Resort. In accordance with the prior agreements and understandings as outlined herein, it is anticipated that the Ko Olina Boat Ramp will be closed once the new ramp is opened as the property area will be integrated into the future aquarium design. To that end, removal of underground storage tanks and other tests will be performed in the area upon the closure of the Ko Olina boat ramp. We appreciate your patience and support in this process. Please call me at 531-8511 or 342-2211 if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Lorrie Lee Stone", with a long horizontal flourish extending to the right.

Lorrie Lee Stone

Enclosures

Cc: client
Keith Kurahashi

LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3: 59

WEST HONOLULU ATTRACTIONS LLC
55 MERCHANT STREET, SUITE 1500
HONOLULU, HAWAII 96813

CITY BANK
Kupolei Branch

Ewa Beach, Hawaii
000162

0015254228

09/30/2004

*TWO HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED SEVENTY-FIVE AND XX / 100

09/30/2004

\$\$\$227,575.00*

THE PHOENICIAN LLC
91-607 Mafakole Rd
Kupolei, HI 96707

THEPHO

000016201 01752696107

#162

\$227,575.00

EXHIBIT "22"

WEST HONOLULU ATTRACTIONS LLC

DATE	INVOICE NO	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
9/30/2004	1	50% PAYMENT	227,575.00	0.00	227,575.00

CHECK: 000162 09/30/2004 THE PHOENICIAN LLC CHECK TOTAL: 227,575.00



LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3:59

April 7, 2005

Mr. Fred Anawati
The Phoenician, LLC
91-607 Malakole Road
Kapolei, Hawaii 96707

Re: Phoenician, LLC Public Boat Ramp

Dear Fred,

This letter will outline and confirm the terms under which we are making the enclosed installment payment of \$115,000. This payment is contingent upon The Phoenician, LLC carrying out the requirements outlined in Section One under that certain "Agreement for Use of Facility" ("Agreement") dated September 30, 2004. More specifically, by receipt of this additional payment you acknowledge and agree that:

- 1) The Phoenician Boat Ramp shall remain open to the public under the guidelines set forth in the Agreement and
- 2) Phoenician will complete the construction of the boat ramp and all other related facilities including, but not limited to: installation of lights for boat traffic control into and out of the harbor; installation of fixtures for the comfort station, including an additional handicap rail; and
- 3) Phoenician shall provide to KOD an executed lease with the State DOT Harbors Division that allows use of the Phoenician ramp by the public as outlined in Section One of the Agreement.

Final payment shall be rendered only in the event that condition numbers one through three above are met to the satisfaction of KOD. Please acknowledge your acceptance of these terms by signing below and returning a copy to me. Please call me if there are any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Ken Williams".

Ken Williams

Read and Agreed to:

A handwritten signature in black ink, appearing to read "Fred Anawati".

Fred Anawati
The Phoenician, LLC

EXHIBIT "23"

KO OLINA COMMUNITY ASSOCIATION, INC.

92-1480 ALIINUI DR.
KAPOLEI, HI 96707
(808) 671-2512

FIRST HAWAIIAN BANK
MAIN BANKING CENTER
HONOLULU, HAWAII 96813
59-101-1213

13367

4/6/2005

PAY TO THE
ORDER OF

The Physician, LLC

\$**115,000.00

Dollars on back.
Security Features included.

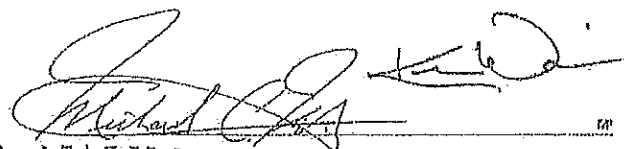
One Hundred Fifteen Thousand and 00/100

DOLLARS

91-607 Malakole Road
Kapolei, Hawaii 96707

MEMO

boat ramp closure - progress billing #2



⑈013367⑈ ⑆121301015⑆ 01⑈171526⑈ ⑈001150000⑈

INDA LINGLE
GOVERNOR



LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3:58

RODNEY K. HARAGA
DIRECTOR

Deputy Directors
ERUCE Y. MATSUI
BARRY FUKUNAGA
STEPHEN T. MORIOKA
BRAD H. SEKIGUCHI

IN REPLY REFER TO:
DEP-H 3647.05

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 S. NIMITZ HIGHWAY
HONOLULU, HAWAII 96813-4898
June 7, 2005

Mr. Henry Eng, Director
City & County of Honolulu
Department of Planning and Permitting
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. Eng:

We have been asked to clarify the status of an easement that was being finalized to permit the Phoenician, LLC to operate a boat ramp from private lands adjoining the Kalaeloa Harbor that permits access into the harbor that was pending from the State Harbors Division. "

Due to mitigating circumstances that have delayed the completion of the lease for the easement, we have informed the company that we will allow their use of the easement pending the finalization of the lease document.

An earlier construction right of entry identified the State's willingness to allow the actual disposition of the area for the purpose of a boat haul ramp. Phoenician, LLC has since undertaken and completed construction of the facility and established operational procedures for the use of the ramp that are acceptable to the state. Based on recognition of these circumstances and knowing that delay in completion of the lease was not solely due to the applicant, we have granted their use of the easement. We believe this may have been the final clearance for the operator to commence their use and operation of their boat ramp. We refer any questions regarding actual operation of the facility to the Phoenician, LLC.

Should you have any question regarding the easement or the lease, please do not hesitate to contact me at 587-3651.

Very truly yours,


BARRY FUKUNAGA
Deputy Director of Harbors

c: Fred Anawati
Lorrie Stone ✓

EXHIBIT " 24 "

COPY

LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3:59

LAND USE COMMISSION
STATE OF HAWAII

ACTION		PAGE	VOLUME
A93-700 OBAYASHI HAWAII CORPORATION (Oahu))	4	II
A83-562 WEST BEACH ESTATES (Oahu))	30	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a public hearing at
Leiopapa A Kamehameha 2nd Floor, Conference Room 204, 235
So. Beretania Street, Honolulu, Hawaii commencing at
8:35 a.m. on Friday, February 2, 2007.

REPORTED BY: HOLLY M. HACKETT, RPR, CSR #130
Certified Shorthand Reporter

EXHIBIT "25"

HMH VENTURES, INC.

Tel: 808-538-6458 Fax: 808-538-0453

1 APPEARANCES:

2 COMMISSIONERS:

3 THOMAS CONTRADES
 4 MICHAEL FORMBY (Acting Chair)
 5 KYONG-SU IM
 6 DUANE KANUHA
 7 STEVEN LEE MONTGOMERY
 8 RANSOM PILTZ
 9 REUBEN WONG

EXECUTIVE OFFICER: ANTHONY CHING
 ACTING CHIEF CLERK: CAROLINE LORENZO
 STAFF PLANNER: MAXWELL ROGERS

10 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON

11 AUDIO TECHNICIAN: WALTER MENCHING

12 A93-700 Obayashi Hawaii Corp.

13 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
 14 WYETH MATSUBARA, ESQ.
 CURTIS TABATA, ESQ.

15 For the County: LORI SUNAKODA, ESQ.
 16 Deputy Corporation Counsel
 DON KITAOKA, ESQ.

17 For the State of Hawaii: BRYAN YEE, ESQ.
 18 Deputy Attorney General
 ABE MITSUDA, Office of Planning

19 A83-562 West Beach Estates

20 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
 21 WYETH MATSUBARA, ESQ.
 CURTIS TABATA, ESQ.

22 For the County: LORI SUNAKODA, ESQ.
 23 Deputy Corporation Counsel

24 For the State of Hawaii: BRYAN YEE, ESQ.
 25 Deputy Attorney General
 ABE MITSUDA, Office of Planning

I N D E X

1		
2		
3	DOCKET A93-700 WITNESSES	PAGE
4	LEA HONG	
5	Direct Examination by Mr. W. Matsubara	9, 11
6	Cross-Examination by	
7		
8	BLAKE McELHENY	
9	Direct Examination by Mr. W. Matsubara	14
10		
11	GAVIN CHUN	
12	Examination by Mr. Yee	22
13		
14		
15	DOCKET A83-562 PUBLIC WITNESSES	
16	CREIGHTON CHANG	34
17	CARROLL COX	40
18	Examination by Ms. Sunakoda	49
19		
20	EDWIN WATAMURA	57
21	Examination by Mr. Yee	59
22		
23	BARBARA TANAKA	67
24	STEVEN TANAKA	70
25	RODNEY AJIFU	76
	WILLIAM AILA	78
	Examination by Mr. Yee	85

1 the motion and 2 absent.

2 PRESIDING OFFICER FORMBY: Thank you to the parties.
3 Appreciate your time. We're going to recess for five minutes so
4 we can set up for the next docket.

5 MR. MATSUBARA: Thank you.

6 (Recess was held. (9:15)

7 **A83-562 WEST BEACH ESTATES**

8 PRESIDING OFFICER FORMBY: (Gavel) Good morning. This
9 is an action meeting of the state of Hawai'i Land Use Commission
10 on docket No. A83-562 West Beach Estates to consider the
11 Successor Petitioner's motion for order to amend caption; and to
12 receive the Petitioner's status report.

13 I have one administrative matter before I proceed.
14 Last time on this docket I disclosed a potential conflict, I
15 don't believe it is. That is my law firm represents the
16 University of Hawai'i in a law suit against Marisco.

17 I know that Marisco is not a party to this proceeding
18 but I understand the Phoenicians is a subsidiary of Marisco. So
19 I wanted to disclose that to the parties.

20 I represented last time that it wouldn't affect my
21 position in this matter. And the motion that's before us today
22 is purely ministerial. So I ask the parties, each of you, to
23 indicate if you have a problem with my appearance on this docket.
24 Mr. Matsubara.

25 MR. W. MATSUBARA: Thank you, Chair, no problem.

1 PRESIDING OFFICER FORMBY: Thank you. Ms. Sunakoda?

2 MS. SUNAKODA: The city has no problem.

3 PRESIDING OFFICER FORMBY: Mr. Yee?

4 MR. YEE: No problem.

5 PRESIDING OFFICER FORMBY: Thank you. Yes,
6 Commissioner Im.

7 COMMISSIONER IM: I also want to make a disclosure
8 that I have represented Marisco in the past not regarding this
9 matter. And Phoenicians is a subsidiary I guess. I never
10 represented the Phoenician in the past. So if the parties want
11 to waive the conflict I would be interested in hearing the case.

12 MR. W. MATSUBARA: Thank you, Commissioner Im. No
13 objections from Ko Olina Development.

14 MS. SUNAKODA: The city has no problem.

15 MR. YEE: No objections.

16 PRESIDING OFFICER FORMBY: Thank you to the parties.

17 COMMISSIONER IM: Thank you.

18 PRESIDING OFFICER FORMBY: On January the 10th, 2007
19 the Commission received the motion for order to amend caption;
20 memorandum in support of motion; affidavit of Jeffrey R. Stone;
21 and Exhibit 1.

22 On January 17th, 2007 the Commission received from the
23 Office of Planning their statement of no opposition to the motion
24 to amend caption.

25 On January 22nd, 2007 the Commission received Ko Olina

1 Development LLC's supplement to the 21st Annual Progress Report;
2 affidavit of Benjamin M. Matsubara, Exhibits 1 through 33,
3 affidavit of Ken Williams; and certificate of service.

4 This morning February 2nd, 2007, the Commission
5 received written testimony from Carroll Cox, EnviroWatch,
6 Creighton Chang, Steven and Barbara Tanaka, and Jeff Kagihara.

7 Let me briefly describe our procedure for today on
8 this docket. First, we will have the parties identify themselves
9 for the record. I would then call on those individuals desiring
10 to provide public testimony on this agenda to identify
11 themselves. All such individuals will be called in turn to our
12 witness box where they will be sworn in prior to their testimony.

13 After completion of the public testimony portion of
14 proceedings the Successor Petitioner and Movant will make their
15 presentation regarding their motion to amend caption.

16 We will then receive in turn remarks from the city and
17 county of Honolulu and the State Office of Planning.

18 I will then entertain the pleasure of the Commission
19 on the Successor Petitioner's motion to amend caption.

20 After the Commission has completed its deliberations
21 on the motion we will give opportunity for the Successor
22 Petitioner to complete their status report and solicit any
23 comments in turn from the city and county of Honolulu and the
24 Office of Planning.

25 This will conclude our meeting on this matter. The

1 Chair would also note for the parties and the public that from
2 time to time I may call for short breaks. Are there any
3 questions on the procedures for today?

4 MR. W. MATSUBARA: No questions.

5 PRESIDING OFFICER FORMBY: Hearing none, will the
6 parties please identify themselves for the record.

7 MR. W. MATSUBARA: Good morning, Chair Formby,
8 Commissioners, Mr. Ching, Wyeth Matsubara and Curtis Tabata on
9 behalf of Ko Olina Development.

10 MS. SUNAKODA: Good morning, Mr. Chair, members of the
11 Commission, Deputy Corporation Counsel Lori Sunakoda on behalf of
12 the Department of Planning and Permitting city and county of
13 Honolulu.

14 MR. YEE: Good morning. Deputy Attorney General Bryan
15 Yee on behalf of the Office of Planning. With me is Abe Mitsuda
16 from the Office of Planning.

17 PRESIDING OFFICER FORMBY: Thank you and good morning
18 to the parties. Is there anyone here desiring to provide public
19 testimony? Okay. Let me get the witness list and I'll go in
20 order of the witness list. If you haven't signed in please do
21 so. If you've already signed in I'll be calling you in order.

22 Before I call the first witness let me just make a
23 comment about our preference for testimony. We share the
24 importance of public testimony, but if you've submitted something
25 in writing we will be reading it. So we would appreciate you not

1 reading it into the record and not repeating things that are in
2 writing. You can summarize, but we do read what you've
3 submitted.

4 So to move things along, please try to be as brief,
5 concise to the point as you can. Thank you.

6 The first public witness is Creighton Chang.

7 CREIGHTON CHANG

8 Being first duly sworn or affirmed to tell the truth, was
9 examined and testified as follows:

10 THE WITNESS: I do.

11 PRESIDING OFFICER FORMBY: State your full name and
12 address for the record.

13 THE WITNESS: My name is Creighton Chang. I live at
14 94-203 Paioa Place. That's in Waipahu.

15 PRESIDING OFFICER FORMBY: Thank you, Mr. Chang. You
16 can proceed.

17 THE WITNESS: I think you just blew the steam out of
18 my -- I was going to read this and I thought I could.

19 PRESIDING OFFICER FORMBY: Actually you've submitted
20 written testimony to us, right?

21 THE WITNESS: I just did it this morning.

22 PRESIDING OFFICER FORMBY: I would prefer if you
23 summarize. We have it. I think it's, like, four pages, right?

24 THE WITNESS: It's big print.

25 PRESIDING OFFICER FORMBY: Okay.

1 THE WITNESS: Well, big print.

2 PRESIDING OFFICER FORMBY: You do your best. I'm not
3 gonna tell you you can't. But I just tell you what our
4 preference is.

5 THE WITNESS: Okay. Thank you. Like I said, my name
6 is Creighton Chang. I'm just a weekend warrior type fisherman. I
7 used to fish at Ko Olina but -- and that's maybe once, maybe one
8 to three times a month. Back in February of 2005 we were rudely
9 awakened when we went down to launch our boat that we were turned
10 away at the gate. And the Ko Olina Resort closed the ramp so we
11 could not launch there.

12 My understanding is that when the development was made
13 at West Beach Estates an agreement was that that Ko Olina Resort
14 or West Beach Estates was to provide a boat ramp, public parking,
15 wash facilities as a condition of their permit requirements. If
16 that's the case then I think the ramp was closed illegally.

17 I did send letters prior to this from the last meeting
18 that came out. And I think that is on, also on record. But to
19 summarize some of the points: About the Phoenicians ramp where
20 we were told that that is the substitute ramp, the substitute
21 ramp at Phoenicians has a lot of problems with it.

22 The ramp is too flat. So if you launch a boat there
23 you have a hard time. You have to send your vehicle too far down
24 the ramp which means your tires get wet, your brakes will go bad.
25 Because the ramp is so flat there is a lot of limu growth that

1 occur on the ramp that nobody cleans.

2 I launched my boat there one time just to see how it
3 was. And when we brought the boat back up I had to get three
4 guys on the back of the truck jumping up and down on the bumper
5 just so that I could get enough traction to pull the boat out of
6 the water.

7 I was down there when the Commissioners had a field
8 trip. And I remember, I'm not sure which Commissioner was
9 walking down that ramp, almost slipped. I mean he slipped and
10 almost fell backwards and cracked his head, but he didn't fall.
11 I'm not sure which one of them was there.

12 But the ramp is dangerous. It's a very dangerous
13 ramp. There is no pier or catwalk. Now, when you take your boat
14 down to a ramp you launch it, tie it up, you park your trailer.

15 In this particular case you launch your boat, you have
16 to try and push it town through a ladder system. When I launched
17 mine it hit the concrete wall, cracked my sponson on my boat. My
18 boat is a \$30,000 boat and it caused maybe a thousand dollars
19 worth of damage. That was only just to show how difficult it was
20 to launch the boat there.

21 There's no safety railing. When you get to the, when
22 you launch a boat you take your trailer up, you tie it up. Now
23 you got to walk to where the ladder is. There's no safety
24 railing. The fall is over 6 feet. Okay? Even if you're falling
25 in water you can get seriously hurt.

1 I think this is a HIOSH violation and OSHA violation.
2 There's a rail that is only about 14 inches which creates even a
3 bigger tripping hazard. You could trip and fall in that way.

4 If there is a boat being hauled out, this is a
5 commercial ramp, a commercial haul-out facility. If there is a
6 boat being hauled out of the facility, you just have to wait.
7 That may be an hour. If you're in the water, you're trying to
8 get back in you'll have to stay in the harbor which is, it's a
9 commercial harbor. So you have boats going in and out and that's
10 also a dangerous situation.

11 Because the position of the ramp it's prone to, I
12 would say westerly swells like what we have right now. I
13 wouldn't be surprised if there was a lot of water breaking on the
14 ramp.

15 And when there's this much of surge in the harbor, if
16 you climb down that ladder there's a good chance that your boat
17 surges up and down and you may get pinched. You put your foot on
18 your own boat's gunnel and the boat goes up; it might pinch your
19 foot against the ladder system that they have there.

20 I go fishing with my wife and I bring my dog. We go
21 nighttime. We like to enjoy. It's nice and cool at night. I
22 don't see how I could launch my boat there. I can't get my dog
23 down in the boat, that's for sure. The dog can't climb down the
24 ladder.

25 The other thing I notice about this ramp, I'm an

1 engineer and what I notice about this ramp is that it was
2 constructed very poorly. I see lumps of concrete on the ramp. I
3 see holes in the ramp. I don't know what kind of concrete they
4 used but it a very poor standard.

5 I don't even know if there was any engineering done on
6 this ramp, if there was construction drawings or was there a
7 permit even submitted to construct this ramp. Those are some of
8 the questions that I have.

9 At the last meeting I read the testimony of Councilman
10 Todd Apo and I had a lot of questions regarding his testimony.
11 In it he says that the fishermen drink all day and when they come
12 back in they create a problem at lagoon 4.

13 And I was wondering if, you know, was there any
14 documentation to show that? Did the coast guard ever pick up one
15 of our captains that was coming in driving recklessly in the
16 ocean? What kind of documentation that created this type of
17 accusation?

18 Everybody who got a permit -- I applied for a permit
19 when they opened the ramp. The permit had all my personal
20 information in. And we had to have the boat inspected for
21 safety, your flares your VHF radio. And when they went out and I
22 think Councilman Apo stated the community was behind this.

23 Well, I consider myself as being part of the
24 community. And he said the community was behind it and they had
25 agreements from the community. I don't know what community he

1 was talking about. Nobody talked to me. And yet he says, you
2 know -- they had all my information. All the information is on
3 the permit and we were never contacted.

4 He also said that he talked to William Aila and
5 William Aila, who was our governor candidate, was in favor of
6 moving the people over to Kalaeloa. And he said that probably
7 the fishermen wouldn't mind moving over there as long as you have
8 an equal or better ramp. Well, the ramp, the way I see it, can
9 never be equal, can never be better to be at Phoenicians.

10 I said that consideration must be given to safety, you
11 know, restroom facilities, the fees, parking, access, insurance
12 requirements.

13 The ramp, the ramp is just a substandard ramp. I
14 don't know, I just don't understand how they can consider it a
15 substitute ramp for the one that was at Ko Olina. Mr. Apo, I
16 mean Councilman Apo said the ramp was of resort standard. Well,
17 if it was going to be an equal or better, then I believe we
18 should have a resort standard ramp built someplace else. I would
19 be happy to use it.

20 At one point I believe Mr. Nelson said that, I've
21 heard numbers and the ramp at Phoenicians cost anywhere from
22 350,000, I heard 350,000, 700,000, 500,000. I'd like to be the
23 one to have constructed that ramp. I would have been awfully
24 rich at this point.

25 The ramp is just, is not a, not a good ramp to use.

1 It has many construction defects in it. It has a lot of safety
2 defects in it. And I think the Commissioners, I hope -- we are
3 just small-time fishermen -- I hope we can count on you to make
4 it right and have the Ko Olina Resort people open up their ramp
5 again. Thank you.

6 PRESIDING OFFICER FORMBY: Thank you, Mr. Chang.

7 MR. W. MATSUBARA: No questions for Mr. Chang.

8 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

9 MS. SUNAKODA: No questions.

10 PRESIDING OFFICER FORMBY: Mr. Yee?

11 MR. YEE: No questions, thank you.

12 PRESIDING OFFICER FORMBY: Commissioners, any
13 questions? Commissioner Montgomery.

14 COMMISSIONER MONTGOMERY: Mr. Chang, were you living
15 in Waipahu in '83 when this docket first came up and there were
16 conditions attached about the ramp for the public?

17 THE WITNESS: No, I was not.

18 COMMISSIONER MONTGOMERY: Were you or any of your
19 fishermen friends keeping track of what was said then? Because
20 I'm wondering whether it was your impression that this ramp that
21 was originally in there was a temporary ramp or whether it was a
22 permanent commitment to the small boaters.

23 THE WITNESS: I believe it was a permanent ramp.
24 Nobody ever told us fishermen that it was a temporary ramp. When
25 we went and applied for the permits there was no mention that,

1 "Oh, you're only going to have the permit for a year." It was
2 never said like that.

3 COMMISSIONER MONTGOMERY: Thank you.

4 PRESIDING OFFICER FORMBY: Commissioners, any other
5 questions? Thank you, Mr. Chang. The next witness is Carroll
6 Cox.

7 CARROLL COX

8 Being first duly sworn or affirmed to tell the truth, was
9 examined and testified as follows:

10 THE WITNESS: I do.

11 PRESIDING OFFICER FORMBY: Please state your full name
12 and address for the record.

13 THE WITNESS: Carroll Evans Cox. I'm at Post Office
14 Box 893062, president of EnviroWatch Mililani, Hawai'i 96789.

15 PRESIDING OFFICER FORMBY: Thank you. You may
16 proceed.

17 THE WITNESS: Thank all of you and happy new years. I
18 had hoped that this matter would have been resolved. I was
19 encouraged when I witnessed a visit by the Commission. And I'm
20 hoping to make just a few statements.

21 I do apologize for providing you with those documents,
22 but I wanted to, it dawned on me that I have not provided you
23 with any resources of our long and arduous attempt to right this
24 wrong that has been inflicted on the public community of
25 fishermen and the public.

1 This effort, entertaining any part of this I believe
2 is wrong, legally wrong, morally wrong and ethically wrong. And
3 I qualify that by saying if, in fact, the Commission entertains
4 this practice, this method, I see no records in the files where
5 Ko Olina or its other members or representatives have come to the
6 Commission to modify, to amend, to cancel out any conditions of
7 the original West Beach Estate agreement.

8 I have no record of it. They may exist but I've not
9 found any.

10 What if we allow this to continue? You spend many
11 years of writing a finding of fact, you have strong conditions,
12 issue an order signed by all parties and it's a legal binding
13 document.

14 What if we decide, Ko Olina decides just through hair
15 brain experience that all of the public golfers were not welcome
16 or Mr. Apo comes in and says, "They're hitting the balls at the
17 windows over there, what have you," and wasn't burdened with
18 proving any specific incidents, as he said the drinking of the
19 fishermen.

20 But what if they decide to go to Pearl Kai Golf Course
21 and go to the driving range and say to them, "We're going to give
22 you a million dollars if you take our public participants who
23 come here to golf at our Ko Olina Resort."

24 And what if you are allowed, you permit them to give
25 this million dollars to the driving range? In essence what

1 | you've done you've now undermined and set a precedent. And
2 | that's what this is doing with all the legal wrangling and all of
3 | this.

4 | What is occurring here is that you're basically just
5 | entertaining any part of this with the city corporation counsel.
6 | What is happening is that you're basically saying any part of
7 | this binding order, go find any party that's willing to take the
8 | public visitation, take our numbers, we will pay you and in
9 | essence we will turn this into a full fledged private function,
10 | this resort. And that's basic legally, that is what you're doing
11 | precedent-wise. And to entertain any or all of this it's just
12 | wrong.

13 | And I've submitted testimony. I've filed, just
14 | backtracking, filed ethics complaints on Mr. Apo. As you see
15 | he's missing here now. Because we felt that coming before this
16 | Commission was just wrong. He's a city councilman it is these
17 | tactics. But that's not something that you regulate.

18 | But I bring a bigger issue. Page 21 of the finding of
19 | fact. In that page 21 No. 87. "Petitioner will also open the
20 | public use of parks, open areas including 18-hole golf course and
21 | sandy beaches, and recreational support facilities not presently
22 | on the property such as comfort stations, showers, and 150
23 | parking spaces. Petitioner will provide boating and other marina
24 | related recreational facilities and beach rights-of-way in
25 | coordination with the county Department of Parks and Recreation."

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1 I submit to you, and I may just be wanting to be a
2 lawyer and play with words, but let me say this to you. Have you
3 ever, ever received a single document from the parks and
4 recreation from the city and county of Honolulu? No.

5 I have contacted, when I first initiated this, reading
6 this section it does not say the Department of Planning and
7 Permitting. It does not say the Office of Corporation Counsel.
8 It does not say the city council. Does not say unilateral
9 agreement. It says that it will be according to the parks and
10 recreation. Why? Because this is a recreational activity. This
11 is something that is afforded in this binding document.

12 Absolutely not a single soul has presented a single
13 testimony from the city council or the corporation counsel that
14 would do this. I suspect today you probably will get testimony
15 from corporation counsel that provides responses from the city
16 management of Mr. Hannemann, Mayor Hannemann probably to offer
17 what he's written to us in response to my letters.

18 I can only submit to you that this is wrong. We
19 should not even be entertaining it. And immediately the
20 Commission here, the Land Use Commission, should, in fact, not
21 hear any part of this in order as a condition.

22 Do we have any amendments that, official amendments
23 that they have filed to inform or request changes in the findings
24 of fact? Have there been any motions?

25 So basically I just have to tell you, and this is

1 | however one digests it, but in all of this process this is
2 | disheartening and I must share this with you. You can dismiss it
3 | if you may. But I learned in the processes of doing this there's
4 | a concerted effort on the part of the DPP and others in the city
5 | to rid the state of the Land Use Commission. People in the
6 | administration.

7 | Upon hearing that I'm finding myself just puzzled.
8 | How is it that such practice could even be contemplated? Then I
9 | look at the actions. The city and county of Honolulu have fought
10 | me vigorously and fought the community vigorously and provided
11 | testimony opposing anything. And I asked the Commission isn't
12 | there something in all of us that would say, "Ladies and
13 | gentlemen, you might be legally right but this is morally wrong"?

14 | You can't sit and provide the public with
15 | documentation and in turn tell them, "Well, now we're going to
16 | systemically strip you so the sandy beaches will now, we set up
17 | an agreement with Tesoro or with Hawaiian Cement or someone or
18 | BEI says, 'Why don't we set up a deal and make a false beach area
19 | there, bulkhead and allow the public to come there.'"

20 | Will the Commission hear that? If you hear this then
21 | clearly what legal challenge could you say that, "No we can't do
22 | that" because the precedent is already here.

23 | Mr. Apo represented that Mr. Aila, William Aila had
24 | represented this. Mr. Aila is a very respectful, reputable
25 | gentleman. In his capacity he was not serving as an official

1 capacity for his office. And I have no doubt that Mr. Aila would
2 not say anything -- would say anything that would deprive the
3 public of its rights.

4 But what I suspect Mr. Apo represented these things.
5 Just a moment. What I suspect is that he thought that no one
6 would follow up on this. But if we in fact give, the Commission
7 gives equal weight to that statement and to Mr. Aila's
8 presentation just on face value, Mr. Aila's one member of the
9 community.

10 And I think we now have demonstrated if the Commission
11 gives weight to Mr. Apo's representation. If, in fact, and I
12 very seriously doubt that what was represented by Mr. Aila will
13 support that, stated that. But Mr. Aila is one person. We have
14 demonstrated by testimony, by representation, by facts that the
15 community is not wanting that, that Phoenicians.

16 Now, if you give weight to his statement in a
17 democracy I would think you would be inclined to give weight to
18 ours, the fishing community, myself, my organization.

19 I was hoping to see, maybe the presentation today,
20 that the Commission will provide some insight as to what it went
21 there to see and what was the purpose just to provide the public
22 with a finding of what it was the Commission viewed there.

23 Now, along the way you have, probably will see
24 representations here that all things were proved. I've already
25 raised the issue that the Department of Planning and Permitting

1 is a regulatory body. How is it that the regulatory body each
2 occasion that I raise an issue whether legal, moral or just
3 outright right and wrong they sought to communicate with other
4 agencies?

5 And I share this experience that I'm not taking this
6 lightly and hope none of you do. We go to the DLNR. It was
7 scheduled to be on the agenda. The chairman moved it up to make
8 it first while it was nearly the last item on the agenda.

9 I come in prepared to testify, scheduling, based on
10 the scheduling and it was moved up. They heard the matter, no
11 one was present, but they promised to reschedule it, "they" being
12 Mr. Peter Young, Chairman. The rest of the board, Land Board,
13 expressed an interest in hearing, Tim John expressed an interest
14 in hearing. To date I've not received a single reschedule.

15 DOT. I wrote a letter and contacted the DOT. Asked
16 them information. Wrote David Tanoue, Mayor Mufi Hannemann.
17 This information I sought was to ask had this been approved.
18 Immediately the strategy was to make our efforts moot. And
19 immediately wrote a letter approving saying that everything was
20 complying.

21 So it is these tactics that I call into question the
22 whole integrity of this effort. And I ask that based on my
23 original statement and my testimony that I submitted in 2005 and
24 the other testimonies that they submitted for record and taken
25 into consideration, and that this matter just simply be ruled on

1 and that the Commission take into consideration that if you set
2 this precedent they're unstoppable.

3 This nullifies your official responsibility in setting
4 the binding conditions of the finding of fact. Because if they
5 can walk in here and dismiss everything by going and relocating,
6 I'm sorry, there's no need for a Commission. There is no need
7 for anything.

8 Because why waste the time if you allow this process
9 to occur. And I also, I put in my testimony and I will close. I
10 want to make sure that on the development proposal I want to pay
11 close attention to item 33. I'm not going to read it all, item
12 33 of the finding of fact, No. 41, No. 87 and No. 125.

13 I encourage the Commission to just observe those. I
14 found nothing in the documents that say that it's temporary
15 landing or launch ramp or anything. What I do find is that it
16 says that this is a binding document and the conditions of it is
17 binding. It doesn't have anything in here that says the
18 unilateral agreement.

19 So what's going to probably be represented by city
20 counsel corporation (sic) is that: We looked at this and we
21 wrote back we approved it." That's fine. That's within their
22 arena. This is the Land Use Commission. They have to come and
23 show that they abided by the conditions and the binding facts of
24 the conditions of this finding of fact.

25 And I really appreciate and I've learned in this town

1 | people say, "Is that a threat?" But I have to let you know and
2 | all of you that it doesn't stop here. And I am prepared, this is
3 | not a veiled threat or empty threat is to exercise my rights and
4 | the public's right in federal court. So whatever. Let's just
5 | make sure now we do it the right way. We will not tolerate the
6 | practices, the behind-the-scene practics. There's been no
7 | openness, no community involvement.

8 | The only reason this subject matter is being discussed
9 | in public today is that the fishermen had to complain. The
10 | public had to complain.

11 | They didn't complain. They had it on a fast track.
12 | They have letters from the Stones, Mr. Jeff Stone, the attorneys.
13 | They in turn hire other former DPP employees. And some of our
14 | articles we wrote we asked for documents from DPP. They held
15 | them and hid them, 14 files. That is documented in some of the
16 | those records that I've given. So this is not just some simple,
17 | "We're going to remove the public." This is sinister.

18 | And based on that the public hope to get relief. And
19 | I believe in every one of you you will not tolerate. You will
20 | not stand for, you will not allow your responsibilities to be
21 | undermined by this practice. Thank you.

22 | PRESIDING OFFICER FORMBY: Thank you, Mr. Cox. Mr.
23 | Matsubara, any questions for the witness?

24 | MR. W. MATSUBARA: No questions for Mr. Cox.

25 | PRESIDING OFFICER FORMBY: Ms. Sunakoda, any

1 questions?

2 MS. SUNAKODA: I just have one question for
3 clarification.

4 EXAMINATION

5 BY MS. SUNAKODA:

6 Q. Mr. Cox, you previously testified that with respect to
7 finding of fact 87 you made a reference to the Department of
8 Parks and Recreation of the city and county of Honolulu that
9 nothing had been presented with respect to compliance with that
10 condition, is that correct?

11 A. I said that nothing has been provided. Remember I
12 also made a statement that records had been withheld. I
13 telephoned the parks and recreation, they had had absolutely
14 nothing.

15 In fact I asked for the dedication of the parks which
16 is still an outstanding matter. You've not dedicated any parks
17 or acquired them, passed them over to the city and county of
18 Honolulu.

19 Q. Okay. But you would agree that there's no specific
20 timeline or other timing type of trigger or deadline that was
21 imposed by the Land Use Commission within which compliance with
22 that condition was supposed to occur, is that correct?

23 A. Well, I wouldn't use the term agree or disagree. I
24 find it suspect. And I find it very convenient your leaving this
25 time and your bringing people and you've taken the resource from

1 the public and there's no justification why the delays have
2 occurred.

3 What we find is a whitling of those things were in
4 place. So we have spent more time on taking away what was in
5 place opposed to spending more time in dedicating the park. So I
6 wouldn't say that I agree or disagree.

7 I am suspect of the timing and the process and the
8 hiring by Ko Olina of former city employees who handled this
9 specific subject, this development. So it's not an issue that I
10 agree or disagree.

11 Q. Let me rephrase my questions. There is no deadline
12 that's specified in the, with respect to that condition,
13 correct?

14 A. It does not give a specific but it's binding.

15 MS. SUNAKODA: No further questions.

16 PRESIDING OFFICER FORMBY: Thank you. Mr. Yee, any
17 questions?

18 MR. YEE: No questions. Thank you.

19 PRESIDING OFFICER FORMBY: Commissioners, any
20 questions for Mr. Cox commissioner Montgomery.

21 COMMISSIONER MONTGOMERY: Mr. Cox, I'd like to focus
22 on the future because we have seen from our field trip what
23 happened and what results, what facilities are available.

24 I know you've been in the community a long time.
25 You've had professional positions in training in police work and

1 know a lot about evidence, the importance to gather it and to
2 respect it.

3 I'm concerned about where do we go? There is an
4 option of repairs to make this new ramp of equally safe and
5 convenient for fishermen like the previous public witness. Or
6 there's the option of reconstructing the original one that's
7 apparently totally demolished. Could you address these options?

8 THE WITNESS: Well, I'm going to be guided by the
9 conditions of the finding of fact. That to me is the bible. I
10 don't want to adopt the responsibility or participate, a lot of
11 planning went into that..

12 To second guess the Commission in past would be
13 improper. To come back and say, "Someone has placed this, it's
14 improper." I think I've demonstrated and shown and you saw for
15 yourselves, the Commission, the safety issues in the surge. I
16 don't now if you witnessed the surge that day. But just the
17 other day the surge was coming in. It was a substantial surge.

18 And I just, as a practice, as you say, I've been a
19 professional special agent and in law enforcement. I keep my eye
20 on the prize. When someone dangles a carrot, says to me, "You
21 have this option or that option," I would say as a practicing
22 professional and as a person, "Just give me what's rightfully
23 mine." That way I don't, there wouldn't be an issue of tasking
24 me with having to select.

25 I think the issue would be respectfully asking the

1 Commission, "Do you accept what they thrust upon us while you
2 knew nothing of it?" I didn't find anything in the records or
3 you only knew when the public complained? So that alone should
4 enable you too, the Commission, to keep your eye on the prize and
5 protect the public's interest here.

6 I've not had a difficulty in selecting because it is
7 required. It is required. And it is binding in the finding of
8 fact.

9 COMMISSIONER MONTGOMERY: I recall Mr. Chang said that
10 he had used it once. I get the impression that a lot of
11 fishermen are simply avoiding trying to use the ramp because of
12 the damage that's been sustained to their craft.

13 At some point I hope we have a witness who can talk to
14 me about what kind of inconvenience and what kind of actual harm
15 it is to have to try to function with what's provided now as a
16 substitute for the original ramp.

17 Do you have any records of this kind of thing? Not
18 being much of a boater myself I don't know how far people have to
19 go to find someplace that is safe where they don't get thousand
20 dollar repair bills just for going fishing.

21 THE WITNESS: Well, you know, just this recent
22 incident with the Tang Chong, of the Tong Chong, the Chinese
23 vessel, that harbor was closed. Coast guard efforts. They had a
24 clean sweep of the area. The tug barges that had to escort and
25 bring them in they had it closed. So clearly in a security issue

1 and what have you I did see them also clear the area out for Ko
2 Olina. But when it cleared up you still had the activity on the
3 Phoenicians side.

4 As I pointed out, and I don't want to disagree but I
5 laid out these concerns. You've got propane tanks close,
6 located, you have the restroom, you have children traveling
7 across from the parking area to go to the restroom. You have
8 children in the area who could fall off, as he's pointed out.

9 Again, there are many, many factors that come into
10 play here. But again it's really not to me. I'm being asked and
11 I think the public is being asked to accept something that's
12 wrong to start off. And I think that's the problem. That's what
13 I have a problem with. We never got to step 2 properly.

14 So to task the public or myself with "should we accept
15 this if we did this," it's irrelevant because for me as a person
16 that, who prides himself in just doing what's right for the
17 community and just doing what's right. So to ask, I don't mean
18 to be disrespectful or stumbling here but I'm stuck on that
19 finding of fact. I'm stuck on the conditions of that finding of
20 fact. I'm stuck on the fact that the withheld records when I
21 tried to educate myself.

22 I'm stuck on the fact that I asked the mayor of
23 Honolulu to intervene, to come in and petition it, flesh this
24 out, bring it out in the open. And I'm stuck on the fact that
25 this mayor never ever once responded to me until late. Then I'm

1 stuck on the fact that city councilman when represents that
2 district came in here representing the developer.

3 So it's so difficult just based on those elements.
4 It's so difficult, ladies and gentlemen of the Commission, to get
5 from that point. You know I'm walking through this forest of
6 misdeeds.

7 COMMISSIONER MONTGOMERY: Yes, Mr. Cox I can, I can
8 feel your pain. We're stuck with the fact of what previous
9 Commissions agreed to with Applicant's predecessors and how to
10 honor those commitments that were made well over a decade ago.
11 So I return to my original question of what do we do in the
12 future to try to fix things?

13 THE WITNESS: Well, we do in the future because in 20
14 years from now someone will come in, challenge it, I think the
15 integrity you focus pride yourselves, I know all of you,
16 especially you as being a professional, carrying level headed.
17 And I would hate to think that down the future someone come along
18 and says, "Well, that Commission was slow in its processes and
19 its deliberation so let's just abandon ship and start all new
20 process."

21 I think it's an accepted standing here that there's
22 quality and in yesteryears. Nobody has challenged this. See,
23 that's the problem. None of this has been challenged by the
24 developer publicly where the public has been allowed to come in
25 before the Commission and where this has been discussed and

1 | fleshed out. None of it.

2 | We're at this point because the public finds itself
3 | being stripped of those conditions. So it's not a matter of the
4 | integrity or quality of the decisions rendered by the Commission
5 | in yesteryears. It's about the behavior of the developer who
6 | acquired this. And then I think the burden should be placed on
7 | them, the expectation should be placed on them, not the public.

8 | COMMISSIONER MONTGOMERY: Well, as I recall you folks
9 | came to the Commission while we were getting a status report.
10 | And it's certainly possible that we could issue an order to show
11 | cause. We could maintain that the conditions have been violated.

12 | So in sorting all these things out that's why I raise
13 | the question of what can we do in the future? Can this ramp be
14 | fixed so that it serves the needs adequately the way the original
15 | ramp did? What are some of the options that you folks who are
16 | users and have studied this closely and live in the area feel
17 | this is a way to resolve things?

18 | THE WITNESS: Well, you're asking me to tell you how
19 | to fix something that's not broken. It's not broken. The ramp
20 | was in place, there was adequate parking. It was safe. It was
21 | binding. It was part of an agreement.

22 | So I can't project or overlay anything to say can we
23 | accept this? Because honestly I'm still stuck on the original
24 | agreement. I'm stuck. I just can't. I'm sorry. I know you
25 | would like me to tell you. But there are no options. Fix that.

1 | By the way, the notice to show cause, that was also discussed in
2 | the letters as you'll see to the mayor and others.

3 | So if we were, if the public would have just gotten a
4 | fair shake with the information upfront, we wouldn't be here.
5 | You wouldn't have to ask me that. And I could sit here and say,
6 | "By golly, you know, hey there may be bona fide reasons. But
7 | let's get to it in a logical way, in a legal way."

8 | COMMISSIONER MONTGOMERY: Mr. Chairman, I no further
9 | questions.

10 | PRESIDING OFFICER FORMBY: Any other questions from
11 | the Commissioners? Hearing none I think that we'll take a
12 | recess.

13 | (Recess was held. 10:20)

14 | PRESIDING OFFICER FORMBY: (10:35) Okay. Back on the
15 | record. And just for planning purposes my goal is that we get
16 | through this by lunchtime. So let's please do our best to keep
17 | it moving.

18 | Next is Ed Watamura.

19 | EDWIN WATAMURA

20 | Being first duly sworn or affirmed to tell the truth, was
21 | examined and testified as follows:

22 | THE WITNESS: I do.

23 | PRESIDING OFFICER FORMBY: Can you state your full
24 | name and your address for the record.

25 | THE WITNESS: Yeah. My name is Edwin Watamura. 20-15

1 Leiloki Drive, 96822.

2 PRESIDING OFFICER FORMBY: Okay. You can proceed.

3 THE WITNESS: I'm here representing the Waialua Boat
4 Club which I am the president of in the matter of the closing of
5 the public use boat ramp located at Ko Olina. I'm confused as to
6 why this matter is still being debated. Given the facts of the
7 case it is truly perplexing that the ramp has not been reopened
8 for public use.

9 My understanding of the original agreement allowing
10 for the reopening of the -- the rezoning of the West Beach
11 Estates stated that a public use boat ramp be provided for until
12 such time that an alternative ramp be made available for use.
13 This ramp is supposed to be usable and safe for boaters.

14 This ramp is only usable under the most ideal
15 conditions. One look at it and one can plainly surmise that it
16 doesn't look like the rest of the boat ramps around the state.
17 That's because it was designed for a haul-out facility.
18 Launching a small boat at this ramp is difficult at best because
19 of the very high platform, lack of bumpers, and during high surf
20 it is downright dangerous.

21 It is only a matter of time before a boat or boater is
22 seriously hurt. I'm perplexed as to why this ramp was ever
23 approved for use by anyone concerned for the safety of the small
24 boater.

25 The Ko Olina boat ramp provided us with a much needed

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1 alternative to the Waianae boat ramp on the west coast of Oahu.
2 The ramp gave us easy access to many coveted fishing grounds near
3 Barbers Point. Because of the buffering from the predominant
4 tradewinds, the area in front of Kahe Power Plant is ideal for
5 akule and menpachi fishing.

6 Launching from Ko Olina made it a very short run to
7 these grounds. It also provided us with a safe place to launch
8 during periods of high surf.

9 As most boaters know the Waianae Harbor can be quite
10 treacherous during high surf. The deep draft of the Barbers
11 Point entrance gives Ko Olina the ideal solution to this problem.

12 I implore the Commission to do what is necessary to
13 reopen the Ko Olina boat ramp.

14 PRESIDING OFFICER FORMBY: Thank you, Mr. Watamura.
15 Mr. Matsubara, any questions?

16 MR. W. MATSUBARA: No questions.

17 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

18 MS. SUNAKODA: No questions.

19 PRESIDING OFFICER FORMBY: Mr. Yee?

20 MR. YEE: I do have a question.

21 EXAMINATION

22 BY MR. YEE:

23 Q. You had said it was designed as a haul-out facility.
24 what is that?

25 A. It's for when large -- large ships need to be dry

1 docked for their hulls to be cleaned and the scheduled
2 maintenance, usually once or twice a year.

3 So what happens is the large crane goes out over on
4 these sides and a mechanism comes down and actually lifts the
5 boat out of the water and drags them out of water and sets them
6 up on dry land so they can be repaired.

7 When you look at the ramp you can see that the design
8 was for this purpose.

9 Q. Can I ask you can you a have facility that is
10 acceptable or usable or appropriate for a recreational or small
11 boat fisherman and also be appropriate or acceptable as a
12 haul-out facility?

13 A. I don't see how it can be.

14 Q. So you couldn't use -- could you use a recreational
15 small boat facility for a haul-out purpose?

16 A. No.

17 Q. Can you explain why?

18 A. Well, because the way the crane operates. It needs to
19 have this high platform to drive out, you know, over the water.
20 and just the height of that platform itself makes it difficult
21 for a small boater to use.

22 If you look at a regular boat ramp the piers are, you
23 just walk out on 'em and just hop right onto your boat. I mean
24 they're low. And they've got tires on them to buffer your boat
25 from hitting the sides. That's the other thing. It's very easy

1 | for your boat to be hitting concrete at this facility.

2 | Q. The thrust of my questions, just so I'm clear, is I
3 | was wondering if they made changes to this facility so that it
4 | would be acceptable to the small boat fishermen, do you then
5 | create a separate problem for someone who wants to use it as a
6 | haul-out facility?

7 | A. I would imagine that engineers could figure out a way
8 | to do it. But it would be quite a project to try to make it a
9 | multipurpose.

10 | Q. Is there another haul-out facility in this area?

11 | A. I'm not sure. I'm not sure. Also I'd like to address
12 | something. Somebody was referring to the future like what do you
13 | do to solve this problem. And I've been to Ko Olina recently.
14 | And it's not in, it's not, it's not broken down to the point
15 | where it wouldn't be easily repairable and set up for use again.

16 | MR. YEE: I have no further questions.

17 | PRESIDING OFFICER FORMBY: Thank you, Mr. Yee.

18 | Commissioners, any questions? Commissioner Montgomery.

19 | COMMISSIONER MONTGOMERY: If you would summarize again
20 | what you referred to as an ideal solution, and also comment on
21 | this concept of the annual user fee of \$125. I don't know if you
22 | were around in '83 when these things were agreed upon. But is it
23 | a surprise to you? Do you think it's reasonable to have this
24 | \$125 user fee?

25 | THE WITNESS: Yeah, it's very surprising. Well first

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1 of all, we don't have to pay this fee anywhere else in the state
2 to use the public boat ramps. We have a, we have a boat ramp fee
3 that we pay annually. But this fee that they were asking for to
4 use the Phoenicians ramp was above and beyond this boat ramp fee.
5 Is that what you're referring to?

6 COMMISSIONER MONTGOMERY: Well, the fee you're
7 referring to, how much is that and is that paid to the state or
8 who was that paid to?

9 THE WITNESS: The annual fee that we pay to use the
10 boat ramp is paid to the state.

11 COMMISSIONER MONTGOMERY: And that is how much?

12 UNIDENTIFIED SPEAKER: \$40.

13 THE WITNESS: Yeah, \$40.

14 COMMISSIONER MONTGOMERY: I see. Okay. Now,
15 summarize again what you see as the ideal solution here.

16 THE WITNESS: Well, I just don't see why they don't
17 just reopen the Ko Olina boat ramp. I mean why, what, that's the
18 wrong that can be righted. These people just closed the boat
19 ramp. And their reasoning was that there was an alternative ramp
20 provided for. This alternative ramp is just not safe. It's not
21 usable. It's not safe. So I don't know, you know, how the
22 approval was done that, you know, it was okay to do this. But...

23 COMMISSIONER MONTGOMERY: As a boater what's your
24 estimate of what it would cost to reopen the original one as
25 opposed to, say, fixing to the safe standards of the present?

1 THE WITNESS: Oh, you can't even compare it. I mean
2 to open the original one would be just laying down some cement.
3 They've just broken the cement down right in front of the ramp.

4 COMMISSIONER MONTGOMERY: Well, that's what I'm
5 asking.

6 THE WITNESS: That's it.

7 COMMISSIONER MONTGOMERY: Is that like a few thousand
8 dollars? There's estimates of hundreds of thousands to fix the
9 Phoenicians ramp to make it safe.

10 THE WITNESS: Oh, yeah. Yeah, at least hundreds of
11 thousands it not more because you'd have to buffer the whole area
12 somehow from the surf. That would mean building some kind of...

13 COMMISSIONER MONTGOMERY: Breakwater?

14 THE WITNESS: Wall, a breakwater yeah, to keep the
15 surf from running up onto this ramp. Because of the direction of
16 where the surf comes from it just, you know, it just comes right
17 in there. Whereas the Ko Olina ramp is actually set in such a
18 way that it doesn't receive any of the surge.

19 COMMISSIONER MONTGOMERY: So if they fixed up the one
20 you used to use and you weren't allowed to launch at night what
21 would you think of that?

22 THE WITNESS: We've already, that was of the original
23 agreement. And we've all pretty much realized that that was the
24 original agreement because the harbormaster is not there at night
25 to control the traffic in and out of the harbor. So we used to

1 go out before nightfall to fish and then come back in the
2 morning.

3 COMMISSIONER MONTGOMERY: I see. So you just
4 committed the whole night and it was no big deal.

5 THE WITNESS: Yeah, right.

6 COMMISSIONER MONTGOMERY: Okay. Thank you.

7 PRESIDING OFFICER FORMBY: Commissioner Kanuha.

8 COMMISSIONER KANUHA: Following up on that particular
9 question, one of the concerns was that at the marina launch ramp
10 it was a 24-hour use that conflicted with the operations,
11 security, et cetera for the resort.

12 If the use of the marina was less than 24 hours would
13 that still work for the boating community? Or, as you just
14 responded to Commissioner Montgomery's question, you guys just
15 get around it by going out in the afternoon and staying out all
16 night?

17 THE WITNESS: Yeah. When we originally, we were
18 allowed to use the ramp that was one of the conditions that it
19 would be closed during certain hours, you know. In fact they
20 used to put a chain up in the parking lot so you couldn't go in
21 or out. So, you know, we have all abided by that and just worked
22 around it.

23 COMMISSIONER KANUHA: So it wasn't 24 hours.

24 THE WITNESS: No, it wasn't 24 hours. It was from, it
25 was during the daylight hours that the ramp was open for use. In

1 fact we couldn't, we couldn't even go fishing real early in the
2 morning because we had to wait until a certain hour before they'd
3 let us in at the front gate.

4 COMMISSIONER KANUHA: And the fishing community was
5 able to work around that?

6 THE WITNESS: Oh, yeah, yeah. That wasn't a problem.

7 COMMISSIONER KANUHA: Thank you.

8 PRESIDING OFFICER FORMBY: Commissioner Piltz.

9 COMMISSIONER PILTZ: What I'd like to do is kind of
10 compare community golfing and resort golf versus your private
11 ramp use and versus public ramp use. For instance, on Maui at
12 the Waiehu Golf Course you buy a monthly fee for \$50 -- or annual
13 fee for \$50 and you can pay a daily rate of a buck every time you
14 go out.

15 But now if I good down to Kapalua I got to pay the
16 resort fee which is 125 bucks which is still better than --
17 that's the kama'aina rate.

18 So would your fishing community, if you're allowed or
19 if the Petitioner says, "Okay, we're gonna rebuild this ramp,"
20 would you be willing to pay? Because it's a resort you're going
21 to be using the resort facility, to pay -- well, right now you're
22 paying 100 what, before they moved you over you were paying \$125
23 annual fee. How about a daily fee? You pay for something and
24 then maybe each time you launch you pay so much.

25 THE WITNESS: Well, you know, this brings us back to

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1 | what we're looking at. You're describing it as a private
2 | facility. This was not the original way it was set up. It was
3 | open for public use, this ramp. It was provided for the public
4 | as a condition for the rezoning.

5 | So you can't, it's not apples to apples here. I mean
6 | this was a public use facility. They never said that they were
7 | going make it into a private use facility. They said that if
8 | such time that they could provide a reasonable alternative they
9 | would move us over to this reasonable alternative. But that has
10 | yet to be provided for as far as I can see.

11 | COMMISSIONER PILTZ: The only alternative is in order,
12 | from what I've seen and what I've seen elsewhere, That you'd have
13 | to have two facilities over at the Phoenicians area. You'd have
14 | to have that regular boat ramp versus a haul-out ramp which
15 | that's all you got now.

16 | THE WITNESS: Right. But then you still have the
17 | surge problem. You have to build a breakwater.

18 | COMMISSIONER PILTZ: What I'm trying to see if there's
19 | that possibility that, you know, Petitioner would say, "Okay.
20 | We're going to put this back in. But because we have to have
21 | additional security and everything," maybe looking at an
22 | additional fee.

23 | THE WITNESS: Well, the additional security is a moot
24 | point because they restricted us from night usage anyway. So the
25 | security is already there.

1 COMMISSIONER PILTZ: I understand that because I
2 looked at some of the documents. It did say sunup to sundown and
3 that was it.

4 THE WITNESS: That's right.

5 COMMISSIONER PILTZ: Okay. Just some thoughts I'm
6 trying to put out there.

7 PRESIDING OFFICER FORMBY: Mr. Watamura, I just had, I
8 guess maybe one question or maybe even a comment? Just to be
9 fair, I think, I understand your position that the boaters were
10 accepting the facility. But I think the record shows that there
11 was some boaters in the community that were unhappy with the
12 inability to launch their boats 24 hours. Isn't that fair?

13 THE WITNESS: That's fair. Because of the fact that
14 this restriction wasn't put on us at any other boat ramp.

15 PRESIDING OFFICER FORMBY: Right.

16 THE WITNESS: They were public use boat ramps.

17 PRESIDING OFFICER FORMBY: I guess like most
18 situations there's two sides to every story, right?

19 THE WITNESS: But it, you know, for, it was
20 understandable because of the lack of a harbormaster at night to
21 control the traffic. That harbor, that deep draft harbor was
22 used by more than just recreational boaters. There's huge ships
23 that go in and out of that harbor so just the safety factor of
24 that alone made it understandable.

25 PRESIDING OFFICER FORMBY: I hear what you're saying.

1 But as to my point that some people in the community, in the
2 fishing community, did want to have the ability to launch their
3 boat and come in 24 hours. I mean not everybody wanted to go out
4 early in the morning and come back by sunset.

5 THE WITNESS: In fact that were emergency situations
6 also when you had a problem and you had to come back. At that
7 point there was no choice.

8 PRESIDING OFFICER FORMBY: Okay. Any further
9 questions from the Commissioners? Thank you for your testimony.

10 THE WITNESS: Thank you.

11 PRESIDING OFFICER FORMBY: Next is Barbara Tanaka.

12 BARBARA TANAKA

13 Being first duly sworn or affirmed to tell the truth, was
14 examined and testified as follows:

15 THE WITNESS: I do.

16 PRESIDING OFFICER FORMBY: Can you state your full
17 name and your address for the record.

18 THE WITNESS: Barbara Ray Tanaka, 94-1159 Lumikula
19 Street, Waipahu 96797.

20 PRESIDING OFFICER FORMBY: Thank you, Ms. Tanaka. You
21 may proceed.

22 THE WITNESS: I have my testimony here which I wrote
23 last night but since you don't want to hear it, I'll give you a
24 brief detail and my husband can tell you about what he
25 experiences launching from there.

1 PRESIDING OFFICER FORMBY: We have your written
2 testimony, right?

3 THE WITNESS: Right here.

4 PRESIDING OFFICER FORMBY: No, do we have it?

5 THE WITNESS: You have it.

6 PRESIDING OFFICER FORMBY: A summary would be great.

7 THE WITNESS: I have a couple things to add. When we
8 used to launch from the Ko Olina as a family, my husband and I
9 been fishing many years together; we adopted a littler girl from
10 China, and we'd go as a family and we'd go nighttime fishing.

11 Ko Olina was Ko Olina, no problem. It was safe. So
12 due to that's the fishing area we like to fish, the type of fish
13 we catch. We sold the boat because our boat was a larger boat.
14 It wasn't a small akule boat. We had a 26-foot yellow fin. It
15 was too large for us to launch at the other harbor, impossible
16 for us to do it, the two of us, I guess because I'm going to be
17 60.

18 Anyway, we sold the boat, we got a small boat. So no
19 longer do we have the pleasure, my daughter and I, going out with
20 my husband. So that's a hardship for the family because we
21 enjoyed it.

22 Another thing, well, that's basically what I was going
23 to say, is that the new harbor we're at now the larger boats have
24 a very difficult time launching. That's why a lot of them don't
25 go there.

1 We have a friend that bought our boat. He was not
2 aware of the situation. My husband had come and he also fished
3 at night and he couldn't get the boat out of the water. He had
4 to put on snow chains, that somebody had. And that was the only
5 way, snow chains to get the boat because the boat's huge. That's
6 about all I have to say.

7 But my husband's an experienced fisherman, been
8 fishing since the '70s. We fished this island, we fished Big
9 Island and all around the state. So that's all I have to say.

10 PRESIDING OFFICER FORMBY: Thank you, Mrs. Tanaka.
11 Mr. Matsubara, any questions for the witness?

12 MR. W. MATSUBARA: No questions for Ms. Tanaka.

13 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

14 MS. SUNAKODA: No questions.

15 PRESIDING OFFICER FORMBY: Mr. Yee?

16 MR. YEE: No questions, thank you.

17 PRESIDING OFFICER FORMBY: Commissioners, any
18 questions? Commissioner Montgomery.

19 COMMISSIONER MONTGOMERY: You said that many boaters
20 don't go there now. I presume it's because of the safety factor
21 and you changed the size of your boat because it was
22 inconvenient.

23 THE WITNESS: Yes.

24 COMMISSIONER MONTGOMERY: About how many boaters do
25 you think don't go there now?

1 THE WITNESS: That's a hard question. I know when I
2 was fishing at Ko Olina the parking lot was literally full.
3 Offhand I don't know how many people, how many stalls there is,
4 but the parking lot was full.

5 The one at the other side, not that many stalls. So I
6 would say pretty large amount. Lot of the people that went Ko
7 Olina there was small boats but also was the larger boats. I'm
8 saying 24, 26-footers plus.

9 COMMISSIONER MONTGOMERY: So what kinds of solutions
10 does your family see to this problem?

11 THE WITNESS: I'll leave that all up to my husband.
12 I'm smart (Laughter)

13 COMMISSIONER MONTGOMERY: Thank you.

14 PRESIDING OFFICER FORMBY: Commissioners, any further
15 questions? Thank you. Steven Tanaka. Good morning.

16 STEVEN TANAKA

17 Being first duly sworn or affirmed to tell the truth, was
18 examined and testified as follows:

19 PRESIDING OFFICER FORMBY: Can you state your full
20 name and your address for the record.

21 THE WITNESS: My name is Steven Tanaka. My address is
22 94-1159 Lumikula Street.

23 PRESIDING OFFICER FORMBY: Thank you. You can
24 proceed.

25 THE WITNESS: Thank you, Commission to hear us out.

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1 In regarding the Ko Olina ramp in comparison to the Phoenicians
2 ramp it's like night and day, the difference. Being a boat owner
3 from 1975 to present I've launched almost every boat, in fact
4 every boat ramp on the island of Oahu and almost every ramp on
5 the Big Island.

6 And I haven't come across a ramp where you climb down
7 a ladder to board your boat. This is the only ramp, the
8 Phoenicians ramp, where you climb down a ladder 6 feet to launch
9 a boat.

10 One of the agreements was that there would be, in
11 comparison it would be similar. The Phoenicians' ramp has, this
12 past last month there was three, I would say four available
13 parking stalls for the boat trailers. That was it. Because of
14 the Phoenicians had hauled out, and I don't know if we can look
15 at this picture. But anyway they had a navy barge in the parking
16 facility.

17 And also in many occasions the travel lift would
18 launch a boat and they would be in that launch ramp stall which
19 is travel lift stall for approximately two to three hours or
20 more. I mean it's impossible to utilize a ramp/haul-out facility
21 and a boat ramp. It's impossible to come to, you know, to even,
22 it's impossible.

23 As far as making improvements to the ramp then you
24 would face the fact of parking facilities because the high
25 percentage of the time the area is occupied by cars and trucks

1 | that the people fish there along the coastline there.

2 | Of course at night the homeless situation there,
3 | there's vans parked there, there's homeless people parked there.
4 | There's a lot of drinking there, et cetera.

5 | So, Commissioner Montgomery, I heard you say what
6 | would be the solution. I've been in construction from 1971. And
7 | from my knowledge I would say no possible way to make any
8 | improvements to that Phoenicians ramp to make it safe.

9 | Right now it's a real unsafe ramp to even use. To
10 | climb down the ladder to board a boat under surge and angle of
11 | the ramp where your truck nearly gets dipped in the ocean because
12 | of the slope of the ramp.

13 | So I find it, and, you know, and also from being a, Ko
14 | Olina being a open to public to Phoenicians being private.

15 | For me I don't mind paying the 125 if there was
16 | restroom facilities which was in operation which I haven't seen.
17 | And no security.

18 | I've been using that ramp when conditions are
19 | favorable. And in the past few months there are more on the
20 | unfavorable side. So I see a no possible way to even make any
21 | improvements to that. Just to summarize I feel the solution
22 | would be to reopen Ko Olina ramp would be the less costly in the
23 | future.

24 | PRESIDING OFFICER FORMBY: Okay. Thank you,
25 | Mr. Tanaka. The photographs that you're sharing with us today,

1 | those are not included in your written testimony, right?

2 | THE WITNESS: No.

3 | PRESIDING OFFICER FORMBY: So I just want you to
4 | realize they won't be part of the record but we did get a chance
5 | to look at them. Mr. Matsubara, did you have any questions for
6 | the witness?

7 | MR. W. MATSUBARA: No questions for the witness.

8 | PRESIDING OFFICER FORMBY: Ms. Sunakoda?

9 | MS. SUNAKODA: No questions.

10 | PRESIDING OFFICER FORMBY: Mr. Yee?

11 | MR. YEE: No questions, thank you.

12 | PRESIDING OFFICER FORMBY: Commissioners, any
13 | questions for Mr. Tanaka? Seeing none, thank you. Next is Roy
14 | Morioka. Good morning.

15 | ROY MORIOKA

16 | Being first duly sworn or affirmed to tell the truth, was
17 | examined and testified as follows:

18 | THE WITNESS: I do.

19 | PRESIDING OFFICER FORMBY: Please state your full name
20 | and your address.

21 | THE WITNESS: Roy N. Morioka. 1190A Iki Place 96821.

22 | PRESIDING OFFICER FORMBY: Thank you. You may
23 | proceed.

24 | THE WITNESS: Thank you. I'm a fisherman. My Ko
25 | Olina registration number is 1643. And in response to

1 Commissioner Montgomery's question and as noted by Mr. Watamura
2 it is not a ramp. It is a haul-out facility.

3 And to answer your question, sir, a haul-out facility
4 has high bunkers on each side. So it's above normal small, small
5 boats. You don't step off the small boat. You climb out of this
6 hole. Depending on the tide you may be six feet, you may be more
7 below to the top of that ramp. Okay.

8 Secondly, the Petitioner will probably try to make
9 adjustments and amendments to the existing facility. But hearing
10 just what I said it is not a ramp. It is a haul-out facility and
11 therein lies the basic problem. If you put bunkers inside then
12 you create issues for the haul-out people.

13 And you still don't address the issue of when the dry
14 dock is in use and access is required by a small boat. Whether
15 it be for emergency or whatever that access will not be there.

16 With regard to the \$125 fee. The state charges \$40
17 for the state access to the ramp, using of water, et cetera. I
18 understand Ko Olina had a fee of \$25 that they were thinking of
19 assessing but they waived that.

20 My belief is that being that this was a state
21 agreement that my \$40, that I paid for a state ramp should also
22 be included. And whatever or whoever pays or requires a fee
23 should be paid for by the state because I already paid access to
24 this facility.

25 This in my mind's eye comes down to an issue of truth,

1 fairness, beneficialness and goodwill. And in this particular
2 case truth has not really been shared. Fairness, as witnessed by
3 the testimony provided today, indicates that it has not been a
4 fair solution.

5 Beneficial? Yeah, it's been beneficial for the
6 developer and the Petitioner, not beneficial to the public, not
7 beneficial to the fishermen, boaters.

8 With regard to goodwill I think a lot of goodwill has
9 been lost and the goodwill of this Commission. We, the taxpayer,
10 depend on our elected officials and appointed officials such as
11 yourself to represent us in our needs and our concerns.

12 And it would be derelict for this Commission not to
13 remember that. I speak with emotion because this is something
14 very, very dear to me. Those are the basic issues. Rotary uses
15 them. Please be reminded of them: Truth, fairness, beneficial
16 and goodwill. I think that's the line, bottom line that I'd like
17 to leave with you this morning. Thank you.

18 PRESIDING OFFICER FORMBY: Thank you, Mr. Morioka.
19 Mr. Matsubara?

20 MR. W. MATSUBARA: No questions for Mr. Morioka.

21 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

22 MS. SUNAKODA: No questions.

23 PRESIDING OFFICER FORMBY: Mr. Yee?

24 MR. YEE: No questions.

25 PRESIDING OFFICER FORMBY: Commissioners, any

1 questions? Thank you for your testimony.

2 THE WITNESS: Thank you.

3 PRESIDING OFFICER FORMBY: Next on the list is Rodney
4 Ajifu.

5 RODNEY AGJIFU

6 Being first duly sworn or affirmed to tell the truth, was
7 examined and testified as follows:

8 THE WITNESS: I do.

9 PRESIDING OFFICER FORMBY: Full name and address.

10 THE WITNESS: My name is Rodney Ajifu. I live at
11 94-1036 Moale Street. That's in Waipahu.

12 PRESIDING OFFICER FORMBY: Thank you. You can
13 proceed.

14 THE WITNESS: I just want to make sure that Anthony
15 Ching -- or Chang, (sic) excuse me, did receive my letter that
16 was addressed to him on January the 25th, 2006.

17 PRESIDING OFFICER FORMBY: Just a second. We'll look
18 here see if we have it.

19 THE WITNESS: If not I have a copy for you that I
20 brought.

21 PRESIDING OFFICER FORMBY: Why don't we do this.
22 We'll look but we'll take the copy when you're through so we can
23 make sure if we don't have it we'll supplement the record.

24 THE WITNESS: Basically the comments in my letter that
25 addressed to Commissioner Chang (sic) reflects the same concerns

1 that Creighton Chang has addressed to your committee.

2 Rather than repeat, and I don't want to make you late
3 for your luncheon, I figure I'll just give you a copy and you
4 guys can review it. But I don't want to reiterate the same thing
5 that's been stated. But what Todd Apo has addressed to your
6 committee I disagree with his comments that were being made and
7 it addressed in my letter.

8 As far as notice being given to us we received no
9 notice. I speak also for my fellow fishermen. There're about
10 eight of 'em who also live in the Aiea, Pearl City and Leeward
11 area. They never did receive notice.

12 However, we all got notice from Ko Olina that the ramp
13 use was temporary and we couldn't launch there anymore.

14 As far as the safety issues and the 24 hours we
15 disagree with that.

16 PRESIDING OFFICER FORMBY: Okay. Mr. Matsubara, any
17 questions?

18 MR. W. MATSUBARA: No questions for Mr. Ajifu.

19 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

20 MS. SUNAKODA: No questions.

21 PRESIDING OFFICER FORMBY: Mr. Yee?

22 MR. YEE: No questions.

23 PRESIDING OFFICER FORMBY: Commissioners, any
24 questions? Just a comment. We don't have a luncheon. We just
25 have outerisland Commissioners with planes to catch.

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1 THE WITNESS: Oh, sorry about that.

2 PRESIDING OFFICER FORMBY: Appreciate your testimony.
3 Thank you very much. The last witness William Aila, Jr. Good
4 morning.

5 THE WITNESS: Aloha, Commissioners.

6 WILLIAM AILA

7 Being first duly sworn or affirmed to tell the truth, was
8 examined and testified as follows:

9 THE WITNESS: I do.

10 PRESIDING OFFICER FORMBY: Thanks. Full name and
11 address.

12 THE WITNESS: William Johnson Aila, Jr. 86-630
13 Lualualei Homestead Road, Waianae, Hawai'i.

14 PRESIDING OFFICER FORMBY: You may proceed.

15 THE WITNESS: I think the issue that's before you is
16 one of compliance and understanding what is public access. It's,
17 to me public access is real clear. It's whatever the state
18 offers and declares as public access. That means you have the
19 right to access facilities.

20 I want to correct some of the earlier speakers. The
21 state charges \$25 for a decal to use the ramps. The additional
22 moneys, the \$40 amount that was stated earlier, part of that is a
23 registration fee for the vessel, so \$25.

24 Why is that important? It's important because the
25 users at Ko Olina were charged a fee of \$25 to use that facility.

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1 They wanted to charge more initially. But through discussions
2 and through pointing out that, you know, their responsibility to
3 provide a public facilities coupled with what a public facility
4 was charging, this is where the \$25 fee came from.

5 Initially there was great disagreement on whether or
6 not Ko Olina was responsible for providing public access to its
7 ramp. Initially Ko Olina took the position in a public meeting
8 in Waianae that they did not have to provide public access in
9 which we pointed out the unilateral agreement and the sections of
10 the unilateral agreement that they purchased when purchasing the
11 development rights.

12 Subsequently to that there were discussions within the
13 community about what the responsibilities were that were assigned
14 to Ko Olina development as a successor to West Beach Estates and
15 the commitments that they made to the public. It was real clear
16 from the fishermen, it was real clear to me from the record that
17 public access meant public access.

18 However, Ko Olina took the stance that because in the
19 wording of the unilateral agreement 24-hour public access wasn't
20 put in there that as an interim while the discussions were
21 occurring, that access would be from sunrise to sunset. This was
22 the interim agreement that had occurred for quite a while.

23 Initially, Ko Olina also wanted to impose a condition
24 on public users using their ramp to provide insurance on their
25 vessels, which is something that's not required at a government

1 run facility. Yes, public -- yes, insurance on the vehicle that
2 you drive to bring the vessel down to the harbor is required and
3 subsequently Ko Olina made that a condition of their ramp.

4 So as you can see from the way that they sort of
5 reacted to the mayor's assertion that they were supposed to
6 provide a public facility, they took subsequent steps to do that.
7 There were still disagreement on 24 hours or not. That prompted
8 some fishermen coming forward to me and initiated the discussions
9 about another facility.

10 Ko Olina at that time tried several things. They
11 tried to give the -- they approached the state of Hawai'i to say
12 "We will put a certain amount of money into repairs at your
13 facility." I was approached and Waianae was in dire straits at
14 that time because of deterioration to our piers, but I was able
15 to convince my superiors that this sort of payment of this fee in
16 lieu of public access was not right; that Ko Olina still had the
17 commitment, although it did not make the commitment, it inherited
18 that commitment from the previous developer, to provide public
19 access to the launch ramp.

20 Subsequently, Ko Olina Resort then tried to get the
21 state Department of Transportation to allow it to provide some
22 funds for the Department of Transportation to open up a public
23 facility at Kalaeloa. Those discussions, I think, occurred for
24 about six months before finally the Department of Transportation
25 said no and gave a really strange reason why no.

1 They didn't want to mix small boats and big boats,
2 commercial boats together, which was a strange reason because Ko
3 Olina, the approval of the operation of Ko Olina was doing
4 precisely the same thing. I think it had more of a fact they
5 didn't want to operate a small launching facility.

6 Keeping in mind that there were other fishermen that
7 wanted 24-hour access and were willing to accept conditions under
8 which 365-day-a-year access was not going to be expected,
9 discussions continued with Ko Olina in trying achieve some sort
10 of agreement between the folks looking for 24 hours.

11 In all of the discussions that have occurred never
12 have I represented myself as representing all of the boaters. In
13 all of the discussions that have occurred it has been made clear
14 to me that whatever solution Ko Olina was going to come up with
15 it had to be equal to what was being closed at the resort. I
16 guess Todd Apo's was equal or better. I just said whatever you
17 offered at Ko Olina that's what's got to be offered. Okay.

18 The only option at that point because the Department
19 of Transportation was unwilling to create a facility, became this
20 option of trying to get Phoenicians' facility in an acceptable
21 state to be accepted by boaters for this 24-hour access.

22 Initially, Phoenicians required the same thing that Ko
23 Olina wanted to require at the beginning, insurance on vessels.
24 And that requirement was protested greatly and subsequently
25 dropped.

1 The requirement to pay the 125 fee, as Commissioner
2 Piltz stated earlier, is not a condition of a public facility in
3 which Ko Olina is responsible for providing because they are
4 profiting from the development and the rezoning of those lands
5 and the profits that come from the rezoning and the profits from
6 the rezoning, they were allowed to use public trust resources,
7 i.e. access to the ocean, submerged lands, the entrance to the
8 facility, in return for providing a public access point.

9 I was not there in 1983 when these things were being
10 discussed. But I have spoken with people who were there, who
11 were picketing, who were suing in court to make sure that public
12 access not only for the boat harbor but also for the lagoons and
13 also for the access to the reefs there to fish at night.

14 They all recall that this is what the intent was. The
15 intent was to provide public access to that area in return for,
16 and the agreement to the rezoning as demonstrated in the
17 unilateral agreement.

18 The unfortunate part is it wasn't clearly spelled out.
19 This would be all moot if they just inserted "24 hours" in front
20 of "public access." This is how we come to this point today.

21 The question is is the present state of the facility
22 in compliance with what is generally regarded or generally
23 accepted by the public as public access? You've heard clearly
24 from some of the fishermen that they feel that it is not.

25 Ko Olina is going to talk about steps that they want

1 to take or propose in order to make it more reasonable, make it
2 more safe. I still have a major problem, and this is no secret
3 to either side, both Ko Olina and both the fishermen, that
4 Phoenicians being able to charge \$125 make this whole process
5 moot because it's not in compliance with the unilateral agreement
6 and the ability to provide access via what's acceptable at a
7 public facility.

8 I have stated all along in my discussions with Ko
9 Olina and in my discussions with fishermen that if the ramp at
10 Phoenicians cannot be brought into compliance, then I think that
11 the option for Ko Olina is to put back their ramp.

12 Commissioner Montgomery asked about what it would
13 cost. What it would cost is the pouring the cement for the
14 approach to the launch ramp which is still there and the finger
15 pier which services that area that's still there.

16 My agreement via the letter or my concurrence via the
17 letter that you have, I'm not sure what exhibit stating that,
18 yes, we talked about this, yes when Phoenicians is fully brought
19 up to speed we think that Ko Olina can be closed was something
20 that occurred without Phoenicians Phoenicians being brought up to
21 speed. There were still questions about the \$125 fee.

22 There were still questions about how do we get access
23 down the ladder. Is there another way to do it? You'll see in
24 the presentation late on today, the addition or the proposed
25 addition of a catwalk which would make access better.

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1 You'll see the proposed response with changing the
2 level, actually changing the degree of approach to the launch
3 ramp to make it more convenient. If Ko Olina does this and you
4 accept that they're still in violation of the spirit of the
5 unilateral agreement in that Phoenicians is still wanting to
6 charge this \$125 fee.

7 That coupled with all the other concerns that you've
8 heard I don't see how you can come up with a reasonable
9 conclusion that they're in compliance with the original spirit of
10 the unilateral agreement.

11 So unless we can address all of the concerns, unless
12 we can get some concurrence on this removal of this \$125 fee and
13 get the safety concerns addressed, I don't see anything less than
14 a requirement for them to put either back the original launch
15 ramp or to build another launch ramp at another location within
16 that harbor footprint at Ko Olina.

17 This should come as no surprise to anyone because I've
18 been saying this for all these years. And I would be happy to
19 answer any questions.

20 PRESIDING OFFICER FORMBY: Thank you, Mr. Aila. Mr.
21 Matsubara, any questions?

22 MR. W. MATSUBARA: No questions for Mr. Aila.

23 PRESIDING OFFICER FORMBY: Ms. Sunakoda?

24 MS. SUNAKODA: No questions.

25 PRESIDING OFFICER FORMBY: Mr. Yee?

1 MR. YEE: I do have questions.

2 EXAMINATION

3 BY MR. YEE:

4 Q. I do have questions. Mr. Aila, first of all, thank
5 you for the historical discussion of what's been happening. I
6 take it from that you've been personally involved with the these
7 issues about Ko Olina and the boat ramp access personally?

8 A. Yes. From day one when Ko Olina took the position
9 that it did not have to provide public access.

10 Q. Have you been engaging in any discussions about what
11 improvements, putting aside the \$125 charge, what improvements
12 would be necessary to bring the Phoenicians ramp up to your
13 satisfaction?

14 A. Every time that Ko Olina has proposed to do something
15 I've put out inquiries amongst fishermen see what the response
16 was going to be. They have resulted in requests for action like
17 putting in a catwalk, like changing the slope of the launch ramp.
18 The answer is yes.

19 Q. So you're familiar with the proposal in the Ko Olina
20 supplement on their status report?

21 A. The proposal to change their slope of the ramp and to
22 add a catwalk?

23 Q. Yes.

24 A. Yes, I'm familiar with that.

25 Q. And the issue about the waves is a resolvable issue to

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1 | you?

2 | A. It's not a resolvable issue, but the folks who brought
3 | the 24-hour access to my attention earlier in the discussions
4 | related to me that they were okay with not having access 365 days
5 | a year.

6 | Being a harbor agent at the Waianae Boat Harbor I
7 | realized that even at my facility there is not access to that
8 | facility 365 days a year for similar reasons because of the
9 | surge. Now, we're hearing concerns from other fishermen which I
10 | think have been brought to my attention in the last couple of
11 | years.

12 | Q. At least a couple of the witnesses characterized the
13 | existing Phoenicians ramp as a haul-out facility. Is that an
14 | accurate statement?

15 | A. That's an accurate statement.

16 | Q. Do you know whether there is another facility that
17 | can be used as a haul-out facility? Or do you need a haul-out
18 | facility in this area?

19 | A. I think it's a question if the haul-out facility came
20 | first and there was an attempt to incorporate a launch ramp into
21 | that facility to satisfy the concerns and the needs of fishermen.

22 | Q. I guess my question is if they make the changes as
23 | proposed and if you were in agreement that it would satisfy the
24 | needs of the small boater fishermen, is there another problem
25 | with, or can you use that same facility for haul-out purposes?

1 A. The answer to that question based upon what I know now
2 from other fishermen is probably not. At the time that I was in
3 the discussions what's going on there were fishermen who felt it
4 would be an acceptable solution.

5 Q. Is there another alternative for those who need to use
6 that area as a haul-out facility. Do you know?

7 A. There are other haul-out facilities on the island of
8 Oahu, one at Sand Island and one at the Ala Wai Boat Harbor as
9 well as one at Kewalo.

10 Q. Is the change in location significant? That is can
11 you just go to any of the facilities?

12 A. I think it's a matter of competition, price. I mean
13 if you're a boater on the west coast, if you're a boater at Ko
14 Olina it's more convenient for you to go to a haul-out facility
15 closest to you because that reduces your cost.

16 So it depends on which boater you ask and where
17 they're at.

18 MR. YEE: Okay. No further questions.

19 PRESIDING OFFICER FORMBY: Thank you, Mr. Yee.
20 Commissioners, questions? Commissioner Kanuha.

21 COMMISSIONER KANUHA: Mr. Aila, you seem to indicate
22 that beside the supposedly temporary boat ramp and the haul-out
23 facilities that there could be another, there's another area
24 within the project a ramp could be used?

25 THE WITNESS: Early in the discussion with Ko Olina

1 | there was actually discussion about building another launch ramp
2 | towards the back of its current marina. And some of the
3 | discussions that occurred, most recent was because of the
4 | discussions that occurred about the, everything was in flux.

5 | If Kalaeloa at Phoenicians was not an option could
6 | they move the launch ramp from where its present position is to
7 | the back of the facility at Ko Olina. So these discussions were
8 | all occurring, you know, in relation to what was happening.

9 | The reason given to me why the approach, not the
10 | launch ramp itself, but the approach to the launch ramp at Ko
11 | Olina was removed was this was an area on or about the second or
12 | third design of the aquarium was going to be used as the
13 | aquarium. And that Phoenicians facility, according to
14 | Phoenicians, was ready to go. That's what I was told.
15 | Phoenicians was ready to go and they needed the launch ramp area
16 | for the aquarium.

17 | Subsequently, we have learned that the aquarium is not
18 | going to be built. So if the aquarium is not going to be built
19 | and you decide that the requirements for public access have not
20 | been met, the simplest thing for and the most inexpensive thing
21 | for Ko Olina is to simply spend probably \$200,000 to pour the
22 | cement and put the access back in there.

23 | The interesting thing I think you have to consider is
24 | the additional changes to the ramp, at or the haul-out facility
25 | as you described it at Kalaeloa, Phoenicians is going to cost

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1 about the same amount.

2 So the question I think for the Land Commission, is
3 and what you're tasked with is, enforcing the conditions of the
4 unilateral agreement. And the main condition of the unilateral
5 agreement being providing public access to a ramp.

6 COMMISSIONER KANUHA: Thank you.

7 PRESIDING OFFICER FORMBY: Commissioner Im.

8 COMMISSIONER IM: Thank you for your testimony. I
9 thought it was very good and very informative. Other than, and
10 I'm not saying I'm advocating this position, I just want to hear
11 what you have to say. Other than providing access through Ko
12 Olina, if Ko Olina is able to provide Phoenicians ramp, addition
13 to that, maybe some other kind of public access, obviously the
14 Phoenicians ramp has to be similar or at least equal in facility.

15 Was that kind of discussion had with your fishermen
16 and people who are interested in this issue?

17 THE WITNESS: The discussion that occurred with the
18 fishermen that brought the problem to me initially was that there
19 was a problem with the 24-hour access. We didn't -- we agreed
20 temporarily to this interim measure of sunrise to sunset with the
21 intent to go back and revisit that.

22 Subsequently a proposal was given to provide 24-hour
23 access at an equal level of service. And then that began this
24 three-year discussion of where and how this could occur. And
25 that brings us to today, an attempt to provide something similar

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1 to Ko Olina but at Phoenicians, obviously with problems, because
2 there is another group of fishermen here who have some concerns
3 about safety, concerns about not having the 365-day a year
4 access, and some bigger concerns about having to comply with
5 additional conditions which is normally not required of a public,
6 of a fisherman using a public ramp, this \$125 a year additional
7 fee.

8 And there's no, there's no, there's no place in
9 writing that Phoenicians can't come back and institute additional
10 conditions such as the requirement of insurance on the vessels.

11 So in my mind, as I testified, say it again, we
12 haven't reached a point where we are at that equal level. My
13 understanding is that Phoenicians and Ko Olina have been unable
14 to resolve this \$125 a year issue.

15 It's Ko Olina's responsibility in my mind to resolve
16 that because it is the one that is on the hook for providing
17 public access. And should they not be able to do that they're
18 responsible for providing public access.

19 One of the options that are available is putting the
20 ramp back in, moving the ramp to another facility. I have said
21 this consistently throughout the whole five-year process, or
22 ordeal, however you want to describe it. But this is what's been
23 consistently said.

24 COMMISSIONER IM: How many people would be subjected
25 to this 125 annual fee if it was imposed? I guess the question

1 is how many people using the ramp, how many people used to use
2 the ramp at Ko Olina?

3 THE WITNESS: I don't know that that question is
4 actually relevant because I think the issue before us is public
5 access.

6 COMMISSIONER IM: No, I just want to know what kind
7 of figures.

8 THE WITNESS: My understanding the figure's, I think
9 someplace in this docket is 72 people have used the ramp at one
10 time or another.

11 COMMISSIONER IM: Seventy-two people.

12 THE WITNESS: Correct.

13 COMMISSIONER IM: Seventy-two people don't seem like,
14 I mean it's not like they use it every day. So on a given day
15 how many people will be using, how many people will use the ramp
16 at Ko Olina? Ten, 15?

17 THE WITNESS: That I don't know. But we'll never know
18 the answer because it's not comparable right now. I mean as
19 people get more used to, say people got more used to Ko Olina
20 you'd have a higher usage. And the conditions are acceptable
21 then you have an increase in usage.

22 COMMISSIONER IM: I'm just curios, maybe I should ask
23 this to Petitioner, but if the usage is not that great I don't
24 see why allowing the usage to continue would be that big of a
25 deal. I mean if the usage was so great and it conflicts with

1 | their development plans and all that, I guess we could discuss
2 | that. But 72 people would pay annual fee, that doesn't seem like
3 | it's a large number.

4 | THE WITNESS: I'm sorry. I thought you were referring
5 | to Phoenicians side.

6 | COMMISSIONER IM: No, no, the Ko Olina.

7 | THE WITNESS: There's a roster in your submittal, I
8 | think it's like three pages long, of people who have signed up to
9 | use Ko Olina. Ko Olina in itself was still limited by the number
10 | of parking. So when parking became full there was a notice put
11 | out to the guard at the front saying, you know, "We can't take
12 | any more boats." They kept track of how many boats were leaving
13 | and how many would be able to come in.

14 | COMMISSIONER IM: Well, I'd just like to make a
15 | comment that I think what makes actually the state of Hawai'i so
16 | unique and wonderful is the fact that its shores are
17 | unrestricted. I mean anybody could go there. The public could
18 | go there.

19 | The reason why this Commission, when it considers
20 | reclassification of properties along the shoreline to provide
21 | public access is to make sure those accesses can continue. If
22 | there never was access now it provides access.

23 | So the public access issue is very important. I just
24 | never knew that public access would go to the next level which is
25 | the boat ramp. If that was what the community and this

1 Commission in the past was able to negotiate, or not negotiate,
2 impose on as a condition to the development, you know, obviously
3 that should be, the Petitioner should be complying with that
4 condition.

5 THE WITNESS: Commissioner, this is not a unique
6 situation. The Ocean Pointe Development at Haseko in 'Ewa Beach
7 has a very similar agreement to provide public access in return
8 for the rezoning of those properties. So this is not a unique
9 situation.

10 COMMISSIONER IM: Thank you.

11 PRESIDING OFFICER FORMBY: Commissioner Piltz.

12 COMMISSIONER PILTZ: Mr. Aila, I can see the
13 frustration that you and your, the Waianae fishermen's group is
14 upset. I just looked at a letter that's dated June 1st, 2000.
15 It's listed as Exhibit No. 13.

16 And No. 6 -- it goes down and it shows, in fact, it
17 states earlier that, "We have met with Mr. William Aila,
18 representative of the Waianae fishermen and have agreed to modify
19 the boat ramp access plan as follows:" No. 6 it says, "At such
20 time that the substitute boat ramp is constructed and open to the
21 public, Ko Olina Companies shall have the right to permanently
22 close its ramp or limit its use to the resort guests."

23 It seems like that particular item has not come about.
24 They have not constructed an alternative site. And then if you
25 go back into their master plan, a public access master plan which

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1 is item No. 9, and it goes over to item IX "Special requirements
2 for users of the marina."

3 It also states that "Ko Olina Marina leases an access
4 easement over the deep draft channel for Kalaeloa Barbers Point
5 Harbor from the state of Hawai'i. Therefore the following
6 procedures, state rules and coast regulations must be observed by
7 all vessels." And it goes on to tell you what they require from
8 you. But then this is part of the general access plan.
9 Apparently the Petitioner, from what I can see so far, is not
10 living up to what it said.

11 THE WITNESS: I'm glad you brought this up. Because
12 in the discussions with Ko Olina, I mean this is other than the
13 Land Use Commission making the determination that they have not
14 fulfilled their public access agreements, this is the next step
15 that we're planning to take which is to -- this is no secret to
16 Ko Olina.

17 This is no secret to Land Board members. I've brought
18 it up with them that should you find them in compliance the
19 Department of Transportation through the Land Board surely cannot
20 find them in compliance, if you're changing the conditions of the
21 original public access.

22 COMMISSIONER PILTZ: Well, there's also in the dockets
23 here or documentation a letter from DOT stating to Phoenicians
24 that they should build or construct a safe facility, not just use
25 the existing facility. So, you know, I see your frustration and

1 the frustration of the other fishermen. There's a lot of
2 documentation. And I haven't been able to get all of it. But
3 what I see here tells me that our Petitioner here and/or the
4 Phoenicians have not lived up to what the Petitioner has wanted
5 to do for the fishermen.

6 THE WITNESS: I would agree with you at this moment
7 that at this moment in time they have not.

8 COMMISSIONER PILTZ: Okay. Well, you know where I'm
9 coming from.

10 PRESIDING OFFICER FORMBY: Any other questions from
11 Commissioners? I have just, I guess, a little bit of a comment
12 to follow up on that. And I'm not prejudging this case because
13 there's to judge. But it seems to me that if there's going to be
14 a solution to this the best solution is by agreement.

15 Because what you said is very true. And that is the
16 finding of fact that's in the order was not written in a way that
17 the hands of Ko Olina are tied. They don't have to do going 24
18 hours. They may be able to require insurance on vessels.

19 In other words, and there's a Hawaii Supreme Court
20 case out recently that says if you drafted a condition in such a
21 way that it's not ambiguous and in hindsight you wish you had put
22 other things into it and been more specific, it's too late
23 because it speaks for itself.

24 And it seems to me that we can, you know, if it ever
25 came to this we could say, yes, put the boat ramp back. But

1 you're going to have the same problem you had three years ago and
2 that's people are going to be complaining that it doesn't really
3 meet the needs of the community.

4 So it seems to me it's something, and I think you've
5 done a great job and the other boaters that are here have done a
6 remarkable job. It's unfortunate it's taken this long. But the
7 best resolution to this is by agreement.

8 Because if you come back to us and we have to make a
9 decision one way or the other you may not be happy. So that's
10 just my take on it. I think you read about the finding of fact
11 being the way it is, which is non-specific, is right on.

12 THE WITNESS: Well, I would only add just because the
13 letter of the law is not clear the spirit of the law certainly is
14 clear in this case.

15 PRESIDING OFFICER FORMBY: No, I understand and I
16 appreciate your testimony. Are there any other public witnesses
17 that want to give testimony this morning? If not I appreciate
18 all of you coming. It's really nice to see the public come out
19 and let the Commission know how you feel.

20 We really appreciate it. We know you have to take
21 time out of your day to do that. Thank you for coming. We like
22 that.

23 Mr. Matsubara, do you know how long your presentation
24 is going to take before I make a decision about a break?

25 MR. W. MATSUBARA: Well, there's two matters going to

1 | be on the record. The first matter I'm hoping to be extremely
2 | quick. Then I was going to hand it over to Ben Matsubara to
3 | continue his, maybe 20, 40 minutes.

4 | MR. MATSUBARA: Twenty minutes.

5 | PRESIDING OFFICER FORMBY: Okay. So let's do this.
6 | Let's take a break. Then we're going to do on the motion to
7 | amend and we'll do the presentation. So take a five-minute
8 | break. Thank you.

9 | (Recess was held. 11:40 Gavel)

10 | PRESIDING OFFICER FORMBY: (Gavel 11:45) Thank you.
11 | We're going to go back on the record. Mr. Matsubara, would you
12 | please make your presentation on the motion to amend caption.

13 | MR. W. MATSUBARA: Thank you, Chair. The motion to
14 | amend the caption is to properly reflect the real party in
15 | interest, Ko Olina Development. Prior West Beach Estates is no
16 | longer in the picture and no longer viable. They transferred
17 | their, conveyed their interest in their property to Ko Olina
18 | Development. Therefore we just want to clarify the record.

19 | PRESIDING OFFICER FORMBY: Does the city and county
20 | have a position?

21 | MS. SUNAKODA: It appears to be a housekeeping measure
22 | for consistency purposes. The city doesn't have an objection to
23 | the proposed motion.

24 | PRESIDING OFFICER FORMBY: Thank you, Ms. Sunakoda.
25 | Mr. Yee, does the state have a position?

1 MR. YEE: No objection.

2 PRESIDING OFFICER FORMBY: Okay. Commissioners, any
3 questions for Mr. Matsubara? Seeing none, Commissioners, what's
4 your pleasure? Commissioner Piltz.

5 (Commissioner Im no longer present)

6 COMMISSIONER PILTZ: Mr. Chairman, with the motion to
7 amend the caption from West Beach to Ko Olina I hereby make a
8 motion that we accept.

9 COMMISSIONER KANUHA: Second.

10 PRESIDING OFFICER FORMBY: Motion made by Commissioner
11 Piltz and seconded by Commissioner Kanuha. Commissioners, any
12 discussion? Seeing none, why don't we just hold on a couple
13 minutes and let Commissioner Im return and then we'll take a
14 vote.

15 (Commissioner Im now present.)

16 Okay. Commissioner Im, just so you know there's been
17 a motion made by Commissioner Piltz and seconded by Commissioner
18 Kanuha to grant the motion for order to amend the caption. So
19 we're going to have -- do you have any discussion, Commissioner
20 Im? (Commissioner Im shaking head from side to side)

21 The executive officer will take a roll call vote.

22 MR. CHING: Commissioners, we have a motion to approve
23 amendment to the caption in this docket.

24 On that motion, Commissioner Piltz?

25 COMMISSIONER PILTZ: Yes.

1 MR. CHING: Commissioner Kanuha?

2 COMMISSIONER KANUHA: Yes.

3 MR. CHING: Commission Contrades?

4 COMMISSIONER CONTRADES: Yes.

5 MR. CHING: Commissioner Montgomery?

6 COMMISSIONER MONTGOMERY: Aye.

7 MR. CHING: Commissioner Im?

8 COMMISSIONER IM: Yes.

9 MR. CHING: Chair Formby?

10 PRESIDING OFFICER FORMBY: Yes.

11 MR. CHING: Your motion passes with a vote of 6 for
12 the motion and 3 absent.

13 PRESIDING OFFICER FORMBY: Okay. Having attended to
14 the motion to amend the caption we will allow Mr. Matsubara to
15 make his status report on the efforts of the Petitioner to comply
16 with conditions of approval ordered by this Commission. This is
17 like a tag team wrestling here.

18 MR. MATSUBARA: It's because of my age I cannot, I
19 don't have the endurance that I once used to. I'm the oldest of
20 the Three Bens, by the way. (Laughter).

21 PRESIDING OFFICER FORMBY: Okay, Mr. Matsubara, Sr.
22 you may proceed. (Laughter)

23 MR. MATSUBARA: Thank you very much. In regard to the
24 continuation of the status report, members of the Commission, we
25 filed a supplement to the status report that was annually filed

1 earlier with you. We tried to file it early enough on
2 January 22nd so at least, hopefully, to give you a chance to look
3 at it.

4 In general terms it's divided into three sections.
5 The first section gets into the historical background on how it
6 came about that the boat launch was moved from the marina to
7 Kalaeloa.

8 The second portion of the supplement talks about
9 planned improvements to the Kalaeloa site which, hopefully, will
10 make the ramp more user friendly.

11 The third section covers -- we went through the
12 transcript of the last status hearing that was conducted and
13 tried to provide the information that was asked by various
14 Commissioners in regards to things they felt was not included in
15 the prior written status report. The third section of this
16 supplement sort of covers those conditions in general terms.

17 I recognize the time constraints. Let me start on the
18 background first as to how it came about to go to Kalaeloa. The
19 Land Use Commission decision and order in this docket was
20 originally issued in '85. I'm dealing with really old dockets
21 today. The last one was '94. This is '85.

22 The original owner, West Beach Estates, built the ramp
23 in 1988. It was 10 years before Ko Olina Resorts acquired it.
24 We attempted to get cost figures, what it cost to build it in
25 relation to Commissioner Piltz' original question. We were

1 | unable to find records in that regard. But it was built in 1988
2 | but it was not open to the public because the marina wasn't
3 | completed, there was construction going on, site clearing, so on,
4 | so forth. Although it was built in '88 it was not in open use.

5 | Ko Olina Development acquired the property in August
6 | of '98. The maintenance, dredging began in May of '99 and the
7 | construction of the marina began in July of '99.

8 | Now, in August of '99 we filed a preliminary access
9 | plan and rules for the boat ramp with the city and county that
10 | was Department of Planning and Permitting. That's pursuant to
11 | condition 4 of the Land Use Commission's decision and order which
12 | required us, "Petitioner shall dedicate to the city and county
13 | public easement for shoreline access to the beach and lagoon
14 | areas to develop on the property from all internal roadways."

15 | So to follow up. After our Land Use Commission
16 | approval we went to the city for additional entitlements we did,
17 | part of which, pursuant to your directive, was to submit a public
18 | access plan which met the approval because it was required to be
19 | dedicated to the city and county and, therefore, it required us
20 | to provide the access subject to their specification and
21 | approval.

22 | That document is exhibit tab No. 2. If you looked at
23 | it you would see that in that document it was clearly established
24 | that under the preliminary access plan access would be from
25 | sunrise to sunset not only for the beach area and the park but

1 also for the boat launch.

2 In October of that year, two months after we submitted
3 to the city, we submitted the same information to the Department
4 of Transportation state of Hawai'i Harbors. That was submitted
5 to them.

6 Then we began to go out in the community. On
7 December 7, 1999 we had a meeting with the Waianae Coast
8 Neighborhood Board meeting. It was at that meeting that we
9 initially presented discussions of the boat launch in the marina
10 with a sunrise to sunset accessibility and other information
11 relating to the fees and insurance that would be required.

12 It was at that meeting that Mr. Aila indicated that he
13 was strongly opposed to the sunrise to sunset. He and the kupuna
14 would object to that and fight that. You'll notice that our
15 plans initially are all being submitted with the boat launch and
16 the marina sunrise to sunset.

17 We had an update meeting with the Waianae Neighborhood
18 Board. And the meeting and what was discussed there is contained
19 in an affidavit. It's the last document we have in the
20 supplemental report, Affidavit of Ken Williams. We also provided
21 a copy of what we filed with Mr. Aila before we filed it to be
22 sure we weren't misstating anything.

23 We went back again to the Waianae Neighborhood Board
24 on March 9, 2000 to again talk about where we were at and what we
25 were doing. At this time the marina boat lunch, the boat launch

1 was still in the resort. Still sunrise to sunset.

2 In March 28th, 2000, that's Exhibit 7, Williams and
3 his wife Melba wrote a letter to Mayor Harris complaining about
4 the absence of 24-hour access, the insurance requirement and the
5 fees.

6 A month later we filed our PAMP Public Access Master
7 Plan with the city and county. That final document we filed
8 still has the boat launch in the marina. And sunrise to sunset.
9 However, about a week after we filed it with the city based on
10 Mr. and Mrs. Aila's letter to the mayor, the mayor on April 19th,
11 2000 schedules a meeting which he was present and I have attached
12 as tab 10 all the people who were present at that meeting.

13 You have Mayor Harris, Managing Director Ben Lee.
14 Both of them don't sign the sign-in sheet but the other parties
15 indicated they were there. William Aila was there. Department
16 of Planning and Permitting, DLNR, that's division of boating and
17 ocean recreation was there, DOT Harbors were there. Three people
18 from Harbors was there.

19 The long and the short of it was that at the meeting
20 it was strongly encouraged that you find a 24-hour site for
21 accessibility. So although we had submitted our PAMP with the
22 launch still in the marina, I think at that meeting it was quite
23 firmly directed to us, at least from the people who were involved
24 from a governmental basis, based on the public comments that had
25 arisen at the time -- you said when we're going through the

1 entitlement process we're going to the neighborhood boards.
2 We're making a presentation. Their comments are given for and
3 against. The ones that are against we try to look at, try to
4 address. That's the only thing we can at that point in time
5 address.

6 So after this meeting with the mayor, DOT, DLNR, DPP
7 we start looking for another site. And from the date of that
8 meeting, April 19th to June 1st, a period of about two and a half
9 months, is when that search for a solution occurred.

10 During that two month period while we're looking for a
11 solution you'll find at tab 11 we have a letter of support from
12 Maka -- well, a letter from Makakilo, Kapolei, Honokai Hale
13 Neighborhood Boards that supported the sunrise to sunset and
14 didn't want us to extend the hours for the launch in the marina.

15 On May 5, that's Exhibit 12, DPP partially approves
16 our PAMP which is th Public Area Master Plan for the access to
17 the beach, the lagoons, et cetera, and so on, except for what we
18 had as the boat launch, the boat launch in the marina sunrise to
19 sunset. That was not approved. It was a sort of put on the
20 side. Everything else as far as parking with paths, access to
21 the beach and lagoons, that was approved.

22 On June 1st, that's tab 13, we sent a letter basically
23 following discussions as to six modifications that would be
24 entertained for purposes of trying to get the boat launch aspect
25 of the Public Access Master Plan approved. Those six

1 modifications, which Commissioner Piltz was referring to, is
2 contained in that June 1st, 2000 letter which is tab 13. And
3 one, the first condition was that we would attempt to construct a
4 public boat launch ramp in Kalaeloa Harbor.

5 On June 15th, 2000 DPP accepted those six
6 modifications. Phoenicians requested of DOT the Harbors Division
7 the right to use their facility as a public boat launch ramp.

8 On September 18th, 2002, tab 15, DOT approved that but
9 it was subject to DOT's review and approval of the proposed plans
10 for the ramp.

11 On October 28th, 2002, just about a month later, DOT
12 confirms that Ko Olina had satisfied the obligation to build a
13 public boat launch ramp and is therefore released. That's tab
14 16.

15 On February 11, 2004 -- we're jumping ahead two years,
16 there was a site visit at the Kalaeloa site between Jeff Stone,
17 William Aila and Fred Anawati, the owner and president of
18 Phoenicians. A discussion, a letter summarizing the discussions
19 that day occurred is included as tab 18, talked about Kalaeloa
20 now having 24-hour access, 12 parking stalls, a tieup area,
21 bumpers, ladders and the closure of the boat launch in the
22 marina.

23 Mr. Aila responded to this letter. His response to
24 Mr. Stone is attached as Exhibit 19.

25 On September 8th, 2004 we notified DPP we're

1 confirming the construction of the substitute ramp and the marina
2 ramp was being closed.

3 The agreement for use of facility was negotiated
4 between Phoenicians and Ko Olina and that's referenced in
5 Exhibit 21. That was executed September 30th, 2004. And it
6 relates to building that boat ramp for \$450,150 of which \$342,575
7 have been paid. A balance of 112,575 remains to be paid. That's
8 being worked out at this time.

9 On June 7th, 2005 the state indicated that the use of
10 the subject property for a boat ramp would be permitted since the
11 construction and operational procedures have been completed and
12 were acceptable to the state Dot Harbors.

13 Then I have attached to Harbors lease there's some
14 concerns and questions for the harbor lease, it's 30-year lease,
15 25 years remaining. We have included an e-mail from DOT
16 indicating that the Phoenicians lease is in good standing as of
17 November 2006.

18 And that's sort of how it came about that the original
19 plans to have the boat launch in the marina moved toward Kalaeloa
20 based on what happened within the community, with the regulators,
21 the multiple regulators that were involved.

22 And I guess you need to understand, I mean we've never
23 considered William as a spokesman for everybody. But he was
24 organized in his protest. He was organized in raising his
25 concerns. And he was organized in following up on it in terms of

1 making sure that people who had the authority to make decisions
2 made the decisions. But that was the voice out there.

3 There may have been other concerns. But please
4 understand if it doesn't come up during the neighborhood board
5 meetings or the other public hearings that are scheduled at times
6 it's difficult to address certain concerns which are not raised.

7 So in terms of talking about working out an
8 arrangement, we thought at this time we were working out an
9 arrangement which would address the concerns that were being
10 raised with us as far as 24-hour access as being very important.
11 So that was an effort at that time to try and work it that way.

12 So that ends Section 1. I can move to the proposed
13 improvements if there are any questions. You've been out there
14 for the site visit. I think we all have and I think we all
15 believe that the facility can be made more user friendly.

16 I can understand the concerns and the description of
17 the -- I can understand the concerns of the facility being more
18 of a haul-out than a boat launch.

19 Just from a perspective this is Kalaeloa. This is the
20 marina boat launch. They both allow launching into the harbor,
21 of course, from different sides, basically in the same community.
22 This is the parking area you went through. This is the parking
23 lot that the trailers used to park there. One of the safety
24 concerns we had is all the beach access to lagoon 4 is here. The
25 trailers and the trucks hauling them go through this area.

1 And one of the safety concerns that were raised is
2 there are a lot more children going to the beach in the lagoons.
3 So you had a lot more children traffic there. Some of the safety
4 concerns related to the trailers passing through that area.

5 PRESIDING OFFICER FORMBY: Mr. Matsubara, can I just
6 clarify that the, I guess the charts that you're using today are
7 not in the evidence before us, that's just for demonstrative
8 purposes.

9 MR. MATSUBARA: That chart was included in the
10 PowerPoint that was presented the last time there was a status
11 meeting. I don't know whether there was an exhibit number
12 attached. I know a hard copy and the PowerPoint was submitted.

13 PRESIDING OFFICER FORMBY: Okay.

14 MR. MATSUBARA: So this is in the PowerPoint.

15 My next exhibit is an exhibit that I've included in
16 our submittal. And that would be under tab 30, lower right-hand
17 corner you would be sheet A-2. Basically sheet A-2, which is 3
18 of 4, reflects the major changes being proposed. And they
19 relate to the slope.

20 Earlier you heard testimony relating to fishermen
21 being concerned that the slope was too shallow. The truck had to
22 reverse all the way down into the water and it was difficult
23 coming up.

24 In tab 30 there's also you'll find an exhibit relating
25 to the schematic drawing or the construction drawings that will

1 be undertaken to lower or improve the slope of the ramp.
2 Currently the slope's about a 12 percent. We're talking about if
3 you look at that going down to 15 and 18 degrees at the end.

4 So that basically would add a 2 feet depth to the ramp
5 at the end. It is intended to decrease the distance that the
6 trucks have to reverse the trailer down the ramp. It is hoped
7 that because the ramp is deeper it will help with the algae
8 problem because the shallow slope of the ramp contributed to the
9 water being warmer and the algae growing. With it being more
10 angled it is hoped and understood that the algae would be less of
11 a problem. So that relates to the slope.

12 We have the working drawings here attached under tab
13 30 before the picture where we have superimposed the picture of
14 the walkway that we hope will alleviate the necessity of boarding
15 the boat from ladders.

16 You will see that the ramp will be approximately
17 50 feet. The width of the ramp at the top will be 4 feet
18 8 inches wide. The marina ramp is 3 feet wide. This is a lot
19 wider. It's 4 feet 8 inches. There's a little, I have a hard
20 time with distances but this pink strip we have here that's
21 4 feet 8 inches so I could understand how wide it was.

22 You'll notice here that there is a stain that shows
23 the high-water mark. So the height of this walkway should be
24 3 feet and a quarter inch above the mean water mark which is
25 similar to what it was at the marina.

1 PRESIDING OFFICER FORMBY: Mr. Matsubara, can I ask
2 you a question?

3 MR. MATSUBARA: Sure.

4 PRESIDING OFFICER FORMBY: I'm looking at A2, I'm
5 thinking it's the same one that's the one up there. But the one
6 up there appears to have some sort of bumper guard at the edge.
7 And so is it slightly different than the one we have here?

8 MR. MATSUBARA: I'm sorry, yes. When we got this I
9 know they had told us they were going to put up bumper guards and
10 cleats. I asked where are they. I guess the picture they made
11 for us as an exhibit does have the cleats. I can make smaller
12 copies and submit it.

13 PRESIDING OFFICER FORMBY: It's okay I guess if you
14 just can point out the difference.

15 MR. MATSUBARA: The difference in the photograph is
16 the brown strip on the top of the walkway which is the tow rail
17 and the cleats that will be attached there.

18 So that's the description of the two major
19 construction type changes that will be undertaken. The cost runs
20 about 200 to 250,000. We have not been able, although we are
21 attempting to address the \$125 fee that Phoenicians are charging
22 the users, we have not been able to work out anything in that
23 regard at this time. So at this point it's still at that rate.

24 I have a description of other -- the third part talks
25 about responses, other conditions where questions were raised in

1 the last report, condition 1, 2 but they're listed in the
2 supplement I submitted. If you wanted me to go over it briefly I
3 can do that. If you've read it and are totally familiar with it
4 then I'll forego continuing to go on.

5 PRESIDING OFFICER FORMBY: Okay. You're asking
6 whether or not you should go on to the third part?

7 MR. MATSUBARA: Correct.

8 PRESIDING OFFICER FORMBY: I'd say how long are you
9 looking at for that, going to that part? If you feel the need to
10 do it then go ahead.

11 MR. MATSUBARA: I can do it quickly.

12 PRESIDING OFFICER FORMBY: Yeah.

13 MR. MATSUBARA: On the condition 1 that relates to low
14 and moderate income housing number that was done 136 multi-family
15 townhouses at West Loch Fairway, 256 multi-family townhouses at
16 Kulalani Village and Paiko Gardens total 392 at 80 percent of
17 moderate income and below.

18 On the condition 2 relating to offsite infrastructure
19 it's all been completed.

20 Condition 3 sinkholes there were concerns relating to
21 what happens to the fossils we removed. We have included the
22 letter, Commissioner Montgomery, 32 which is Exhibit from PRHI
23 which says that it's being curated at their facilities. There
24 was a question of what happened to them.

25 Condition 8 relates to the hotels. We have the number

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1 of rooms a Ihilani, 390 and 302 rooms so far built as far as the
2 Marriott timeshare. The full intent is to comply with condition
3 8 as it relates to the number of units and the percentage for
4 full hotel use.

5 There was a question asked on condition 9 which
6 related to noise that basically reflected that everything over 60
7 LDN would have sound attenuation. But you were curious how much
8 of the development fell within that. We have included the
9 Darby/Ebesu letter as Exhibit 33 which basically shows that our
10 development falls in the 50 to 55 LDN, doesn't get up to the 60.

11 That covers that. The only other comment I would make
12 in closing was that we feel that they may not be literal, literal
13 compliance in terms -- let me back up a little bit. Finding of
14 fact 33 reflects a finding of fact regarding the building of a
15 boat launch, construction of a public boat launch that's related
16 to the marina.

17 There is no condition in the decision and order
18 relating to a boat launch. But I'm not saying that there's no, I
19 just want to say that the public boat launch is not referenced
20 specifically as a singular condition. But you do have Condition
21 13 which reflects that "Petitioner shall substantially comply
22 with the representations made."

23 We're going on that basis in saying that we believe we
24 have substantially complied with what was intended by a public
25 boat launch.

1 I know there's been differences of opinion in regard
2 to whether the fees and everything else make it the same. But in
3 terms of its location, in terms of an effort to make it more user
4 friendly, in terms of what led to that, it wasn't some decision
5 done in a back room by the Petitioner on his own to switch it
6 over there.

7 I think the record reflects that there were legitimate
8 concerns raised by members of the community which were attempted
9 to be addressed. We attempted to address the regulators'
10 concerns. So we believe to the extent that how we got to be
11 where we are and what we've done which we intend to further
12 improve that there's basically been substantial compliance with
13 the requirements of the decision and order. Thank you.

14 PRESIDING OFFICER FORMBY: Thank you. Does the city
15 and county have a position or wish to express any comments?

16 MS. SUNAKODA: At this time with respect to condition
17 LUC No. 13 the Department's position is that the developer is in
18 compliance with that particular condition.

19 PRESIDING OFFICER FORMBY: Okay. Thank you. Mr. Yee,
20 does the state of Hawai'i wish to take a position or make any
21 comments?

22 MR. YEE: Let me start with noting that in the agenda
23 I notice it says "status report and action if appropriate." To
24 be clear based upon the agenda certainly this Commission can
25 express without deciding concerns about issues, it can, such as

1 it has, regarding the encouragement to further public discussion
2 between Ko Olina and the various interested members and the
3 continuation of that discussion. It can express concerns, I
4 think, to help and guide the Petitioner as to where it should go
5 from here.

6 It could even schedule the matters as it has already
7 done in scheduling further status reports if they felt it was
8 necessary. I suppose conceptually you could even schedule an
9 order to show cause but actually deciding whether there is good
10 cause or not.

11 I don't think, however, you can actually take a
12 substantive determination today. So I don't think you can decide
13 that they either are or are not in compliance. The Petitioner is
14 certainly entitled to make a representation on what he believes
15 but that's not on the agenda today.

16 There is no motion for enforcement. There's no motion
17 to modify. There's no petition for declaratory relief. There's no
18 motion for an order to show cause. So to be clear what our
19 position is on that.

20 I think we have heard a lot of important testimony
21 today expressing concerns primarily about the harbor and the
22 harbor access. We are not, the Office of Planning is not
23 prepared at this time to express the same position as the county
24 as to whether or not Ko Olina is in substantial compliance or
25 not.

1 I will express some skepticism about their argument
2 that term, the finding of fact -- let me backtrack. The finding
3 of fact says, "Petitioner proposes to develop a 36-acre
4 recreation and commercial marina with a public boat launch ramp."
5 Their argument, their status report doesn't say "within". I will
6 have to take exception, I think, to the idea that with or within
7 are separate terms. "When we said 'with' we didn't mean
8 'within'. You could just as well have said a commercial marina
9 and a public boat ramp if that's what you meant to allow for
10 separate geographic facilities.

11 I will not express a position at this time as,
12 however, whether or not a separate geographically -- as to
13 whether a geographically separated launch ramp is in substantial
14 compliance regardless of that language.

15 I think there are some questions that, however, that
16 do remain unanswered. In their status report they say it will
17 take two years, well up to two years to complete the proposed
18 changes that were described to you today.

19 In the meantime obviously the Ko Olina boat ramp is
20 not in. It is not clear how long it would take to pour the
21 cement in and use the Ko Olina boat ramp or how much it would
22 cost.

23 So it's unclear as to whether it would be reasonable
24 or not to require that because that information is simply not
25 available to us. And it is also not clear, to me anyway, based

1 on the information we have, as to the significance of the high
2 waves or surges at the Phoenicians boat ramp. So it's difficult
3 to evaluate the equivalency of the proposed changes to the prior
4 marina, Ko Olina Marina boat ramp.

5 I think it certainly would be helpful, the difficulty,
6 let me put it this way. The difficulty in this case is that
7 although there are proposed changes to be made, those changes
8 will take approximately two years to do. In the meantime two
9 years does seem like a somewhat lengthy period of time to have a
10 very different type of boat ramp for the public.

11 So in the event that -- it would be important, I
12 think, to continue this conversation and not to drop the issue
13 for two years or to simply let it go for that period of time. It
14 seems to me we need to find some mechanism by which this issue
15 gets resolved, either to say the Phoenicians boat ramp is
16 perfectly fine as it is so you're in compliance, or to say it is
17 not in compliance and the following things should be done.

18 We cannot do that today I think. But the issue, I
19 think is important enough that it should be raised again and
20 addressed and resolved. That would be our comments today.

21 PRESIDING OFFICER FORMBY: Okay. Thank you, Mr. Yee.
22 I think we're in agreement with you on our restricted purpose
23 and role today. Commissioners, any questions or comments?
24 Commissioner Contrades.

25 COMMISSIONER CONTRADES: I would just like to say that

1 I have been in planning for many years as a volunteer. I served
2 on the Planning Commission for the county of Kaua'i and been on
3 the Department of Hawaiian Home Lands Commission and now I'm the
4 Land Use.

5 And I've always understood that every condition that
6 we have ever approved for any subdivision, any land zoning,
7 anything, the condition does not go with the person that you give
8 it to but with the land.

9 So in this case I believe the condition is, whether
10 it's West Beach Estates or Ko Olina it's still there. I honestly
11 have to say that I feel I have wasted a couple of hours of my
12 life listening to nonsense because -- not nonsense from the
13 people but nonsense that I have to be here that there is a
14 condition that's not being met, that there was a condition that
15 was put on by the Land Use Commission that I was not a part of
16 which is still in effect in which something was changed. The
17 Land Use Commission was never informed of.

18 It is obvious, I mean I speak English decently well.
19 I understand words. It's obvious that what was meant was that
20 there was supposed to be something when they got this permission.
21 That is not acceptable. In any form. That is not public.

22 I am not a commercial fisherman. I fish once in a
23 while. I go out for fun and everything. I would never go on
24 that, to be honest with you. That's not safe for anybody who is
25 a small fisherman wanting to launch his little boat out there.

1 I can't believe we're doing this, you know? I'm also
2 in tourism. I've been in tourism for 30 years now. This really
3 gives us a bad name when we have developers who don't follow the
4 rules. I'm sorry but I got to scold you today to tell your
5 developer he ain't following the rules. That's how I feel.

6 It's not good for us. It's not good for tourism.
7 It's not good for anybody that when we give people permission to
8 do things they don't follow the rules. It's quite simple. Put
9 the damn boat ramp back in. If you don't want to do it 24 hours,
10 "I'm sorry," tell the boat people, "you can't have 24 hours."

11 But this is just, to me I'm flabbergasted that I had
12 to sit here and watch this. I'm going, when you got to pull a
13 boat out to dry dock it's going to take up all that space in
14 there; it's going to make it impossible for people to use that
15 place. I mean it limits the use. It's just not what was
16 intended.

17 We have, I believe as a Commission, we have an
18 obligation to be sure that what was done in the past continues
19 on. I will never vote to change that. That will never be my
20 vote. I want everybody to understand this.

21 If it's going to take two years I think I would even
22 be willing to make a motion the next time we meet for a show
23 cause order to be done and let's get this thing moving out. It
24 shouldn't take two years to do this. People should not be going
25 through all of this. And it really disturbs me that we had to do

1 this today.

2 PRESIDING OFFICER FORMBY: Commission Contrades, thank
3 you for your sincere and frank comments. Commissioner Piltz.

4 COMMISSIONER PILTZ: Just a short comment in regards
5 to a letter dated January 9th from the Phoenicians, LLC. I think
6 the developer's making an agreement with the devil to be held up
7 for \$250,000. Two years in private funds? Any kind of
8 construction for that little bit of work can be done a lot faster
9 than two years. And I think it's a waste of money.

10 PRESIDING OFFICER FORMBY: Thank you, Commissioner
11 Piltz. Commissioner Montgomery.

12 COMMISSIONER MONTGOMERY: Mr. Matsubara, we heard some
13 testimony that the aquarium plans were the reason that the access
14 to the original ramp, the cement was torn up. We have read in
15 the papers that the aquarium won't be built out there any longer.

16 We haven't heard an estimate of what the cost would be
17 to replace that cement accessway that was broken up. It would be
18 good to know what it would take to fix the original ramp in terms
19 of cost and how quickly it could be done.

20 MR. MATSUBARA: I'm sorry, I don't have that
21 information right now.

22 PRESIDING OFFICER FORMBY: Okay. Do you have further
23 comments?

24 COMMISSIONER MONTGOMERY: Well, I guess if we put this
25 on the agenda at a future meeting maybe we'll have more

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1 information there to make a decision on because we, as the state
2 has explained, we don't have an action item on the agenda today.
3 But it would be helpful to have that kind of information to know
4 what kind of resolutions are open to us.

5 And we learned from the public witnesses, at least
6 most of those citizens who've come down here today, they seem to
7 prefer the original ramp as meeting their needs and fulfilling
8 the conditions that they saw that were set up some 20 years ago.
9 Thank you.

10 PRESIDING OFFICER FORMBY: Thank you, Commissioner
11 Montgomery. Commissioner Kanuha.

12 COMMISSIONER KANUHA: Thank you, Mr. Chairman. You
13 know, it was one of the fishermen who testified today that I've
14 known for over 30 years as a fisherman and I haven't seen him for
15 about 25 years, that was Mr. Morioka.

16 For all this time that I've known him he is a
17 fisherman. I believe he served as Hawaii representative on the
18 Western Hawai'i Fisheries Council. And I really respect his
19 opinion in matters regarding fishing, et cetera. My brother was
20 also a commercial fisherman. It's not as if I'm unfamiliar with
21 what's required to do these things.

22 I think as far as a status report, an historical
23 perspective of this petition and where they were and where they
24 are now, I think that's as complete as it could be. But I also
25 have reservations that, and it's actually not reservations, I

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1 think it's unfortunate that somewhere along the line they had to
2 make some decisions in terms of what they felt the needs of the
3 users were.

4 And I think in this particular instance this
5 alternative in my mind does not seem to satisfy the, you know,
6 the intent, and obviously from the testimony the wishes of most
7 of the users of this particular facility. Thank you.

8 PRESIDING OFFICER FORMBY: Thank you, Commissioner
9 Kanuha. Commissioner Im.

10 COMMISSIONER IM: Thank you. I haven't made up my
11 mind on any of these issues. I think the testimonies today were
12 good and informative. But I just want to reiterate what I said
13 before. That is I consider public access in any development if
14 it's imposed and used by the public of recreational facilities
15 within the property or project or outside of the project, one of
16 the most fundamental land use matters we have in the state.

17 So just please keep that in mind that I consider
18 public access a very important issue.

19 PRESIDING OFFICER FORMBY: Thank you. I'll just offer
20 a final comment I guess. I don't think I see things maybe quite
21 as black and white as most of the Commissioners. I think that we
22 have other requirements on dockets that we allow to be done
23 offsite, offland such as affordable housing, people build
24 affordable housing not on the property. But I do think there is
25 a requirement that whatever you do it must be in substantial

1 compliance with the findings of fact.

2 I think there is a serious indication that the
3 consensus is or maybe that you're treading on soft ground. And I
4 think it's a good opportunity for the Petitioner to go back --
5 you've heard the expressions of the Commissioners, you've heard
6 the community, and see if you can work something out.

7 I seem to think there's a possibility. I mean I
8 didn't hear it today. I'm sure you're all more versed and
9 skilled and knowledgeable about the history behind this than I am.

10 But it would seem like if the 24-hour situation is a
11 possibility that maybe Phoenicians can still be a 24-hour public
12 boat ramp and Ko Olina could offer something to the public with
13 more restrictions, less hours, more restrictions. But something
14 seems like it'd be better to work it out than to leave it maybe
15 for us to decide.

16 So, Commissioners, any more final comments before we
17 thank Mr. Matsubara for his presentation today? Seeing nothing
18 Mr. Matsubara, we really appreciate your time.

19 I do have one I guess I would call it a disclaimer
20 that I need to read just to make sure. That is we appreciate the
21 Petitioner's efforts today to present their plans. But I want to
22 remind all the parties that the receipt of this status report
23 does not waive any of the Commission's rights to take future
24 action.

25 Nor should any of the questions or comments be

1 interpreted by the parties as express, implied or apparent
2 approval or rejection of your right to proceed as you deem best.
3 Okay? Thank you.

4 MR. MATSUBARA: That's understood.

5 PRESIDING OFFICER FORMBY: Thank you very much. We're
6 adjourned.

7 (Gavel. Proceedings adjourned at 12:30 p.m.)

8 --oo00oo--

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HMH VENTURES, INC.

Tel: 808-538-6458 Fax: 808-538-0453

C E R T I F I C A T E

I, HOLLY HACKETT, R.P.R., C.S.R. in and for the State of Hawai'i, do hereby certify;

That I was acting as shorthand reporter in the foregoing matter on the 2nd day of February, 2007;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

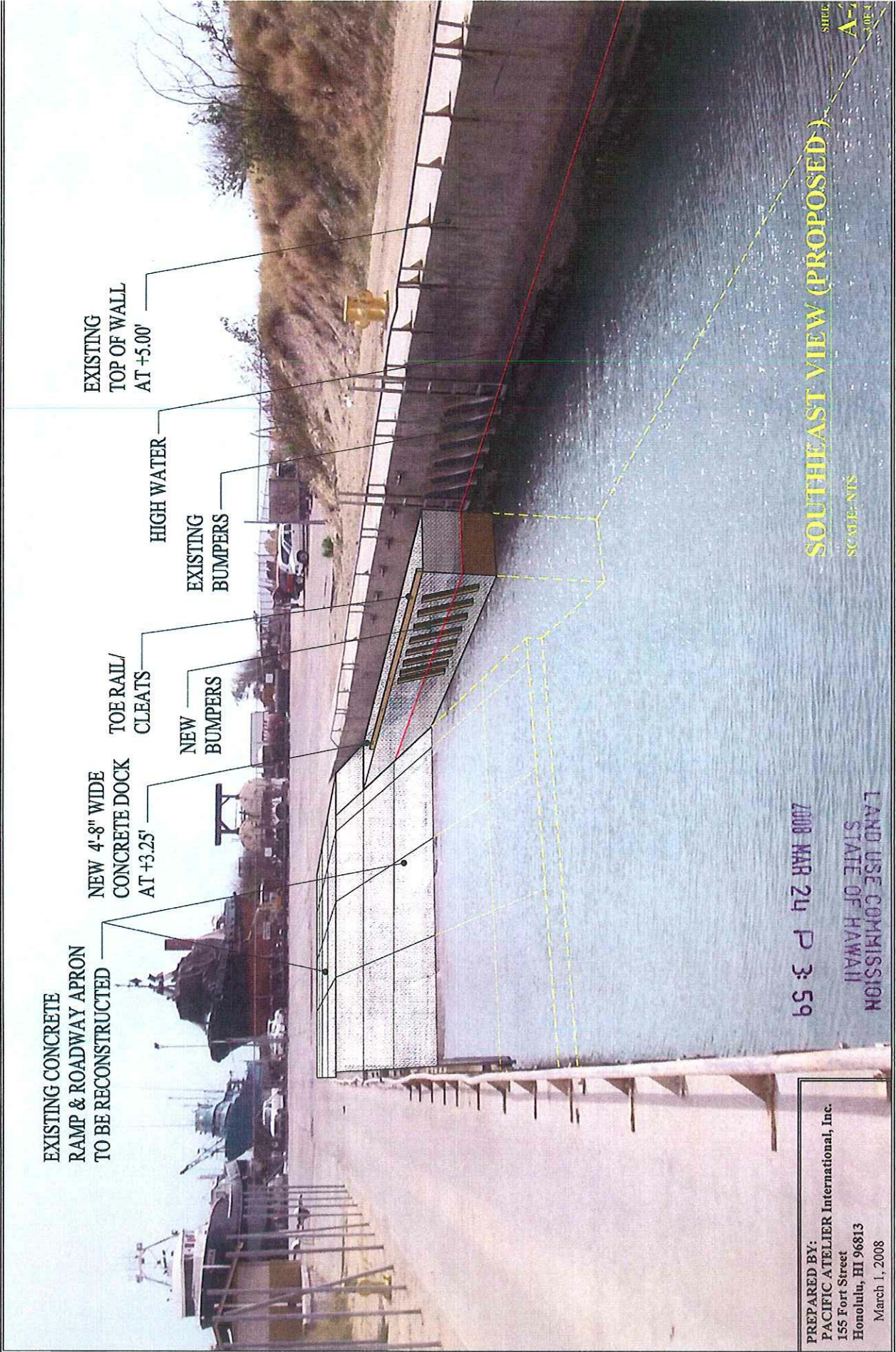
That the foregoing represents, to the best of my ability, a correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

DATED: This 13th day of February 2007

Holly M. Hackett

HOLLY M. HACKETT, R.P.R., C.S.R. #130
Certified Shorthand Reporter



EXISTING CONCRETE
RAMP & ROADWAY APRON
TO BE RECONSTRUCTED

NEW 4'-8" WIDE
CONCRETE DOCK
AT +3.25'

TOE RAIL/
CLEATS

NEW
BUMPERS

HIGH WATER

EXISTING
BUMPERS

EXISTING
TOP OF WALL
AT +5.00'

SOUTHEAST VIEW (PROPOSED)

SCALE: NTS

SHEET
A-2
TOP 4

65 3 P 3:59 2008 MAR 24 0007

LAND USE COMMISSION
STATE OF HAWAII

PREPARED BY:
PACIFIC ATELIER International, Inc.
155 Fort Street
Honolulu, HI 96813
March 1, 2008



LAND USE COMMISSION
STATE OF HAWAII

2008 MAR 24 P 3:59

TranSystems

180 Grand Avenue, Suite 400
Oakland, CA 94612
Tel 510 835 2761
Fax 510 835 9839

www.transystems.com

February 18, 2008

Job No. P501070159

Mr. Michael Nelson, Vice President
Ko Olina Resort & Marina
92-101 Waiialii Place
Honolulu, Hawaii 96707

Dear Mr. Nelson:

Pursuant to our consulting agreement with Ko Olina Resorts to provide an independent review of the Phoenician launch ramp's design, I visited on the site on November 30, 2007, and again the following day, December 1, 2007. I have also reviewed the design plans, as prepared by Pacific Ateller International and dated January 18, 2007, for improvements to the existing ramp. The plans call for increasing the ramp slope and installing a 4'-8" concrete boarding dock with bumpers and tie-up cleats. The surface of the boarding dock would be at a +3.15 to facilitate loading and unloading of boats using the facility.

Provided such improvements are installed in accordance with the plans and material specifications submitted to us, we believe that the Phoenician launch ramp would meet all reasonable operational requirements and standards, and that it will function appropriately as a small boat launch ramp facility.

Surge may occur in the launch ramp on an occasional and seasonal basis during periods of high surf when the ramp is unlikely to be used. Accordingly, we understand that no breakwater improvements are contemplated.

Our evaluation and the foregoing conclusion are based on our experience over the past 30 years of consulting on marina and harbor facilities internationally for private businesses as well as governments such as the State of California, and more than 30 cities and counties in the State.

Please do not hesitate to contact me to further discuss our evaluation process.

Sincerely,

TranSystems

Gordon R. Fulton, Principal
Regional Vice President

EXHIBIT "27"

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
WEST BEACH ESTATES,)
a Hawaii general partnership)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
642 acres at Honouliuli, Ewa, Oahu)
Tax Map Key Nos.: 9-1-15: Portion)
of Parcel 4; 9-1-56: 1-10, 13-26,)
Portion of Parcel 11, Portion of)
Parcel 12; 9-1-57: 1-28; 9-2-03:)
Portion of Parcel 69)

Docket No. A83-562
ORDER GRANTING
PETITIONER'S MOTION TO
AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER DATED
SEPTEMBER 12, 1985

MAY 3 8 23 AM '84
LAND USE COMMISSION
STATE OF HAWAII

ORDER GRANTING PETITIONER'S MOTION TO AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER
DATED SEPTEMBER 12, 1985

2008 MAR 24 P 3:59
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A83-562
WEST BEACH ESTATES,)	
a Hawaii general partnership)	ORDER GRANTING
To Amend the Agricultural Land Use)	PETITIONER'S MOTION TO
District Boundary into the Urban)	AMEND FINDINGS OF FACT,
Land Use District for approximately)	CONCLUSIONS OF LAW AND
642 acres at Honouliuli, Ewa, Oahu)	DECISION AND ORDER DATED
Tax Map Key Nos.: 9-1-15: Portion)	SEPTEMBER 12, 1985
of Parcel 4; 9-1-56: 1-10, 13-26,)	
Portion of Parcel 11, Portion of)	
Parcel 12; 9-1-57: 1-28; 9-2-03:)	
Portion of Parcel 69)	

ORDER GRANTING PETITIONER'S MOTION TO AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER
DATED SEPTEMBER 12, 1985

On February 18, 1994, West Beach Estates, a Hawaii general partnership, ("Petitioner"), filed a Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order dated September 12, 1985, ("Decision and Order"), and subsequently amended on April 5, 1994.

On April 7, 1994, the matter came on for hearing at Honolulu, Hawaii, and the Land Use Commission ("Commission"), heard public testimony from Mr. M. Kauila Clark and Charles R. "Dick" Beamer, Ph.D., and received written testimony from Mr. Kamaki Kanahale and Ms. Agnes K. Cope.

The Commission, having considered said Motion, the oral and written public testimonies, the arguments of Petitioner, the statements of no objection by the City and

County of Honolulu Planning Department and the Office of State Planning, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

1. By Order dated September 12, 1985, the Commission approved the reclassification of approximately 642 acres of land from the State Land Use Agricultural District to the State Land Use Urban District for the development of a resort, commercial, and residential community, including a golf course, lagoons, marina, parks, school site, transit stations, a Hawaiian Cultural Center, beach and yacht clubs, and tennis facilities, located at Honouliuli, Ewa, Oahu, Hawaii, and identified as Tax Map Key Nos.: 9-1-14: 2 (por.); 9-1-15: 3, 6, 7, 10, and 4 (por.); 9-2-3: 3, 7, and 2 (por.) ("Property").

2. On February 18, 1994, Petitioner filed a Motion to Amend the Findings of Fact, Conclusions of Law and Decision and Order dated September 12, 1985.

3. Petitioner's Motion requests the deletion of Condition No. 10 of the Decision and Order which states:

With respect to the cross hatched areas on Petitioner's Exhibit 29, identified as areas where construction of buildings may not be started within five years from the date of this approval, and more particularly identified on the map attached hereto as Exhibit A, and incorporated herein, Petitioner shall develop said lands only to the extent of mass grading and construction and installation of infrastructure improvements. Upon substantial completion of construction on the remainder of the Property, areas outside the cross hatched areas on Exhibit A, Petitioner shall file a motion with the Commission to

request the Commission's release of a restriction on building on cross hatched areas reflected on Exhibit A. Upon satisfactorily demonstrating to the Commission that Petitioner can substantially complete development of remaining area, the Commission shall allow construction on the cross hatched areas and release the building restriction.

4. In support of its Motion, Petitioner testified that the approval of this Motion would release the partial building restriction imposed by Condition Number 10 of the Decision and Order, and allow the residential portions of the project to proceed.

5. On April 5, 1994, Petitioner filed an Amendment to Motion to Amend the Findings of Fact, Conclusions of Law and Decision and Order dated September 12, 1985, to reflect the new Tax Map Key numbers for the Property in the Motion submitted on February 18, 1994.

6. Petitioner represented that the Industrial Bank of Japan has approved financing for the project's residential development.

7. Petitioner has argued that approval of the Motion as amended is justified because of the repeal of Section 6-2 of this Commission's rules subsequent to the issuance of the Decision and Order; the Petitioner's commitment in terms of large investments, extensive development of on- and off-site infrastructure, extensive completion of mass grading and recreational amenities; and, a revised project schedule which reflects the change in market conditions.

8. Petitioner represented that the project has received approval for the following: a county zone change, a Special Management Area Use Permit, Shoreline Setback Variance, Conservation District Use Application Permit, and the approval of the Department of Army Corps of Engineers to develop the marina and swimming lagoons.

9. Petitioner represented that the project's Visitor Center, golf course, clubhouse and restaurant, and Ihilani Resort and Spa have been completed and are in operation. In addition, the project's four lagoons, marina, the shoreline public parkway, and public park sites have been substantially completed.

10. Petitioner has specifically provided 136 low income townhomes and is currently developing 256 low income multi-family units.

11. Petitioner represented that it has contributed half-a-million dollars to the West Oahu Employment Corporation for job training programs for Leeward Coast residents.

12. Any finding of fact that is deemed a conclusion of law shall be a conclusion of law.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, as amended, and the Hawaii Land Use Commission Rules, the Commission having considered Petitioner's Motion as amended, the records and files herein, and the representations and arguments of the parties, hereby concludes that granting of the subject Motion

as amended, is reasonable and non-violative of Chapter 205, HRS, as amended, and the Hawaii Land Use Commission Rules.

DECISION & ORDER

IT IS HEREBY ORDERED that Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order, dated September 12, 1985, be approved, with the deletion of Condition Number 10, and the addition of Conditions 13, 14, and 15 to the Decision and Order dated September 12, 1985, which will read as follows:

Condition 13:

Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

Condition 14:

Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Condition 15:

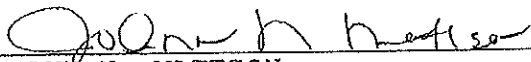
Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.


All other conditions to the Decision and Order dated September 12, 1985, are hereby reaffirmed and shall continue in effect.

DOCKET NO. A83-562 - WEST BEACH ESTATES

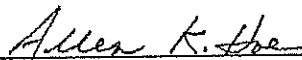
Done at Honolulu, Hawaii, this 3rd day of May 1994,
per motion on April 7, 1994.


LAND USE COMMISSION
STATE OF HAWAII

By 
JOANN N. MATTSON
Chairperson and Commissioner

By 
KAREN S. AHN
Vice Chairperson and Commissioner

By (absent)
TRUDY K. SENDA
Vice Chairperson and Commissioner

By 
ALLEN K. HOE
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

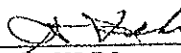
By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

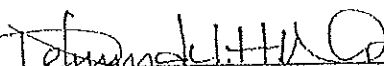
By (absent)
RENTON L. K. NIP
Commissioner

Filed and effective on
May 3, 1994

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A83-562
WEST BEACH ESTATES,)	
a Hawaii general partnership)	ORDER GRANTING
To Amend the Agricultural Land Use)	PETITIONER'S MOTION TO
District Boundary into the Urban)	AMEND FINDINGS OF FACT,
Land Use District for approximately)	CONCLUSIONS OF LAW AND
642 acres at Honouliuli, Ewa, Oahu)	DECISION AND ORDER DATED
Tax Map Key Nos.: 9-1-15: Portion)	SEPTEMBER 12, 1985
of Parcel 4; 9-1-56: 1-10, 13-26,)	
Portion of Parcel 11, Portion of)	
Parcel 12; 9-1-57: 1-28; 9-2-03:)	
Portion of Parcel 69)	

MAY 21 1994
P 4:00
LAND USE COMMISSION
STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order Dated September 12, 1985 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:


HAROLD S. MASUMOTO, Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. ROBIN FOSTER, Chief Planning Officer
Planning Department
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. JAN NAOE SULLIVAN, ESQ., Attorney for Petitioner
Takeyama & Sullivan
Suite 3110
1100 Alakea Street
Honolulu, Hawaii 96813

CERT. ALAN T. MURAKAMI, ESQ., Attorney for Intervenor
Native Hawaiian Legal Corporation
Suite 1205
1164 Bishop Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 3rd day of May 1994.


ESTHER UEDA
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	Docket No. SP_____
)	
KO OLINA DEVELOPMENT, LLC)	KO OLINA DEVELOPMENT, LLC
)	
To Amend The Agricultural Land Use)	
District Boundary into the Urban Land)	
Use District for approximately 642 acres)	
At Honouliuli, Ewa, Oahu, Tax Map)	
Keys: 9-1-14: Portion of Parcel 2; 9-1-15:)	
3, 6, 7, 10, Portion of Parcel 4; 9-2-03: 3,)	
7, Portion of 2)	
_____)	

LAND USE COMMISSION
 STATE OF HAWAII
 2008 MAR 24 P 4: 00

VERIFICATION

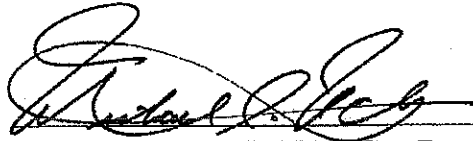
STATE OF HAWAII)	
)	ss.:
CITY AND COUNTY OF HONOLULU)	

MICHAEL A. NELSON, being first duly sworn, on oath, deposes and says that:

1. I am one of the Vice President of Ko Olina Resort & Marina, and in this capacity I am familiar with matters relating to the land which is the subject of this Petition For Declaratory Order and knowledgeable to testify on behalf of the Petitioner.
2. I have personal knowledge of the matters set forth in the foregoing Petition For Declaratory Order and am qualified and competent to make this verification.
3. I make this verification pursuant to §15-15-39 of the Land Use Commission Rules.

4. I have read the foregoing document and the contents therefore are true and correct to the best of my knowledge and belief.

Dated: Honolulu, Hawaii, 3/24/08.

A handwritten signature in black ink, appearing to read "Michael A. Nelson", written over a horizontal line.

MICHAEL A. NELSON, Vice President
of Ko Olina Resort & Marina