

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Acceptance Date: August 29, 2008
180-Day Exp. Date: February 25, 2009

February 13, 2009

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) OA-3481
University of Hawaii at Manoa, Institute of Marine Biology's
(HIMB) Coconut Island (Moku o Lo'e) Proposed Improvements

CONSULTANT: George Atta, Group 70 International, 925 Bethel Street, 5th Floor,
Honolulu, Hawaii 96813-4307

LANDOWNER: State of Hawaii, Department of Land and Natural Resources
(DLNR)
University of Hawaii (UH) Foundation

LOCATION: Kaneohe Bay, Island of Oahu

TMK: (1) 4-6-001:001 UH Foundation Landowner
(1) 4-6-001:051 Under Governors Executive Order (EO) # 3794 to
UH Manoa (**Exhibit 1**)

AREA OF USE: 15,163 Square Feet Marine Laboratory & Accessory Uses
1,728 Square Feet Main House Enclosure
Potable Water Distribution System
1072 Square Feet West Lagoon Floating Dock
7,350 Square Feet Lilapuna Pier

SUBZONES: Coconut Island - General
Immediate Marine Reef Area - Protected
Marine Water Outside Reef - Resource (**Exhibit 2**)

PRIOR CONSERVATION DISTRICT USE PERMITS (CDUP):

Prior CDUP'S have been approved by the Board of Land and Natural Resources (BLNR); 1) CDUA OA-687 to construct a pump station and install sewer main; 2) CDUA OA-761 to construct a filtered seawater system (replace/enlarge seawater pumping system for research tanks – tanks, pipes, fixtures, storage tanks, motors,

generator); 3) CDUA OA-1583 to repair existing floating docks; 4) CDUA OA-1607 to replace/reconstruct seawall; 5) After-The-Fact (ATF) CDUA OA-2134 for an entrenched seawater intake pipe; 6) CDUA OA-2340 to construct a six inch water line installation; 7) and CDUA OA-2854 to demolish three existing buildings, construct new marine laboratory facility (three buildings), road and landscape improvements (**Exhibit 3**).

Various requests have been made to the DLNR to either repair and/or construct various project elements. Requests have been evaluated on a case-by-case basis, and were approved via correspondence(s) and/or Site Plan Approval (SPA).

ENFORCEMENT CASE:

On April 23, 1999, the BLNR found the HIMB to be in violation of Title 13-5, Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS) for establishing uses (catfish tank, windmill, storage sheds, aquaculture tanks, new floating dock, Monk seal fish house, replacement Miller House deck, sea wall repair by beach and Lanai suites, floating utility dock, marine mammal pens, loading dock for landing craft, marine mammal building) without first obtaining the approval of the Department or BLNR. The \$2,000 fine was paid by HIMB as required. The ATF CDUA should have been submitted within sixty days from the date of the BLNR's decision (**Exhibit 4**).

DESCRIPTION OF AREA/CURRENT USE:

Coconut Island has been used by a variety of residents and visitors. Private families, companies, and DLNR have owned or leased all or portions of the island at different times. In 1933, the island was subleased to Christian Holmes; he purchased the island in 1936. Between 1935 and 1936, Holmes dredged and filled around the island, expanding the island to its current acreage of 28.8 acres. In 1947, the Edwin Pauley family donated land for the establishment of the Hawaii Marine Laboratory and funding for the construction of the island's original laboratory. Marine biology has been studied at the island ever since that time.

HIMB reports to the School of Ocean and Earth Science and Technology (SOEST), then to the University Administration, then to the Board of Regents. However, HIMB is in charge of the overall management of the island - policies, day-to-day operation of utilities, common areas, facilities, and development of new facilities. The Coconut Island Advisory Committee serves as an advisory capacity to the University Administration. Since the UH Foundation and DLNR are landowners they are considered part of the management structure.

Currently, Coconut Island has 56,000 square feet of developed exterior and interior space contained within thirty buildings. Areas include: 1) Research and Housing Facilities (Administrative/Laboratory building – laboratories, classrooms, offices), National Science Foundation Building, two dormitories, tank pads, machine shop, pelagic fish research area, Maturation Laboratory, storage sheds and accessory structures, Edwin Pauley Marine Laboratory (laboratories, offices, libraries, research center, meeting

room), Pelagic Fish Research Annex (animal research, tank area), coral reef research facilities (office space, labs, tank ponds), saltwater pump house, lighthouse, arrival deck, whale/dolphin research and support facilities, poolhouse, support facilities for students and research, old boathouse with adjacent marine railway, public education center, Main House (dorms, conference rooms, outdoor area), shark and fish ponds for research, floating enclosures for mammal research, Lanai Suites (8 room facility), Guest House/Thurman House (pool, residence/office); 2) Lagoons - east, south, west, swimming; and 3) Docks and Piers - docks in east lagoon, piers and docks west lagoon.

The Marine Scientific Preserve area is located from the islands high water mark to 25 feet from the edge of the coral reef. The reef surrounding the island covers approximately 64 acres, comprised of the following corals: *Porites compressa*, *Pocillipora damicornis*, and *Montiporra verrucosa*. The threatened green sea turtle (*Chylonia mydas*) is known to occasionally enter the lagoons. Monk seals and whales can be found in the bay but are unlikely to enter the lagoons. Common species of fish found in the waters include: Maomao (*Abudefduf abdominalis*) *Acanthurus dussumieri*, Lauhau/Butterfly fish (*Chaetodon miliaris*), *Chlorurus sordidus*, *Ctenochaetus strigosus*, Aloiloi/domino damselfish (*Dascyllus albisella*, Uhu (*Scarus*), Hinalea Lauwili (*Thalassoma duperrey*), Lau'ipala/yellow tang (*Zebrasoma flavescens*).

The botanical resources study noted existing vegetation consisted of a maintained, grassy lawn with scattered plantings of various ornamental species. Alien or introduced species are the dominant components of the site's vegetation. Few native species exist: moa, hau, milo, hala and the endemic loulu lelo. The grounds have been extensively disturbed in the past. There appears to be no sensitive native plant dominated communities left. Overgrown portions of the property (along the periphery) support scrub vegetation composed primarily of koa haole, Indian pluchea, and Christmas berry. Mangrove thickets are located along the shoreline. Remnant landscape plantings are scattered throughout overgrown areas. None of the plants found during the field studies are listed or proposed, candidates for threatened and endangered species and/or species of concern.

Avian species consist of alien bird species including the common myna, red-vented bulbul, dove, and house finch. The auku'u (Black-crowned Night Heron) was the only native resident waterbird recorded. No endemic or endangered birds were observed though the endangered a'eo (Black-necked Stilt) may also forage on the island. No migratory ducks or shorebirds were found on the survey. No native mammals were found during the survey; mice and rats were evident.

Originally comprised of 12.5 acres of scrub and basalt rubble, the island was formed following the cessation of activity from the Koolau volcanic dome; it is a remnant portion of a dike system associated with the dome. The highest point on the island is approximately 55 feet above mean annual sea level. Ocean waters around the island are relatively shallow and dominated by reef formation. Annual rainfall on the island is between 40-50 inches. The island is relatively dry as it is located in the lee of Mokapu peninsula to the northeast. There is no permanent source of fresh water on the island. Soils on the island are identified as Alaeloa silty clay. Flood Insurance Rate Maps

(FIRM) identify the area as being in Zone X (FEMA, 2000, Community Panel Number 15003C0260E, 270E, 280E, 290E).

The applicant states there are cultural, historical, and archeological resources located on Coconut Island. A traditional cultural subsurface feature has been identified and designated as State Site No. 50-80-10-6590: however the area is not located in the project area and is located in a set aside area of the island as mitigation. Oral testimonies suggest at least four individuals were buried on the island. Two possible burial sites were identified through studies; no burials, subsurface features, and/or human remains were identified through subsequent surveys.

Existing utilities include: water, wastewater treatment and disposal, electricity, telephone, water, drainage, and sewer. Access to Coconut Island is via ferry that leaves from Lilipuna Pier to access various points on the island (entry dock, East Lagoon, floating piers). Other access points originate from Heeia Pier, Marine Corps Base Hawaii and/or other Oahu piers.

Coconut Island is located in the State Land Use (SLU) Conservation District, General subzone. The immediate marine reef area lies within the Protected subzone; outside the reef the marine waters lie within the Resource subzone.

PROPOSED USE:

Although HIMB proposes multiple elements in the Final Environmental Impact Statement (FEIS) and Coconut Island Long Range Development Plan (LRDP), the only projects the DLNR can review are the projects which have received Special Management Area (SMA) permit approval and which have been applied for via a CDUA. This would include ATF approval for unauthorized structures, approval of Liliapuna Pier, and the LRDP short term projects - Marine Laboratory, Main House Pavilion enclosure, potable water distribution system, and West Lagoon floating dock.

ATF CDUA approval is also being sought for land uses not previously approved (catfish tank, windmill, storage sheds, aquaculture tanks, new floating dock, Monk seal fish house, replacement Miller House deck, sea wall repair by beach and Lanai suites, floating utility dock, marine mammal pens, loading dock for landing craft, marine mammal building)(Exhibit 5).

ATF CDUA approval is also being sought for 7,350 square feet for Lilipuna Pier. Lilipuna Pier is located seaward of TMK's: (1) 4-6-001:015, 016, and 017. HIMB considers the pier as an existing facility, and is discussed in the FEIS and LRDP. On July 30, 2004, the BLNR, through Land Division, accommodated UH in fixing the pier by setting aside the area and a management Right-of-Entry to UH with the understanding that the long term plan of the island will cover the Lilipuna (road) Pier (i.e. CDUA compliance). On February 25, 2005, the BLNR amended its prior action by changing to issuance of a lease to UH for the same purpose. The Land Division is still working with

UH on satisfactory terms and conditions of the pier lease (GL 5779). UH currently operates the pier based on said management right Right-of-Entry (**Exhibit 6**).

Marine Biology Laboratory

Construction is proposed on 12.5 acres of land for the 15,163 square foot Marine Biology Laboratory (located between Old Pauley Marine Laboratory and West Lagoon). The lab will be composed of four one-story structures; DRY lab building, central building containing specialty laboratories, restrooms, utility building. The structures propose to use environmentally friendly products and follow LEEDS requirements for green buildings. Color palettes for the roof and buildings will be compatible with Coconut Island. Staff notes the plans presented are conceptual; specific plans would need to be submitted to the DLNR for approval.

The Dry Lab Complex will consist of multiple individual small-scale buildings which will terrace the landscape to temper the complex's visual impact on the site. The labs will be of a light frame construction on stepped building pads which will allow off-site pre-fabrication and small-scale material transportation. The lab roofs are designed to provide high-bay ceilings with clerestory windows for light. Exterior walkways between the labs are planned to decrease air conditioning. Passive architectural features include high performance thermally insulated building envelopes. Mechanical, electrical and communication equipment rooms will be constructed. Access to the building is via walkway on the East and West sides of the building and connects to the existing walkways fronting the Pauly Laboratory Building.

The anticipated water demand is 1,000 gallons per day (gpd). The proposed water system will use existing water supply line and a proposed (not yet built) water supply line. The existing and proposed water systems are adequate however water supply for the fire sprinklers is inadequate. HIMB is proposing a 5,000 gallon storage tank to serve the fire sprinklers in lab located adjacent to the lab. Wastewater generation is anticipated at 1000 gpd. The existing sewer system is inadequate. The proposed wastewater system will include a septic tank and leach field (**Exhibit 7**).

Main House Enclosure

An area of area of 1,728 square feet of the main house will be enclosed to provide additional usable space for a classroom. HIMB notes that the LRDP long term plans call for the demolition of the main house thus the enclosure will be temporary (**Exhibit 8**).

Potable Water Distribution System

An 8-inch main loop is proposed along the main road on the island as water services are inadequate. Water service to the island is currently provided by a 6-inch connection from the BWS 8-inch water main at Lilipuna Road, to the pier, under Kaneohe Bay to Coconut Island. There the 6-inch polyethylene main is reduced and connects to a 4-inch PVC main. Potable water is distributed throughout the island by a network of 4-inch mains. Monthly consumption of potable water is approximately five million gallons; amounting to 167,000 gallons per day (gpd) if daily water consumption is constant. Over 90 percent of this consumption is for research purposes and less than 10 percent is for domestic uses.

HIMB notes that future water consumption needs may exceed supply, and additional usage will be reviewed by the appropriate agencies for approval. A salt water pump system is also proposed to suppress fire (**Exhibit 9**).

West Lagoon Floating Dock

HIMB proposes to install a 1,072 square foot 8 foot “U” shaped floating pier in the small lagoon adjacent to the south side of the Coconut Island Lighthouse. Presently, access and egress from Coconut Island is via a two tiered fixed wooden dock at this same location. The new floating dock will be attached to the existing floating dock next to the Coral Reef Lab out at the Point located in the East Lagoon (**Exhibit 10**).

Future Land Uses

It is expected the applicant will apply for a future CDUA for other projects identified in the FEIS and LRDP: Arrival Building II, Storage, Research Court, Observation Kiosk, Meeting/Conference Facility, Housing/Accommodations, Recycling Center, Lagoon Bridge, Wastewater Research Facility, and Windmills. Should the proposed construction receive approval, square footage amounts will increase to include 116,000 square feet of exterior and interior space and fifteen buildings to the island.

The LRDP long term projects (within twenty year) include: upgrading fire protection, constructing research and education building (house the 5,000 square foot Center for Sustainable Future, Library, Multimedia Research Center, other educational activities), constructing 5,000 square foot Salt Water Laboratory located in the West Lagoon area and outdoor tanks, constructing Shark Tank research site with two portable containers, moving existing workroom containers, constructing 26 foot square wood platform, constructing tank platform, constructing shark tank (outfall pipe, backup generator system), and renovating the Old Pauley Marine Laboratory.

Other projects include: fostering sustainability projects (wastewater, water, composting, solid waste recycling, windmills/wind power, biologically friendly construction materials), loi pond complex, catamaran dock shelter, shore protection/repair seawalls, repair Lilipuna Pier and new arrival pier, water, electrical, and telecommunications system upgrade(s), alternative utility system, saltwater intake system (intake wells, wet wells, pumps), wastewater master plan/wastewater recycling facility, package wastewater treatment system (sewer, gravity pump station, force main), boardwalks and lagoon bridges, East Lagoon water circulation improvements, improve roadway circulation, floating pens for marine mammals (sharks), large animal research area improvements, open tank area expansion, Americans with Disability Act (ADA) improvements, meeting/conference center, housing (60 beds for temporary and long term student and faculty lodgers, conference attendees, 5 apartment type units, 2 permanent resident units).

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands (OCCL) consulted the following agencies: Department of Land and Natural Resources (DLNR) – Division of Conservation and Resource Enforcement (DOCARE), Historic Preservation Division (HPD), Engineering

Division (ED), Division of Forestry and Wildlife (DOFAW), Division of Aquatic Resources (DAR), State Parks Division, Oahu District Land Office (ODLO), Division of Boating and Ocean Recreation (DOBOR), Department of Health (DOH), Office of Environmental Quality and Control (OEQC), Office of Hawaiian Affairs (OHA), City and County of Honolulu Department of Planning and Permitting, Office of the Mayor, Honolulu Fire Department, Councilmember's Donovan Del Cruz and Barbara Marshall, Board of Water Supply, Kaneohe Neighborhood Board, US Fish and Wildlife Service, US Army Corps of Engineers, National Marine Fisheries Service, Mark Hamasaki of Na Mako o Moku o Loe, and the Kaneohe Public Library. The following comments were received:

Land Division

Late response: Parcel 51 is under Governors Executive Order (EO) Number 3794 to the UH Manoa for marine biology purposes. Prior to this, GL 5325 was issued to UH regarding HIMB's occupation of State land. UH needs to obtain authorization from the State to use the submerged lands, which is beyond the boundary of EO 3794. Because the neighboring area is a popular spot for recreational ocean activities, any expansion of UH's occupation of water or submerged land needs to address the issue of public access to the same area. Input from the community on this issue may be necessary. Although the FEIS discussed recreational resources it does not appear that any discussion elaborates on community input relating to the proposed expansion and improvements.

For the legal description of the expanded area (including the submerged land) it may include some text covering the outer edge reef area without a detailed survey.

The Lilipuna Pier provides marine access to the island. To facilitate UH fixing the pier, the BLNR approved setting aside the area and a management Right-Of-Entry to UH on July 30, 2004 with the understanding that the long-term plan of the island will cover Lilipuna Pier (i.e. CDUA compliance). The BLNR amended its prior action by changing to issuance of a lease to UH for the same purpose. To date, ODLO is still working on the terms and conditions of the pier lease (GL 5779) and UH is currently operating the pier based on the said management ROE.

Applicant Response: The comment about the need for authorization beyond the boundaries of the EO seems superfluous unless there is implied a specific instance or example when this happened. The refuge extends from the high water mark to 25 feet beyond the outer edges of the reef. While the ordinance is not clear if this means 25 feet beyond the top of the reef or the base of the reef, it clearly provides for use of an area along the vertical face of the reef. We know of no unauthorized experiments that extend beyond the 25 foot extension beyond the reef. The comments about recreational activities and community input are not accurate. While the EIS text did not go into great detail on this issue, the reviewing agencies and comments letters include many community individuals and organizations. The issue of recreational use has been a sensitive one from the beginning and we have addressed it in the plan and have had numerous meetings with community groups where this issue was discussed. We met with neighborhood boards many times during the last 12 year period and this issue came up

several times. We think the plan represents a consensus plan that is acceptable to the majority of the community.

STAFF NOTE: *The Land Division did not specify any encroachments on state unencumbered submerged land. The Land Division has oversight of the submerged lands outside of the perimeter of the island. During discussion with the applicant, staff was told that UH is authorized to use up to 25 feet beyond the outer reef as stipulated in Section 188-36, HRS. Land Division opined that the said section only allows UH to catch marine life within the marine refuge as defined in the law. The same section does not authorize UH to place any improvement up to 25 feet beyond the reef. Land Division states that approval from the Land Board is required for any improvement beyond the boundary of the existing executive order. OCCL recommends that UHIMB consult with the Land Division to determine what approvals are necessary should HIMB require use of state unencumbered submerged land.*

Division of Boating and Ocean Recreation

DOBOR notes more information is required from HIMB prior to making a commitment to the use of Heeia Kea small boat harbor. DOBOR notes the proposed long term closure of 3,500 square feet parking and vehicular traffic, use of harbor to unload/load onto and off boats, use of a 25 ton crane will severely impact harbor operations, and construction related parking and traffic will increase. HIMB should lease the City lot across the street during the project's construction; DOBOR then could lease the area from the City for boat trailer parking and vehicles.

Applicant Response: We acknowledge DOBOR's comments about the use of Heeia Kea Small Boat Harbor, and the potential impacts of any long term closure of 3,800 square feet of parking area and on/off loading at the pier site. We acknowledge the alternative of leasing the City lot across the street suggested by DOBOR and will consider it. In the past we have also had permission to use the pier facilities at Marine Corps Base Hawaii Kaneohe, and will also consider that option for construction logistics. In any case we are mindful of the issues raised by DOBOR and will take it into consideration when we plan our next construction project.

Division of Forestry and Wildlife

DOFAW notes if windmills are constructed a mitigation plan should be developed and implemented for downed seabirds. If impacts to listed species occur a Habitat Conservation Plan shall be developed and/or an Incidental Take License should be developed and approved by the State and Federal governments. Landscaping should include native coastal species (milo, kou, naupaka, etc.). Exterior lighting shall be shielded (horizontal cut off) type to minimize seabird attraction to lights. Should native seabirds such as wedge-tailed shearwaters take up residence on the island mitigative actions should be implemented. Rats, mice, mongoose, and cats should be removed from the island as they are threats to native seabirds.

Applicant Response: We appreciate the comments made by DOFAW regarding windmills and bird strikes. We will develop a mitigation plan if new windmills are constructed. The

plan will include plans for incidental take and habitat conservation as necessary. We note that recent studies on windmills and bird strikes have increased our knowledge of the issue and understand that rotational speed and placement on placement play important roles in the hazard; this knowledge will clearly be reflected in the plan. Additionally, wind turbine designs have evolved significantly recently and there are many different models which no longer use the old fashioned airplane propeller blade design. The new designs are generally more efficient and less hazardous to birdlife. Please note that the existing windmill on the East Lagoon has been dismantled and there are no windmills currently on the island. While the master plan does indicate potential windmill sites on the island the technology of wind mills has evolved over time and both the siting and design will be considered should new wind energy devices be placed on the island.

Regarding Landscaping, we will include native coastal species such as milo, kou and naupaka in our plant palette. One of the overarching themes of the Long Range Plan is sustainability and species adapted to the climate are an integral part of the plan and identity of the island. Regarding lighting, new construction will design for shielded downward facing exterior lighting and a reduction of light scattering from internal lighting as well. We are aware of the concern for shearwaters and other night feeding seabirds that may be disoriented from exterior lighting and will minimize these impacts throughout the island. Regarding the possibility of native seabirds take up residence on the island the U.S. Fish and Wildlife Service will be contacted to assist HIMB in the proper treatment of these situations.

An ad hoc vector mongoose and feral cat control program is in place but implementation is spotty due to limited resources. A more aggressive program will be developed and resources sought to implement it; especially if native seabirds or wetland species take up residence on the island.

Division of State Parks

No Comment.

Engineering Division

Comments dated October 3, 2003 included in the FEA still apply. The applicant should include project water demands infrastructure required to meet water demands. Projects requiring water service from the BWS: 1) must first obtain a water allocation credit from the former Engineering Branch, Land Division (now Engineering Division) before it can receive a building permit and/or water meter; 2) will be required to pay a resource development charge; 3) Water Facilities Charges; and 4) the project site is located in Zone X.

Applicant Response: We acknowledge the comments from the October 3, 2003 FEIS comment letter from the Engineering Division. At that time the average monthly consumption was about 167,000 gallons per day (gpd). Over the years, following the vision for sustainability, HIMB has been managing potable water consumption with the intention of slowly reducing overall consumption. Today, the average gpd is slightly less than in 2003. We hope to continue this trend as we seek to make the island more

sustainable. Regarding overall infrastructure needed to meet demand for the projected plans, this is the basis of the water master plan in the Long Range Development. Regarding BWS resource development charges and water facilities charges, the situation is complicated at Coconut Island due to the integrated nature of the lines and the metering system in relation to individual buildings. However, any necessary charges will be negotiated with the BWS.

Honolulu Fire Department

HFD notes HIMB should provide a fire access road and adequate water supply for fire protection pursuant to the 1997 Uniform Fire Code, Section 902.2.1 and Section 903.2¹. Civil drawings should be submitted to the HFD for review.

Applicant Response: We acknowledge the comments from the Fire Department regarding provision of a fire apparatus access road for every facility, and a 150 foot maximum distance from fire apparatus access. We have met with the Fire Department Chief Lloyd Rogers and Captain Stephen Kishaba on April 15, 2004 and discussed these issues and requirements. We understand they are based on the understanding of the unique circumstance of separation of Coconut Island from the main Island of Oahu without any vehicular bridge connections. Our main fire access road is the main roadway network that exists on the island and the improvements reflected in the FEIS Circulation Plan. The primary and secondary roads in the plan will provide the fire apparatus access. The Water Master plan includes plans for fire protection. Each new building will meet the requirements of the Fire Department's comments. Civil Drawings for new facilities will be submitted to the Fire Department for review.

Board of Water Supply

BWS has no objections to the proposed project based on the current data. The BWS reserves the right to change any information or position. The BWS will make a final decision on the availability of water when the building permit application is submitted for approval. HIMB will be required to pay a Water Systems Facilities Charges for resource development, transmission, and daily storage. On-site fire protection requirements should be coordinated with the Fire Prevention Bureau of the Honolulu Fire department (HFP).

Applicant Response: We acknowledge and appreciate the Board of Water Supply's comment that they have no objections to our project. We also acknowledge the Board's position on reserving final decisions on availability until the building permit stage and

¹ 1997 Uniform Fire Code, Section 902.2.1 a fire apparatus access road should be provided for every facility, building and/or portion of a building constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building or facility. 1997 Uniform Fire Code, Section 903.2 water supply should be provided, approved by the County, capable of supplying the required fire flow for fire protection to all premises, upon which facilities or buildings, or portions thereof are constructed, or moved into or within the county. On-site fire hydrants and mains capable of supplying the required fire flow shall be provided when any portion of the facility or building is in excess of 150 feet from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building.

the need to pay source resource development, transmission and storage charges. Regarding on-site fire protection requirements we have already spoken with the staff of the Fire Prevention Bureau of the Fire Department on this issue and will comply with their requirements.

Office of Hawaiian Affairs

OHA had substantial comments regarding: 1) ceded lands; 2) biological or genetic resources and bioprospecting; 3) demolition plans versus renovation; 4) conceptual plans versus specific plans; 5) wish list of proposed infrastructure; 6) use of recyclable and solar materials; 7) use of green building designs; 8) lighting; 9) landscaping; 10) access to rights; 11) lack of adequate response regarding historical, archeological, and cultural resources; 12) lack of drainage and storm runoff; 13) marine experiment proposed discharges; and 14) rational regarding non-assessment of penalties.

OHA attended the site visit with DLNR staff and followed up with a second letter commenting on: 1) broad scope of proposals; 2) wish list of proposals; 3) sewer capacity; 4) lack of water for fire suppression; 5) debris; 6) stewardship; 7) access; 8) signage; 9) lack of contact with OHA regarding appropriate protocol for traditional and customary practices; 10) ceded lands (**Exhibit 11**).

*Applicant Response: staff has summarized the applicant responses (full letter **Exhibit 11**). HIMB notes that the historical land tenure from the initial Mahele period until transfer to Christian Holmes in 1933 is vital, as its findings have merit to adequately respond to some of OHA's concerns. The island was classified as Crown Lands and was awarded to Paki as LCA 10613, apana 1 and Royal Patent 1664. On June 13, 1855, Paki passed away at the age of 47; his lands and those of his wife Konia were bequeathed to their daughter, Pauahi. In 1884, Pauahi died, leaving all of her remaining lands in trust for the establishment of the Kamehameha Schools for Hawaiian children. The lands of Pauahi, including those of Moku o Loe, became known as the Bishop Estate. Various tenants leased the land (Marcus Colburn, HAC, Frederick C. Bolte, James Bicknell Castle). In November 1933, the Heeia Company subleased the island to Christian Rasmus Holmes II. In 1937, a hearing was conducted in the territorial land court on the petition of the Bishop Estate for registration of its claim to full fee simple title to Moku o Loe; the court held that Bishop Estate had proved its title to the island by a continuous and uninterrupted association of either direct use or lease for over 50 years since 1886. Since that time to its use by the island was maintained for private use until the eventual transformation as a center for marine sciences.*

Moku o Loe as a laboratory and public place began with the start of the Marine lab in the late 1940s upon the invitation of Edwin W. Pauley who owned it with a private partnership and later on his own. As recently as the late 1990s half the island was owned by a private company until it was bought by the Pauley Foundation and donated to the UH Foundation, which is a 501(c)(3) non-profit organization.

Ceded Lands

Regarding the boundary delineation of the island, only the high island section about 12.4 + acres is owned by the UH Foundation; the remaining fill lands (16.3 acres) belong to the DLNR. It is HIMB's position that the lands under the Foundation's control fail to meet the understood definition of ceded lands as these lands had been maintained within the tenure and use by Pauahi's familial legacy from Pahi until the establishment of Bishop Estate. However, we do recognize OHA's assertion that the remaining fill lands and submerged lands which are under State jurisdiction could be defined as part of the public trust. We feel though that OHA's statement pertaining to compensation from revenues generated from these lands has a global application that is beyond the scope and intent of this CDUA review.

STAFF NOTE: *According to the Land Division, the filled areas are actually under an Executive Order (EO-3794) to the University of Hawaii. This land is considered to be ceded lands. Staff presumes that the University of Hawaii will do all things necessary to address the ceded land issues with the Office of Hawaiian Affairs.*

Bioprospecting and Commercial Use of Marine Resources

HIMB provides marine research facilities for researchers and students of the University of Hawai'i and not for any commercial purposes. Each year, every member of the HIMB faculty and staff must report to the HIMB director to sign a conflict of interest statement that informs the University of any potential commercial benefits that would accrue to them personally from their research conducted at the Institute. All current HIMB members have verified that they have no ties with commercial entities.

Please note that in 2005, a report was undertaken by the State of Hawaii Legislative Reference Bureau ("Bureau") in response to House Concurrent Resolution No. 146, H.D. 1, 2005. The Bureau had been requested to "conduct a study on the fair and equitable sharing of benefits arising from research, indigenous knowledge, intellectual property, or application of biological resources that are public natural resources held in trust by the State for the benefit of the people." Under this report, bioprospecting was informally defined (to date, there is no universally agreed upon definition of the term) as searching for, collecting, and deriving genetic material from samples of biodiversity that can be used in commercialized pharmaceutical, agricultural, industrial, or chemical processing end products. By the early 1990s, objections to uncompensated bioprospecting that does not share benefits with the source country became a contentious issue globally.

As a result of this report, in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006, with the Senate concurring, the Governor is requested to establish a temporary advisory commission on bioprospecting, to be placed within the Office of Hawaiian Affairs for administrative purposes only, to make recommendations for policy development in the area of: 1) prior informed consent; 2) equitable benefit-sharing; 3) bio-safety protocols; 4) a permitting and licensing process; and 5) cultural rights for the use of Hawaii's biodiversity. In our review of LRB

records, we were unable to find the final report that was to be submitted by this advisory commission to the Legislature and therefore are not in a position to comment on its findings and conclusions as applicable to HIMB's marine research. We welcome a continuing dialogue with OHA as to the merits of this report, when available for public review.

Purpose of LRDP and Funding Relationship

The LRDP for Coconut Island visualizes the balanced development of the island with a continued emphasis on excellence in marine biology research. This plan, adopted by the University Board of Regents, envisions the island as a home to affiliated research and education programs, a meeting conference facility and support functions. The designation of areas for each of these uses is indicated on the plan in conjunction with existing facilities and conceptual forms for programmed uses. The intention of the plan is to provide a flexible framework for future development in regards to functional adjacencies supported by more specific design criteria which will guide development so as to ensure that the environmental and aesthetic objectives of the plan are achieved and should not be dismissed as a "wish list." The reality of these projects' economic viability is that project funding is made available, when available, either through annual University budget allocations and appropriations, which are further supported by other public and/or private initiatives or partnerships.

Clarification of Project Scope

The proposed uses specified in the CDUA under review are stated as over the long-term, the LRDP proposes: expanded research facilities, conference center, overnight accommodations, infrastructure improvements, as well as the continued existing uses of the island for research and education. LRDP projects occur over a 20 year planning horizon. Due to the long-term nature of these facilities and improvements, specific details are unavailable for every project as actual project funding needs to be appropriated to take each project within the LRDP to a detailed design phase. There are no guarantees that project funding will ever be allocated. If project funding is made available, then project implementation may require a separate review and/or amendment under the proposed CDUA. As outlined in the LRDP, these projects include (Arrival Building II, Storage, Research Court, etc.). Additional actions to be covered under this CDUA include: Fire Protection Upgrades, Shore Protection Measures, Research and Education Building, Salt Water Laboratory, Shark Tank Research Site for the Laboratory, Workroom Container, Tank Platform, Shark Tank, and Old Pauley Marine Laboratory renovation.

The following projects are specified at this time and are expected to begin with the approval of this permit: a) the new Marine Biology Research Laboratory; b) a 24' by 6' floating dock in the south lagoon; c) the enclosure of the "Main House" pavilion; and d) the construction of a new 8-inch water distribution system. A retroactive CDUP is requested for existing structures that are not covered by CDUA OA-2854.

STAFF NOTE: the only approvals before the BLNR are the Marine Biology Research Laboratory; floating dock; Main House pavilion enclosure; and construction of a new

8-inch water distribution system. Staff notes an ATF CDUA is being requested for the unauthorized structures; not a retroactive CDUP.

Sustainable Design Practices & Landscaping

The applicant recognizes the State's goals related to renewable energy resources. The University is already participating with Leadership in Energy and Environmental Design (LEED) Green Building Rating System and will continue to do so with new buildings that come online for HIMB. Design elements for either new projects or renovation of existing facilities would include energy saving features (access to natural light, high efficiency lighting, solar/occupancy sensors, photovoltaic panels, green roof), and recyclable materials will be used during construction to the extent possible. New screening vegetation, all current and future plans for new facilities, and retrofits and/or renovations to existing facilities will conform to the Design Guidelines provided in the Coconut Island Long Range Development Plan (1998). Landscaping for the proposed project will be done with drought tolerant native plant species, where possible.

Traditional and Customary Rights for Access and Use/ Public Access

The issue of public access has been important to the general public, which the University does provide albeit limited in range and extent on the Island. However, access to the Island has been to some degree either restricted or limited since the years prior to and during the Māhele period in the mid-1800s. With public ownership, the issue of public access has become more important. Issues raised include the public access generally available to coastal waters and the shoreline to the high wash of the waves. Also, as public land, there is a general perception that it should be open to the public. However, that issue is not so easily clear. Public access on public lands is subject to many caveats related to health, safety and the public welfare. Rights are limited by the State's police power that balances and regulates competing public interests. Dangerous and high security areas are routinely restricted to the general public. Public buildings and yards are also locked and restricted. Access to sensitive natural resource areas is limited. Public buildings are restricted by hours of operation and security areas. Military bases and public utilities routinely restrict total access to entire facilities including coastal areas.

The work of the HIMB with many indoor and outdoor facilities where experiments are conducted and potentially dangerous chemicals and expensive equipment is stored is not conducive to unmanaged open public access. Even access to the surrounding reef is problematic as there are many experiments being conducted and transit over or through the reef area may damage equipment or affect study results. On Coconut Island, this issue is magnified even more with open aquaculture tanks and equipment and chemicals that create both a conflict of use and potential hazards to visitors who are not aware of the contents of chemicals or the hazards of operating equipment. Unintentional or deliberate disruption of experiments may also occur.

Further, the island is surrounded by a special, protected, marine scientific preserve. Please note that the responsible authority for fishing regulations in the surrounding Marine Reserve around Moku o Loe is the DLNR Division of Aquatic Resources (DAR).

The area within 25 feet of the reef edge is restricted and fishing and other traditional resource gathering activities are not allowed. The reef and its resources are reserved for scientific purposes. Paddlers and water skiers are allowed to traverse the preserve to get to the beach on the eastern lagoon peninsula and Maile Point. Scattered signs inform boaters of the existence of the preserve.

As a general policy, except for the two areas mentioned above, visitors are welcomed to the island but because of all the experiments that are ongoing and liability issues, HIMB provides a host for all visits. All interested parties are welcomed to initiate the process of contacting the University to make arrangement to visit the island. Every effort is made to fulfill each request, as permitted by availability of time and personnel.

During the EIS process, OHA expressed its concerns related to provision of access for traditional and customary practices. HIMB is fully aware of the concern raised during the EIS process regarding measures to ensure Native Hawaiian traditional and customary rights to fishing grounds around the island. HIMB responded by stating that it recognized the difficulty of two perspectives on the issue of access and use as the coral reef flat around the island is designated as a scientific preserve under Hawaii Revised Statutes (HRS), Chapter 188-36. HIMB stated then it would work with OHA in developing a protocol that addresses the issue pertinent to traditional and customary practices related to fishing resources. However, it is our current understanding the University and HIMB do not possess the authority to develop access protocols to ensure Native Hawaiian traditional and customary rights to fishing grounds around the Island. All members of the HIMB community, for example, must apply with the DAR for the appropriate permits to conduct their own studies and/or to collect marine specimens.

The HIMB is involved with many community partners and has a policy for fostering opportunities to expand its education and outreach programs, which have brought thousands of people to the island over the years. Its general policy is to be as open as possible and to partner with the community. Many groups like the Outdoor Circle and the U.S. Marine Corps come to the island to participate in workdays and community events on the Island. Further, HIMB has taken the initiative to create strong working relationships and partnerships with numerous Native Hawaiian organizations and community groups like the Waikalua Loko Fishpond Preservation Society, the Pacific American Foundation, the Koolaupoko Hawaiian Civic Club, Paepae o Hee'ia (a private non-profit organization dedicated to caring for He'e'ia Fishpond. HIMB also has a close affiliation with the Polynesian Voyaging Society and the Myron B. Thompson Academy. Finally, the Department of Education is involved in several programs which bring students of all grade levels to the Island.

The University proposes to continue a policy of managing public access to the island as the best method for balancing the many public interests involved in the operation of the HIMB. Specific to Native Hawaiian access and use on island, in 2008, HIMB had begun to work with the Koolaupoko Hawaiian Civic Club to host a cultural protocol event and workshop on the Island. Although the event was postponed, HIMB believes the relationship building it has fostered with the Hawaiian community will continue to

strengthen and perhaps in the near future, events as those proposed with the Civic Club will occur with this entity and with other interested Native Hawaiian groups. Currently, efforts are ongoing to host cultural workshops between HIMB researchers and cultural practitioners in preparation of the scientific research season that begins in June 2009.

Finally, HIMB wants to emphasize that kupuna used to come often to the island. However, due to the nature of the access for kupuna, special provisions for boat access may be required, requiring additional costs and fees. HIMB used to subsidize these kupuna visits but can no longer do so due to limitations on State operational budgets. Also, fees have to be charged uniformly because of Federal funding regulations. The lack of provisions that were once more readily available is not because of attempts to limit access but by simply the current economic state of affairs all State entities have been and continue to be challenged to maintain. If more funds were to become available to subsidize the whole operation of boat access, then these visits would be again encouraged. HIMB welcomes the opportunity in 2009 to begin a meaningful dialogue with OHA to help define the necessary balance and to ensure these issues are addressed.

Archaeological Resources

The applicant acknowledges the error of the statement provided in the CDUA and agrees with OHA's comment. HIMB will coordinate with the State Historic Preservation Division (SHPD) and seek concurrence on the level of mitigative action required for a specific project. As part of the recently approved City and County of Honolulu SMA permit, archaeological monitoring is a requirement for proposed future ground disturbances on the Island. In accordance to State Historic Preservation law, the appropriate plan of action will be filed with SHPD for its review and approval prior to project development.

Drainage, Outfall Discharged, and Concern for Invasive Species

Existing structures are not all directly related to the NPDES permits to discharge into the nearshore waters on a one to one basis. However, discharges enter the bay through one of HIMB's 39 permitted outfalls, and are carefully monitored. Certain facilities including the "catfish" tanks and other aquaculture tanks receive fresh, salt or brackish water and their discharge flows into outfalls are permitted by NPDES permit no. HI 0021644. The returned water is often much clearer than the receiving water. Regarding surface runoff, vegetative buffers and pervious surfaces will be installed, where practicable. New materials, xeriscape landscaping, and native coastal species will be part of the plane pallets. Rainwater harvesting will also be considered and implemented, where practicable. All of these measures should reduce or eliminate runoff into the waters of Kaneohe Bay. No culture of foreign aquatic species is permitted at HIMB without permission from the relevant authorities. HIMB currently does cultivate tilapia, which is foreign to Hawaii waters. However, the species under cultivation has been authorized by the State Department of Agriculture.

HIMB leadership has been mindful of its past delinquencies, all of which were inherited from past HIMB administration. HIMB continues its ongoing endeavors to be better

stewards by first aligning its regulatory obligations to having existing structures come into compliance prior to the implementation of any future projects.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated September 22, 2008 that:

1. The proposed use is an identified land use in the Protective subzone of the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR), P-6, PUBLIC PURPOSE USES, D-1, "land uses undertaken by the State of Hawaii or Counties to fulfill a mandated government function, activity, or service for public benefit and in accordance with public policy and the purpose of the conservation district," please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(4), HAR, HEARINGS, a hearing is required on all applications determined by the Chairperson that the scope of proposed use, or the public interest requires a Public Hearing on the application; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Draft Environmental Impact Statement (DEIS) was published in OEQC's Environmental Notice on September 23, 2003. The Governor's Office of the State of Hawaii was the accepting authority of the Final Environmental Impact Statement (FEIS) (March 2004). The FEIS was published in OEQC's Environmental Notice on April 8, 2004.

The CDUA was noticed in the Environmental Notice on October 8, 2008.

PUBLIC HEARING:

A Public Hearing was held on Tuesday, October 16, 2008, at 6:00 P.M. at the Kalanimoku Building, 1151 Punchbowl Street, Room 132, Honolulu, Island of Oahu. No one showed up to testify.

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Staff notes the proposed projects will have an impact on existing vegetation and open space. The impacts will be mitigated to the greatest extent possible. The action is consistent with the purpose of the Conservation District.

- 2) *The proposed land use is consistent with the objectives of the Subzones of the land on which the use will occur.*

The objective of the General subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted water-sheds, marine, plant, and wildlife sanctuaries, significant historic, archeological, geological, and volcanological features and sites, and other designated unique areas.

Staff notes there is no current proposed project in the Protective subzone (immediate marine area) at the time. Staff is of the opinion that the proposed project's land use is consistent with the General subzone in maintaining open space. Staff notes the proposed infrastructure is designed to blend with the developed portion of the island. Staff notes there is a strong public purpose underlying the project. The applicant proposes adequate mitigation measures.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

HIMB has received two Special Management Area (SMA) Permits: Resolution 06-069, and Resolution 07-318. Staff notes that the proposed project is consistent with Chapter 205A policies and objectives.

Recreational Resources and Coastal Ecosystems: The proposed use would not affect the current recreational value (fishing, swimming, diving) of the area. No proposals or improvements are being sought in the marine waters that would impact the existing recreational resources. The applicant's proposed use of best management practices (BMP) seeks to limit impacts to the coastal ecosystem.

Historic and Cultural Resources: Apart from the intrinsic historic and cultural value of Coconut Island, the applicant notes no known historic and cultural resources would be affected by the proposed project. Staff will recommend as a condition an archeological monitor will be present during construction, and that the HPD will be contacted should unrecorded finds be uncovered.

Scenic, Esthetic and Open Space Resources: The proposed land use(s) would not appreciably affect Coconut Island. The proposed marine laboratory would be constructed in an already developed area; the floating pier will be located in an area that already contains similar structures; and Lilipuna Pier is an established use, as is the Main House.

Coastal Hazards: Staff notes that Coconut Island is somewhat sheltered from storms due to its location. However, the seawalls are affected by daily currents so repair and/or maintenance is required. Prior to any DLNR approval a CDUA and various federal and state permits will be required. Should there be a public health and safety issue staff notes that the department will work with HIMB.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff is of the opinion that impacts have been adequately mitigated even though the proposed project will take place in the General subzone.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed projects will fit into the locality and surrounding area. Although the proposed action will add structural density to the island. Staff notes with the appropriate mitigation measures there will be no significant or deleterious effects to the locality, surrounding area and parcels.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts and to maximize and enhance the natural beauty and open space characteristics of the subject parcel.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff notes the proposed project will provide additional educational and lab space, and provide additional areas to dock.

DISCUSSION:

The proposed use is an identified land use within the Conservation District, according Hawaii Administrative Rules (HAR), 13-5-22, P-6, D-2, PUBLIC PURPOSE USES, "transportation systems, transmission facilities for public utilities, water systems, energy regeneration facilities utilizing the renewable resources of the area (e.g. hydroelectric or wind farms) and communications systems and other such land uses which are undertaken by non-governmental entities which benefit the public and are consistent with the purpose of the conservation district."

Staff notes it has taken ten years for HIMB to submit the ATF CDUA to address the unauthorized land uses. Staff notes only specific components of the Coconut Island LRDP and FEIS are being sought approval for the approval for the unauthorized structures, approval for Lilipuna Pier, and the Coconut Island LRDP short term projects - Marine Laboratory, Main House Pavilion Enclosure, Potable Water Distribution System, and West Lagoon Floating Dock.

Staff does not foresee issues with the proposed land uses as long as Best Management Practices (BMP) and mitigation measures are adequately enforced, such as an archeological monitor is present during the construction of the Marine Laboratory and its accessory structures. Staff notes the design and siting of Marine Laboratory on the island includes integrating the built landscape with the existing topography to minimize visual impacts and reduces site development costs. Although development of the lab could have potential short-term impacts to surface water quality and discharge to the ocean, it is expected BMP's will be enacted to mitigate impacts.

Staff notes there are issues regarding: management and coordination of research activities, past, current, and future scientific land use(s), existing structures, disposal of green waste materials, seawall repairs, retroactive fines, use of a DOBOR facility, access, archeological monitor, lighting, and fugitive dust.

Staff notes HIMB's management and coordination of research activities in conjunction with land uses on the island is still lacking. Staff notes during the site inspection, questions were asked regarding structures, compliance, experiments, land uses, debris, hazardous materials; yet answers were not forthcoming from HIMB staff. It appeared random and uncoordinated projects were still being conducted.

Staff is concerned that the island has become a hodgepodge of science experiments that are not coordinated well and may or may not be authorized. Staff recommends to the Board of Land and Natural Resources (BLNR) a condition that the HIMB will submit a working list of scientific land use experiments past, current, and future, that may occur at Coconut Island within sixty days from the date of the BLNR's approval. Staff notes in this way HIMB staff should have an adequate accounting of land uses and activities that are occurring or should occur.

Staff notes HIMB and/or the University Administration need to address the existing structures that desperately need renovations, repair, or to need be demolished. Staff notes various structures are in disarray; parts of the main house have been condemned, docks, piers, seawalls have fallen and need to be repaired wires are exposed in walkways, handrails, walkways, etc. Staff understands that a critical factor in repair and maintenance is the availability of funding, which does not seem to be available to HIMB and may not be in the foreseeable future.

Staff recommends to the BLNR that a condition that HIMB will submit a list of infrastructure that require minor and/or major repairs or demolition within sixty days from the date of the BLNR's approval to facilitate departmental approval, if possible.

Staff notes Condition # 21 of the 1999 Enforcement Case required a Coconut Island Master Plan to address the long term development, maintenance, and operations of the island prior to any further development approvals. Staff notes although the LRDP and FEIS address green waste, debris, and hazardous materials, it is apparent that HIMB is not following their own guidelines. HIMB notes "green waste should be recycled through composting in an area that is removed from living and work spaces, and well screened by landscaping." Staff notes that a "composting pile" was approximately 80 feet long and 10 feet high located adjacent to marine waters (**Exhibit 12**).

Staff notes that HIMB is also in desperate need of seawall repairs. There are many types of walls and shore protection features on the island, with no consistency of design, character or quality. Some areas pose potential safety hazards. Due to the extensive dredging, and alterations seawalls and other shore protection features are needed to prevent erosion. The northeast section's outer edge has eroded between 15 to 20 feet since the original construction, due to wind and wave erosion. Staff notes the LRDP and FEIS currently identified areas of required repairs (lighthouse/arrival pier 750 linear feet (LF), southwestern shoreline areas 1,050 LF, Pelagic Fish Laboratory shoreline 150 LF, southeastern shoreline areas 800 LF, northeastern and northern shoreline 1,500 LF, western shoreline 500 LF, research pens LF).

Staff notes a separate CDUA should be submitted that discusses the repair and maintenance of the seawalls around the whole island, and that proposed improvements should be conducted in phases and/or increments. Staff encourages HIMB to discuss proposals with their consultant and the OCCL.

Staff recognizes that HIMB did not submit an ATF CDUA for ten years, which is a violation of the BLNR's 1999 Enforcement case terms and conditions. Staff recognizes that fines could be imposed on HIMB for noncompliance should the BLNR deem it necessary. However, staff notes HIMB has worked with Group 70 International and come to the department several times over the past ten years to identify how to best address the above issues. Staff feels that it is best not to fine HIMB. HIMB should be given the chance to clean up area(s) of debris, potential hazardous waste materials, and fix minor and major ailing infrastructure. Staff notes should the BLNR wish staff to revisit the

matter after a site inspection in six months with a report to the BLNR on HIMB's progress, a condition can be attached to the staff report.

Staff notes approval from the BLNR for the proposed project does not constitute approval for the use of other DLNR facilities, i.e. HIMB proposed use of Heeia Kea small boat harbor.

Staff notes that access onto and/or within the island maybe an issue for the general public. Staff notes that there several "KAPU" signs posted on prominent points around the island perhaps giving the public the impression that access is not possible. Staff also notes that the HIMB web page indicates that visitors in general must be sponsored by HIMB staff (<http://www.hawaii.edu/HIMB/visitor1.html>). HIMB staff notes access to the public is available in specific areas and pointed out two specific beach areas. However, staff notes that after the site visit and question phase was over, HIMB staff was reluctant to allow OHA and DLNR staff to walk around independently. Staff notes that HIMB may have addressed access through the FEIS and LRDP. However, staff notes that HIMB may want to address public access with OHA (so they can let their constituents know) and/or post on their website areas that allow public access.

Staff notes the Historic Preservation Division did not respond regarding the CDUA process regarding having a qualified archeologist onsite to monitor all subsurface disturbances. Staff recommends to the BLNR a condition be added regarding having an archeological monitor onsite to monitor all subsurface disturbances, and that in the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division.

Staff comments that there is significant potential for fugitive dust to be generated during the proposed action, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including by not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

Staff is of the opinion that the proposed project does not conflict with the objectives of the subzone. Staff notes the applicant will preserve the natural beauty and open space characteristics of the area with landscaping and the appropriate color palette. Staff is of the opinion that the proposed project will not result in substantial adverse impacts to natural resources provided that the conditions of this permit are satisfied.

Staff therefore recommends;

RECOMMENDATION:

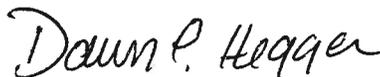
Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for the ATF CDUA approval for the unauthorized structures, Lilipuna Pier, and Coconut Island LRDP short term projects - Marine Laboratory, Main House Pavilion Enclosure, Potable Water Distribution System, West Lagoon Floating Dock; subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 3) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 6) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

- 7) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 8) The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
- 9) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 10) The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;
- 11) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 12) That a qualified archeologist will be onsite to monitor all subsurface disturbances; in the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
- 13) Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes shall be prohibited of the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as permitted pursuant to Section 205A-71, HRS; and regarding the possibility of native seabirds take up residence on the island the U.S. Fish and Wildlife Service will be contacted to assist HIMB in the proper treatment of these situations;
- 14) That the applicant will follow the Seabird Protection Protocol developed with the US Fish and Wildlife Service and Division of Forestry;
- 15) The applicant will use Best Management Practices for the proposed project;
- 16) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void

- 17) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

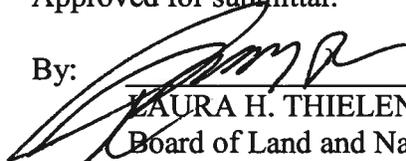
Respectfully submitted,



Dawn T. Hegger
Senior Staff Planner

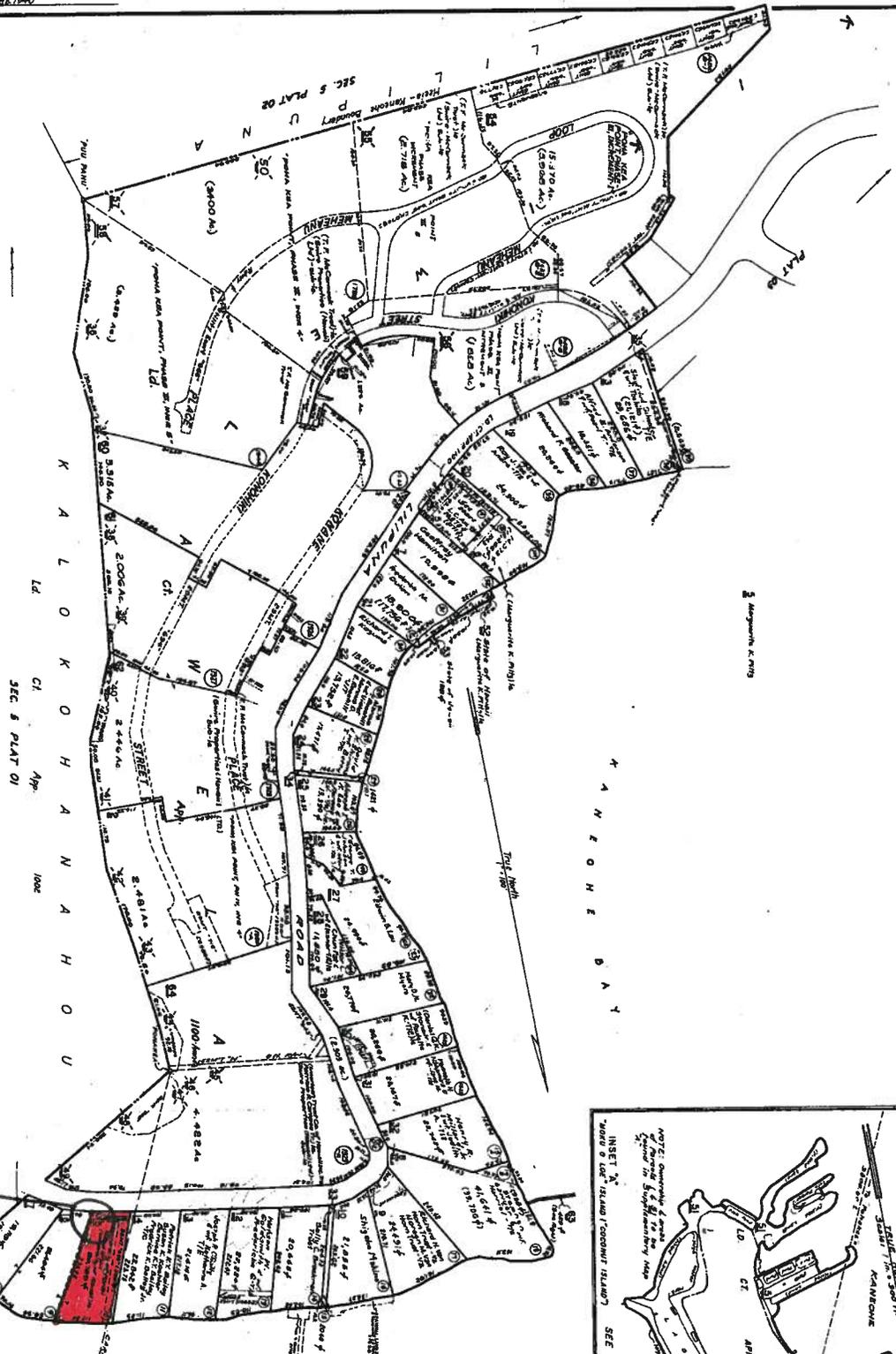
Approved for submittal:

By:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

NEHEIA, KOOLAUPONO, OAHU, HAWAII

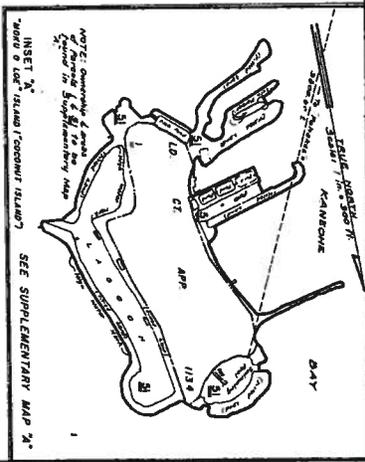


K A L O O K O H A H A N O U L I
 LD CI App 1002
 SEC. 5 PLAT 01

Note: All lots owned by B.P. Bishop Estate unless otherwise noted.

SUBJECT TO CHANGE

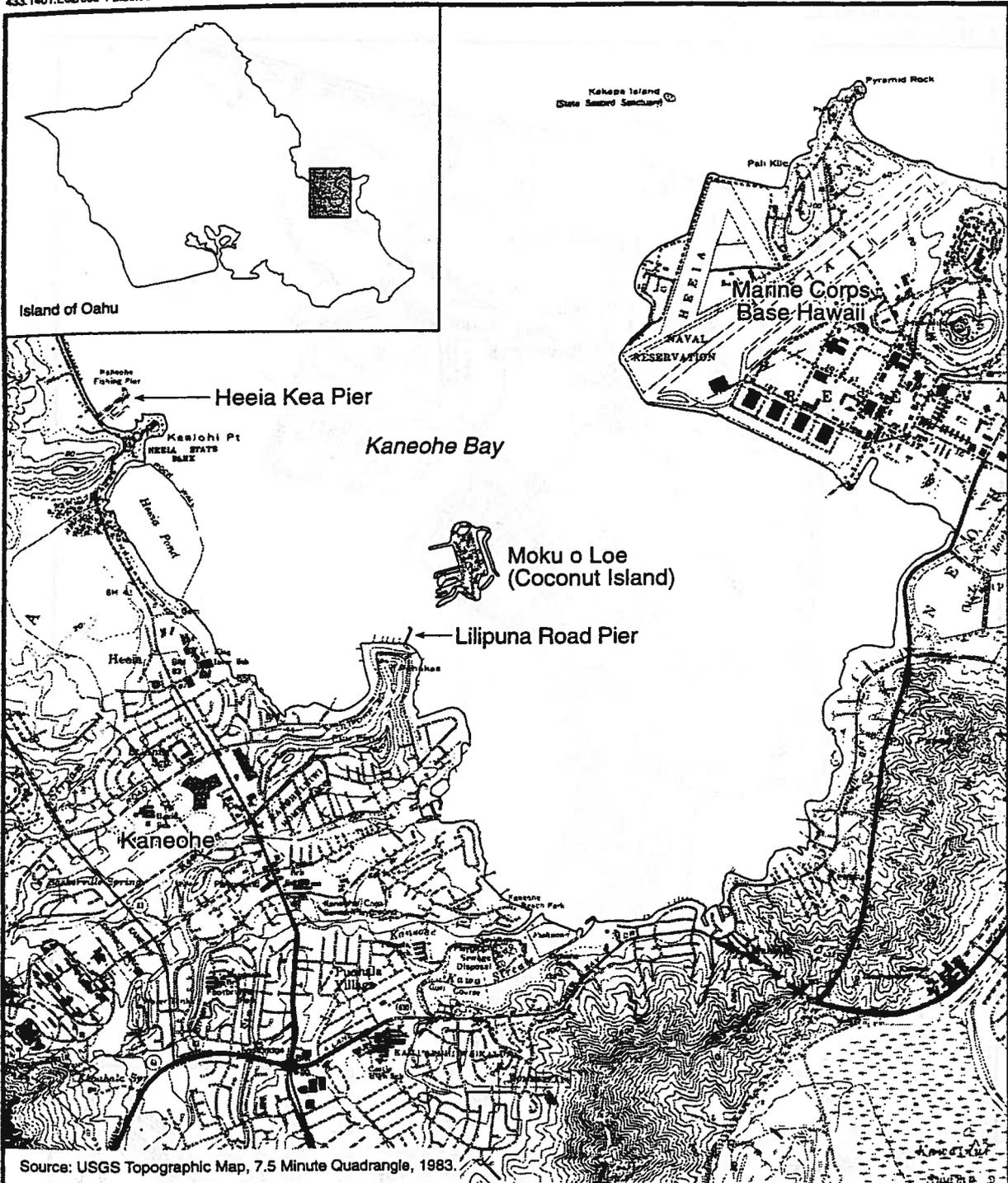
PLAT	01
SECTION	5
DIVISION	CI
FIRST DIVISION	4
TAX MAP	6
ZONE	4
CONTAINING PARCELS	01
SCALE:	1 in = 100 ft



INSET "A" ISLAND (OAHU ISLAND) SEE SUPPLEMENTARY MAP "A"

Subject Parcel where
 Liliupuna Pier located

EXHIBIT 1

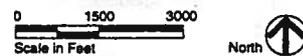


Source: USGS Topographic Map, 7.5 Minute Quadrangle, 1983.

ENVIRONMENTAL IMPACT STATEMENT
MARINE LABORATORY AND SUPPORT FACILITIES
Hawaii Institute of Marine Biology

Prepared by: Belt Collins Hawaii
February 1996

FIGURE 1-1
LOCATION MAP





Kekepa Island
(State Seabird Sanctuary)

CORAL REEF

P

RESERV

Kaneohe Bay Marine
Air Station

Kaneohe
Fishing Pier

Keelohi Pt
HEELA STATE
PARK

Heeila Pond

Heeila

University of Hawaii
Marine Laboratory

Wreck

CABLE FERRY AND

R

EXHIBIT 2

St. John's
Sch.

Heeila
Sch.

Kaneohe
Light

Basinville Spring

Playground

Kaneohe Commons
Playground

Kaneohe Beach Pier

Kogoka

Punalua
Village

Kaneohe
Sewage
Disposal

Kawa Stream
Golf Course

Fishpond

DR

UNIVERSITY OF HAWAII AT MANOA,
HAWAII INSTITUTE OF MARINE BIOLOGY
COCONUT ISLAND

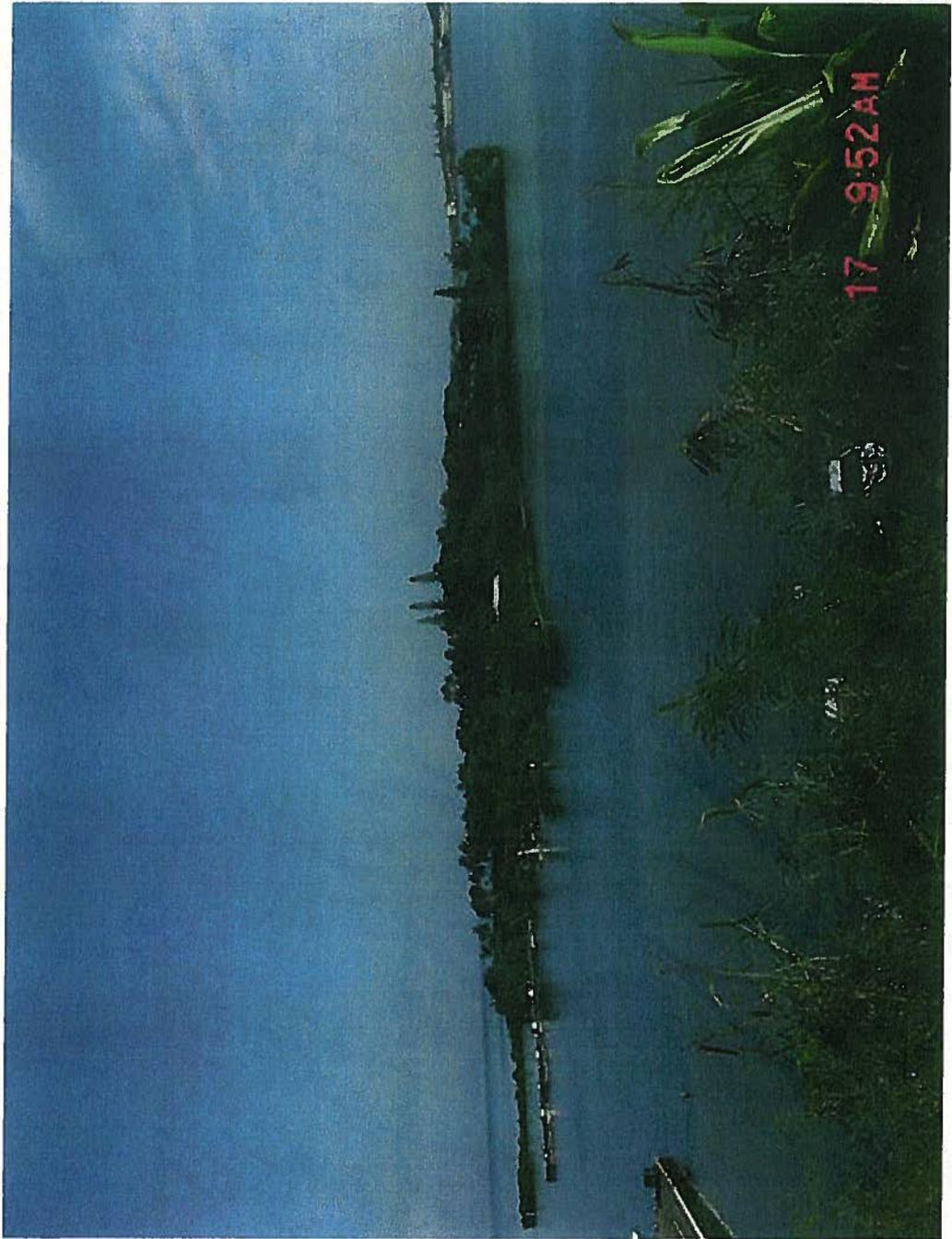


EXHIBIT 3

COCONUT ISLAND SITE INSPECTION



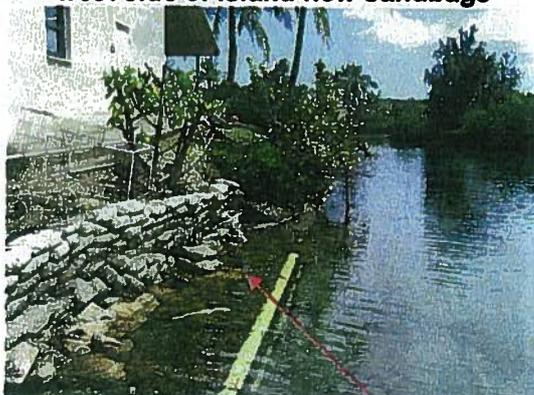
north east side of island – encroachment



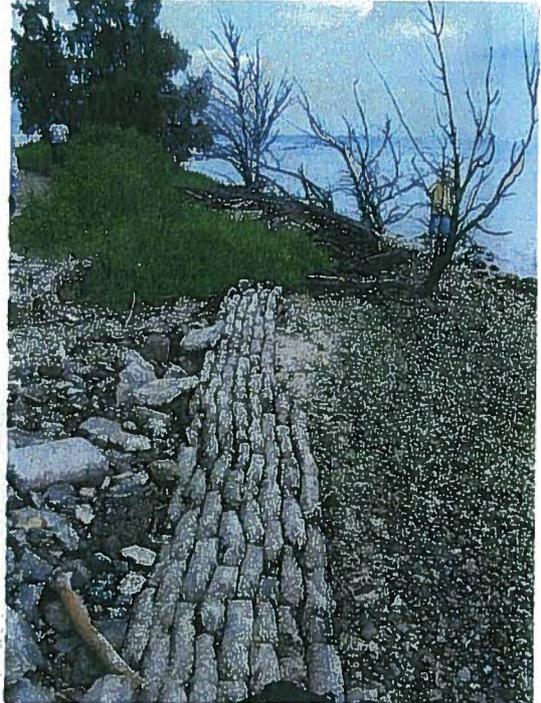
east side of island – old & new sandbags



west side of island new sandbags



lagoon – new sandbags



northeast side of island old sandbags (7)



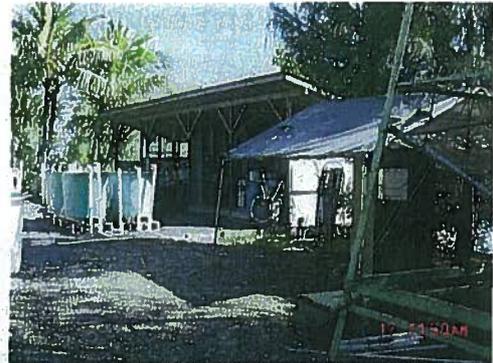
northeast side of island old sandbags (7)



west side of island



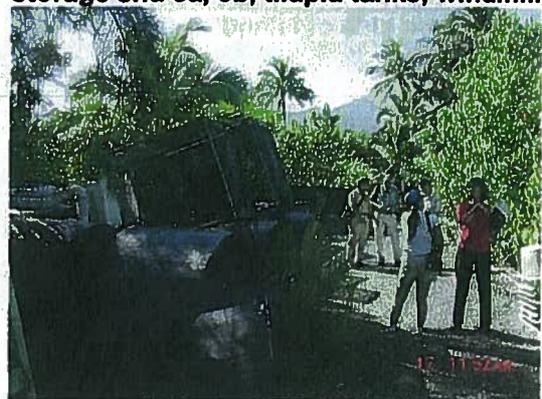
Edwin Pauley Marine lab # 6



storage shd 3a, 3b, tilapia tanks, windmill



tilapia tanks



grau tank, cage storage area



Dormitory / Research Support Bld # 8



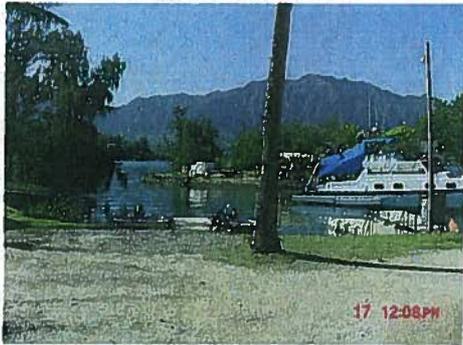
Maturation Lab "catfish area"



Maturation Lab / Hatchery # 7



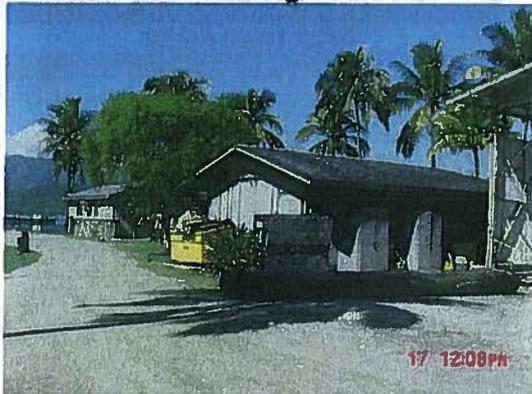
Education Research Support Bld # ___



Boat lagoon



Road to Lanal Dorms # 22



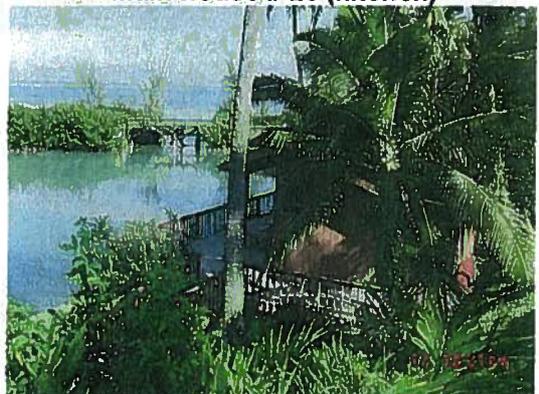
Whale-dolphin research bldg., Marine Mammal bld.



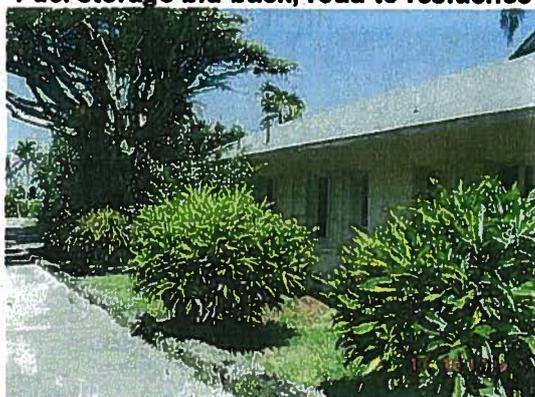
Main house # 23 (kitchen)



Fuel storage bld back, road to residence



Beach house # 21, North lagoon

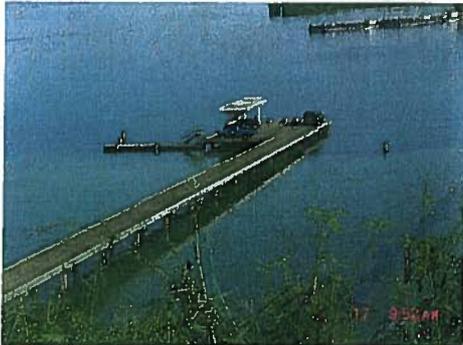


Truman residence



Picnic shelter # 19

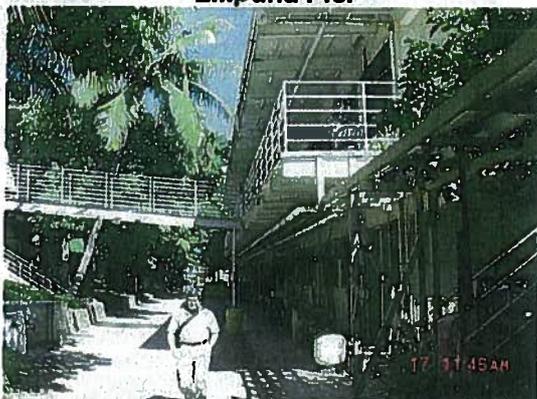
SITE INSPECTION DECEMBER 17, 2004



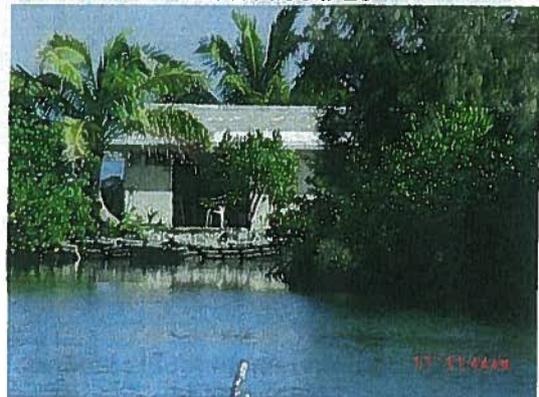
Lilipuna Pier



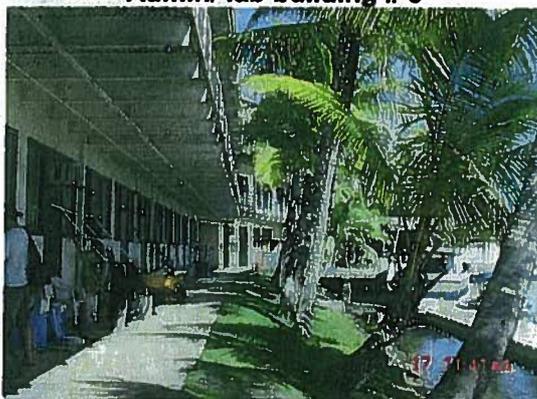
Net House # 28



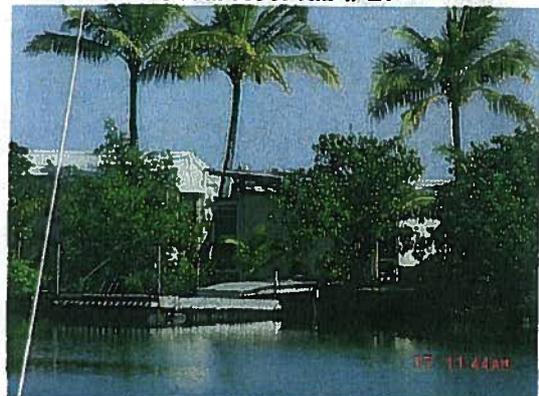
Admin/ lab building # 9



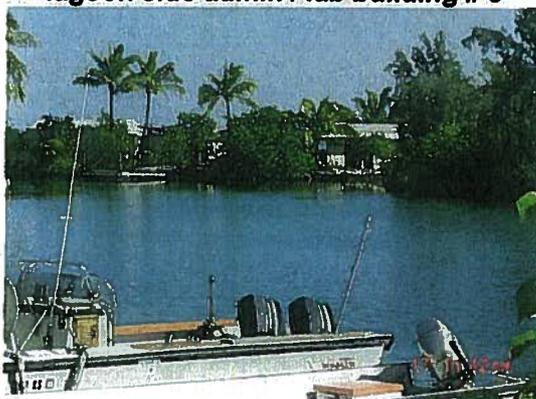
Coral Reef lab # 27



lagoon side admin / lab building # 9



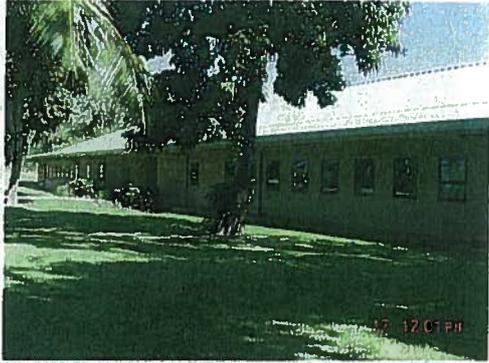
Utility dock



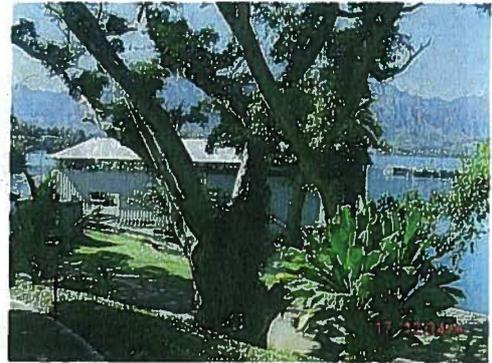
East lagoon, Coral Reef labs in distance



Water pipes



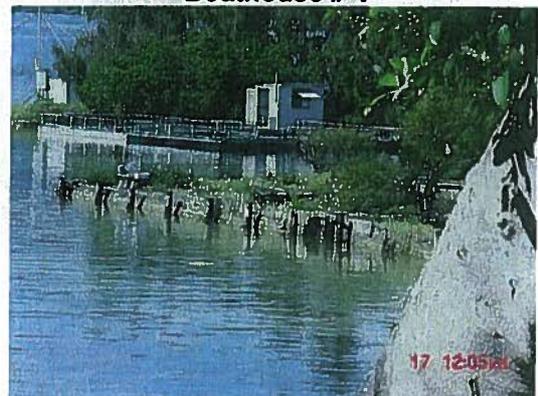
Edwin Pauley Marine Lab



Boathouse # 4



Pauley lab



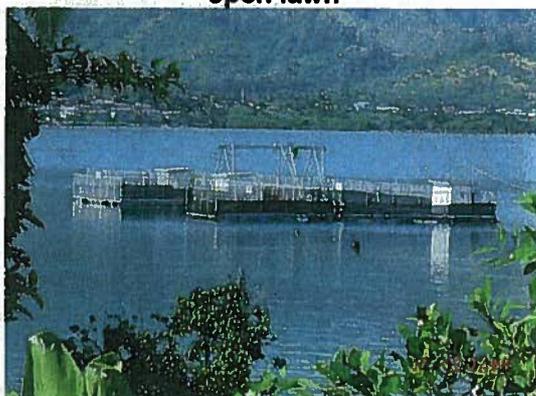
Shark lagoon



open lawn



Winch house # 29



Marine mammal pens - no authorization



Boathouse left, Marine railway # 3



Equipment / Storage Shed # 17



repaired seawall behind lanai suites



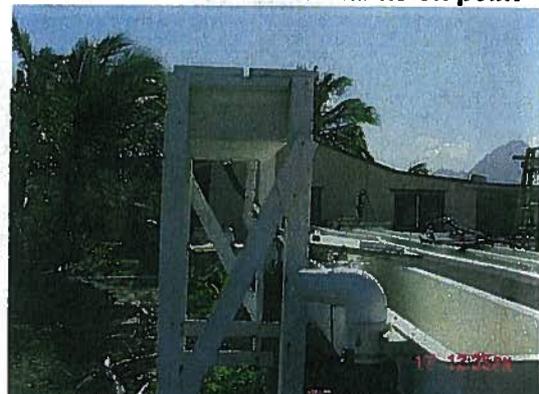
Miller House # 16



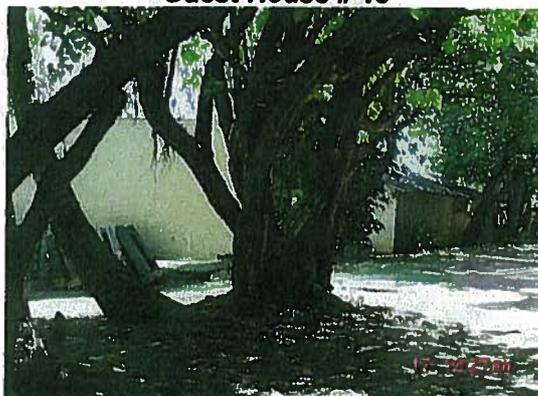
Coral lab # 27 research tanks on point



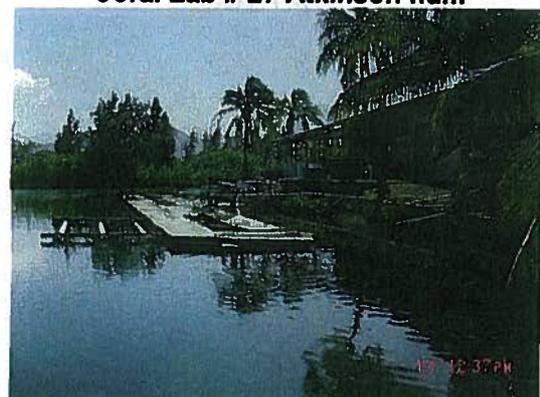
Guest House # 13



Coral Lab # 27 Atkinson flum



NSF Laboratory # 12



Lesters dock and Pelagic lab

OA-68

CONSERVATION DISTRICT USE APPLICATION

OA-6/6/75-687

180-DAY: 12/2/75

APPLICANT: University of Hawaii, Hawaii Institute of Marine Biology,
at the request of
Dept. of Accounting & General Services
State of Hawaii
P. O. Box 119
Honolulu, Hawaii 96810

USE REQUESTED: Sewer Line Use, Kaneohe, Oahu

DISTRICT/ISLAND: Koolaupoko, Oahu

TAX MAP KEY: 4-6-01:1 & 51

AREA/PARCEL: (1) 12.5 acres AREA/USE: 4,000 square feet
(51) 16.30 acres

BOARD ACTION: Approved by the Board of Land & Natural Resources at it's meeting held on 10/24/75 6 CONDITIONS

Indexed ✓

EXHIBIT 3

November 3, 1975

Honorable Hideo Murakami
State Comptroller
Dept. of Accounting and
General Services
State of Hawaii
P. O. Box 119
Honolulu, Hawaii 96810

Dear Sir:

**Conservation District Use Application for
Private Utility; Sewer Line Use at
Approximately 1.5 Miles from
Kaneohe, Koolaupoko District,
Oahu; TMK: 4-6-01:1 & 51**

At its meeting of October 24, 1975, the Board of Land and Natural Resources approved the subject application subject to the following conditions:

1. The applicant shall comply with Section 2C and 2F of Regulation No. 4.
2. Signs large enough for legibility and erected at the extremities where the sewer line emerges from bay waters indicating the presence of a sewer line crossing and prohibited anchoring be posted.
3. A Shorewaters Construction Permit from the Harbors Division be obtained.
4. All applicable Public Health Regulations are met.
5. A Department of the Army (DA) Permit for construction of the Main Force be obtained.

EXHIBIT 3

Hon. Hideo Murakami
Page 2
November 3, 1975

6. A Construction Right-of-Entry and Easement from the Board of Land and Natural Resources be obtained.

Should you have questions on any of these conditions, please contact our Planning Office at 548-6461.

Very truly yours,

Edgawa A. Hamasu

for CHRISTOPHER COBB
Chairman of the Board

cc: C & C Planning Dept.
C & C Board of Water Supply
Oahu Board Members
Oahu Land Agent
DOH
OEQC
U. S. Fish & Wildlife
DOT
Corps of Engineers

bcc: Divisions

JE

May 17, 1976

REF: OA-2/9/76-761

Mr. Hideo Murakami, Comptroller
Dept. of Accounting & General
Services
State of Hawaii
P. O. Box 119
Honolulu, Hawaii

Dear Mr. Murakami:

Conservation District Use Application for
Governmental Use at Coconut Island, Kaneohe
Bay, Oahu TMK 4-6-01:51

At its meeting of May 14, 1976, the Board of Land and Natural Resources approved your application subject to the following conditions:

1. That the applicant or its assigns comply with applicable parts of Sections 2C and 2F of Departmental Regulation No. 4 especially to
 - a. Requirements of applicable Public Health Regulations.
 - b. Compliance with requirements of the U.S. Corps of Engineers, State Department of Transportation, Harbors Division, and State Department of Land and Natural Resources, Land Management Division.
2. That no development occur within the Special Management Area unless approval is first received from the authority in accordance with the procedures adopted pursuant to Section 205A, Act 176, SLH 1975.
3. Should the applicant award a contract for construction of the replacement facilities, the contract shall include the condition that the State of Hawaii be held harmless from and against any loss, liability, claim or demand for property damage, personal injury and

EXHIBIT 3

Mr. Hideo Murakami

-2-

May 17, 1976

death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit, and not occasioned through the fault of the State.

4. Prior to construction, three copies of final plans shall be submitted to the Chairman for review and approval.
5. Any other terms and conditions prescribed by the Chairman.

Should you have questions on any of these conditions, please contact our Planning Office at 548-7837.

Very truly yours,

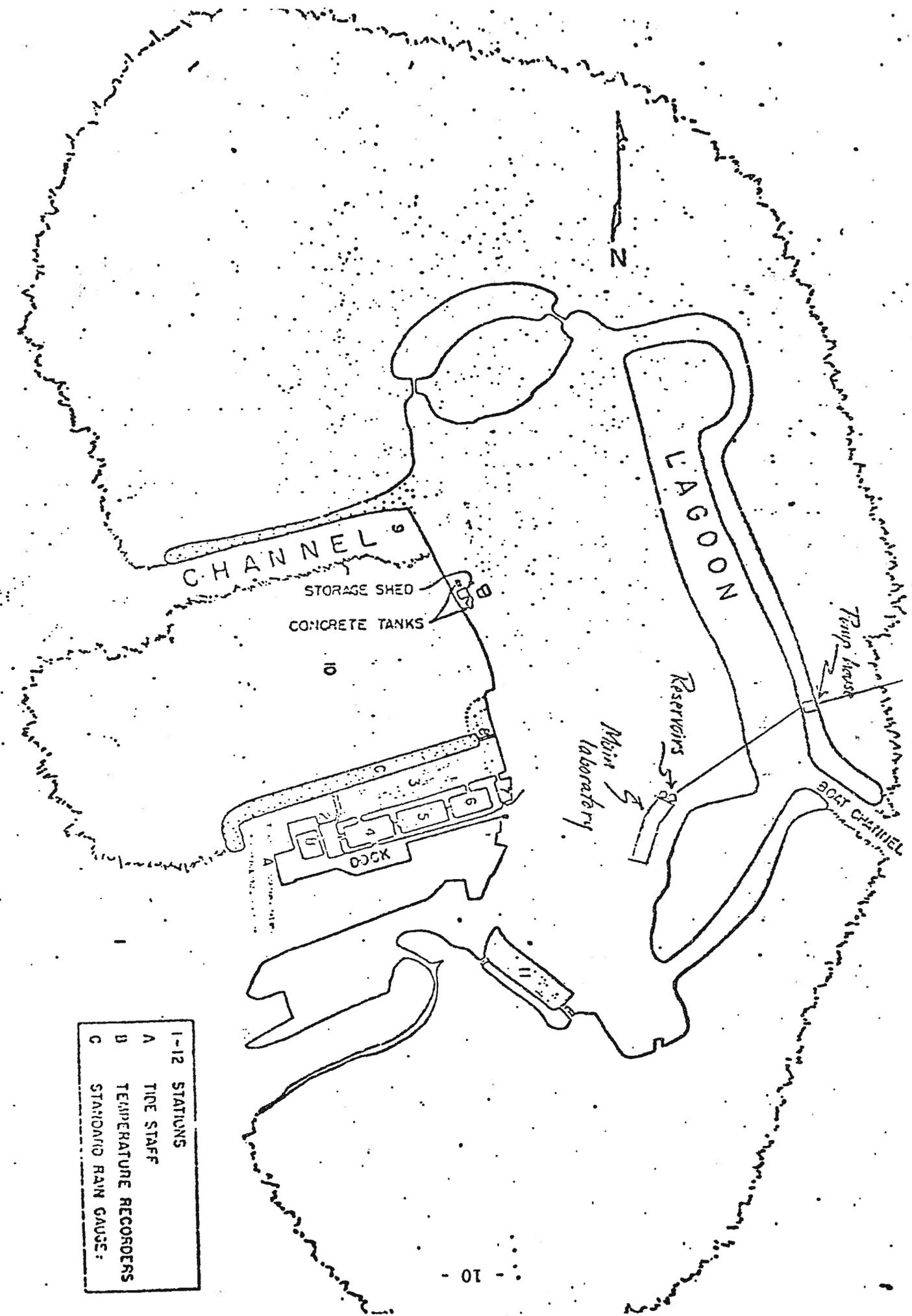
CHRISTOPHER COBB
Chairman of the Board

cc: U.S. Fish & Wildlife
U.S. Corps of Engineers
Dept. of Health
Dept. of Transportation
OEQC
EQC
County Planning
County Water Supply

bcc: Land Management
DOWALD
Fish & Game

LB:cm

FIG 2 MAP OF "COCONUT ISLAND" LOCATING STATIONS



REF. NO.: CPO-332-85
FILE NO.: OA-9/13/83-1607
180-Day Exp. Date: 3/11/84

AUG 0 0 1984

Honorable Hideo Murakami
Department of Accounting & General Services
Public Works Division
P. O. Box 119
Honolulu, Hawaii 96810

Dear Mr. Murakami:

We are pleased to inform you that your Conservation District Use Application for replacement and/or reconstruction of a seawall at Coconut Island, Kaneohe Bay, Hawaii was approved on January 16, 1984, subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The State of Hawaii shall not be responsible for any loss, liability, claim or demand for property damage, property loss, or personal injury including death caused by or resulting from any act or omission of the applicant's contractor in connection with its exercise of the privileges herein granted;
3. Other terms and conditions as prescribed by the Chairperson;
4. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization from the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
5. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
6. That the applicant comply with all applicable Public Health Regulations;
7. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective

EXHIBIT 3

DEC 19 1983

REF. NO.: CPO-1142
FILE NO.: OA-7/2/83-1583
180-Day Exp. Date: 1/8/84

Ms. Barbara J. M. Pauley
dba Coconut Island Properties
P. O. Box 800
Kaneohe, Hawaii 96744

Dear Ms. Pauley:

Conservation District Use Application for a Small Floating
Boat Pier at Coconut Island, Kaneohe, Hawaii

We are pleased to inform you that the Board of Land and Natural Resources, at its meeting of December 2, 1983, approved your application subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairperson;
4. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
5. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction,

EXHIBIT 3

DEC 19 1983

the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;

6. That the applicant comply with all applicable Public Health Regulations;
7. The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the Conservation District, shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration or repair of any building or other improvement, four (4) copies each of the final location map, plans and specifications shall be submitted to the Chairperson, or his authorized representative, for approval;
8. Upon approval of a particular use by the Board, any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and, all work and construction must be completed within three (3) years of the approval of such use;
9. That four (4) sets of construction plans where three (3) sets shall be returned to the applicant, shall be submitted to the Department for review and approval.

Should you have any questions on any of these conditions, please contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

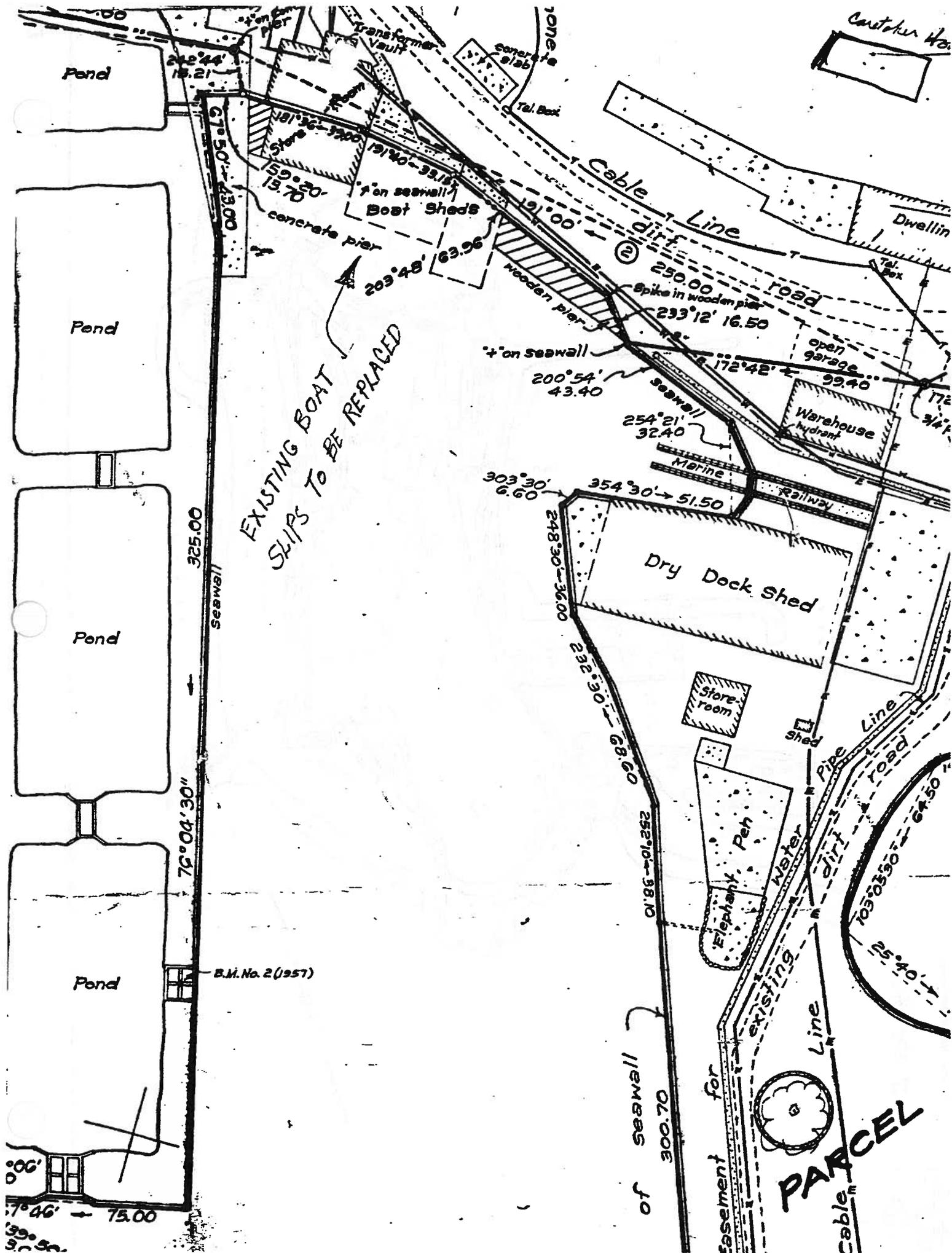
SUSUMU ONO, Chairman

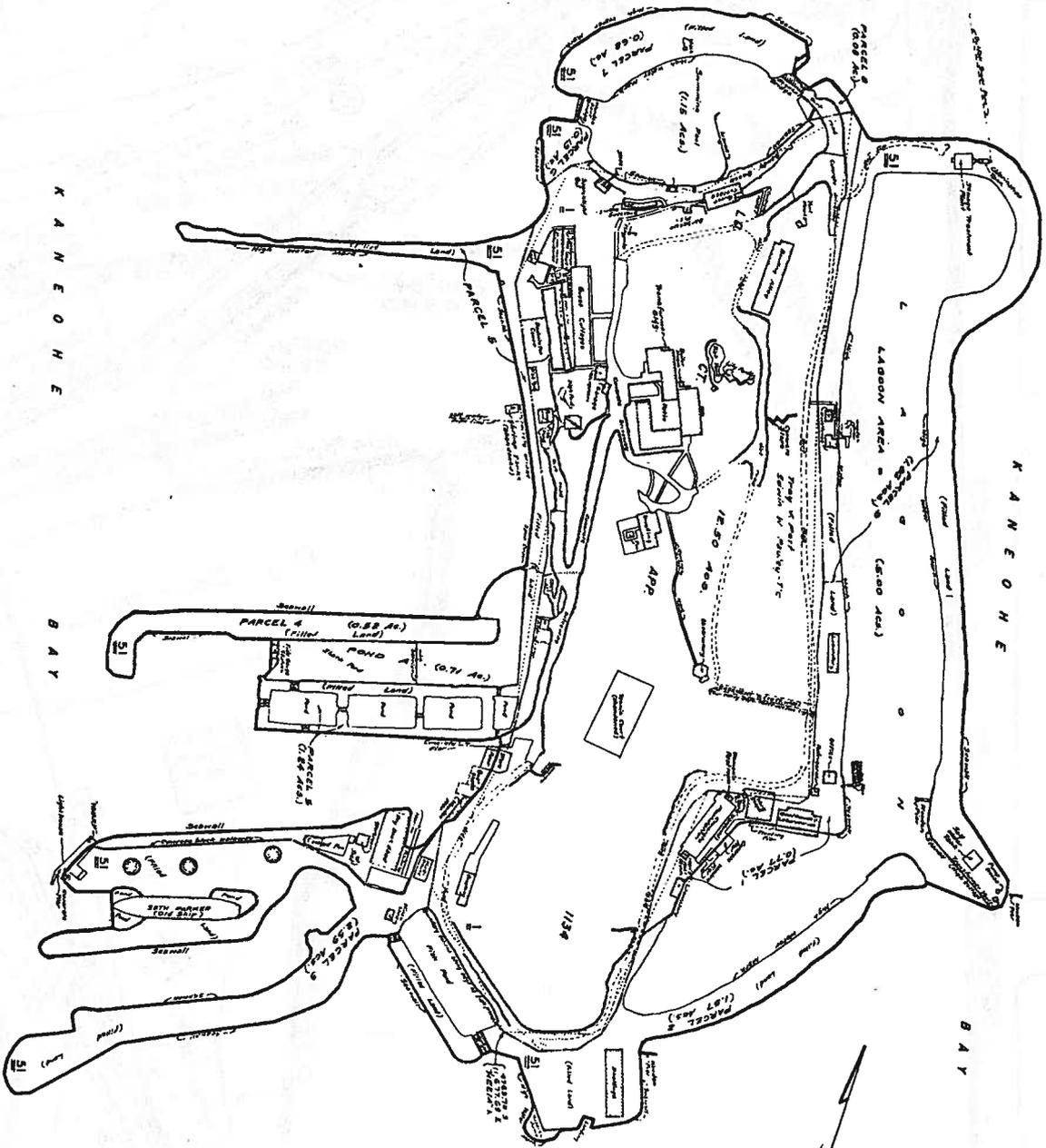
SUSUMU ONO, Chairperson
Board of Land and Natural Resources

cc: Oahu Board Members
Oahu Land Agent, c/o
Land Management Division
C&C/DGP
DOH/OEQC/EQC/DPED/OHA

bcc: Land Management
DOWALD
Aquatic Resources
Historic Sites
Forestry and Wildlife
State Parks
NARS
DOCARE

ALS:gt
1-14-83 DC





KANEONE

BAY

KANEONE

BAY

TRUE NORTH
SCALE: 1/4" = 100'

Note: Parcel 51 owned by
KANEONE BAY
Total Area = 10.50 Ac.

SUPPLEMENTARY MAP "A"
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

RE-ZONE	T-3, T-7
FLOORING	ASBESTOS
TAX MAPS	BY
STATE OF HAWAII	
TAX MAP	
FIRE TAXATION	
ZONE	T-3, T-7
SCALE	1/4" = 100'

JOHN WAIHEE
GOVERNOR OF HAWAII



WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

LIBERT K. LANDGRAF
MANABU TAGOMORI
RUSSELL N. FUKUMOTO

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

OCT 3 1988

FILE NO.: OA-4/29/88-2134
180-Day Exp. Date: 10/26/88
DOCUMENT NO.: 4366E

Mr. Clyde Akita
University of Hawaii
Facilities Planning Office
2002 East-West Road
Honolulu, Hawaii 96822

Dear Mr. Akita:

SUBJECT: Conservation District Use Application for an
After-the-Fact Entrenched Seawater Intake Pipeline
at Coconut Island

The Board of Land and Natural Resources rendered the following
decisions on your application at their meeting on September 23,
1988:

A. Land Use Violation

1. The applicant be assessed a fine of \$500.00, pursuant to HRS 183-41(e), for the unauthorized work in the Conservation District.
2. In the event of failure to pay this fine within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition.

B. Application

The after-the-fact request for excavation and entrenchment of the filtered seawater intake system is approved subject to the following conditions:

1. Live coral shall be transplanted in the area for restoration to its natural condition;
2. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;

EXHIBIT 3

3. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
4. The applicant shall comply with all applicable Department of Health Administrative Rules;
5. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
6. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other.

Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,



WILLIAM W. PATY, Chairperson
Board of Land and Natural Resources

Receipt acknowledged:

Clyde L. Akita
Applicant's Signature

10/5/88
Date

cc: Dr. Albert J. Simone, President
University of Hawaii
Dr. Philip Helfrich, Director
Hawaii Institute of Marine Biology
Oahu Board Member
Oahu District Land Agent

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

UNIVERSITY OF HAWAII
OFFICE OF
SR. VICE CHIEF



RECEIVED

MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

'97 FEB 28 AIO:38

STATE OF HAWAII

97 MAR 6 A 8:35

DEPUTY
GILBERT S. COLOMA-AGARAN

DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

Ref.:PB:SL

FEB 25 1997

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

File No:OA-2854

Mr. Philip Helfrich
Hawaii Institute for Marine Biology
P.O. Box 1346, Coconut Island
Kaneohe, Hawaii 96744-1346

Dear Mr. Helfrich:

This is to inform you that on February 14, 1997, the Board of Land and Natural Resources approved your Conservation District Use Application to construct a new marine laboratory and support facilities at Coconut Island, Kaneohe, Oahu (TMKs:4-6-01:51 & 1), subject to the following conditions:

1. The applicant and its contractors shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicant and its contractors shall comply with all applicable Department of Health Administrative Rules;
3. All conditions imposed under the County Special Management Area Use Permit for this project, shall be observed by the applicant and its contractors;
4. All mitigation measures set forth in the accepted Final Environmental Impact Statement for this project are hereby incorporated as conditions of approval;
5. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

EXHIBIT 3

MAR 5 1 38 PM '97

6. The applicant and its contractors shall obtain the approval of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources for use of Heeia Pier as a staging area, with specific mitigation measures to be worked-out with DOBOR. Any damage to the Heeia pier facilities resulting from staging operations shall be repaired by the applicant and its contractors at no cost to DOBOR. Staging operations for demolition and construction of facilities on Coconut Island shall not incur additional costs on DOBOR;
7. A Best Management Practices program shall be developed and implemented by the applicant and its contractors to ensure that the surrounding marine waters and aquatic life are not negatively impacted;
8. Construction staging areas, including stockpiled sediment and materials shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. Precaution shall be taken during demolition and construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into Kaneohe Bay;
10. The applicant and its contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;
11. Accidental discharges of construction materials into the lagoon shall be minimized by using proper containment for the materials on the LCU;
12. The contractor must provide immediate notice to HIMB should any releases of petroleum, chemicals or other products spill into Kaneohe Bay. The HIMB marine mammal research staff shall also be notified immediately of any spills;
13. Since this application is for the use of conservation land only, the applicant shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State Lands;
14. To mitigate impacts on recreation and to ensure public safety in Kaneohe Bay, the applicant shall contact all affected government and business entities prior to the initiation of construction. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work;

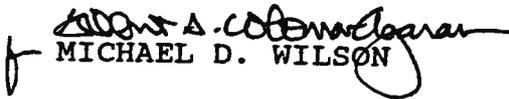
15. For new road construction on the island, construction techniques such as compacting, matting, and hydroseeding, shall be used to stabilize the slopes. Runoff from the access road shall be directed into sedimentation basins so that no increase in runoff to the adjacent lagoons will result. The applicant shall designate roads to be used during construction to minimize ground disturbances and impacts resulting from mobilizing construction equipment;
16. Berms shall be constructed around the fuel and lubricant storage areas. Liquids and cement shall be placed far away from the shoreline and a rigid dust control program shall be implemented;
17. The applicant and its contractors shall ensure that sediment controls are in place and that landscaping will replace much of the vegetation that is removed;
18. To mitigate viewplane impacts, the applicant and its contractors must retain as much foliage as possible and plant new foliage to help screen the new structures. In addition, buildings shall be painted with colors that harmonize with the surrounding environment. Roof materials should also harmonize with the character of the island;
19. The applicant shall ensure that adequate measures are taken for fire protection/prevention on the island, including the use of building elements designed to slow the spread of fire. In addition, portable fire fighting equipment shall be available on the island to extinguish fires. HIMB shall coordinate training for staff in the use of fire fighting equipment;
20. The applicant shall submit proper documentation for the five significant sites that will be affected prior to construction plan approval;
21. The applicant shall complete a Coconut Island Master Plan to address the long-term development, maintenance and operation of the island prior to any further development approvals. The Master Plan shall include a Cultural Resource Management Plan;
22. Should historic remains such as artifacts, burials, or stone pavings or wall be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;

23. The applicant shall develop a short-term and long-term solid waste management plan for removal of construction materials, rubbish and hazardous materials from the island. This plan should contain a recycling element;
24. Milo or other wood products may not be sold by HIMB as this would constitute a commercial use;
25. Greenwaste generated by tree waste and other sources shall be recycled at an approved greenwaste facility;
26. To mitigate off-site impacts resulting from the shortage of available parking facilities for construction workers and HIMB staff, HIMB shall develop a transportation and parking plan, including shuttle service;
27. Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
28. The applicant shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-4 remain the responsibility of the applicant;
29. The applicants shall notify the Department when construction is initiated and when construction is completed;
30. That in issuing this permit, the Department and Board has relied on the information and data which the permittee have provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
31. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
32. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one, and return the other within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning and Technical Services staff, at 587-0386.

Aloha,

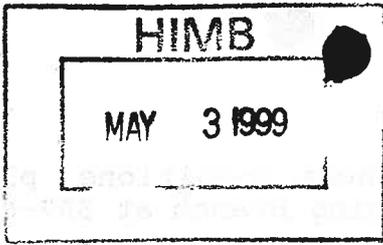

MICHAEL D. WILSON

Receipt acknowledged:


Applicant's signature

Date 3/3/97

xc: Oahu Board Member
Oahu Land Agent
C&C Dept. of Planning
C&C DLU, DPW, BWS
DOH
U.H. Foundation
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
Kaneohe Neighborhood Board No. 30
Glen Koyama



AQUACULTURE DEVELOPMENT PROGRAM
 AQUATIC RESOURCES BOATING AND OCEAN RECREATION CONSERVATION AND RESOURCES ENFORCEMENT
 CONVEYANCES FORESTRY AND WILDLIFE HISTORIC PRESERVATION LAND DIVISION
 STATE PARKS WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
 LAND DIVISION
 P.O. BOX 621
 HONOLULU, HAWAII 96809

Ref.:PB:SL

APR 30 1999

Ref. File No. OA-2854

Mr. Gordon Grau, Interim Director
 Hawaii Institute of Marine Biology
 P.O. Box 1346
 Kaneohe, Hawaii 96744

MAY 9 9 41 AM '99

Dear Mr. Grau:

This is to inform you that on April 23, 1999, the Board of Land and Natural Resources (Board) found the Hawaii Institute of Marine Biology (HIMB) in violation of Title 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by establishing uses without first obtaining the approval of the Department or Board, at Coconut Island, Oahu (TMKS 4-6-01:1&51), subject to the following:

- A. That the Board of Land and Natural Resources imposed a fine of \$2,000 pursuant to Chapter 183C, HRS;
- C. That upon payment of the fine by HIMB, within sixty (60) days of the date of the Board's action, or by a date to be determined by the Department of Land and Natural Resources in consultation with HIMB, HIMB shall submit an after-the-fact CDUA to determine the final disposition of the eleven structures and facilities;
- D. That in the event of failure of the permittee to comply with items B and C, the matter shall be turned over to the Attorney General for disposition including all administrative costs.

Please acknowledge receipt of this action, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days.

EXHIBIT 4

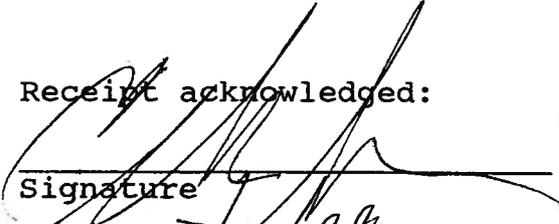
Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning Branch at 587-0381.

Aloha,



Dean Y. Uchida, Administrator
Land Division

Receipt acknowledged:


Signature

Date

5/3/99

cc: Oahu Board Member
Oahu Land Agent
Allan Ah San
DAR/HPD/DOCARE
City and County of Honolulu
Dept. of Planning and Permitting
Dept. of Public Works
Board of Water Supply

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division, Planning Branch
Honolulu, Hawaii

Ref. File No.: OA-2854

April 23, 1999

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING: Alleged Unauthorized Lands Uses at the Hawaii
Institute of Marine Biology's Existing
Research/Educational Complex Located at
Coconut Island, Kaneohe, Oahu

PERMITTEE: Hawaii Institute of Marine Biology
P.O. Box 1346
Coconut Island
Kaneohe, Hawaii 96744-1346

LANDOWNERSHIP: 1. State of Hawaii, Leased to the
University of Hawaii Under General Lease
No. S-5325 for a Marine Biology Facility
(TMK:4-6-01:51)

2. The University of Hawaii
Foundation(TMK:4-6-01:01)

LOCATION/
TMK: Coconut Island, Kaneohe, Oahu, Hawaii
TMKs:4-6-01:01 & 51

SUBZONE: General

AS AMENDED
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

April 23, 1999. per

ITEM D-11

BACKGROUND/DESCRIPTION OF AREA:

Moku O Lo'e (Coconut Island) is a 28.8-acre island located in Kaneohe Bay, along the east shore of the island of Oahu (Exhibits 1-2). The island is approximately 650 meters from the nearest shoreline in Kaneohe Bay. 16.3 acres of the island are owned by the State of Hawaii and leased to the University of Hawaii, Hawaii Institute of Marine Biology (HIMB), by the Department of Land and Natural Resources, Land Division, under to General Lease No. S-5325, for a Marine Biology Facility. The terms of the lease run for sixty-five (65) years starting in 1989. The remainder of the island (12.5 acres) is owned by the University of Hawaii Foundation. It was purchased from Hachidai, USA, Inc., in August, 1995. This land is being leased to HIMB by the U.H. Foundation.

Coconut Island has two distinct physiographic parts. The first is the central area of the island, consisting of the original land (Exhibit 3). This land is elevated to approximately 55 feet and well landscaped. The center of the island is surrounded by an area filled with dredged material, which was placed around the island in the 1930s. This is the area that is owned by the State of Hawaii. The island is surrounded by a 64-acre marine preserve established in 1959 and is used primarily for marine research by HIMB. The marine reserve consists mostly of coral reef (living coral and coralline algae) with water depths at high tide in the range of two to five feet.

Coconut Island is located in the Conservation District, General subzone. The surrounding reefs and waters have been designated as Protective subzone.

CURRENT USE:

The existing laboratory facilities on Coconut Island serve as the aquaculture research center for HIMB. Many facilities on the island date from the formation of the Hawaii Marine Laboratory in the 1940s and from the mid 1960s. The previous laboratory building, constructed in the 1940s, was destroyed by fire in 1961. The present administration/laboratory building was built in 1966.

The center portion of the island has been extensively developed and landscaped. In the past, it was used as a private retreat with cottages a main residence, a pavilion, a guest house and a bowling alley (Exhibit 4). The bowling alley has since been demolished.

The U.H. research facilities have been constructed on the perimeter portions of the island. The main building within the HIMB complex is the administration/laboratory building located behind a concrete pier in the eastern lagoon (See Exhibit 4). It is a three story

building that houses HIMB's administrative functions and a number of research labs. The other buildings are one-story wood structures, except for five buildings that are concrete or metal.

On February 14, 1997 the Board of Land and Natural Resources (Board) approved an application by HIMB to develop new marine laboratory facilities on the island (Exhibit 5).

HIMB has completed construction of the facilities and is in the process of completing landscaping associated with the project.

ALLEGED UNAUTHORIZED LAND USES:

HIMB has periodically been investigated for alleged unauthorized activities at Coconut Island resulting in possible lease default actions by DLNR.

In 1994, the Division of Conservation and Resources Enforcement (DOCARE) conducted a site investigation and documented numerous alleged land use violations. At that time, DOCARE documented dumping, littering, unauthorized tree cutting, and a collapsed seawall.

The Oahu District Land Agent after visiting the island, issued a Notice of Default on June 4, 1997 for an alleged breach of lease conditions due to HIMB's failure to maintain the leasehold in a clean, sanitary and orderly condition and for the storage of hazardous materials (electric transformers).

In response to these allegations, HIMB did take efforts to address some of these issues such as cleaning-up dump sites which included potentially toxic substances (old batteries and transformers) and biowaste. Neither enforcement or the default action were pursued.

DOCARE conducted another site investigation on July 16, 1998 and documented additional land use violations on the island such as dumping.

On August 6, 1998 the DLNR issued a notice to HIMB with the following allegations:

1. Unauthorized dumping and littering at several locations on the island;
2. Outstanding permit compliance matters under Conservation District Use Permit OA-2854;
3. Unauthorized shoreline work; and

4. An unauthorized structure in the South Lagoon area.

In addition, DLNR requested an inventory of all structures either placed, built or rebuilt or improved on the island within the last three (3) years [excluding structures approved under CDUP OA-2854]. DLNR also requested a compliance report covering 32 conditions imposed by the Board under CDUP OA-2854.

On August 27, 1998 DLNR, Land Division staff met with U.H. Administrators on Coconut Island. After surveying the island, HIMB agreed to the following measures to partially address the alleged violations:

1. General Clean-up:

It was agreed that HIMB would grind and recycle all green waste on the island, including large rubbish piles next to the East and West Lagoons.

2. Excavated Soil Near East Lagoon:

HIMB agreed to prevent soil from eroding into the surrounding protected waters of Kaneohe Bay. They agreed to work the soil into the existing landscape, seed and/or plant the area as soon as possible.

3. Shoreline Structures:

DLNR agreed to work with HIMB to protect the shoreline with appropriate construction materials, under the condition that HIMB must receive the proper authorization through Land Division for such work.

4. Alleged Unauthorized Structures:

HIMB agreed to provide Land Division with an inventory of all structures built within the past three years.

5. Condition Compliance:

HIMB agreed to provide a permit compliance report to Land Division covering conditions in CDUP OA-2854.

6. Land Disposition:

Land Division informed HIMB that the General Lease (S-5325) was being placed in default for not maintaining the leasehold properly.

In addition, staff recommended the following measures:

1. Master CDUA:

Staff recommended that HIMB pursue a Conservation District Use Application (CDUA) for the Coconut Island Long Range Development Plan, including the adjoining reef areas. Once approved, individual permitting for projects would be less burdensome. The CDUA would necessarily include a discussion of future facilities, infrastructure and activities, including research on the adjoining reef. In addition, the plan would include a discussion of proposed repair and maintenance work and operations including seawall repair or construction, pier construction and other repairs or improvements.

Staff also noted that DLNR is proposing to place Coconut Island in a Special Subzone, and that the University should consider a request for a set aside for the submerged reef areas to extend its management responsibilities outward from the fast land.

HIMB submitted a progress report on island clean-up efforts and a structures inventory on October 23, 1998 (Exhibit 6). The U.H. Foundation submitted a condition compliance report on October 26, 1998 (Exhibit 7).

According to HIMB, much of the debris has been removed from the island, with the exception of some isolated pockets. They note that the Seth Parker area is free from debris, and the waste was handled properly. With the exception of the construction debris near the East Lagoon, the whole island has been cleaned and groomed, according to HIMB.

The inventory report submitted by HIMB documents twelve (12) structures or facilities that were built during the past three (3) years, of which, eleven (11) were not authorized by the Land Division. A list and location map is included in the report as Exhibit 6 page 3.

With respect to permit conditions imposed under CDUP OA-2854, staff did not immediately notice obvious permit compliance problems, but will continue to monitor the situation.

DISCUSSION:

Coconut island is an important research facility and is integral to the University's plan to expand its scientific programs. On-going research at and around Coconut island provides important information with respect to the factors that effect coral reef development and marine ecology.

However, the island and its surrounding waters are located within the State Land Use Conservation District, which falls under the regulatory authority of the DLNR. The DLNR is mandated to protect and conserve natural resources that are within its regulatory purview.

Although HIMB, has in the past, obtained permits for various land uses, including the most recent permit (OA-2854) for the expansion of the island's research facilities, staff believes that HIMB staff has developed projects, facilities and conducted unauthorized work without the DLNR's authorization. The inventory submitted by HIMB provides evidence to this effect.

Furthermore, although a Master Plan has been developed for HIMB, Land Division staff is concerned that management of activities and uses on Coconut Island is lacking. This has led to a general demise of the State land portion, which has periodically been used as a trash dump. Portions of seawalls that form the perimeter of much of the island have been repaired but many sections have completely failed leading to the erosion of the fast lands into the bay. HIMB is now using fresh water fish species in its research and there are numerous PVC out falls draining into the bay.

Staff is concerned over the management and coordination of research activities on the island. Staff recently returned a request for a Site Plan Approval to establish Monk Seal pens in or near the South Lagoon, for fear that the project was not well coordinated with the HIMB administration.

While these issues may or may not be serious, they certainly raise questions about the management of Coconut Island (e.g., oversight of research projects, facilities and property management, public works, environmental quality, etc.). Staff is concerned that the construction of additional research facilities on the island will increase daily population and place natural resources at greater risk of damage. Unless the University invests more resources into property management and research oversight at Coconut Island, staff is doubtful that these issues will ever be resolved.

RESOLUTION OF ALLEGED UNAUTHORIZED LAND USES

As noted previously, HIMB submitted an inventory of structures or facilities built during the past three (3) years (See Exhibit 6, page 3). Staff reviewed CDUP files related to the development of Coconut Island and found that most of the structures/facilities on the inventory were not, in fact, permitted by the DLNR.

1. Catfish tank area (no authorization)
2. Windmill (no authorization)
- 3a. Storage sheds (no authorization)
- 3b. Aquaculture tanks (no authorization)
4. New floating dock (no authorization)
5. Monk Seal fish house (no authorization)
6. Replacement of deck in back of Miller house (no authorization)
7. Sea wall repair by beach (no authorization)
8. Sea wall repair by lanai suites (no authorization)
9. Floating utility dock (no authorization)
10. Marine mammal pens (no authorization)
11. Loading dock for LUC (authorized per CDUP OA-2854)
12. Marine mammal building (no authorization)

Title 13-5, Hawaii Administrative Rules:

The Department's Administrative Rules identify a list of uses that "may" be developed in the Conservation District, and also define land use as follows:

"The placement or erection of any solid material on land if that material remains on the land more than fourteen days.."

Since all of the structures and facilities on the list qualify as land uses under the definition of land use, a permit or approval of some type should have been obtained by HIMB (with the exception of # 11, which was approved under CDUP-2854).

As such staff recommends as follows:

- A. That the Board of Land and Natural Resources finds that HIMB violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain the appropriate approvals for those eleven (11) items identified in this report;
- B. That the Board of Land and Natural Resources impose a fine of \$2,000 pursuant to Chapter 183C, HRS;

Board of Land and
Natural Resources

Ref. OA-2854

- C. That upon payment of the fine by HIMB, within sixty (60) days of the date of the Board's action, or by a date to be determined by the Department of Land and Natural Resources in consultation with HIMB, HIMB shall submit an after-the-fact permit to determine the final disposition of the eleven structures and facilities;
- D. That in the event of failure of the permittee to comply with items B and C, the matter shall be turned over to the Attorney General for disposition including all administrative costs.

Respectfully submitted,



SAMUEL J. LEMMO
Staff Planner



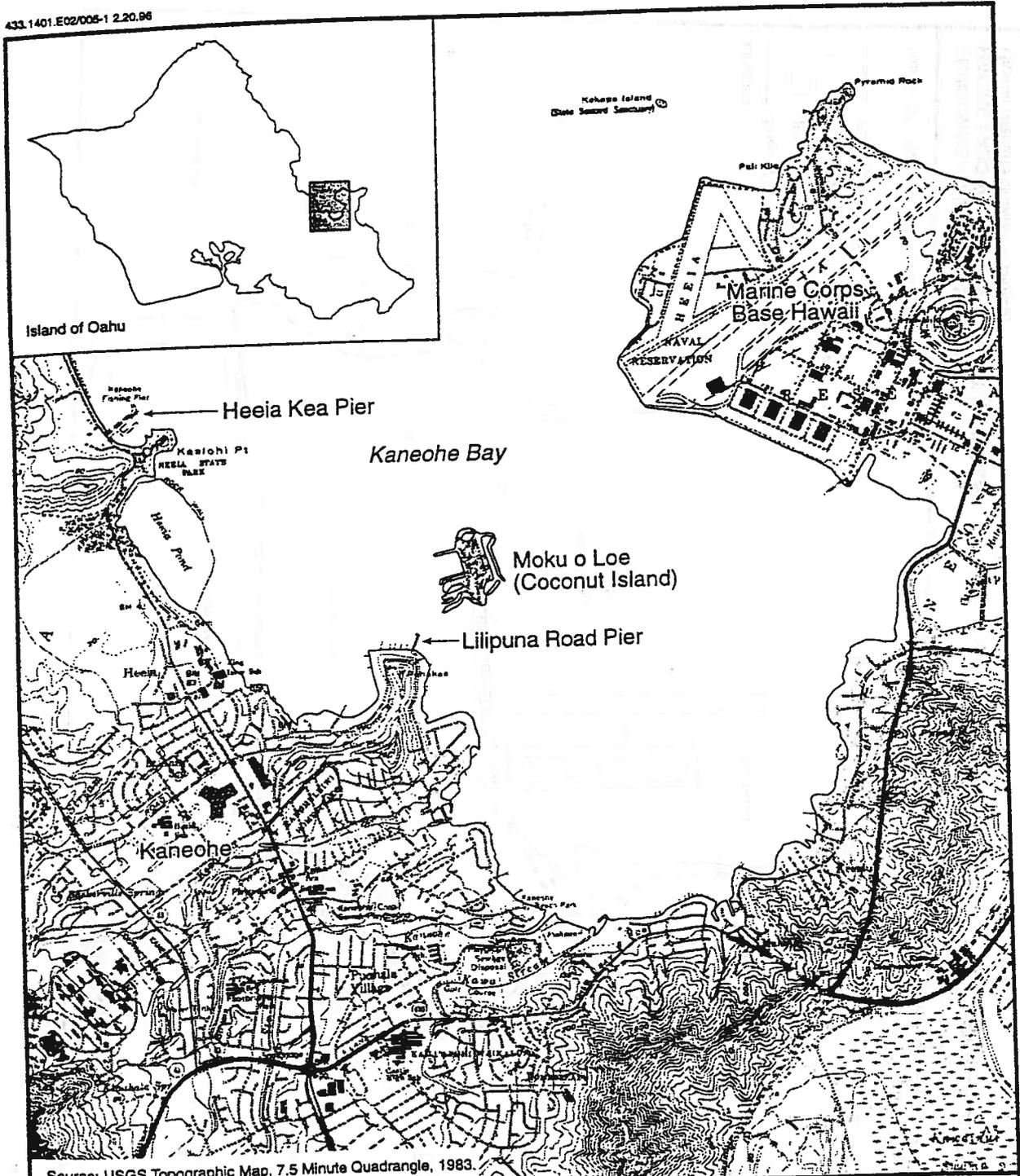
Attachments

Approved for Submittal



TIMOTHY E. JOHNS, Chairperson
BOARD OF LAND NATURAL RESOURCES

11. **Approved as Amended**--The Board amended the staff recommendation in Section C to read: "... HIMB shall submit an after-the-fact [permit] CDUA to determine the final .
..."

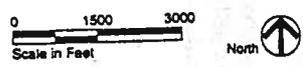


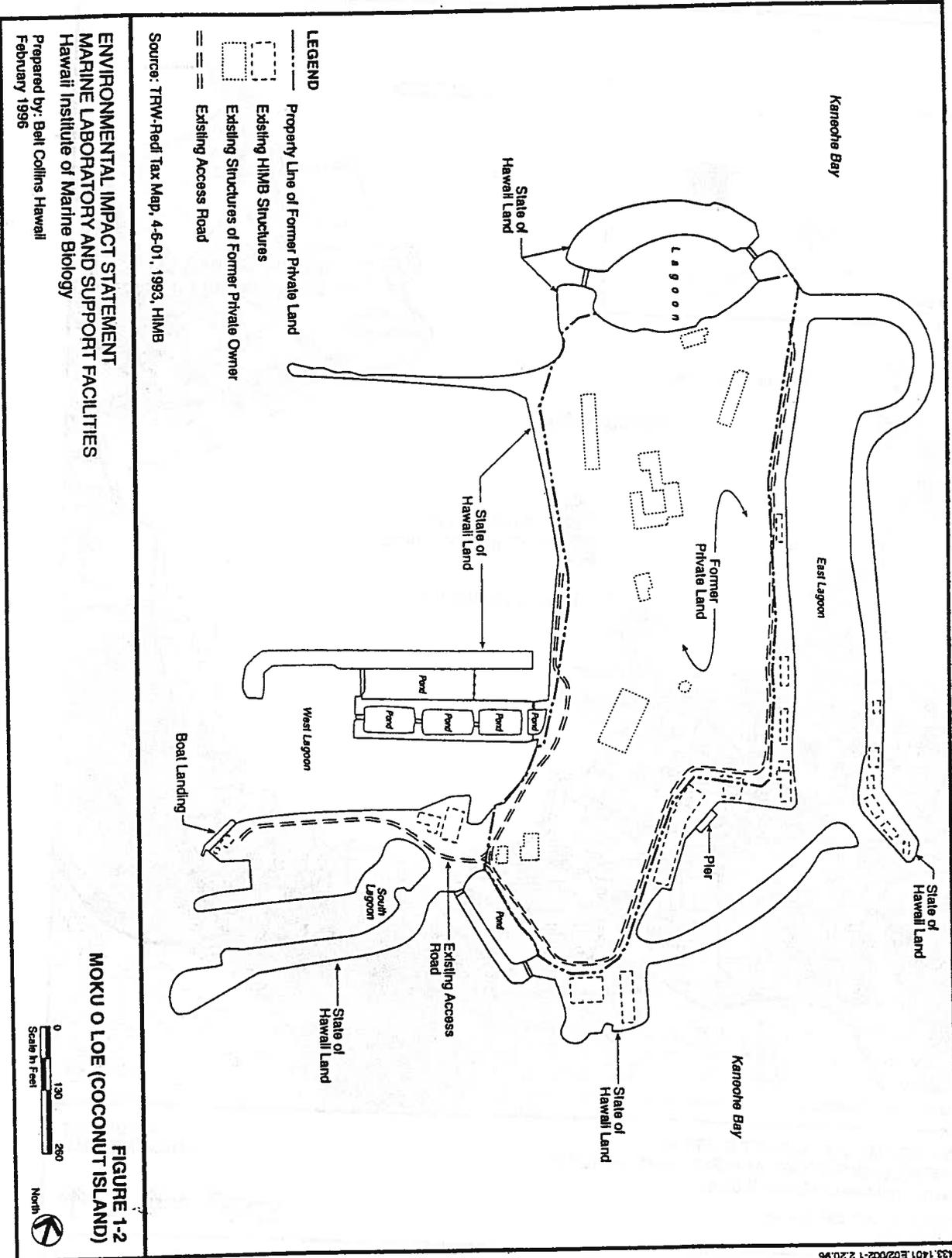
Source: USGS Topographic Map, 7.5 Minute Quadrangle, 1983.

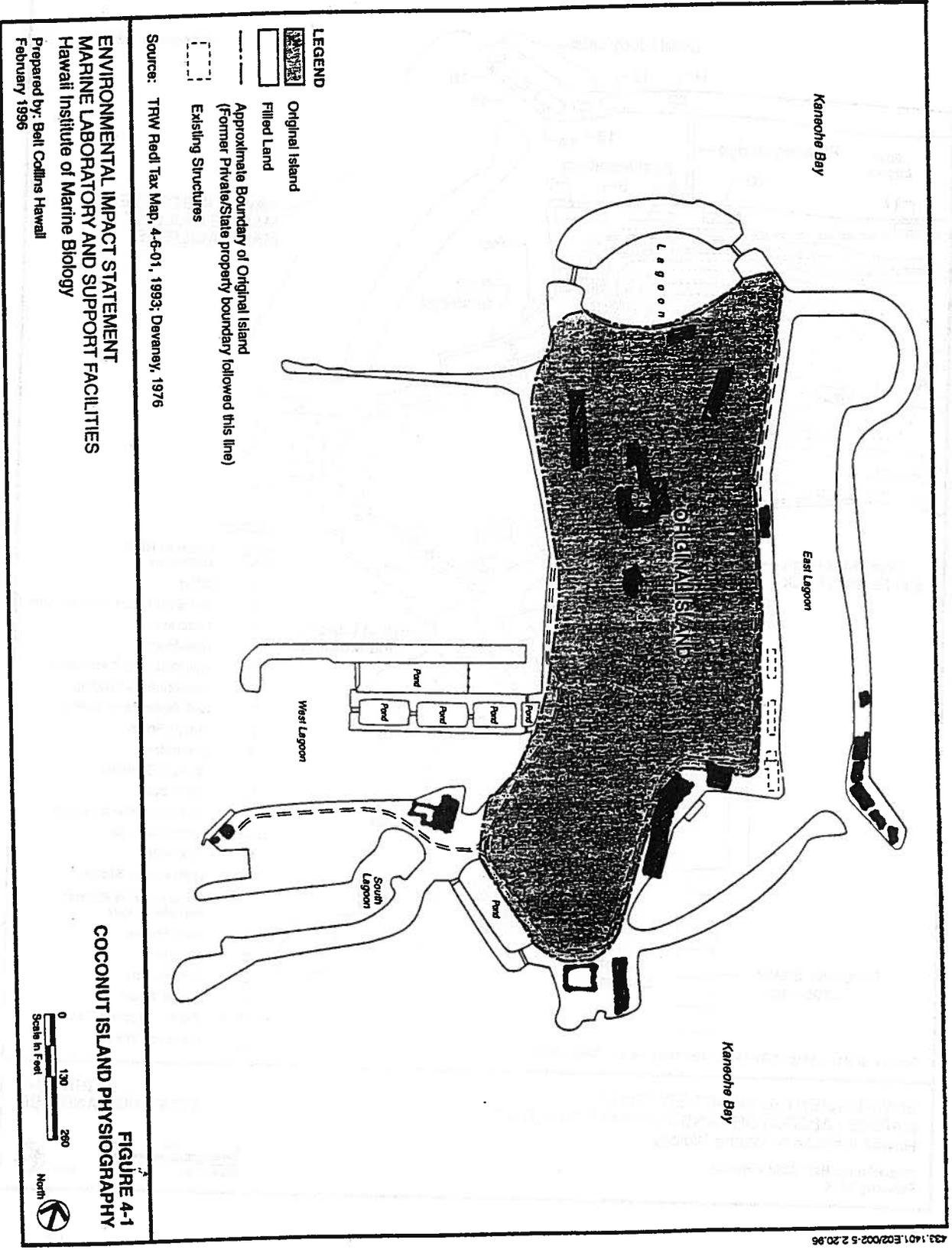
ENVIRONMENTAL IMPACT STATEMENT
MARINE LABORATORY AND SUPPORT FACILITIES
Hawaii Institute of Marine Biology

Prepared by: B&T Collins Hawaii
February 1996

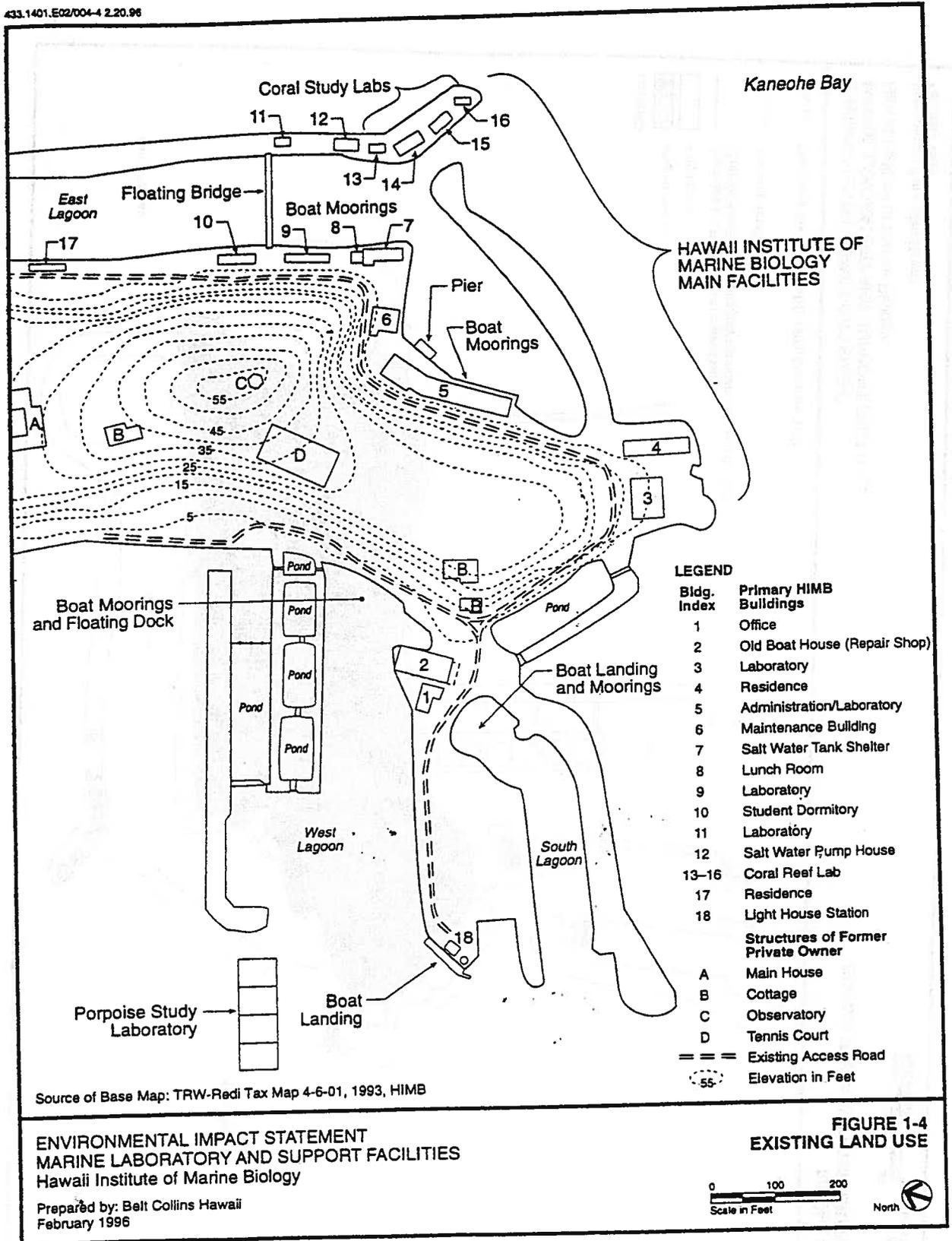
FIGURE 1-1
LOCATION MAP







433.1401.E02/002-5.2.20.96



BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

UNIVERSITY OF HAWAII
OFFICES OF
SR VP ADMIN



RECEIVED

MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY
GILBERT S. COLOMA-AGARAN

'97 FEB 28 AIO:38

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621

HONOLULU, HAWAII 96809

97 MAR 6 10:48:35

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Ref.:PB:SL

FEB 25 1997

File No:OA-2854

MAR 6 10:48:35

Mr. Philip Helfrich
Hawaii Institute for Marine Biology
P.O. Box 1346, Coconut Island
Kaneohe, Hawaii 96744-1346

Dear Mr. Helfrich:

This is to inform you that on February 14, 1997, the Board of Land and Natural Resources approved your Conservation District Use Application to construct a new marine laboratory and support facilities at Coconut Island, Kaneohe, Oahu (TMKS:4-6-01:51 & 1), subject to the following conditions:

1. The applicant and its contractors shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicant and its contractors shall comply with all applicable Department of Health Administrative Rules;
3. All conditions imposed under the County Special Management Area Use Permit for this project, shall be observed by the applicant and its contractors;
4. All mitigation measures set forth in the accepted Final Environmental Impact Statement for this project are hereby incorporated as conditions of approval;
5. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

Marine Laboratory at Coconut Island

EXHIBIT 5

PAGE 1 OF 6

6. The applicant and its contractors shall obtain the approval of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources for use of Heeia Pier as a staging area, with specific mitigation measures to be worked-out with DOBOR. Any damage to the Heeia pier facilities resulting from staging operations shall be repaired by the applicant and its contractors at no cost to DOBOR. Staging operations for demolition and construction of facilities on Coconut Island shall not incur additional costs on DOBOR;
7. A Best Management Practices program shall be developed and implemented by the applicant and its contractors to ensure that the surrounding marine waters and aquatic life are not negatively impacted;
8. Construction staging areas, including stockpiled sediment and materials shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. Precaution shall be taken during demolition and construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into Kaneohe Bay;
10. The applicant and its contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;
11. Accidental discharges of construction materials into the lagoon shall be minimized by using proper containment for the materials on the LCU;
12. The contractor must provide immediate notice to HIMB should any releases of petroleum, chemicals or other products spill into Kaneohe Bay. The HIMB marine mammal research staff shall also be notified immediately of any spills;
13. Since this application is for the use of conservation land only, the applicant shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State Lands;
14. To mitigate impacts on recreation and to ensure public safety in Kaneohe Bay, the applicant shall contact all affected government and business entities prior to the initiation of construction. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work;

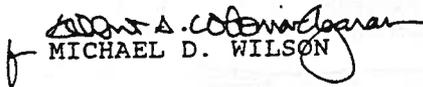
15. For new road construction on the island, construction techniques such as compacting, matting, and hydroseeding, shall be used to stabilize the slopes. Runoff from the access road shall be directed into sedimentation basins so that no increase in runoff to the adjacent lagoons will result. The applicant shall designate roads to be used during construction to minimize ground disturbances and impacts resulting from mobilizing construction equipment;
16. Berms shall be constructed around the fuel and lubricant storage areas. Liquids and cement shall be placed far away from the shoreline and a rigid dust control program shall be implemented;
17. The applicant and its contractors shall ensure that sediment controls are in place and that landscaping will replace much of the vegetation that is removed;
18. To mitigate viewplane impacts, the applicant and its contractors must retain as much foliage as possible and plant new foliage to help screen the new structures. In addition, buildings shall be painted with colors that harmonize with the surrounding environment. Roof materials should also harmonize with the character of the island;
19. The applicant shall ensure that adequate measures are taken for fire protection/prevention on the island, including the use of building elements designed to slow the spread of fire. In addition, portable fire fighting equipment shall be available on the island to extinguish fires. HIMB shall coordinate training for staff in the use of fire fighting equipment;
20. The applicant shall submit proper documentation for the five significant sites that will be affected prior to construction plan approval;
21. The applicant shall complete a Coconut Island Master Plan to address the long-term development, maintenance and operation of the island prior to any further development approvals. The Master Plan shall include a Cultural Resource Management Plan;
22. Should historic remains such as artifacts, burials, or stone pavings or wall be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;

23. The applicant shall develop a short-term and long-term solid waste management plan for removal of construction materials, rubbish and hazardous materials from the island. This plan should contain a recycling element;
24. Milo or other wood products may not be sold by HIMB as this would constitute a commercial use;
25. Greenwaste generated by tree waste and other sources shall be recycled at an approved greenwaste facility;
26. To mitigate off-site impacts resulting from the shortage of available parking facilities for construction workers and HIMB staff, HIMB shall develop a transportation and parking plan, including shuttle service;
27. Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
28. The applicant shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-4 remain the responsibility of the applicant;
29. The applicants shall notify the Department when construction is initiated and when construction is completed;
30. That in issuing this permit, the Department and Board has relied on the information and data which the permittee have provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
31. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
32. Other terms and conditions as prescribed by the Chairperson.

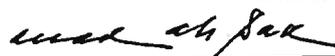
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one, and return the other within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning and Technical Services staff, at 587-0386.

Aloha,

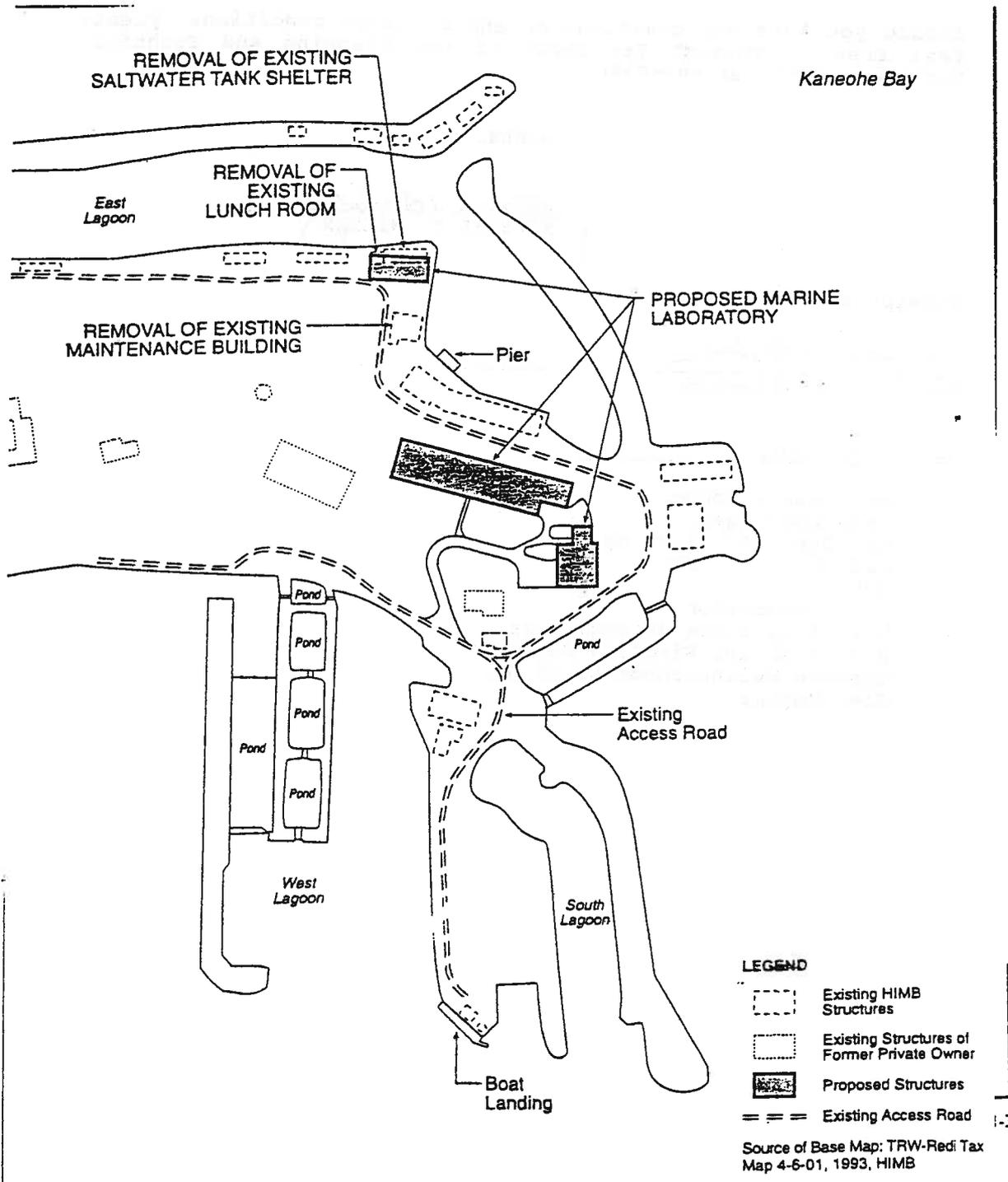

MICHAEL D. WILSON

Receipt acknowledged


Applicant's Signature

Date 3/3/97

xc: Oahu Board Member
Oahu Land Agent
C&C Dept. of Planning
C&C DLU, DPW, BWS
DOH
U.H. Foundation
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
Kaneohe Neighborhood Board No. 30
Glen Koyama





University of Hawai'i at Mānoa

Hawai'i Institute of Marine Biology
P.O. Box 1346 · Coconut Island · Kane'ohe, Hawai'i 96744-1346
Telephone: (808) 236-7401 · Facsimile: (808) 236-7443

October 23, 1998

Dean Y. Uchida, Administrator
Land Division
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

OCT 27 1998

Dear Mr. Uchida:

Subject: Alleged Unauthorized Land Use(s) at Coconut Island, Kaneohe, Hawaii and August 27, 1998 Meeting with Mr. Dean Uchida and his Staff

Your September 8, 1998 letter to Allan Ah San set forth a number of problems that needed to be resolved by HIMB and the University of Hawaii. Group 70 will respond concerning the Master CDUA and the University Foundation will respond concerning condition compliance. I am writing to let you know how HIMB is progressing with the island clean up and putting better management practices into place.

General Clean-up:

We are progressing well with our general clean up activities. The "Seth Parker" area is free of debris, and the waste was handled properly. The green wastes were separated from mixed waste and what we could not use as mulch was taken to a green waste recycling center. Tires, batteries, refrigerators and other potentially hazardous materials were handled by professionals, and the benign mixed waste was removed from the island.

With the exception of the construction debris near the East Lagoon, the whole island has been cleaned and groomed. The pile of debris near the East Lagoon will be dealt with during the period from November 13 to November 23, as that is when we hope to be able to get more containers on the island. So far the debris has been sorted and Manoa campus Facilities has agreed to loan us their heavy equipment operators to load the dumpsters and grade the slope.

An Equal Opportunity/Affirmative Action Institution

Marine Laboratory at Coconut Island

EXHIBIT 6

PAGE 1 OF 3

Excavated Soil Near East Lagoon:

Much of the excavated soil was used to grade and smooth the Seth Parker area. The rest, as was mentioned above, will be mixed with processed green waste and used to grade the slope. It will be planted immediately.

Shoreline Structures:

The concrete and rock waste which has been separated from the green waste and soil will be used as back fill for wall repair. This work will not be done without proper authorization.

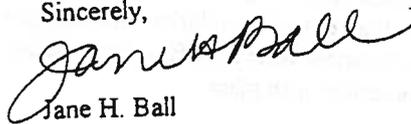
Alleged Unauthorized Structures:

An inventory and photos of all structures built within the past three years is enclosed.

Land Disposition and Facilities Management

As stated above, the initial clean-up effort is close to completion and with appropriate support from the University, HIMB will be able to maintain the property in a more appropriate manner. I would hope that you could come to see the improvement yourself. Please be assured that the University of Hawaii, and HIMB in particular, are serious about fulfilling our responsibilities as stewards of Coconut Island.

Sincerely,



Jane H. Ball
Assistant Director

cc: A. AhSan
E.G. Grau
K. Cutshaw

Handwritten: All
Coconut



Oct 28 2 57 PM '98

UNIVERSITY OF HAWAII

October 26, 1998

SENIOR VICE PRESIDENT FOR ADMINISTRATION

TO: *Handwritten:* Dean Uchida
Mr. Dean Uchida
Administrator - Land Division
Department of Land and Natural Resources

FROM: *Handwritten:* Allan Ah Sam
Allan Ah Sam
Associate Vice President for Administration

SUBJECT: Alleged Unauthorized Land Use - Coconut Island

This responds to Mr. Michael Wilson's letter to Dr. Gordon Grau regarding alleged unauthorized land use on Coconut Island. The letter references thirty-two (32) conditions related to the CDUA to construct the new marine laboratory and support facilities on Coconut Island, and the following provides information on those conditions:

Conditions 1 - 2:

1. The applicant and its contractors shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicant and its contractors shall comply with all applicable Department of Health Administrative rules;
 - The applicant and its contractors complied with all applicable statutes, ordinances, rules and regulations specified. *Handwritten:* proof of compliance
3. All conditions imposed under the County Special Management Area Use Permit for this project shall be observed by the applicant and its contractors;
 - See Attachment 1 for discussion of conditions imposed by Special Management Area Use Permit.
4. All mitigation measures set forth in the accepted Final Environmental Impact Statement for this project are hereby incorporated as conditions of approval;

2444 DOLE STREET • BACHMAN HALL • HONOLULU, HAWAII 96822 • TEL (808) 956-8903 • FAX (808) 956-9212
AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION INSTITUTION

EXHIBIT 7

Marine Laboratory at Coconut Island

PAGE 1 OF 8

Mr. Dean Uchida
October 26, 1998
Page 2

- See Attachment 2 for discussion of adherence to all mitigation measures set forth in the Final EIS.
5. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- No property damage, personal injury or death arose during the project, and no claims have been filed or anticipated.
6. The applicant and its contractors shall obtain the approval of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources, for use of Heeia Pier as a staging area, with specific mitigation measures to be worked out with DOBOR. Any damage to the Heeia Pier facilities resulting from staging operations shall be repaired by the applicant and its contractors at no cost to DOBOR. Staging operations for demolition and construction of facilities on Coconut Island shall not incur additional costs to DOBOR;
- Subsequent to the Board of Land and Natural Resources approval of our Conservation District Use Application, it was decided not to use the Heeia Pier as a staging area. Instead, the contractor was able to use the Marine Corps Base Hawai'i landing facilities.

Conditions 7 - 12:

7. A best management practices program shall be developed and implemented by the applicant and its contractors to ensure that the surrounding marine waters and aquatic life are not negatively impacted;
8. Construction staging areas, including stockpiled sediment and materials shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. Precaution shall be taken during demolition and construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into Kaneohe Bay;
10. The applicant and its contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;

Mr. Dean Uchida
October 26, 1998
Page 3

11. **Accidental discharges of construction materials into the lagoon shall be minimized by using proper containment for the materials on the LCU;**
12. **The contractor must provide immediate notice to HIMB should any releases of petroleum, chemicals or other products spill into Kaneohe Bay. The HIMB marine mammal research staff shall also be notified immediately of any spills;**
 - The contractor, subcontractors and LCU operator followed procedures and practices to prevent any negative impact on the surrounding marine waters and to prevent any public nuisance or threat to public health, safety and welfare. There were no accidental discharges of construction materials or releases of petroleum, clinical or other products. Temporary berms and temporary desilting basins were established in logistical locations.
13. **Since this application is for the use of conservation land only, the applicant shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State lands;**
 - State land was not used.
14. **To mitigate impacts on recreation and to ensure public safety in Kaneohe Bay, the applicant shall contact all affected government and business entities prior to the initiation of construction. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work;**
 - The proposed work program was advertised in the Honolulu Advertiser from September 18, 1997 through September 24, 1997.
15. **For new road construction on the island, construction techniques such as compacting, matting, and hydroseeding shall be used to stabilize the slopes. Runoff from the access road shall be directed into sedimentation basins so that no increase in runoff to the adjacent lagoons will result. The applicant shall designate roads to be used during construction to minimize ground disturbances and impacts resulting from mobilizing construction equipment;**
 - No new roads were constructed; the contractor utilized existing roadways and made every effort to minimize general disturbances. No increase in runoff has been observed.

Mr. Dean Uchida
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Page 4

16. Berms shall be constructed around the fuel and lubricant storage areas. Liquids and cement shall be placed far away from the shoreline and a rigid dust control program shall be implemented;
 - Limited amounts of fuel and lubricant were stored during construction. Temporary berms were utilized around all fuel and lubricant storage areas.
17. The applicant and its contractors shall ensure that sediment controls are in place and that landscaping will replace much of the vegetation that is removed;
 - Landscaping is being completed to replace much of the vegetation removed.
18. To mitigate viewplane impacts, the applicant and its contractors must retain as much foliage as possible and plant new foliage to help screen the new structures. In addition, buildings shall be painted with colors that harmonize with the surrounding environment. Roof materials should also harmonize with the character of the island;
 - The foliage removed was kept to an absolute minimum with existing trees being planted as part of the landscaping work. The exterior building finishes were selected to correspond with the island's environment. The roof materials were selected to harmonize with the tree canopy.
19. The applicant shall ensure that adequate measures are taken for fire protection/prevention on the island, including the use of building elements designed to slow the spread of fire. In addition, portable fire fighting equipment shall be available on the island to extinguish fires. HIMB shall coordinate training for staff in the use of fire fighting equipment;
 - A new 6" firewater line and firewater sprinkler system were incorporated into the construction of the marine laboratory building.
20. The applicant shall submit proper documentation for the five significant sites that will be affected prior to construction plan approval;
 - No response required.
21. The applicant shall complete a Coconut Island Master Plan to address the long-term development, maintenance and operation of the island prior to any further development approval. The Master Plan shall include a Cultural Resource Management Plan;

Mr. Dean Uchida
October 26, 1998
Page 5

- A Coconut Island Master Plan was provided to the DLNR by the University on August 27, 1998.
- 22. **Should historic remains such as artifacts, burials, or stone pavings or walls be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;**
 - No artifacts, burials, stone pavings or walls were found during construction.
- 23. **The applicant shall develop a short-term and long-term solid waste management plan for removal of construction materials, rubbish and any hazardous materials from the island. This plan should contain a recycling element;**
 - All construction materials have been removed from the island. HIMB is developing a long-term solid waste management plan for removal of rubbish and any hazardous materials from the island.
- 24. **Milo or other wood products may not be sold by HIMB as this would constitute a commercial use;**
 - No wood products or other items were sold by HIMB.
- 25. **Green waste generated by tree waste and other sources shall be recycled at an approved green waste facility;**
 - The long-term solid waste management plan will include recycling of green waste at an approved facility.
- 26. **To mitigate off-site impacts resulting from the shortage of available parking facilities for construction workers and HIMB staff, HIMB shall develop a transportation and parking plan, including shuttle service;**
 - A shuttle bus service from Windward Community College was provided during the construction.
- 27. **Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;**
 - Construction was initiated in September, 1997 and was substantially completed by September 15, 1998. There are a few remaining punchlist items.

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October 26, 1998
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28. The applicant shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-4 remain the responsibility of the applicant;

- Plans were provided to the Department of Land and Natural Resources.

29. The applicants shall notify the Department when construction is initiated and when construction is completed;

- Construction was substantially completed by September 15, 1998.

Conditions 30 - 32:

30. That in issuing this permit, the Department and Board have relied on the information and data which the permittee has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

31. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and

32. Other terms and conditions as prescribed by the Chairperson.

- No response required for conditions 30 - 32.

Thank you for assisting the University with its land management responsibilities. Your counsel is very much appreciated.

Attachments

- c: UH Foundation President Donna Howard
Senior Vice President Dean Smith
Senior Vice President Alan Teramura
Senior Vice President Eugene Imai
Dean Barry Raleigh
Dr. Gordon Grau

COCONUT ISLAND
CONDITIONS FOR GRANTING
SPECIAL MANAGEMENT AREA USE PERMIT

- A. The Applicant and its contractor have met all requirements and obtained all approvals of the applicable governmental agencies.
- B. No previously unidentified archeological sites or remains were encountered during construction.
- C. The Long Range Development Plan for Coconut Island was approved by the University of Hawai'i Board of Regents on June 19, 1998. The management plan for cultural and historical reserves on the island is based on recommendations from a report prepared by Bishop Museum.
- D. All building permits were received within the time frame specified.
- E. Construction was in general conformity with plans on file with the Department of Land Utilization.
- F. The Heeia Kea boat harbor was not utilized.
- G. The Applicant and its contractor(s) performed the following to minimize the impact to water quality during construction:
 - Preserved as much vegetation as possible and added landscaping to all exposed areas upon the completion of the construction.
 - Used temporary berms and temporary desilting basins to contain any storm water runoff.
 - Used ready-mixed concrete and contained rinse water.
 - Maintained a regular schedule for servicing all equipment and tools. The contractor provided temporary berms around all fuel and lubricant storage areas.
- H. The Applicant's contractor submitted a plan to the DOH on February 19, 1997. The DOH indicated the plan was acceptable with several modifications.
- I. The Applicant maintained as much existing mature vegetation as possible. Additional landscaping included additional trees and vegetation around the building site.

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

UNIVERSITY OF HAWAII
OFFICES OF
SR VP ADMIN



RECEIVED

MICHAEL D. WILSON
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY
GILBERT S. COLOMA-AGARAN

'97 FEB 28 10:38

STATE OF HAWAII

37 MAR 6 10:35

DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Ref.:PB:SL

FEB 25 1997

File No:OA-2854

MAR 6 1 38 PM '97

Mr. Philip Helfrich
Hawaii Institute for Marine Biology
P.O. Box 1346, Coconut Island
Kaneohe, Hawaii 96744-1346

Dear Mr. Helfrich:

This is to inform you that on February 14, 1997, the Board of Land and Natural Resources approved your Conservation District Use Application to construct a new marine laboratory and support facilities at Coconut Island, Kaneohe, Oahu (TMKs:4-6-01:51 & 1), subject to the following conditions:

1. The applicant and its contractors shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicant and its contractors shall comply with all applicable Department of Health Administrative Rules;
3. All conditions imposed under the County Special Management Area Use Permit for this project, shall be observed by the applicant and its contractors;
4. All mitigation measures set forth in the accepted Final Environmental Impact Statement for this project are hereby incorporated as conditions of approval;
5. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

Marine Laboratory at Coconut Island

EXHIBIT 5

PAGE 1 OF 6

6. The applicant and its contractors shall obtain the approval of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources for use of Heeia Pier as a staging area, with specific mitigation measures to be worked-out with DOBOR. Any damage to the Heeia pier facilities resulting from staging operations shall be repaired by the applicant and its contractors at no cost to DOBOR. Staging operations for demolition and construction of facilities on Coconut Island shall not incur additional costs on DOBOR;
7. A Best Management Practices program shall be developed and implemented by the applicant and its contractors to ensure that the surrounding marine waters and aquatic life are not negatively impacted;
8. Construction staging areas, including stockpiled sediment and materials shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. Precaution shall be taken during demolition and construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into Kaneohe Bay;
10. The applicant and its contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;
11. Accidental discharges of construction materials into the lagoon shall be minimized by using proper containment for the materials on the LCU;
12. The contractor must provide immediate notice to HIMB should any releases of petroleum, chemicals or other products spill into Kaneohe Bay. The HIMB marine mammal research staff shall also be notified immediately of any spills;
13. Since this application is for the use of conservation land only, the applicant shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State Lands;
14. To mitigate impacts on recreation and to ensure public safety in Kaneohe Bay, the applicant shall contact all affected government and business entities prior to the initiation of construction. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work;

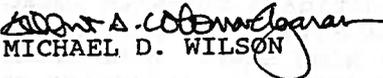
15. For new road construction on the island, construction techniques such as compacting, matting, and hydroseeding, shall be used to stabilize the slopes. Runoff from the access road shall be directed into sedimentation basins so that no increase in runoff to the adjacent lagoons will result. The applicant shall designate roads to be used during construction to minimize ground disturbances and impacts resulting from mobilizing construction equipment;
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17. The applicant and its contractors shall ensure that sediment controls are in place and that landscaping will replace much of the vegetation that is removed;
18. To mitigate viewplane impacts, the applicant and its contractors must retain as much foliage as possible and plant new foliage to help screen the new structures. In addition, buildings shall be painted with colors that harmonize with the surrounding environment. Roof materials should also harmonize with the character of the island;
19. The applicant shall ensure that adequate measures are taken for fire protection/prevention on the island, including the use of building elements designed to slow the spread of fire. In addition, portable fire fighting equipment shall be available on the island to extinguish fires. HIMB shall coordinate training for staff in the use of fire fighting equipment;
20. The applicant shall submit proper documentation for the five significant sites that will be affected prior to construction plan approval;
21. The applicant shall complete a Coconut Island Master Plan to address the long-term development, maintenance and operation of the island prior to any further development approvals. The Master Plan shall include a Cultural Resource Management Plan;
22. Should historic remains such as artifacts, burials, or stone pavings or wall be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;

23. The applicant shall develop a short-term and long-term solid waste management plan for removal of construction materials, rubbish and hazardous materials from the island. This plan should contain a recycling element;
24. Milo or other wood products may not be sold by HIMB as this would constitute a commercial use;
25. Greenwaste generated by tree waste and other sources shall be recycled at an approved greenwaste facility;
26. To mitigate off-site impacts resulting from the shortage of available parking facilities for construction workers and HIMB staff, HIMB shall develop a transportation and parking plan, including shuttle service;
27. Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
28. The applicant shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-4 remain the responsibility of the applicant;
29. The applicants shall notify the Department when construction is initiated and when construction is completed;
30. That in issuing this permit, the Department and Board has relied on the information and data which the permittee have provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
31. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
32. Other terms and conditions as prescribed by the Chairperson.

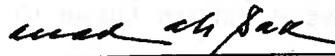
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one, and return the other within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning and Technical Services staff, at 587-0386.

Aloha,

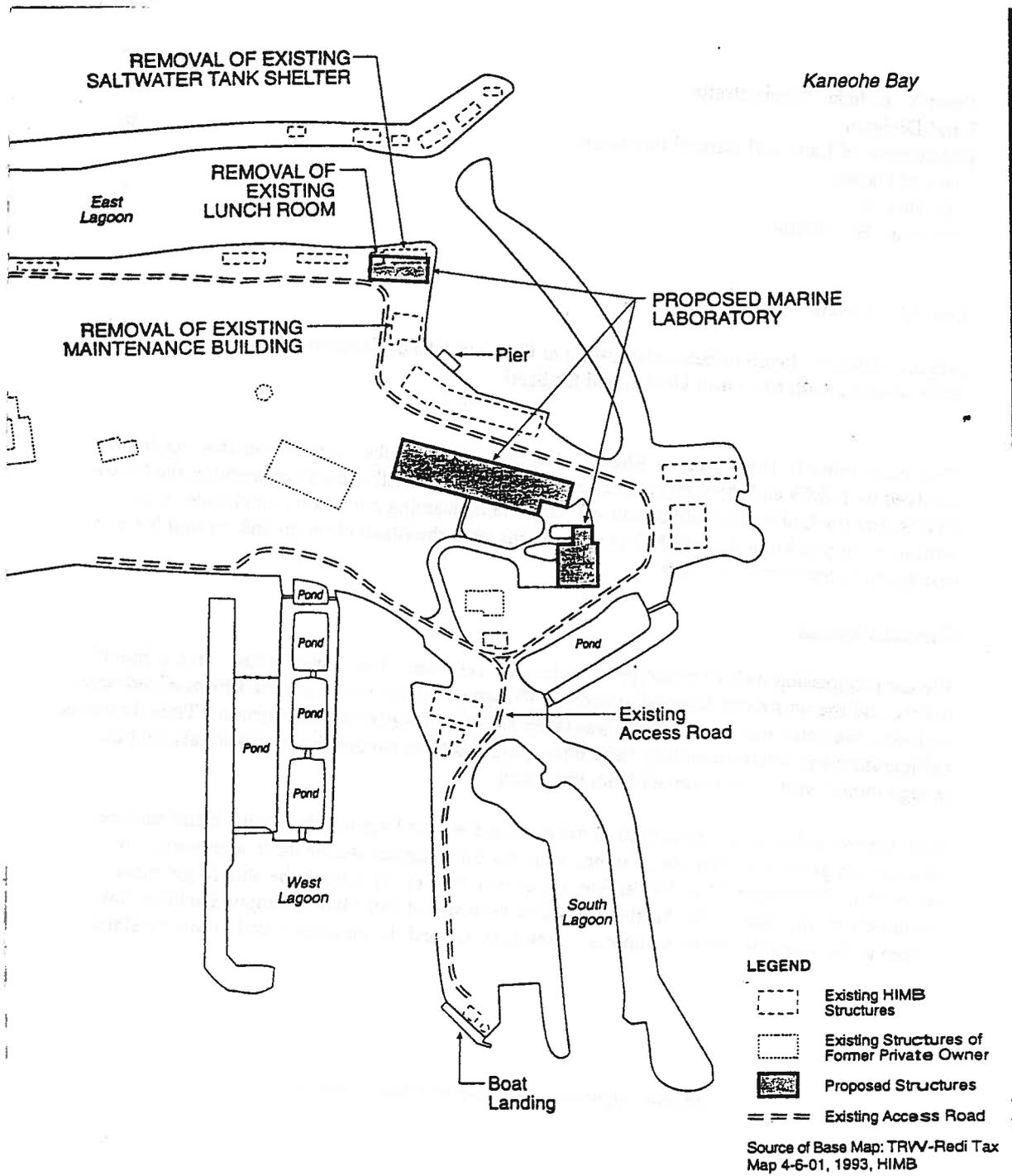

MICHAEL D. WILSON

Receipt acknowledged


Applicant's Signature

Date 3/3/97

- xc: Oahu Board Member
- Oahu Land Agent
- C&C Dept. of Planning
- C&C DLU, DPW, BWS
- DOH
- U.H. Foundation
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- Kaneohe Neighborhood Board No. 30
- Glen Koyama





University of Hawai'i at Mānoa

Hawai'i Institute of Marine Biology
P.O. Box 1346 • Coconut Island • Kane'ohe, Hawai'i 96744-1346
Telephone: (808) 236-7401 • Facsimile: (808) 236-7443

October 23, 1998

Dean Y. Uchida, Administrator
Land Division
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Uchida:

Subject: Alleged Unauthorized Land Use(s) at Coconut Island, Kaneohe, Hawaii and August 27, 1998 Meeting with Mr. Dean Uchida and his Staff

Your September 8, 1998 letter to Allan Ah San set forth a number of problems that needed to be resolved by HIMB and the University of Hawaii. Group 70 will respond concerning the Master CDUA and the University Foundation will respond concerning condition compliance. I am writing to let you know how HIMB is progressing with the island clean up and putting better management practices into place.

General Clean-up:

We are progressing well with our general clean up activities. The "Seth Parker" area is free of debris, and the waste was handled properly. The green wastes were separated from mixed waste and what we could not use as mulch was taken to a green waste recycling center. Tires, batteries, refrigerators and other potentially hazardous materials were handled by professionals, and the benign mixed waste was removed from the island.

With the exception of the construction debris near the East Lagoon, the whole island has been cleaned and groomed. The pile of debris near the East Lagoon will be dealt with during the period from November 13 to November 23, as that is when we hope to be able to get more containers on the island. So far the debris has been sorted and Manoa campus Facilities has agreed to loan us their heavy equipment operators to load the dumpsters and grade the slope.

An Equal Opportunity/Affirmative Action Institution

Marine Laboratory at Coconut Island

EVHIRT 10

PAGE 1 OF 3

Excavated Soil Near East Lagoon:

Much of the excavated soil was used to grade and smooth the Seth Parker area. The rest, as was mentioned above, will be mixed with processed green waste and used to grade the slope. It will be planted immediately.

Shoreline Structures:

The concrete and rock waste which has been separated from the green waste and soil will be used as back fill for wall repair. This work will not be done without proper authorization.

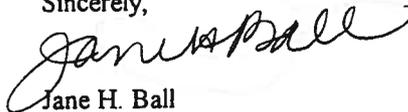
Alleged Unauthorized Structures:

An inventory and photos of all structures built within the past three years is enclosed.

Land Disposition and Facilities Management

As stated above, the initial clean-up effort is close to completion and with appropriate support from the University, HIMB will be able to maintain the property in a more appropriate manner. I would hope that you could come to see the improvement yourself. Please be assured that the University of Hawaii, and HIMB in particular, are serious about fulfilling our responsibilities as stewards of Coconut Island.

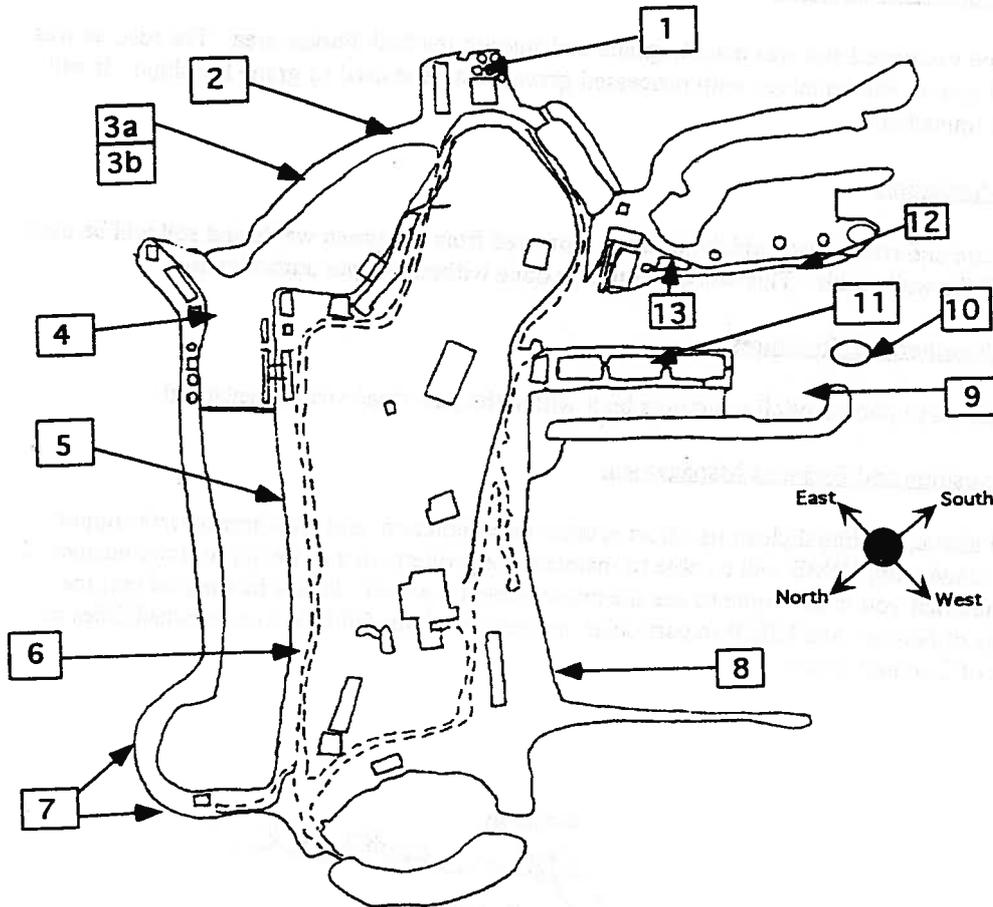
Sincerely,



Jane H. Ball
Assistant Director

cc: A. AhSan
E.G.Grau
K. Cutshaw

Hawaii Institute of Marine Biology



- | | |
|--|------------------------------------|
| 1. Catfish Tank Area | 7. Sea Wall Repair by Beach |
| 2. Windmill | 8. Sea Wall Repair by Lanai Suites |
| 3a. Storage Sheds | 9. Floating Utility Dock |
| 3b. Aquaculture Tanks | 10. Marine Mammal Pens |
| 4. New Floating Dock | 11. Pond Wall Repair by Shark Pens |
| 5. Monk Seal Fish House | 12. Loading dock for LCU |
| 6. Replacment Deck on back of Miller House | 13. Marine Mammal Building |

Handwritten initials



Oct 28 2 57 PM '98

UNIVERSITY OF HAWAII

SENIOR VICE PRESIDENT FOR ADMINISTRATION

October 26, 1998

TO: *Dean*
 Mr. Dean Uchida
 Administrator - Land Division
 Department of Land and Natural Resources

FROM: *Allan*
 Allan Ah San
 Associate Vice President for Administration

SUBJECT: Alleged Unauthorized Land Use - Coconut Island

This responds to Mr. Michael Wilson's letter to Dr. Gordon Grau regarding alleged unauthorized land use on Coconut Island. The letter references thirty-two (32) conditions related to the CDUA to construct the new marine laboratory and support facilities on Coconut Island, and the following provides information on those conditions:

Conditions 1 - 2:

1. The applicant and its contractors shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicant and its contractors shall comply with all applicable Department of Health Administrative rules;
 - The applicant and its contractors complied with all applicable statutes, ordinances, rules and regulations specified. *proof of compliance*
3. All conditions imposed under the County Special Management Area Use Permit for this project shall be observed by the applicant and its contractors;
 - See Attachment 1 for discussion of conditions imposed by Special Management Area Use Permit.
4. All mitigation measures set forth in the accepted Final Environmental Impact Statement for this project are hereby incorporated as conditions of approval;

Mr. Dean Uchida
October 26, 1998
Page 2

- See Attachment 2 for discussion of adherence to all mitigation measures set forth in the Final EIS.
5. **The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;**
- No property damage, personal injury or death arose during the project, and no claims have been filed or anticipated.
6. **The applicant and its contractors shall obtain the approval of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources, for use of Heeia Pier as a staging area, with specific mitigation measures to be worked out with DOBOR. Any damage to the Heeia Pier facilities resulting from staging operations shall be repaired by the applicant and its contractors at no cost to DOBOR. Staging operations for demolition and construction of facilities on Coconut Island shall not incur additional costs to DOBOR;**
- Subsequent to the Board of Land and Natural Resources approval of our Conservation District Use Application, it was decided not to use the Heeia Pier as a staging area. Instead, the contractor was able to use the Marine Corps Base Hawai'i landing facilities.

Conditions 7 - 12:

7. **A best management practices program shall be developed and implemented by the applicant and its contractors to ensure that the surrounding marine waters and aquatic life are not negatively impacted;**
8. **Construction staging areas, including stockpiled sediment and materials shall be managed to prevent public nuisance or threat to public health, safety and welfare;**
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Page 3

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 - State land was not used.
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 - No new roads were constructed; the contractor utilized existing roadways and made every effort to minimize general disturbances. No increase in runoff has been observed.

Mr. Dean Uchida
October 26, 1998
Page 4

16. **Berms shall be constructed around the fuel and lubricant storage areas. Liquids and cement shall be placed far away from the shoreline and a rigid dust control program shall be implemented;**
 - Limited amounts of fuel and lubricant were stored during construction. Temporary berms were utilized around all fuel and lubricant storage areas.
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October 26, 1998
Page 5

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26. **To mitigate off-site impacts resulting from the shortage of available parking facilities for construction workers and HIMB staff, HIMB shall develop a transportation and parking plan, including shuttle service;**
- A shuttle bus service from Windward Community College was provided during the construction.
27. **Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;**
- Construction was initiated in September, 1997 and was substantially completed by September 15, 1998. There are a few remaining punchlist items.

Mr. Dean Uchida
October 26, 1998
Page 6

28. The applicant shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-4 remain the responsibility of the applicant;
- Plans were provided to the Department of Land and Natural Resources.
29. The applicants shall notify the Department when construction is initiated and when construction is completed;
- Construction was substantially completed by September 15, 1998.

Conditions 30 - 32:

30. That in issuing this permit, the Department and Board have relied on the information and data which the permittee has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
31. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
32. Other terms and conditions as prescribed by the Chairperson.
- No response required for conditions 30 - 32.

Thank you for assisting the University with its land management responsibilities. Your counsel is very much appreciated.

Attachments

- c: UH Foundation President Donna Howard
Senior Vice President Dean Smith
Senior Vice President Alan Teramura
Senior Vice President Eugene Imai
Dean Barry Raleigh
Dr. Gordon Grau

**COCONUT ISLAND
CONDITIONS FOR GRANTING
SPECIAL MANAGEMENT AREA USE PERMIT**

- A. The Applicant and its contractor have met all requirements and obtained all approvals of the applicable governmental agencies.
- B. No previously unidentified archeological sites or remains were encountered during construction.
- C. The Long Range Development Plan for Coconut Island was approved by the University of Hawai'i Board of Regents on June 19, 1998. The management plan for cultural and historical reserves on the island is based on recommendations from a report prepared by Bishop Museum.
- D. All building permits were received within the time frame specified.
- E. Construction was in general conformity with plans on file with the Department of Land Utilization.
- F. The Heeia Kea boat harbor was not utilized.
- G. The Applicant and its contractor(s) performed the following to minimize the impact to water quality during construction:
 - Preserved as much vegetation as possible and added landscaping to all exposed areas upon the completion of the construction.
 - Used temporary berms and temporary desilting basins to contain any storm water runoff.
 - Used ready-mixed concrete and contained rinse water.
 - Maintained a regular schedule for servicing all equipment and tools. The contractor provided temporary berms around all fuel and lubricant storage areas.
- H. The Applicant's contractor submitted a plan to the DOH on February 19, 1997. The DOH indicated the plan was acceptable with several modifications.
- I. The Applicant maintained as much existing mature vegetation as possible. Additional landscaping included additional trees and vegetation around the building site.

**COCONUT ISLAND
MITIGATION MEASURES
FINAL ENVIRONMENTAL IMPACT STATEMENT**

CONSTRUCTION IMPACTS

WATER QUALITY
VISUAL ENVIRONMENT
HISTORIC PRESERVATION
ARCHAEOLOGICAL RESOURCES
MARINE TRANSPORTATION
USE OF HEEIA KEA PIER
GROUND TRANSPORTATION
SOLID WASTE
FIRE PROTECTION

The measures identified in these sections were covered by either the CDUA approved by the DLNR or the SMP approved by the City Council. Adherence to these measures is documented in the response to DLNR or Attachment 1.

AIR QUALITY

No buildings were demolished. Dust from activities was controlled by water.

NOISE

No permit was requested since activities were not expected to exceed allowable noise levels.

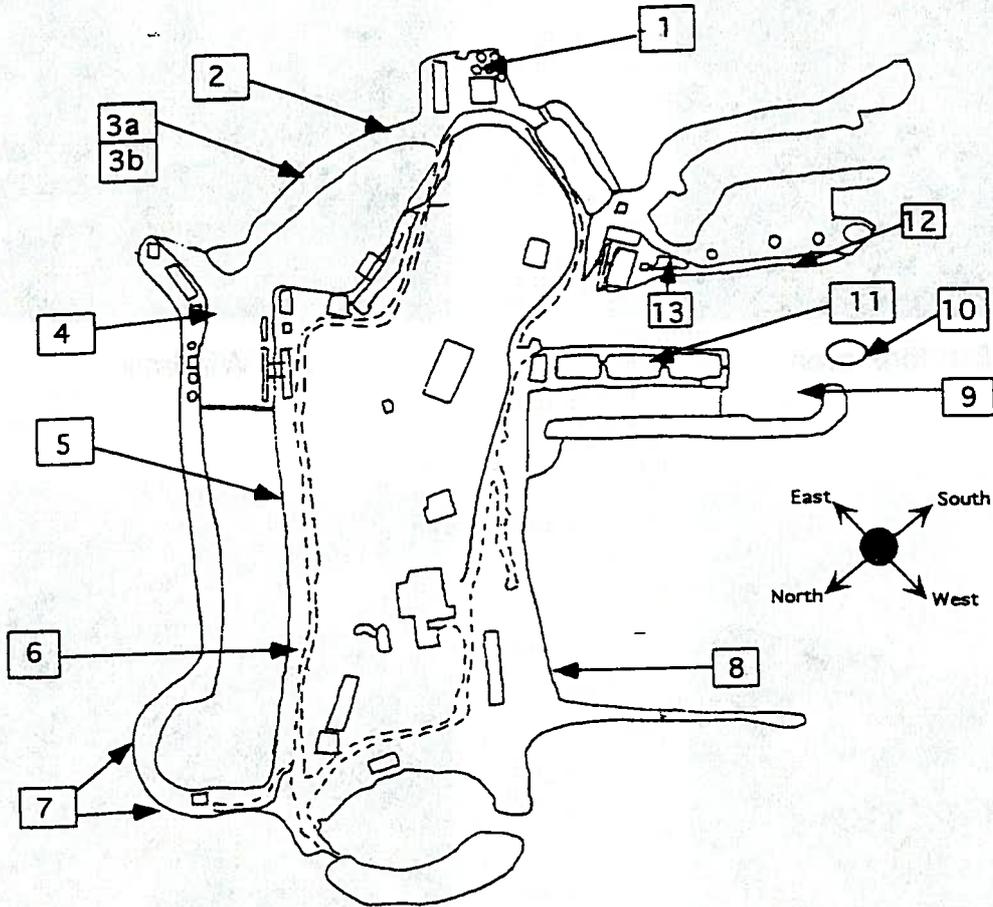
AIR TRANSPORTATION

No potential obstruction to air traffic occurred during construction.

OPERATIONAL IMPACTS

LANDSCAPING
GROUND TRANSPORTATION

Hawaii Institute of Marine Biology

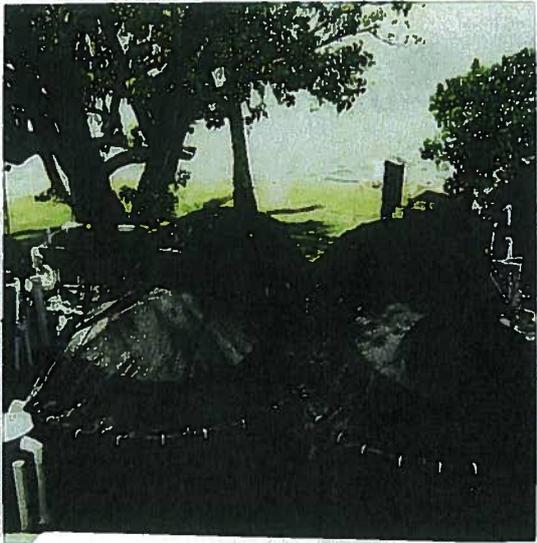


1. Catfish Tank Area
2. Windmill
- 3a. Storage Sheds
- 3b. Aquaculture Tanks
4. New Floating Dock
5. Monk Seal Fish House
6. Replacement Deck on back of Miller House

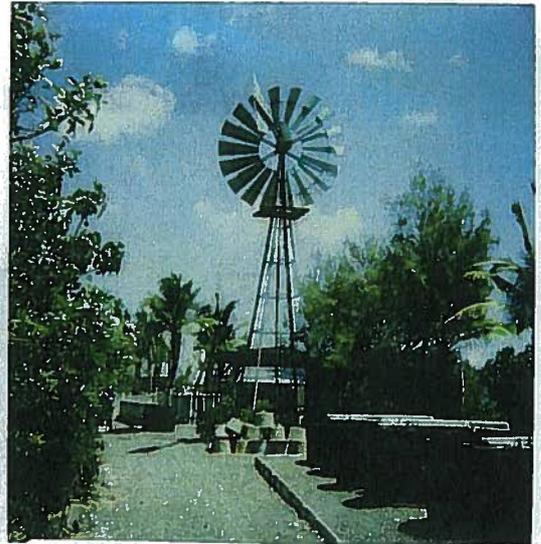
7. Sea Wall Repair by Beach
8. Sea Wall Repair by Lanai Suites
9. Floating Utility Dock
10. Marine Mammal Pens
11. Pond Wall Repair by Shark Pens
12. Loading dock for LCU
13. Marine Mammal Building

EXHIBIT 5

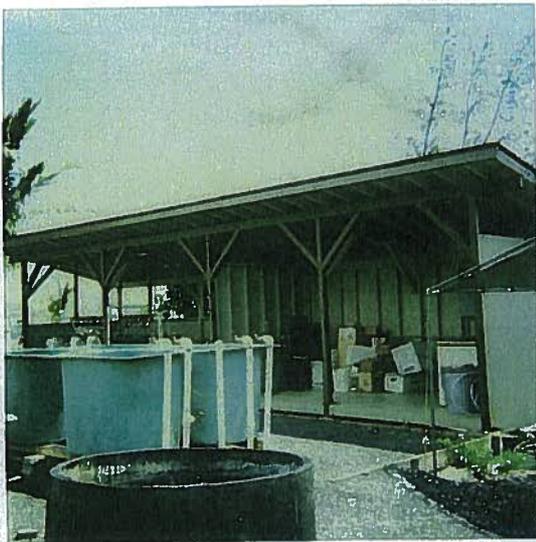
HIMB submittal of structures w/ no COUA



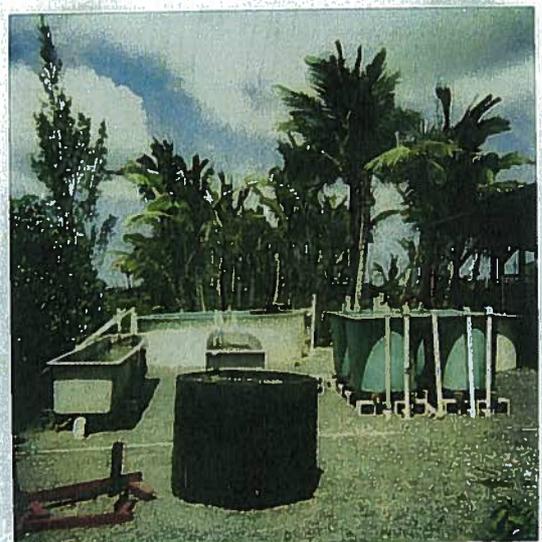
1. Catfish tank area



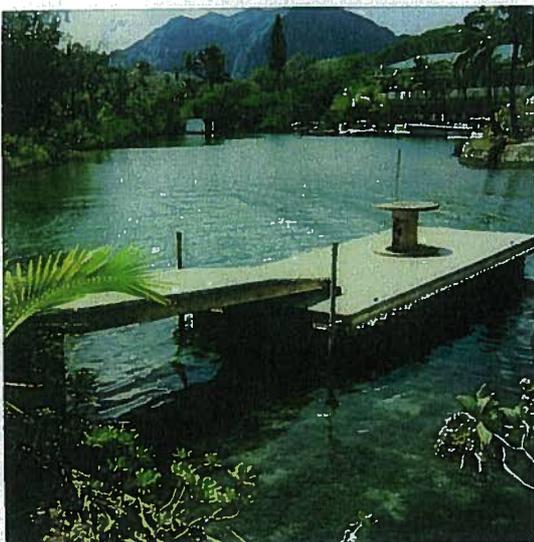
2. Windmill



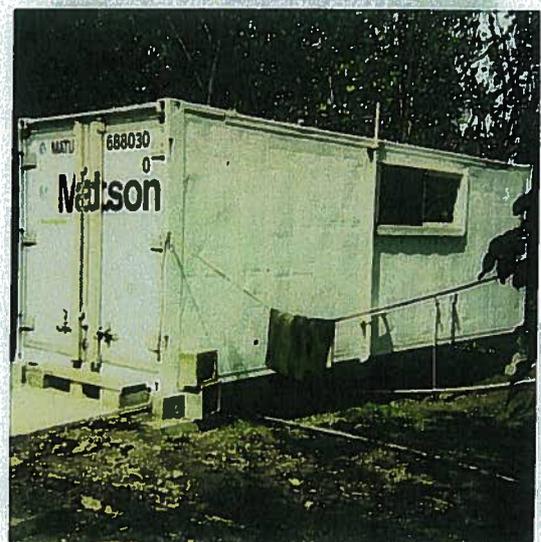
3a. Storage sheds



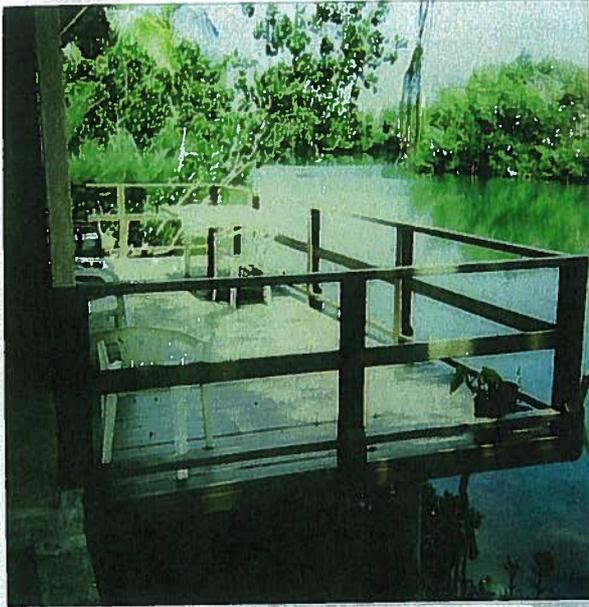
3b. Aquaculture tanks



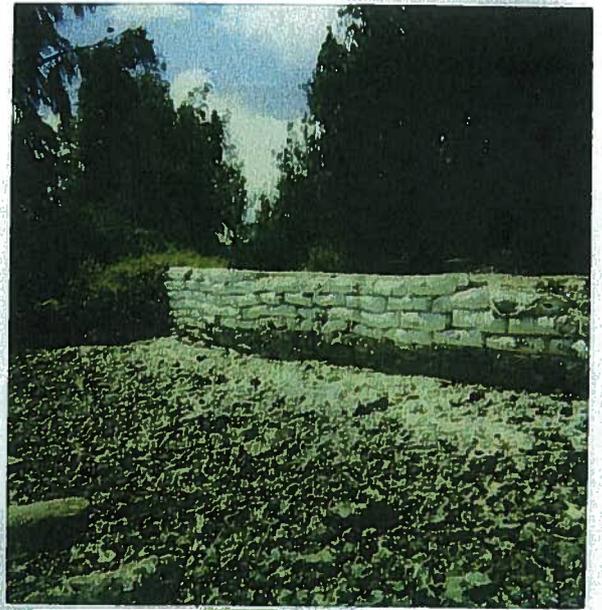
4. New floating dock



5. Monk seal fish house



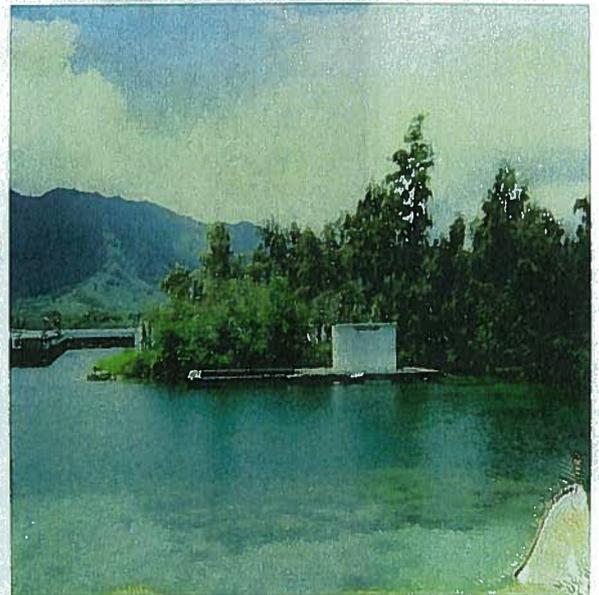
**6. Replacement deck on
back of Miller House**



7. Sea wall repair by beach



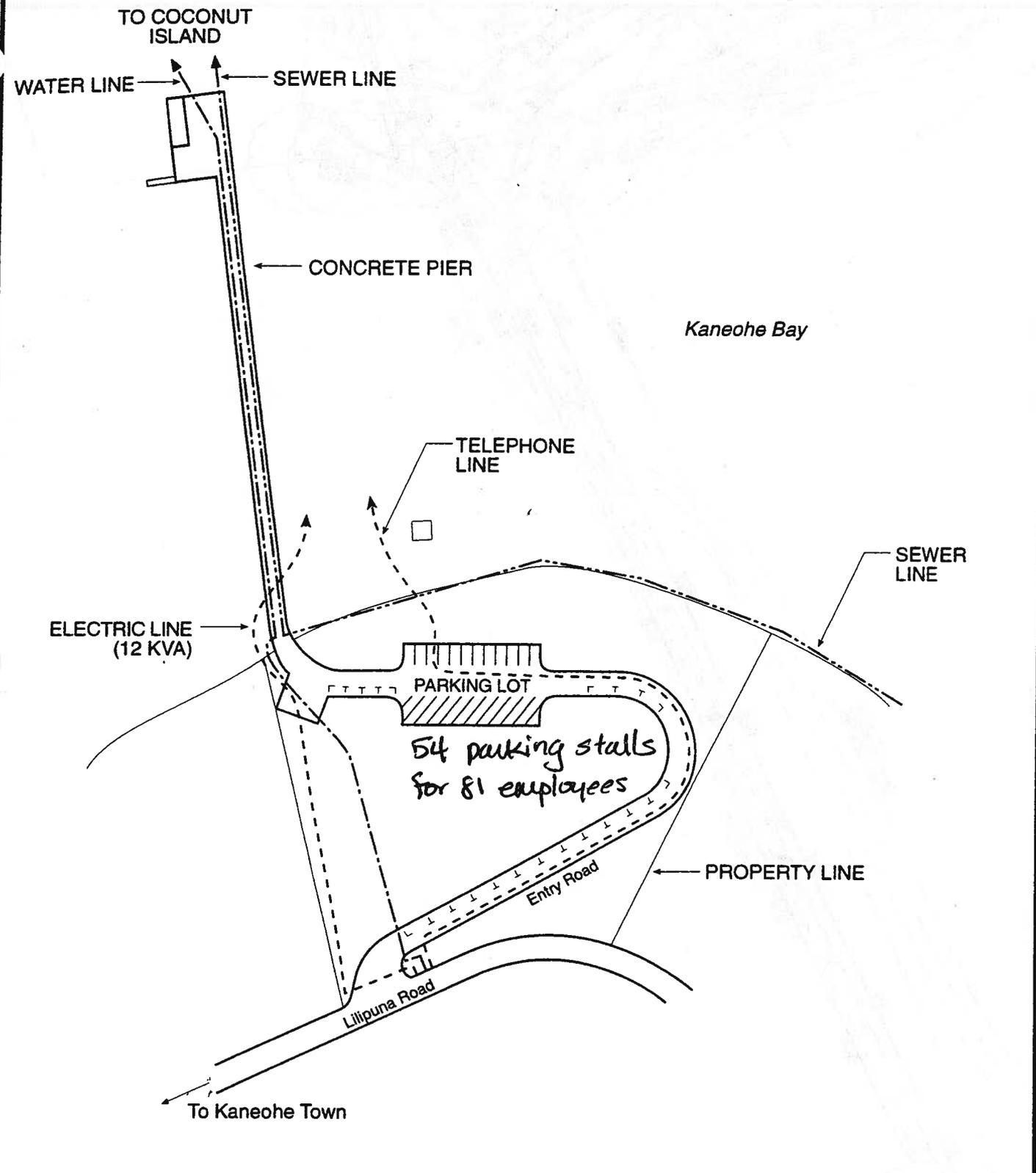
**8. Sea wall repair by Lanai
Suites**



9. Floating utility dock



Deck on Back Miller House
Exhibit 5



Source: Hawaii Institute of Marine Biology

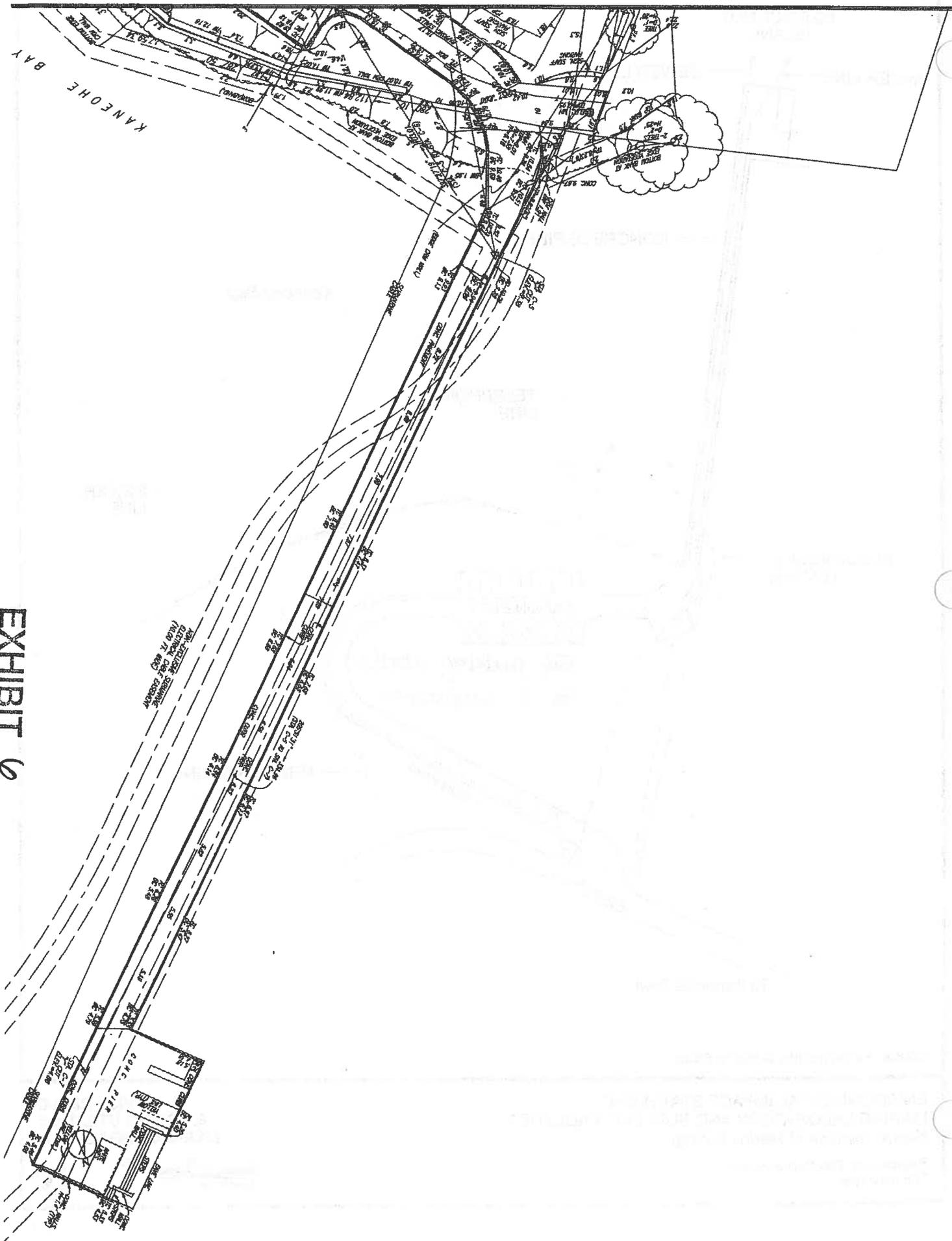
ENVIRONMENTAL IMPACT STATEMENT
MARINE LABORATORY AND SUPPORT FACILITIES
Hawaii Institute of Marine Biology

Prepared by: Belt Collins Hawaii
February 1996

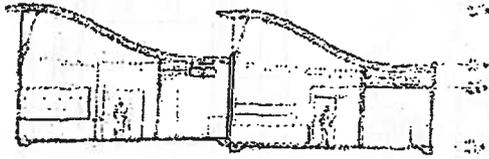
FIGURE 6-6
EXISTING UTILITIES
LILIPUNA ROAD PIER



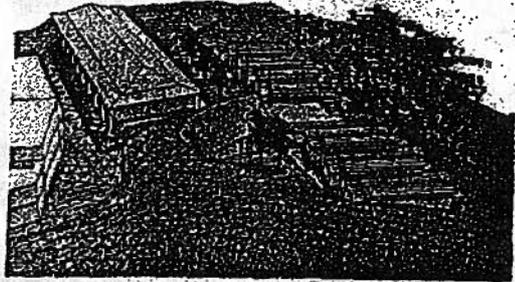
EXHIBIT 6



LAB SECTION CUT



0 6 12 18 24 30
LABORATORY BUILDING
SECTION CUT



ENTRY PERSPECTIVE

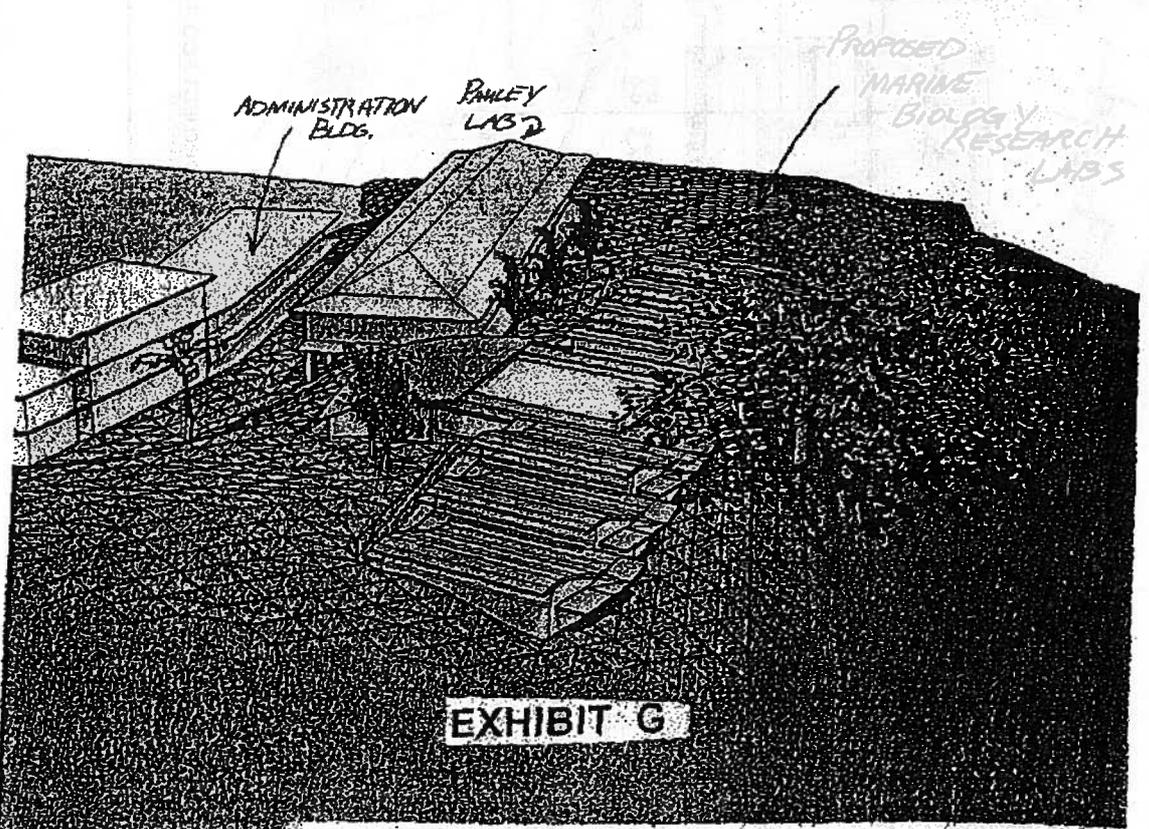
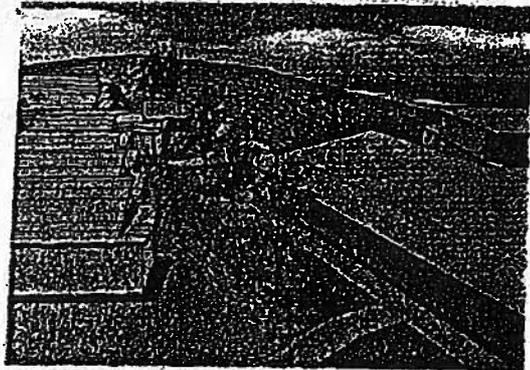
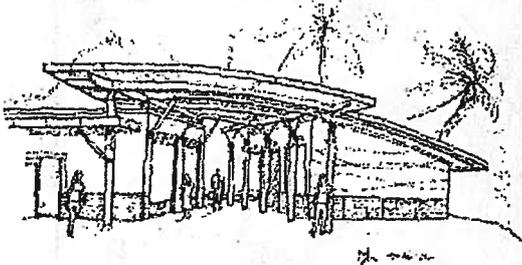


EXHIBIT C

FOLDER NOS.: 2007/ISMA - 3 & 2007/SV-2

LEHRARD CHOI

UNIVERSITY OF HAWAII AT MANOA

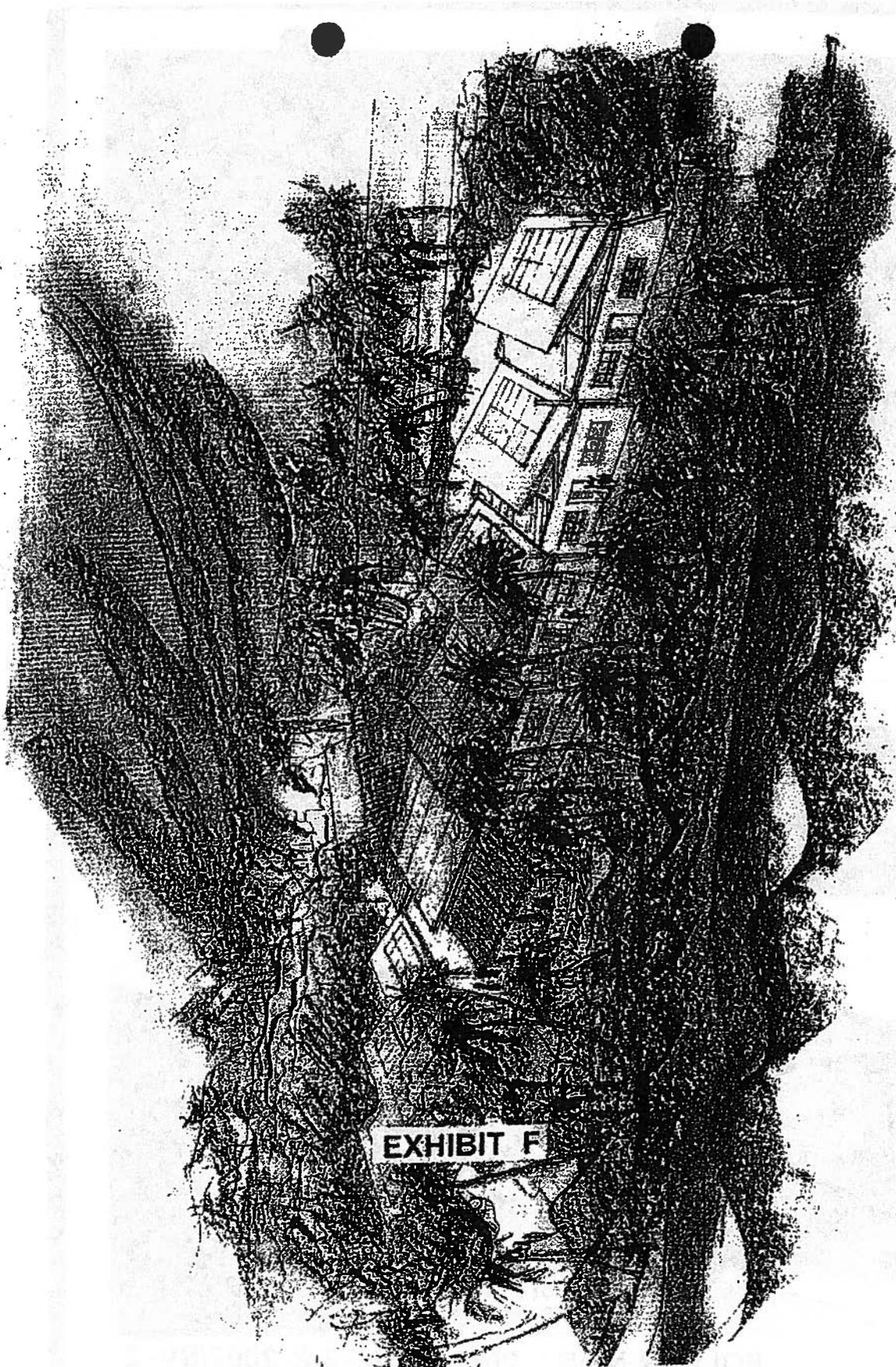


EXHIBIT F

FOLDER NOS.: 2007/SMA - 3 & 2007/SV- 2

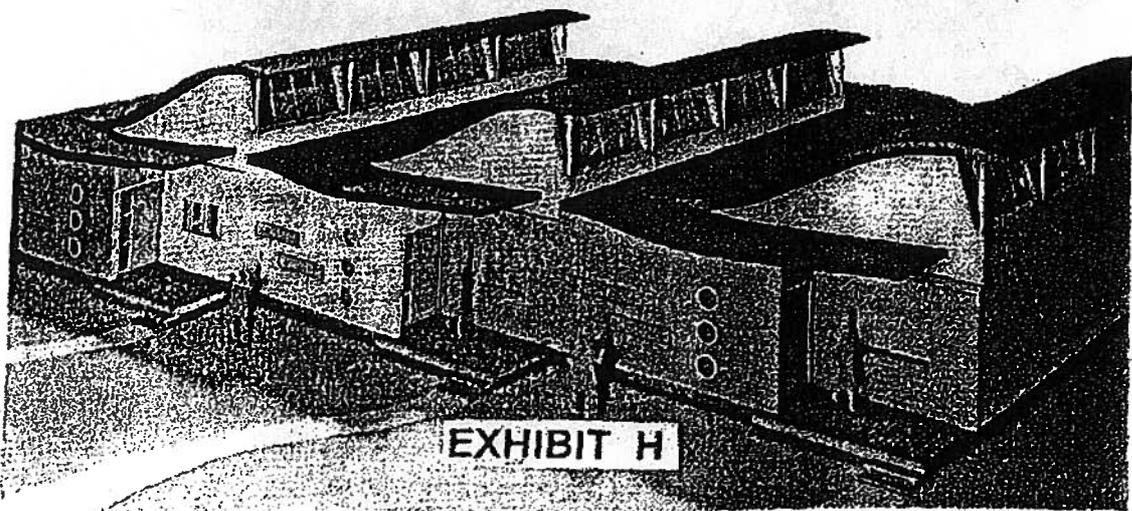
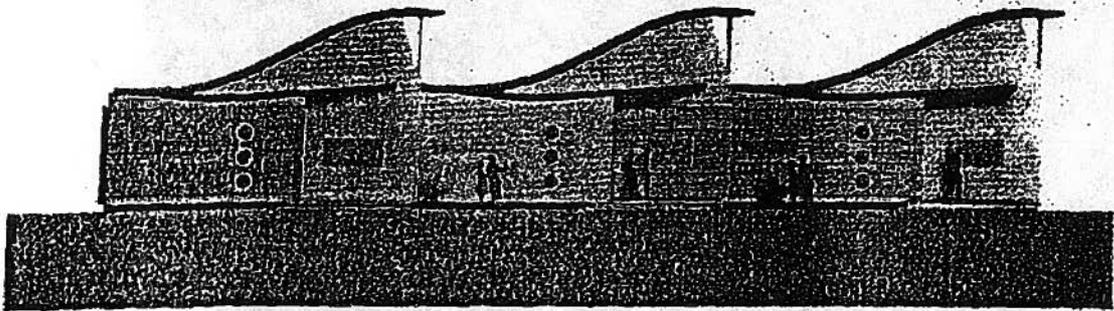
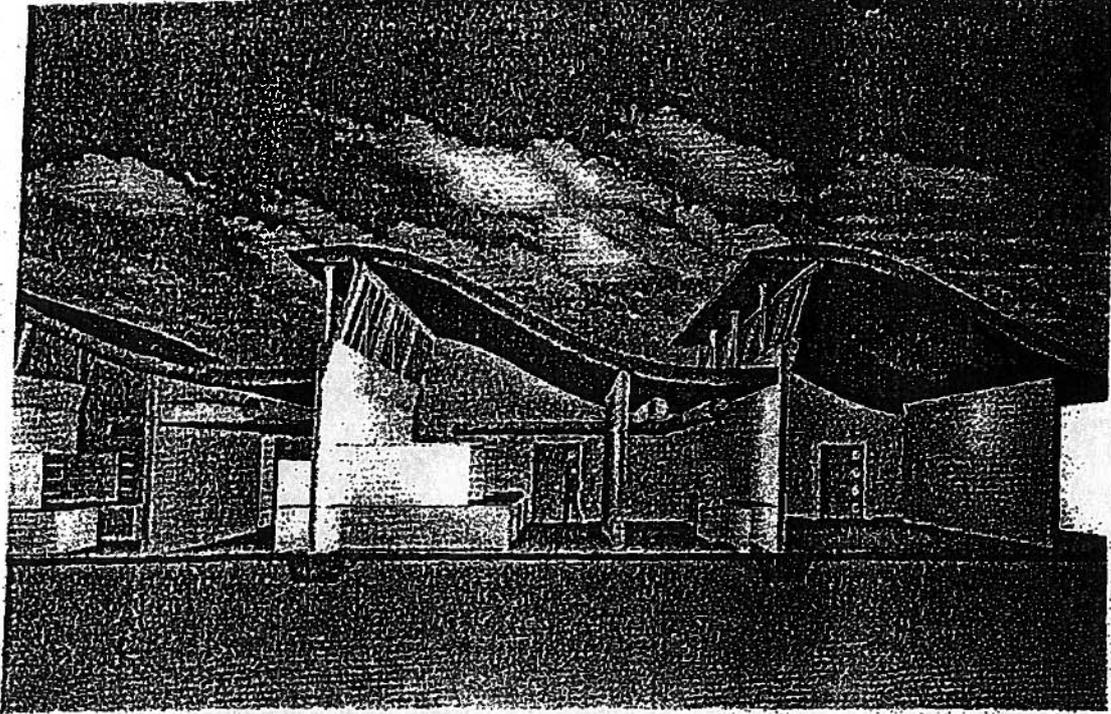


EXHIBIT H

FOLDER NOS.: 2007/SMA - 3 & 2007/SV- 2

ERLANDO CHOI

UNIVERSITY OF HAWAII AT MĀNOA

Coconut Island
Existing Pavilion at the Main House



ADDENDUM TO THE COCONUT ISLAND SHORELINE SETBACK VARIANCE (SSV)
AND SPECIAL MANAGEMENT AREA USE PERMIT (SMA MAJOR) APPLICATION

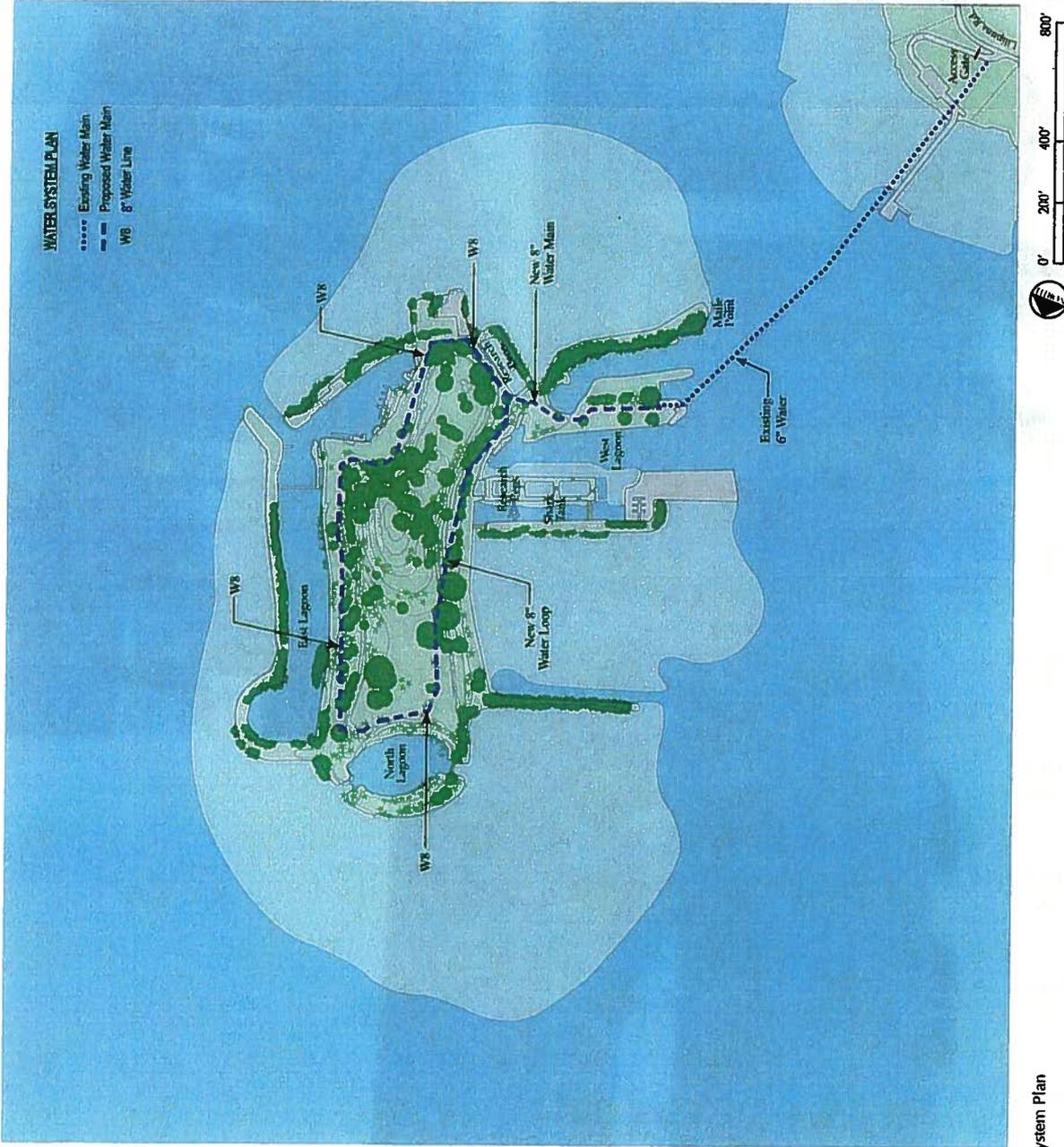
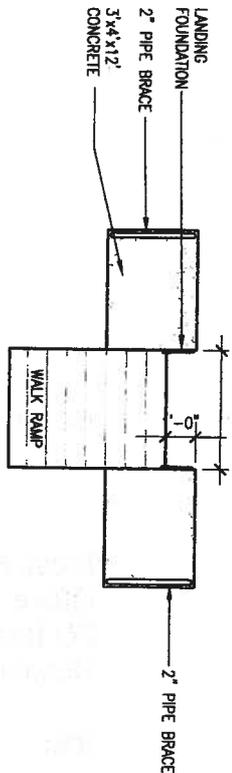
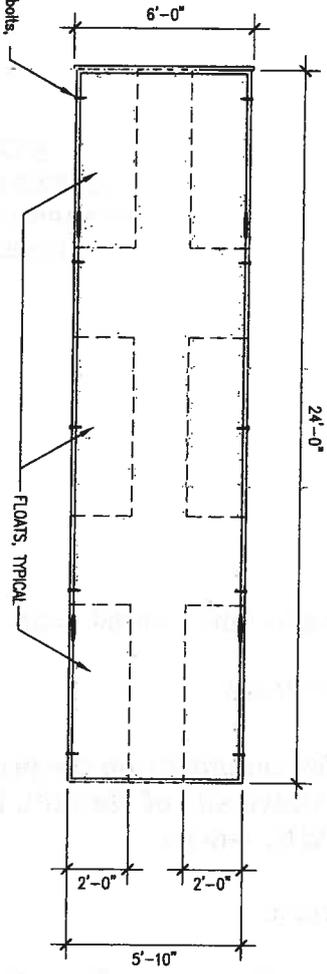


Figure 3. Existing and Proposed Water System Plan

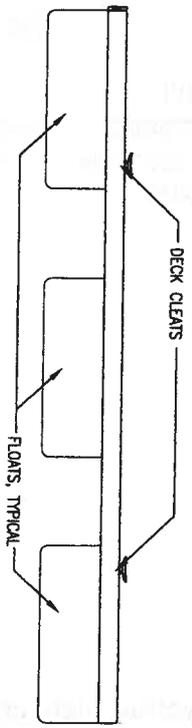


3 RAMP PLAN
1/4" = 1'-0"



2X2 galvanized lagbolts,
5 on each side of
float. Cut end of float
to fit (4) extra float
for ramp

1 FLOATING DECK PLAN
1/4" = 1'-0"



2 ELEVATION
1/4" = 1'-0"



Date 12/21/06	Project No. 96056-11	Plot deck2.dwg	Project Title Hawaii Institute for Marine Biology Coconut Island SMA	Scale AS SHOWN
Revision No./Date	Description		Dwg. Title Plan, Elevation	Dr. by ml
				Scale by -
				Dwg. No. -
				SKD-01

XXXXX

PHONE (808) 594-1888



TELEPHONE (808) 594-1865
FAX (808) 594-1865
OFFICE OF CONSERVATION AND COASTAL LANDS

2008 OCT 16 P 2:17

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

OFFICE OF CONSERVATION AND
NATURAL RESOURCES
STATE OF HAWAII

HRD08/192E

October 8, 2008

Dawn Hegger
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, Hawai'i 96809

RE: Request for comments on the proposed conservation district use application (CDUA), University of Hawai'i, Hawaii Institute for Marine Biology, Moku O Lo'e, O'ahu, TMK: 4-6-1:1.

Aloha e Dawn Hegger,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated September 22, 2008. OHA has reviewed the project and offers the following comments.

The lands which this project would impact are ceded lands, as are all submerged lands. OHA notes that these lands hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. As such, we request that they be treated with the respect due to them. Today, the state holds the Ceded Lands corpus in trust for Native Hawaiians and the general public. OHA is supposed to receive a portion of all revenues generated on these lands.

OHA also generally expresses concern over the potential for some to use biological or genetic resources from public and ceded lands for bioprospecting. OHA stresses that any uses should be for education, management or propagation purposes only. Any scientific research should not be for commercial development. OHA notes the Attorney General Opinion 03-03, issued on April 11, 2003, which suggests that the state must reserve title to biological and biogenetic resources on public lands, including ceded lands, when it allows lessees to remove those resources from where those resources are extracted. Therefore, OHA suggest conditioning uses in this area subject to such restrictions, as Hawaii Revised Statutes Section 187A-6 allows.

EXHIBIT II

OHA is also concerned by the large scope of this proposed project. We do note that the exact proposal is difficult to determine, even from the voluminous amount of materials sent along with the invitation to comment. For example, pages 15 and 16 of the CDUA application asks if any existing structures will be demolished or removed. The applicant marks the 'Yes' box and the applicant then goes on to say that their long range plan is to demolish buildings. However, the applicant states that "staff are reluctant" to demolish buildings and that now plans are to renovate. Then the applicant reverses once again and states that "demolition will occur" after funding is obtained. This is not the only project proposed for which details are unavailable until there is funding. OHA finds it extremely difficult to review proposals that do not exist.

We appreciate that the applicant is complying with the requirement that "the agency shall assess at the earliest practicable time the significance of potential impacts of its actions, including the overall, cumulative impact in light of related actions in the region and further actions contemplated." Hawai'i Administrative Rules (HAR) § 11-200-5. However, we point out that the purpose of our environmental review law is to "ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical consideration." HAR § 11-200-1 (emphasis added). Therefore, if there is no funding, the applicant should not be proposing what amounts to a wish list of potential projects for review.

OHA is appreciative that UH Mānoa is already participating with the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, which is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. Additionally, OHA recommends the use of photovoltaic and small wind harvesting electrical generation for peripheral uses such as parking lot lighting. Solar energy should also be incorporated into the building plans. During construction, OHA urges the use of recyclable materials: steel studs and structural members, and wood products from certified sustainable sources.

Because this project is so close to the coast, all outdoor lights should be fully shaded or full cut-off styles. Uplighting should be avoided. Every effort should be made to avoid lighting situations where light glare projects upwards or laterally. Lighting that directly illuminates the shoreline and ocean waters or directed toward the shoreline is prohibited under Hawaii Revised Statutes §205A-30.5. Large, high-intensity floodlights located on building tops or poles should also be avoided. Use of amber colored or other color (such as blue or green) filters or bulbs should be used to assist in decreasing risk of seabird attraction and the potential confusion of honu. For the same reasons, OHA also recommends the use of motion detection-activated lights to prevent lights from being on for extended periods of time. Also, the painting of buildings and other facilities should be in earth tones; white or reflecting colors are to be avoided.

We would also like to suggest that the project area be landscaped with drought tolerant native or indigenous species that are common to the area. Any invasive species should also be removed. Doing so would not only serve as practical water-saving landscaping practices, but

also serve to further the traditional Hawaiian concept of mālama 'āina and create a more Hawaiian sense of place. This would also help to reduce the amount of impervious surfaces in the project area, thereby reducing runoff as well. Tree and landscape planting to shade paved parking areas and provide shade and cooling to building elements and outdoor use areas should also be considered.

OHA's December 5, 2003 comment letter for this project noted that, "The University should develop access protocols to ensure Native Hawaiians traditional and customary rights to fishing grounds around Moku O Lo'e." OHA asks if this has been done, because we see no evidence of this in the CDUA or environmental review. Further, we are confused by access issues presented in this CDUA application. Page nine of the CDUA states that the applicant will "Provide recreational opportunities accessible to the public" in compliance with HRS § 205A. OHA seeks clarification as to what this means.

Page 13 of the CDUA application states, "While there are limitations on public access we do not view the restrictions as limiting to the other public benefits associated with research, education and resource protection. Public access is available on a managed basis." OHA points out that "managed access" and limitation on access is not within the general interpretation of HRS § 205A and the limits on access mentioned above have nothing to do with recreation or cultural concerns. OHA also notes that the Final Environmental Assessment (FEIS) in section 1.4 mentions allowing unrestricted public access to the interior sections of the island and that existing public access areas are at the East Lagoon and a portion of Maile Point, but these are not mentioned in the CDUA.

Page 24 of the CDUA asks and the applicant responds:

Identify any historic, archeological or cultural sites within or near the parcel. Please submit or include any current management plan. If applicable, indicate location(s) on a map entitled *historical, archaeological, and cultural resources* and describe below.

There have been three archaeological studies on Coconut Island. These studies found no evidence of traditional cultural materials, human remains or burials. They did, however, identify and describe a large number of historical features dating mostly from the island's main period of construction activity in the 1930s.

OHA is frankly disappointed by this answer because the applicant's own FEIS points to archeological resources being present on Moku O Lo'e and even recommends archeological monitoring for any and all planned or future construction activities on the island. (Applicant's Cultural Assessment, in appendix A, FEIS). Further, the Office of Conservation and Coastal Lands on page three of the materials sent with the invitation to comment recognizes that "There are cultural, historical, and archeological resources located on Coconut Island." OHO points out that there is also a designated state site No. 50-80-10-6590 with its own set aside on the island. This must be recognized in the CDUA.

We also note that there is currently no drainage system for the entire island, nor is one proposed. All storm runoff flows directly into the ocean. This is in conflict with the stated "core themes" of the applicant which are sustainability and stewardship (see CDUA, page 11). OHA urges that the applicant propose such a basic consideration as a drainage system, especially in a long range plan. We also urge that if any impacts to coral colonies are proposed or discovered, the colonies should be moved or habitat restoration attempted to minimize the adverse effects.

We further see that there are proposed discharges from marine experiments directly into state waters. The CDUA on page 10 mentions the possible release of invasive species. OHA urges that a release of invasives will certainly not "be limited to the immediate area" as the rapid spread of other invasive species statewide clearly illustrates.

There are also eleven structures that the applicant is seeking after-the- fact approval for due to their violation of HAR and HRS. OHA generally requests at least an assessment of penalties and we look for reasons that may explain why penalties should not be enforced. We see no such discussion presented in this CDUA, and we fail to understand why an applicant of this sophistication and with this many substantial violations should not be subject to after-the- fact fines.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia 'i 'o,



Clyde W. Nāmu'o
Administrator

PHONE (808) 594-1888



COPY

FAX (808) 594-1865

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

RECEIVED
LAND CONSERVATION
2008 DEC 31 A 11:44
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
HRD 08/1920

December 15, 2008

Board of Land and Natural Resources
Kalanimoku Bldg.
115 Punchbowl St.
Honolulu, Hawai'i 96813

**RE: Comments on the proposed conservation district use application (CDUA),
University of Hawai'i, Hawaii Institute for Marine Biology, Moku O Lo'e, O'ahu,
TMK: 4-6-1:1.**

Aloha e Board of Land and Natural Resources,

The Office of Hawaiian Affairs (OHA) has commented on the original CDUA application in September of 2008. With the kind assistance from staff at the Office of Conservation and Coastal Lands (OCCL) and at Coconut Island, OHA participated in a site visit on November 3, 2008. This letter is meant to supplement our original comments to OCCL with the additional information gained from the site visit to Coconut Island.

One of the most striking things about this proposal is the broad scope of it. OHA is unsure of exactly what is being proposed. For example, pages 15 and 16 of the CDUA application asks if any existing structures will be demolished or removed. The applicant marks the 'Yes' box and the applicant then goes on to say that their long range plan is to demolish buildings. However, the applicant states that "staff are reluctant" to demolish buildings and that now plans are to renovate. Then the applicant reverses once again and states that "demolition will occur" after funding is obtained. This should be clarified.

Another example of the lack of clarity with this proposal is that many of the projects are subject to funding. (At least 10)¹ OHA is concerned that this long range plan at times appears to be more of a wish list than actual proposed projects. Our concerns are echoed in Hawaii Administrative Rules § 11-200-1 which seek to “ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical consideration.” (Emphasis added.) OHA would like a prioritized list of viable projects to review that are coming online in the near future. We were also quite surprised by the large number (11) of after-the-fact permits that this experienced applicant has applied for.²

OHA is also concerned that it may not be realistic (funding aside) for the applicant to fulfill all of these proposals. One of the reasons is that the island is limited in terms of infrastructure. OHA understands that the sewer line is at capacity for the current population on the island and no further connections are allowable.³ We point out that the applicant is proposing to nearly double the population of the island yet we see no realistic proposal to accommodate the additional wastewater. This must be accounted for. OHA also notes that even some of the drinking fountains do not work in the newest building. If a fire were to break out on the island now, there is not only no access for firefighters and their equipment; there is no fire flow in the current system to fight a fire on the island. This could have devastating effects.

OHA is not particularly worried about a fire destroying this precious resource. However, these are but two examples that do clearly illustrate the applicant's lack of planning and care for their current situation on the island, let alone ambitious future plans. OHA was quite surprised by the stark beauty of this island that lies so close to urban O'ahu. We were also surprised by the lack of care that has been shown to this island by a sophisticated tenant who claims to be environmental stewards of this island. There were numerous decrepit facilities, debris piles and corroded materials near the shoreline. (See exhibit A.) OHA urges that current uses should be adequately accommodated and supported before expansion is considered. Further, stewardship should be demonstrated by the applicant not just it applies to their proposals, but in a general way towards all of their actions on this special place.

We are concerned over access issues to Coconut Island. The applicant claims to have “managed, controlled access.”⁴ However, OHA discovered that access is by invitation only, which is a far cry from public access. It was quite difficult even for OHA staff to visit the island and we imagine it is even more so for our beneficiaries who are practicing their constitutionally

¹ OCCL Notice of Acceptance and Environmental Determination, file no: CDUA OA-3481, page 1.

² OCCL Notice of Acceptance and Environmental Determination, file no: CDUA OA-3481, page, 2.

³ Addendum to the Shoreline Setback Variance and Special Management Area use Permit Application, page 10.

⁴ Addendum to the Shoreline Setback Variance and Special Management Area use Permit Application, page 14.

protected rights in the area. OHA notes that the Final Environmental Assessment (FEIS) for this proposal in section 1.4 mentions allowing unrestricted public access to the interior sections of the island. This does not exist.

In fact, access to the island is prohibitive. There are two "public access" areas on either side of Maile Point. However, as Exhibit B shows, there are signs posted which openly discourage visitors. OHA strongly urges that the "KAPU" sign be taken down and replaced with appropriately worded and sized font signage. All that is visible from the channel is the bold faced and large lettered KAPU.

OHA understands that the signage is designed to prevent fishing and anchoring in the area. However, since these are supposed to be public access areas, proper signage legible from a reasonable distance designating these areas as public access points are required. Exhibit C shows the second "public access" point. There is no way for anyone to recognize this as such. This must be corrected. OHA recommends "Visitor Information" signs that clearly delineate where the public may go rather than the current KAPU and DANGEROUS signs that clearly discourage access.

If there are health, safety and public welfare concerns to prevent access to these areas or interior sections of the islands, OHA wishes for the applicant to plainly state them so that we can arrange suitable access that reasonably considers these factors and the required access rights. Otherwise, OHA views this as a publicly owned area that requires public access. Furthermore, our beneficiaries have elevated rights accorded to them that must be recognized and accommodated.

We have asked that, "The University should develop access protocols to ensure Native Hawaiians traditional and customary rights to fishing grounds around Moku O Lo'e."⁵ The applicant mentions that they "will work with OHA in developing a protocol that addresses the issue pertinent to traditional and customary practices relating to fishing resources."⁶ OHA points out that, to date, nothing has been done in this regard. We have not been contacted by the applicant to do this. OHA again states that this is a serious requirement that must be addressed and we again extend ourselves to the applicant so that this can be done. Please reach us at the contact point referenced at the end of this letter to do so.

The lands which this project would impact are ceded lands, as are all submerged lands. OHA notes that these lands hold a considerable amount of sentimental, historical and legal

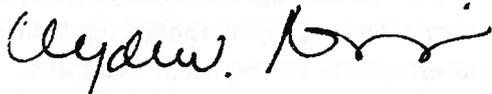
⁵ OHA's December 5, 2003 comment letter for the applicant's Long Range Development Plan and in our September OCCL comments on the CDUA application.

⁶ Addendum to the Shoreline Setback Variance and Special Management Area use Permit Application, page 14.

significance for Native Hawaiians and OHA. As such, we request that they be treated with the respect due to them. Today, the state holds the Ceded Lands corpus in trust for Native Hawaiians and the general public. OHA is supposed to receive a portion of all revenues generated on these lands. This all adds to the special sentiment and history that this island holds for all of us. Now that this island is publicly owned, we look forward to benefitting from and sharing the fabulous opportunities that Moku O Lo'e holds for us.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o

Administrator

Exhibit A

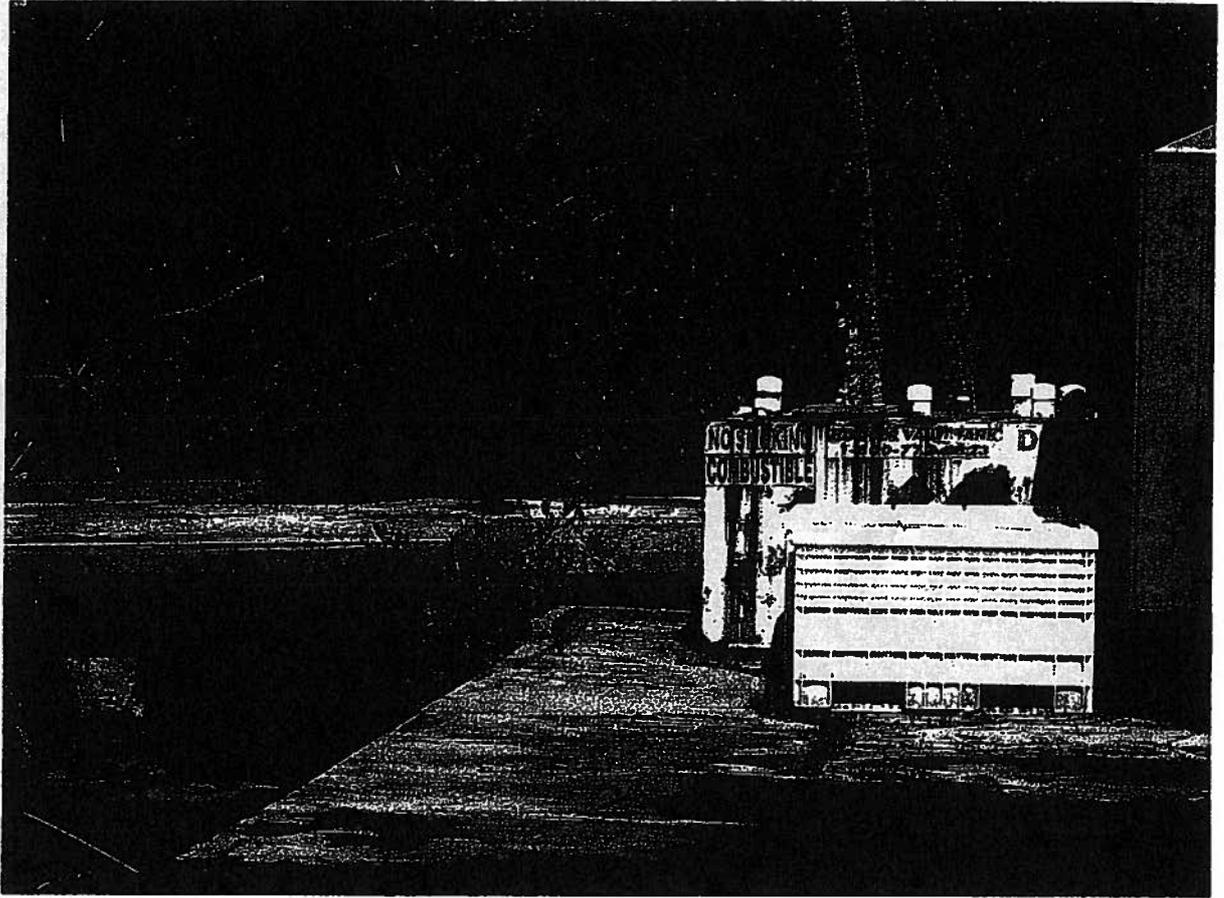


Exhibit B

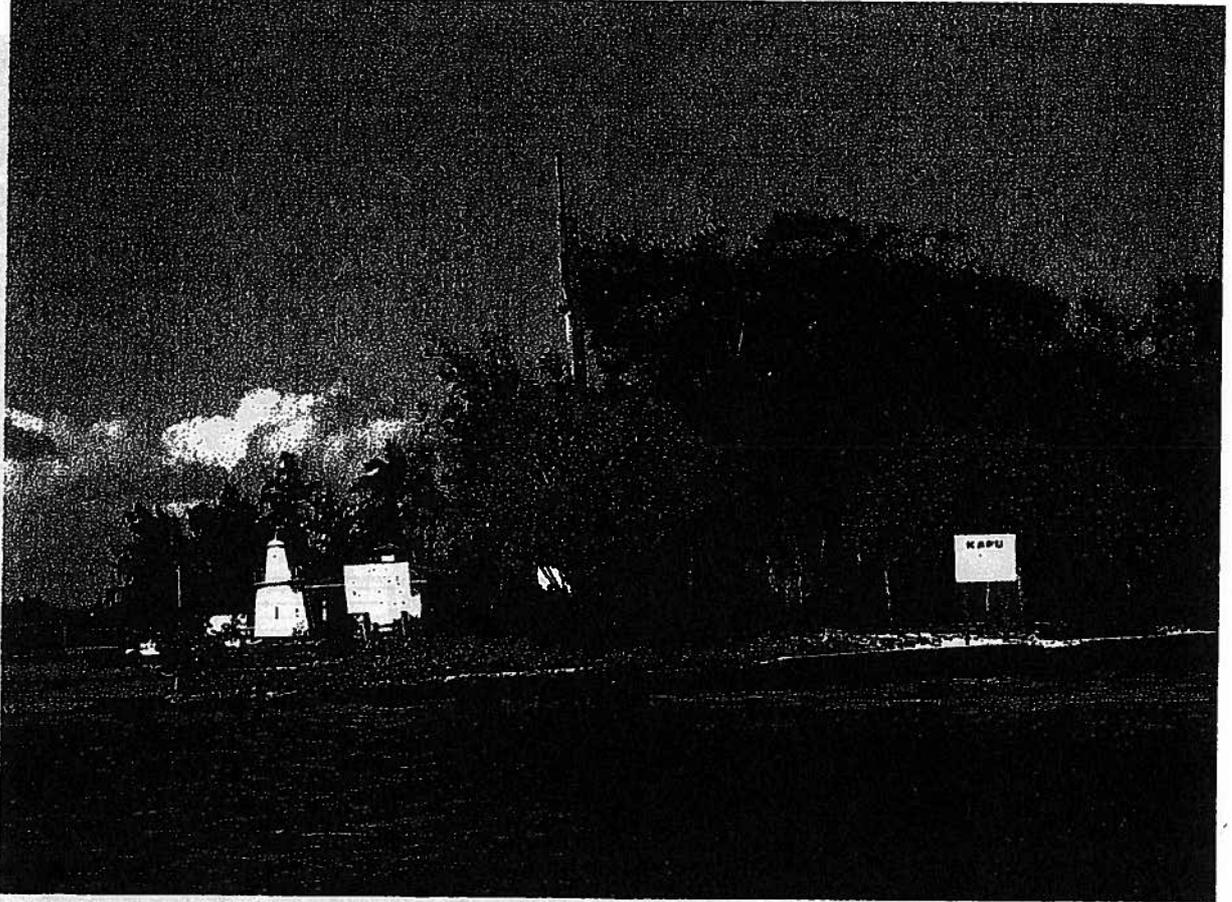


Exhibit C





January 12, 2009

Clyde W. Nāmu'o, Administrator
State of Hawai'i
Office of Hawaiian Affairs
711 Kapi'olani Blvd., Suite 500
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Subject: Applicant Response to Comments by the Office of Hawaiian Affairs (OHA) on the Proposed Conservation District Use Application (CDUA), University of Hawai'i, Hawai'i Institute for Marine Biology (HIMB), Moku o Lo'e, O'ahu, TMK:4-6-1:1

Dear Mr. Nāmu'o:

Thank you for your comment letter dated October 8, 2008 to the Office of Conservation and Coastal Lands regarding the CDUA for the Coconut Island (Moku o Lo'e) Long Range Development Plan. Coconut Island has a unique land use history. It is our sentiment that due to multiple previous owners and the construction of a variety of different structures throughout the last century, permitting has proved challenging to both the current owner, University of Hawai'i Foundation, and the Department of Land and Natural Resources (DLNR) as the regulatory authority for these lands as both Conservation and Coastal Lands.

In review of your letter, you provide commentary on several thematic issues. We present this response in concert with the order in which these issues were discussed in your letter. However, as a prelude, we present what we understand to be the extent of historical land tenure from the initial Māhele period until transfer to Christian Holmes in 1933. We believe this information is vital as its findings have merit to adequately respond to some of your concerns.

According to historical documentation, Abenera Ka'ehu Kūho'oheihēpahu Pākī was the grandson of Kamehamehanui, a Maui Mō'i and advisor to Kamehameha III. Married to Laura Konia, a daughter of the Kamehameha family, Pākī was the father of Bernice Pauahi Bishop. As an ali'i nui, Pākī was only required to commute one-third of his lands to the Mō'i during the Māhele. However, Pākī retained valuable 'āina on the island of O'ahu including the entire ahupua'a of He'eia. During the Māhele, Moku o Lo'e was claimed as part of the He'eia Fishery, indicating that the nearshore waters were a valuable subsistence source. The island was classified as Crown Lands and was awarded to Pākī as LCA 10613, apana 1 and Royal Patent 1664.

On June 13, 1855, Pākī passed away at the age of 47. In his will, some of his lands and those of his wife Konia, who later passed on in July 1857 were bequeathed to their daughter, Pauahi. Moku o Lo'e was part of those lands retained by the family. In 1856, Pauahi signed an agreement that leased portions of He'eia to 97 individuals that were native tenants that had been long time residents of the ahupua'a. In 1883, another lease was agreed upon between He'eia Sugar Company and Bernice Pauahi. The lease

granted the company traditional konohiki rights to the fisheries around Heʻeia, which included those of Moku o Loʻe. After the foreclosure of the company in 1885, the rights to the company were sold to M. Louisson. Within a year, Joseph Mendonca and M.S. Grinbaum bought the rights to the outstanding lease from Louisson and formed the Heʻeia Agricultural Company (HAC). In 1884, Pauahi died, leaving all of her remaining lands in trust for the establishment of the Kamehameha Schools for Hawaiian children. Charles Reed Bishop, the husband of Pauahi, was one of the principal bankers in Hawaiʻi and served as the executor of her estate. The lands of Pauahi, including those of Moku o Loʻe, became known as the Bishop Estate.

Between 1889 and 1894, records indicate the Marcus Colburn leased the lands of Moku o Loʻe from Charles Reed Bishop. From 1893 to 1929, HAC leased the island and other properties within the Heʻeia ahupuaʻa from Colburn for a period of 30 years. During this time, Frederick C. Bolte, president of HAC utilized the island as a fishing retreat. However, in 1908, HAC management decided to discontinue its use of Moku o Loʻe, whereupon it returned to the estate of Bernice Pauahi Bishop. In 1908, James Bicknell Castle, son of Samuel Castle, was granted a 40 year lease in Heʻeia, which included the lands of Moku o Loʻe and that of the ʻili of Kikiwelawela. However, in November 1933, the successor to HAC, the Heʻeia Company, subleased the island to Christian Rasmus Holmes II, who was interested in purchasing the island in 1936.

In 1937, a hearing was conducted in the territorial land court on the petition of the Bishop Estate for registration of its claim to full fee simple title to Moku o Loʻe. Several native testifiers came forward in support and against Bishop Estate's claim. Judge Albert M. Cristy, who presided over the case, ruled that the Bishop Estate rightfully owned Moku o Loʻe. In its oral decision, the court held that Bishop Estate, through its predecessors, had proved its title to the island by a continuous and uninterrupted association of either direct use or lease for over 50 years since 1886. Since that time to its use by the Hawaiian Tuna Packers and then to a private estate for Christian Holmes, the Island was maintained for private use until the eventual transformation as a center for marine sciences.

Moku o Loʻe as a laboratory and public place began with the start of the Marine lab in the late 1940s upon the invitation of Edwin W. Pauley who owned it with a private partnership and later on his own. As recently as the late 1990s half the island was owned by a private company until it was bought by the Pauley Foundation and donated to the UH Foundation, which is a 501(c)(3) non-profit organization. The UH Foundations is independent of the University but does work closely with the administration and other affiliated university organizations and community entities in fulfilling its mission.

Moku o Loʻe as Ceded Lands

As a point of reference for discussion, the ceded lands are all of the lands that had been designated as Crown lands and Government lands by the Kingdom of Hawaii during and soon after the Māhele in 1848. After the overthrow of Liliʻuokalani in 1893 by American businessmen, these lands were appropriated by the Republic of Hawaii, which in turn ceded them to the United States via the Newlands Resolution (the 1898

resolution of annexation). When Hawaii became a Territory and then a State, the United States government retained some of the ceded lands, approximately 400,000 acres, and granted title to the rest of the ceded lands to the State, which are estimated to be about 1.2 million acres.

The State's portion of the ceded lands is placed into the public land trust. Section 5(f) of the Admission Act of 1959 provides that the ceded lands are to be held in trust for five purposes which include: 1) for the support of the public schools and other public education institutions; 2) for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920; 3) for the development of farm and home ownership; 4) for the making of public improvements; and 5) for the provision of lands for public use.

Regarding the boundary delineation of the island, only the high island section about 12.4 + acres is owned by the UH Foundation and the remaining fill lands (16.3 acres) belong to the State Department of Land and Natural Resources. It is HIMB's position that the lands under the Foundation's control fail to meet the understood definition of ceded lands as these lands had been maintained within the tenure and use by Pauahi's familial legacy from Pākī until the establishment of Bishop Estate. However, we do recognize OHA's assertion that the remaining fill lands and submerged lands which are under State jurisdiction could be defined as part of the public trust. We feel though that OHA's statement pertaining to compensation from revenues generated from these lands has a global application that is beyond the scope and intent of this CDUA review.

Bioprospecting and Commercial Use of Marine Resources

Under Hawai'i Revised Statutes 187A-1, "commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State. HIMB provides marine research facilities for researchers and students of the University of Hawai'i and not for any commercial purposes. Each year, every member of the HIMB faculty and staff must report to the HIMB director to sign a conflict of interest statement that informs the University of any potential commercial benefits that would accrue to them personally from their research conducted at the Institute. All current HIMB members have verified that they have no ties with commercial entities.

Please note that in 2005, a report was undertaken by the State of Hawaii Legislative Reference Bureau ("Bureau") in response to House Concurrent Resolution No. 146, H.D. 1, 2005. The Bureau had been requested to "conduct a study on the fair and equitable sharing of benefits arising from research, indigenous knowledge, intellectual property, or application of biological resources that are public natural resources held in trust by the State for the benefit of the people." Under this report, bioprospecting was informally defined (to date, there is no universally agreed upon definition of the term) as searching for, collecting, and deriving genetic material from samples of biodiversity that can be used in commercialized pharmaceutical, agricultural, industrial, or chemical processing end products. By the early 1990s, objections to uncompensated

bioprospecting that does not share benefits with the source country became a contentious issue globally.

The Legislature at that time was faced with the decision whether to regulate bioprospecting in Hawaiʻi and who, including Native Hawaiians, should share in the benefits. The report iterated that the opinion of the Attorney General was that the State does not automatically hold title to the genetic material derived from biodiversity taken from public lands. The Attorney General further opined that, at present, revenues from the sale of that genetic material do not qualify for transfer into the Ceded Lands Trust Account to be distributed by the OHA for the benefit of native Hawaiians. Thus, if the Legislature desired to regulate bioprospecting, it needed to ensure that the State retains title to share in benefits. It is our understanding that the Legislature also had to decide whether native Hawaiians would share in these benefits and if so, how and how much.

As a result of this report, in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006, with the Senate concurring, the Governor is requested to establish a temporary advisory commission on bioprospecting, to be placed within the Office of Hawaiian Affairs for administrative purposes only, to make recommendations for policy development in the area of: 1) prior informed consent; 2) equitable benefit-sharing; 3) bio-safety protocols; 4) a permitting and licensing process; and 5) cultural rights for the use of Hawaiʻi's biodiversity.

In our review of LRB records, we were unable to find the final report that was to be submitted by this advisory commission to the Legislature and therefore are not in a position to comment on its findings and conclusions as applicable to HIMB's marine research. We welcome a continuing dialogue with OHA as to the merits of this report, when available for public review.

Purpose of LRDP and Funding Relationship

The long range development plan (LRDP) for Coconut Island visualizes the balanced development of the island with a continued emphasis on excellence in marine biology research. This plan, adopted by the University Board of Regents, envisions the island as a home to affiliated research and education programs, a meeting conference facility and support functions. The designation of areas for each of these uses is indicated on the plan in conjunction with existing facilities and conceptual forms for programmed uses. The intention of the plan is to provide a flexible framework for future development in regards to functional adjacencies supported by more specific design criteria which will guide development so as to ensure that the environmental and aesthetic objectives of the plan are achieved and should not be dismissed as a "wish list".

The reality of these projects' economic viability is that project funding is made available, when available, either through annual University budget allocations and appropriations, which are further supported by other public and/or private initiatives or partnerships.

Clarification of Project Scope

The proposed uses specified in the CDUA under review are stated as:

1) Future proposed uses in the University of Hawai'i Long Range Development Plan (LRDP): Over the long-term, the LRDP proposes expanded research facilities, a conference center, overnight accommodations and infrastructure improvements as well as the continued existing uses of the island for research and education. Projects included in the LRDP may occur over the 20 year planning horizon.

Due to the long-term nature of these facilities and improvements, specific details are unavailable for every project as actual project funding needs to be appropriated to take each project within LRDP to a detailed design phase. Additionally, there are no guarantees that project funding will ever be allocated. However, if project funding is made available, then project implementation may require a separate review and/or amendment under the proposed CDUA. As outlined in the LRDP, these projects include:

- ◆ Arrival Building II
- ◆ Storage
- ◆ Research Court
- ◆ Observation Kiosk
- ◆ Meeting/Conference Facility
- ◆ Housing/Accommodations
- ◆ Recycling Center
- ◆ Lagoon Bridge
- ◆ Wastewater Research Facility
- ◆ Windmills

Additional actions to be covered under this CDUA include the following considerations:

Fire Protection Upgrades

The fire protection system on the island will be upgraded with the installation of piping, valves and fire hydrants to meet City and County of Honolulu Board of Water Supply and Fire Department water system requirements

Shore Protection Measures

A Shoreline Protection Needs Assessment was conducted by Ed Noda & Associates in September 1998. Two categories of shoreline protection options have been considered: impermeable seawall structures and sloping rubble structures such as rock revetments. The shoreline areas of the Lighthouse and Arrival Pier, the southwestern shoreline, and Pelagic Fish Laboratory shoreline are designated as high priorities for shoreline protection. In the future, a comprehensive plan for repair will be developed by HIMB.

Research and Education Building

The existing residence building surrounding the proposed research court will be demolished to make way for a new 5,000 square foot building to research and educational activities. A proposed library and multimedia resource center in this building will facilitate distance learning and collaborative research.

Salt Water Laboratory

A new Salt Water Laboratory will be constructed near the arrival pier. This facility will take advantage of its adjacency to the West Lagoon and flat land available for outdoor tanks. The proposed building site is approximately 5,000 square feet.

Shark Tank Research Site for the Laboratory

The Laboratory at HIMB requires a large, permanent shark tank and instrumentation facility on the east side of Coconut Island to support its DARPA research grant project. The tank must be large enough for long-term holding of 2-3 medium size sharks. In addition two portable containers will be located onsite as field laboratory space for animal preparation, instrumentation and experiments.

Workroom Containers

Two 20-24' portable containers will be located on the site (see diagram). There currently exists one permitted 24'L x 8'W x 8'H container at the site and has fresh water hook-up and electricity. It is proposed that this trailer be dedicated to the DARPA project, and replaced with an equivalent portable container that can be located at another location on the island. Alternatively, that container can be moved eight feet from its current location towards the dorm building and replaced with a new container. A 26' square wood platform will be built beside the container and a second 24'L x 8'W x 8'H container will be installed on the opposite side of the platform. One container will have a single freshwater sink and electrical, and the second trailer electricity only.

Tank Platform

The ground at the tank site slopes away from the road towards the lagoon. A wooden platform will be built level with the road and elevated approximately two feet above the ground on the lagoon side. The platform will consist of approximately one-inch plywood supported by a framework of wooden beams 16 inches apart on center. The platform will be supported by concrete blocks on small concrete forms. A corrugated roof structure will span the pool between the adjacent containers to keep sunlight, rain, and debris out of the shark tank. The back and front sides of the tank platform area will be enclosed with plywood for environmental protection and security for this animal holding facility.

Shark Tank

A circular fiberglass tank will be constructed on the platform. The platform will accommodate a tank up to 25 feet in diameter and maximum water depth of three feet. Water will be supplied via a line from the main pumps that now extends through the adjacent lagoon. A four inch outfall pipe will drain water from the tank into the lagoon and has already been approved. The tank site will be equipped with a small backup

generator and backup pump system to provide emergency water circulation and filtering in the event of a pump or power failure.

Old Pauley Marine Laboratory

Another project in the "long-term" category is the Old Pauley Marine Laboratory renovation. The "old" wet labs were built in 1965 with funds donated by the Edwin Pauley foundation. Now, over 40 years old and exposed to direct salt laden air, the structure is showing signs of deterioration and may not be salvageable if repair work is not initiated in time. The structure is constructed of hollow CMUs and exposed steel beams. The bottom floor level CMUs have spalling, and the metal underlying the concrete walkways are rusted and falling, and the concrete walkways are cracked.

2) Four proposed near-term projects: The following projects are specified at this time and are expected to begin with the approval of this permit: a) the new Marine Biology Research Laboratory; b) a 24' by 6' floating dock in the south lagoon; c) the enclosure of the "Main House" pavilion; and d) the construction of a new 8-inch water distribution system.

South/West Lagoon Floating Dock

HIMB proposes installation of a floating pier in the small lagoon adjacent to the south side of the Coconut Island Lighthouse. Presently, access and egress from Coconut Island is via a two tiered fixed wooden dock at this same location. The present docking facility is precarious, especially at low tides, when there can be a three-foot differential between the boat level and pier level. Access to the floating pier will be via a ramp that will be anchored to land using a proposed new concrete base.

Coral located in the proposed floating pier location is authorized to be relocated by the U.S. Army 7th Engineering Dive Detachment upon return for deployment. U.S. Army Corps of Engineers Permit POH-2004-1053, extension dated 26 June 2006 and State of Hawaiʻi Department of Land and Natural Resources Special Activity permit 2006-14.

New Marine Biology Laboratory

In keeping with the mission statement for Coconut Island, the university seeks "to promote stewardship of the living oceans; restore, preserve, and sustain marine ecosystems in Hawaiʻi and the Pacific Rim through integrated scientific research, community involvement, education and example." In 2001, the Hawaiʻi legislature passed an Appropriations Bill that included a provision for a new marine laboratory building at Coconut Island. The intent of this new facility is to communicate their mission while providing needed additional space within the context of sustainability so that life-cycle costs, energy consumption, and facility impact on the environment are minimized. It is the intent of the University that the island evolves into a self-sustaining place on the fore-front of research and education.

HIMB is planning to construct a new Biology Research Laboratory. This is one of the four new projects that are included in this CDUP. Located on 12.5 acres in the southern half of the island, the laboratory would be situated between the Pauley Lab Building and the West Lagoon. The project would provide a total of four structures,

including two one-story lab buildings, a central building for specialty labs, restroom, and a building for electrical and mechanical operations and storage. Labs would be equipped with solar panels. The building footprint would comprise approximately 15,163 square feet.

The new Dry Lab Complex proposes the development of an intimate scientific village which revolves around the individual, modular laboratories while standing tied to an organizational circulation core and common support spaces. Multiple, smaller-scale buildings, terracing with the landscape will temper the complex's visual impact on the site. The dry labs will be of a light frame construction on stepped building pads. This low-impact construction technique will minimize the affects on the island and provide an opportunity for extensive off-site pre-fabrication and small-scale material transportation. Single-sloped roofs on the labs will provide high-bay ceilings with clerestory windows to the North for natural day lighting. Low-scale circulation walkways will connect the labs within the complex and where possible, utilize exterior walkways to decrease the building program conditioned space.

Energy conservation is a primary criterion in the design of the new station. Passive architectural features include high performance thermally insulated building envelope, high performance insulated exterior thermal and daylight clerestory in each laboratory module except the common laboratory.

Mechanical, electrical and communication equipment rooms will be adequately sized to allow for access, maintenance, and repair. Due to space constraints, some equipment will need to be partially dismantled for installation and/or removal.

Circulation to and from the building is via walkway on the East and West sides of the building connecting to the existing walkways fronting the Pauly Laboratory Building. All circulation between the seven laboratory modules and the common laboratories is via external walkways.

The anticipated water demand for the new lab is 1000 gallons per day (gpd). The proposed water system will use existing water supply line and proposed (not yet built) water supply line. Note the proposed water supply line is a separate project from the Biology Laboratory project. Existing and proposed water systems are adequate. Note, UHM has a project to add a second water supply line on Coconut Island. This water line project is separate from, and in advance, to the Biology Laboratory project. Water supply for fire sprinklers is inadequate; therefore we are proposing a 5000 gal storage tank to serve the fire sprinklers in the new Biology Laboratory. The water storage tank is to be located adjacent to the proposed Biology Laboratory building.

Wastewater generation is anticipated at 1000 gpd. The proposed wastewater system will include a septic tank with leach field. Existing sewer is inadequate due to limitations of capacity of the County system. Plans call for the provision of a localized to provide for localized sewage treatment in the form of a septic tank and leach field system. The State Department of Health has given preliminary approval for the system.

Existing Electrical and telephone/data systems are adequate.

The lab will provide amorphous photovoltaic panels and hot water panels on the roofs of the new laboratory project. The panels will have an approximate capacity of 30 Kilowatts (kw). Design intention is to feed this electrical power into the building to offset commercial power. Excess power generated, if any, will be fed into the commercial system. It is very doubtful that excess power will be generated. Most likely all power generated by the photovoltaic panels will be consumed by the building.

Enclosure of the Main House Pavilion

A portion of the main house, which currently is only a roof over slab, is proposed for enclosure. Federal and private funding has already been secured for the renovation of this already existing facility to provide space for the growing HIMB Education Program staff and an interactive wet-lab and AV classroom. The intent of this space is to be used for K-12 students to learn marine science and environmental stewardship. As the LRDP calls for this area of the island to be open space, the enclosure of this roofed area would be on a long-term non-permanent basis until funding is secured for the LRDP.

Construction of New Water Distribution System

The existing 4-inch system is inadequate for fire flow purposes. HIMB has discussed this issue with the City and County of Honolulu Fire Department and received some preliminary suggestions for addressing the situation. The long range plan proposes a new 8-inch loop system around the island. This improves the situation but still does not meet the pressure requirements. A salt water pump system has been proposed for fire flow purposes.

3) Unauthorized structures: Includes 12 of 23 existing buildings and structures classified as "unauthorized" by the State of Hawai'i, Board of Land and Natural Resources in 1999.

A retroactive CDUP is requested for existing structures that are not covered by CDUA OA-2854. In 1998 HIMB was cited for 13 unauthorized structures. The applicant started with a request for a retroactive CDUP for the following twelve "unauthorized" structures and facilities previously cited by DLNR. A description of these facilities is provided below. Please note that one of these structures (the Windmill) has already been removed.

UNAUTHORIZED STRUCTURES CITED BY DLNR	DESCRIPTION
Catfish Tank Area	
Physical and Operational	This is a cleared area with a dozen aquaculture tanks, currently not in use, backed by another aquaculture tank field of 20 tanks of assorted sizes used for culture of bottom fish and holding other experimental animals.
Relationship to Shoreline	The tank area directly abuts the shoreline.
Windmill	
Physical and Operational	The windmill was used in a UH College of Engineering experiment to demonstrate the efficacy of using wind power to desalinate ocean water. The experiment is finished and it will likely be transferred to another agency. The windmill is about 30 feet high and stands on an 8 foot by 8 foot pad. The windmill has already been removed. Current plans are for the windmill to be used on Kaho'olawe as part of its ongoing restoration program.
Relationship to Shoreline	The windmill is located 10 feet from the bay on one side and 15 feet from the HMB Lagoon on the other side. Windmills are part of the long range plan for Coconut Island in that location.
Storage Sheds	
Physical and Operational	The storage shed is 10 feet high, 28 feet long and 8 feet wide. It is used by researchers to store and prepare feed for the animals which are kept in the tanks next to the sheds. The shed backs up onto the shoreline of the bay.
Relationship to Shoreline	The shed is adjacent to the shoreline.
Aquaculture Tanks	
Physical and Operational	These tanks hold tilapia brood stock. Tilapias are used in fish endocrinology research aimed at discovering how hormones effect the growth of fish.

Relationship to Shoreline	The tanks are located on the spit of land between the bay and the HIMB lagoon, within 15 feet of the water on both sides.
New Floating Dock	
Physical and Operational	The floating dock was built to hold a number of submerged fish cages for research. The dock was too thick to be used in the lagoon so HIMB asked for and received DLNR permission to turn the dock and create a safe floating bridge to replace the old one that was aged and dangerous.
Relationship to Shoreline	The new floating dock is located between the NSF building and the Point spit.
Monk Seal Fish Tank House	
Physical and Operational	Based on additional investigation and subsequent documentation, this project was officially permitted on 07 April 1998.
Replacement of Deck	
Physical and Operational	Extensive maintenance was done to repair the deck behind the Miller House.
Relationship to Shoreline	The deck is built on the shore of the HIMB lagoon.
Sea Wall Repair (beach)	
Physical and Operational	Sea Walls were repaired where they were failing near the beach. The repairs by the one-time incinerator are 54 feet long and 4 feet high.
Sea Wall Repair (lanai)	
Physical and Operational	Sea Walls were repaired where they were failing fronting the Lanai Suites. The repair near the Lanai Suites is 72 feet long and 3 feet high.

Floating Utility Dock	
Physical and Operational	The dock is a raft connected by a ramp to the shore inside the lagoon near its mouth. It is used by coral researchers to load and unload gear and specimens.
Marine Mammal Pens	
Physical and Operational	The pens are 230 feet by 40 feet and house three marine mammals which are used in echolocation and hearing studies.
Relationship to Shoreline	The marine mammal pens are located 50 feet offshore north of the lighthouse.
Marine Mammal Building	
Physical and Operational	The building is a roof and half walls built on top of the existing elephant cage, which was built by the original owner in the 1930s. It is the graduate student office and is used by the students who are working with the marine mammals.
Relationship to Shoreline	This building is within 10 feet of the shoreline.

The new floating dock, monk seal fish house, and loading dock for LCU have since been authorized. Although DLNR did not cite the Lilipuna Pier submerged area, this is considered an existing facility and is part of this CDUA. Consequently, this application is for the remaining items that still need Land Board approval. The remainder of the Lilipuna property improvements is not located in the Conservation District, therefore do not require a CDUP and are not included in this application.

Sustainable Design Practices & Landscaping

The applicant recognizes the State's goals related to renewable energy resources. As you have mentioned in your letter, the University is already participating with Leadership in Energy and Environmental Design (LEED) Green Building Rating System and will continue to do so with new buildings that come online for HIMB. As appropriate, design elements for either new projects or renovation of existing facilities would include the use includes energy saving features such as access to natural light, high efficiency lighting and solar/occupancy sensors in all offices and labs throughout the building. Additionally, photovoltaic panels and a green roof will be placed on the unused spaces of the roof/penthouse. Recyclable materials will be used during construction to the extent possible.

All current and future plans for new facilities and retrofits or renovations to existing facilities will conform to the Design Guidelines provided in the Coconut Island Long Range Development Plan (1998). The Design Guidelines support six primary objectives to the functional, relational, visual, and environmental relationship of physical design on Coconut Island. These objectives include that the design of facilities should: a) integrate with Kāne'ohe Bay; b) protect and enhance the character and atmosphere of the island; c) protect views; d) be at an appropriate scale and balance; e) encourage a well-organized relationship between functional uses; f) and incorporate sustainability concepts.

New screening vegetation will be installed and the earth tone finishes will be selected from the color palette in the Design Guidelines. Landscaping for the proposed project will be done with drought tolerant native plant species, where possible.

Traditional and Customary Rights for Access and Use/ Public Access

The issue of public access has been important to the general public, which the University does provide albeit limited in range and extent on the Island. However, access to the Island has been to some degree either restricted or limited since the years prior to and during the Māhele period in the mid-1800s. With public ownership, the issue of public access has become more important. Issues raised include the public access generally available to coastal waters and the shoreline to the high wash of the waves. Also, as public land, there is a general perception that it should be open to the public. However, that issue is not so easily clear. Public access on public lands is subject to many caveats related to health, safety and the public welfare. Rights are limited by the State's police power that balances and regulates competing public interests. Dangerous and high security areas are routinely restricted to the general public. Public buildings and yards are also locked and restricted. Access to sensitive natural resource areas is limited. Public buildings are restricted by hours of operation and security areas. Military bases and public utilities routinely restrict total access to entire facilities including coastal areas.

The work of the HIMB with many indoor and outdoor facilities where experiments are conducted and potentially dangerous chemicals and expensive equipment is stored is not conducive to unmanaged open public access. Even access to the surrounding reef is problematic as there are many experiments being conducted and transit over or through the reef area may damage equipment or affect study results. On Coconut Island, this issue is magnified even more with open aquaculture tanks and equipment and chemicals that create both a conflict of use and potential hazards to visitors who are not aware of the contents of chemicals or the hazards of operating equipment. Unintentional or deliberate disruption of experiments may also occur.

Further, the island is surrounded by a special, protected, marine scientific preserve. Please note that the responsible authority for fishing regulations in the surrounding Marine Reserve around Moku o Lo'e is the State of Hawai'i, Department of Land and Natural Resources, Division of Aquatic Resources (DAR). The area within 25 feet of the reef edge is restricted and fishing and other traditional resource gathering activities are not allowed. The reef and its resources are reserved for scientific purposes.

Paddlers and water skiers are allowed to traverse the preserve to get to the beach on the eastern lagoon peninsula and Maile Point. Scattered signs inform boaters of the existence of the preserve.

As a general policy, except for the two areas mentioned above, visitors are welcomed to the island but because of all the experiments that are ongoing and liability issues, HIMB provides a host for all visits. All interested parties are welcomed to initiate the process of contacting the University to make arrangement to visit the island. Every effort is made to fulfill each request, as permitted by availability of time and personnel.

During the EIS process, the Office of Hawaiian Affairs (OHA) expressed its concerns related to provision of access for traditional and customary practices. HIMB is fully aware of the concern raised during the EIS process regarding measures to ensure Native Hawaiian traditional and customary rights to fishing grounds around the island. HIMB responded by stating that it recognized the difficulty of two perspectives on the issue of access and use as the coral reef flat around the island is designated as a scientific preserve under Hawai'i Revised Statutes, Chapter 188-36. HIMB stated then it would work with OHA in developing a protocol that addresses the issue pertinent to traditional and customary practices related to fishing resources. However, it is our current understanding the University and HIMB do not possess the authority to develop access protocols to ensure that Native Hawaiian traditional and customary rights to fishing grounds around the Island. All members of the HIMB community, for example, must apply with the DAR for the appropriate permits to conduct their own studies and/or to collect marine specimens.

The HIMB is involved with many community partners and has a policy for fostering opportunities to expand its education and outreach programs, which have brought thousands of people to the island over the years. Its general policy is to be as open as possible and to partner with the community. Many groups like the Outdoor Circle and the U.S. Marine Corps come to the island to participate in workdays and community events on the Island. Further, HIMB has taken the initiative to create strong working relationships and partnerships with numerous Native Hawaiian organizations and community groups like the Waikalua Loko Fishpond Preservation Society, the Pacific American Foundation, the Ko'olaupoko Hawaiian Civic Club, Paepae o He'eia (a private non-profit organization dedicated to caring for He'eia Fishpond. HIMB also has a close affiliation with the Polynesian Voyaging Society and the Myron B. Thompson Academy. Finally, the Department of Education is involved in several programs which bring students of all grade levels to the Island.

The University proposes to continue a policy of managing public access to the island as the best method for balancing the many public interests involved in the operation of the Hawai'i Institute of Marine Biology. Specific to Native Hawaiian access and use on island, in 2008, HIMB had begun to work with the Ko'olaupoko Hawaiian Civic Club to host a cultural protocol event and workshop on the Island. Although the event was postponed, HIMB believes the relationship building it has fostered with the Hawaiian community will continue to strengthen and perhaps in the near future, events as those proposed with the Civic Club will occur with this entity and with other interested

Native Hawaiian groups. Currently, efforts are ongoing to host cultural workshops between HIMB researchers and cultural practitioners in preparation of the scientific research season that begins in June 2009.

Finally, HIMB wants to emphasize that kupuna used to come often to the island. However, due to the nature of the access for kupuna, special provisions for boat access may be required, requiring additional costs and fees. HIMB used to subsidize these kupuna visits but can no longer do so due to limitations on State operational budgets. Also, fees have to be charged uniformly because of Federal funding regulations. The lack of provisions that were once more readily available is not because of attempts to limit access but by simply the current economic state of affairs all State entities have been and continue to be challenged to maintain. If more funds were to become available to subsidize the whole operation of boat access, then these visits would be again encouraged.

HIMB welcomes the opportunity in 2009 to begin a meaningful dialogue with OHA to help define the necessary balance and to ensure these issues are addressed.

Archaeological Resources

The applicant acknowledges the error of the statement provided in the CDUA and agrees with OHA's comment. HIMB will coordinate with the State Historic Preservation Division (SHPD) and seek concurrence on the level of mitigative action required for a specific project. As part of the recently approved City and County of Honolulu Special Management Area permit, archaeological monitoring is a requirement for proposed future ground disturbances on the Island. In accordance to State Historic Preservation law, the appropriate plan of action will be filed with SHPD for its review and approval prior to project development.

Drainage, Outfall Discharged, and Concern for Invasive Species

Existing structures are not all directly related to the NPDES permits to discharge into the nearshore waters on a one to one basis. However, discharges enter the bay through one of HIMB's 39 permitted outfalls, and are carefully monitored. Certain facilities including the "catfish" tanks and other aquaculture tanks receive fresh, salt or brackish water and their discharge flows into outfalls are permitted by NPDES permit no. HI 0021644.

The returned water is often much clearer than the receiving water. Regarding surface runoff, vegetative buffers and pervious surfaces will be installed, where practicable. New materials, xeriscape landscaping, and native coastal species will be part of the plane pallets. Rainwater harvesting will also be considered and implemented, where practicable. All of these measures should reduce or eliminate runoff into the waters of Kāne'ohe Bay.

No culture of foreign aquatic species is permitted at HIMB without permission from the relevant authorities. Please note that HIMB currently does cultivate tilapia, which is

foreign to Hawaii waters. However, the species under cultivation has been authorized by the State Department of Agriculture.

After-the-Fact Approval

Current HIMB leadership has been mindful of its past delinquencies, all of which were inherited from past HIMB administration. HIMB continues its ongoing endeavors to be better stewards by first aligning its regulatory obligations to having existing structures come into compliance prior to the implementation of any future projects

We appreciate your input and participation in the review of the applicant's CDUA.

Sincerely,

GROUP 70 INTERNATIONAL, INC.



George I. Atta, AICP
Principal Planner

DUMPING



EXHIBIT 12