

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 10, 2007
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson, Allan A. Smith called the meeting of the Commission on Water Resource Management to order at 8:34 a.m.

The following were in attendance and/or excused:

MEMBERS: Mr. Allan A. Smith, Chiyome Fukino, Ms. Stephanie Whalen, Mr. James Frazier, Mr. Neal Fujiwara,

STAFF: Roy Hardy, Ed Sakoda, Lenore Nakama, Robert Chong, Dean Uyeno

EXCUSED: Dr. Lawrence Miike, Ms. Meredith Ching

COUNSEL: Mr. Randall Ishikawa, Esq.

OTHERS: Mr. Thomas Fee, Ms. Donne Dawson, Mr. Isaac Moriwake, Mr. Scott Allen Logan, Ms. Sandra Ichihara, and Mr. Gus Cobb-Adams, Mr. Jim Economos

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

B. ANNOUNCEMENTS

Mr. Roy Hardy announced the withdrawal of Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc.'s Citizen Complaint against Wailuku Agribusiness Co., Inc. and Hawaiian Commercial & Sugar Company and petition for Declaratory Order to Immediately Cease Wasting Water diverted from Waihee, North and South Waiehu, Iao and Waikapu Streams.

C. ACTION ITEM

1. Chairperson's Recommendation, Approval of Mr. Peter T. Young, Interim Deputy to the Commission on Water Resource Management.

Deputy Attorney General Randall Ishikawa stated that since this involves the proposed hiring of an officer or employee that may involve reservation of matters affecting privacy, the Commission should discuss this matter in a closed meeting pursuant to HRS §92-5, (a)(2). That section reads as follows:

- (a) "A board may hold a meeting closed to the public pursuant to Section 92-4 for one or more of the following purposes:"

Sub-section Two reads:

- (2) "To consider the hire, evaluation, dismissal, or discipline of an officer or employee of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting will be held;"

Mr. Peter Young stated that his life has been pretty public the past few weeks and had no objection to having an open meeting.

Interim Chairman Allan Smith asked for discussion on the appointment of Mr. Peter Young as interim Deputy Director for the Commission on Water Resource Management.

Commissioner Frazier stated that Mr. Young is an able candidate and moved that the Commission accept the appointment of Mr. Peter Young, effective May 10, 2007.

Commissioner Whalen second.

UNANIMOUSLY APPROVED

E. STREAM PROTECTION AND MANAGEMENT

- 1. Application for a Stream Channel Alteration Permit (SCAP-KA-410), Mr. Thomas A. Fee, Construction of Two Temporary Bridges Across South Fork Wailua River (Waiahi Stream), Lihue-Koloa Forest Reserve, Kauai, (TMK: (4) 3-8-001:001)**

Interim Chairman Allan Smith recused himself from this submittal.

PRESENTATION OF SUBMITTAL: Mr. Ed Sakoda

DISCUSSION:

Mr. Sakoda stated that there were several amendments to the submittal. The first one was to replace the applicant Mr. Thomas Fee with Mr. Scott Allen Logan, the Location Manager for Tropic Works Productions, Inc.

Mr. Sakoda stated that two temporary bridges will be constructed, one at the Lower Powerhouse Area and the other at the Upper Powerhouse Area. Construction and removal will be completed without any stream diversion.

Mr. Sakoda stated that the second amendment was that the U.S. Army Corps of Engineers (COE) had determined that a Department of the Army permit was not required for this project.

The Department of Health Clean Water Branch comments were outlined in the submittal and were sent to the applicant.

The DLNR and DHHL had no comments on this project as did the Division of Forestry and Wildlife and the Kauai County Public Works. The Division of Aquatic Resources stated that there were no native Hawaiian fish and crustaceans or mollusks in this area because of the large population of alien and predatory small mouth bass.

The Office of Conservation and Coastal Lands (OCCL) staff conducted a site visit in April 2007 and approved the request for road maintenance repairs to Grove Farm's back country access road. In May 2007 OCCL approved a Conservation District Use Permit (CDUP) that was subject to a total of 22 conditions. The main purpose of the CDUP was to simplify the permit process for film making in Hawaii to the extent that it did not cause undesirable effects to the state, its people, and the environment.

A site visit conducted in April 2007 by the State Historic Preservation Division disclosed no historic preservation concerns related to the proposed filming activities.

Additional amendments to the staff report included comments received from the U.S. Fish and Wildlife Service that were forwarded to the applicant and the Office of Hawaiian Affairs (OHA). OHA recommended that a cultural monitor from Kauai be retained and that historic artifacts and remains be protected. Mr. Sakoda stated that item 7 in the Standard Permit Conditions addressed OHA's concerns.

DLNR's Engineering Division and State Parks had no comments or objections. The University of Hawaii /Environmental Center did not submit any comments as of the date of the preparation of this submittal.

Mr. Roy Hardy asked if there were any sunshine issues regarding the change of the applicant's name on the submittal.

Mr. Randall Ishikawa stated that the matter had been reviewed. The staff submittal erroneously listed Mr. Thomas Fee as the applicant when Mr. Fee was actually the agent for the film company, and there was no problem in disclosing the name of the applicant, Mr. Scott Allen Logan.

Mr. Sakoda stated that the Commission had received letters of support from Grove Farm Company and the Kauai Island Utility Company (KIUC).

RECOMMENDATIONS:

That the Commission approve a Stream Channel Alteration Permit to construct two temporary bridges across the South Fork Wailua River (Waiahi Stream), Lihue-Koloa Forest Reserve, Kauai. The permit shall be valid for one (1) year subject to the Commission's standard conditions in Exhibit 5. The temporary bridges shall be removed and the stream restored by May 10, 2008.

Commissioner Whalen asked what would happen if there were delays and restoration was not done by May 10, 2008.

Mr. Sakoda stated that the process would be for the applicant to request an extension and explain the reasons for the delay.

Commissioner Frazier asked what kind of assurance we would have for the clean-up by the film people.

Mr. Sakoda stated that before and after photos will be taken, and follow-up by OCCL will determine whether or not the applicant abided by OCCL's conditions as well as the Commission's conditions.

Commissioner Frazier asked what would happen if there were a bankruptcy and there was no existing company at the end of this project? Who would be accountable?

Mr. Tom Fee stated that this project was a well-financed enterprise and that Grove Farm Company, the landowner, and the production company have established a close working relationship and will make sure that the site will be restored to its original state.

Commissioner Whalen asked if a special fund was set up to cover cost overruns.

Mr. Fee stated that the bridge contracting that was presently underway, and the removal of the structures was part of the contract.

Ms. Kapua Sproat, an attorney with Earthjustice, stated that it was helpful and important that the Hawaii Film Office took the initiative to seek input from the public and various agencies before this matter came to the Commission. The Office of Hawaiian Affairs requested that a cultural monitor be retained and kept on site during the construction of this project. Ms. Sproat stated that a cultural monitor would be helpful and would address some of the Commission's concerns to make sure that installation and removal were in compliance with the permit conditions. Ms. Sproat encouraged the Commission to consider this and add it to the standard conditions that would be in place.

In reference to the before and after inspections, Ms. Sproat recommended Mr. Donald Heacock, an aquatic biologist who was familiar with the area and the conditions of the stream.

Commissioner Neal Fujiwara asked if condition number seven on the Standard Stream Channel Alteration Permit Conditions covered the cultural resource aspects that OHA outlined in their letter.

Ms. Sproat stated that she didn't think so. A cultural monitor on site was of great importance to OHA.

Ms. Donne Dawson, Hawaii Film Office, stated that they were working with the Kauai representative for OHA, Kanani Kagawa, to find a cultural monitor. Ms. Kagawa will be

reviewing the work before and after construction which would be the primary concern. Ms. Dawson offered reassurances that the film company would leave the area in a better condition than its original state. Ms. Dawson stated that the film company will address all the concerns being raised and assured the Office of Hawaiian Affairs that the right thing will be done by this film production company.

Commissioner Fujiwara asked that OHA's cultural monitor on Kauai be on site during construction but not necessarily for the entire duration of the film project.

Ms. Sproat stated they would do that especially during the construction and removal part of the project.

Mr. Scott Allen Logan stated that he had an appointment with OHA's Kauai representative, Ms. Kanani Kagawa, and they will visit every site on Kauai that the company will be filming at.

Commissioner Whalen moved to accept the amended staff recommendation.

Commissioner Neal Fujiwara seconded the motion.
UNANIMOUSLY APPROVED AS AMENDED

H. NEXT COMMISSION MEETINGS (TENTATIVE)

1. June 27, 2007
2. July 18, 2007

The meeting adjourned at 9:29 a.m.

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

APPROVED AS SUBMITTED:

PETER T. YOUNG
Acting Deputy Director