

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

DATE: September 23, 1983
TIME: 9:00 A. M.
PLACE: Kahului Library
Conference Room
Kamehameha and School Streets
Kahului, Maui

Roll
Call

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:05 A. M. with the following in attendance:

Members

Mr. Takeo Yamamoto
Mr. Thomas S. Yagi
Mr. Roland Higashi
Mr. Moses W. Kealoha
Mr. Susumu Ono

(Mr. J. Douglas Ing was absent and excused.)

Staff

Mr. Roger Evans
Mr. Mike Shimabukuro
Mr. Henry Sakuda
Mr. Eddie Ansai
Mrs. Joan K. Moriyama

Others

Dep. A. G. William Tam
Mr. Peter Garcia
Mr. Ralph Hayashi (Item H-4)
Mr. B. Martin Luna (Item F-7)
Mr. James Lee Farley (Item H-2)
Rep. from Wilson Okamoto & Associates
(Item H-3)

Minutes

The board, on Mr. Higashi's motion and seconded by Mr. Yagi, unanimously approved the minutes of August 12, 1983 and August 26, 1983 as distributed.

Added
Items

Mr. Higashi moved to add the following items to the board agenda, Mr. Kealoha seconded, and the motion was unanimously carried:

C. Division of Forestry and Wildlife

Item C-2 -- Official Duty and Per Diem Status - National Association of State Foresters

F. Division of Land Management

Item F-1-m -- Maui C & A, Inc. request for consent to mortgage, Land License No. S-264, portion of government land of Olowalu, Lahaina, Maui

ITEM H-4

CDUA FOR PAIA SEWERAGE SYSTEM PART "A" AT KAHULUI, MAUI

Mr. Ono asked the staff whether the applicant had a chance to review the conditions outlined in the submittal.

Mr. Ralph Hayashi, Director of Department of Public Works, County of Maui, said they have reviewed the conditions and have no objections.

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM F-7 STAFF RECOMMENDATION FOR WAIVER OF REPURCHASE OPTION, LOT 42, WAHIKULI HOUSE LOTS, 5TH SERIES, WAHIKULI, LAHAINA, MAUI

The original sale of the subject lot was made on April 14, 1977 at public auction. Subsequently, the purchaser conveyed the property to her parents by a quitclaim deed on May 26, 1981 without giving the state an opportunity to exercise its repurchase option as required under the SSA and the Land Patent Grant. The purchaser, Ms. Jacqueline Ruth Helgelien, died in April 1982.

The attorney representing the estate has informed the staff that the purchaser, prior to her death and prior to the Land Patent Grant being issued to her, transferred this property to her parents who are now seeking the waiver for the state's right to repurchase the property so that the transfer can be legally completed.

Staff recommended that the board waive the repurchase option contained in both SSA No. S-5497 and Land Patent Grant No. S-15,548.

Mr. Ono asked the staff why we are deviating from the practice that the board has been following on similar situations.

Mr. Shimabukuro said the price we may have to pay for the repurchase is conservatively \$424,000. The land itself is only \$40,000, the original sales price. The rest is in improvements. The state would have to pay the full market value for the improvements if we were to repurchase it.

Attorney B. Martin Luna said the parents had provided the loan to their daughter for the improvements, and the improvements are substantial. He said the daughter was having difficulty in repaying the loan, so as an added security they had a deed prepared. Mr. Luna said they were not involved at that time. They became involved only after the family learned that there was the repurchase provision, and they were asked to see if they could assist them in clarifying that point.

Mr. Ono asked whether the parents own any other property, here or any other place.

Mr. Luna believed that they have property in Alaska but not in the State of Hawaii.

Mr. Ono said the concern that he has is that if the parents held property in Alaska, they would not have been eligible to bid for this property in the first place. He said this is a legal question that needs to be looked at.

Mr. Yagi asked whether the original purchaser had a will.

Mr. Luna said she had a will, and the attorney who is handling the probate has been in contact with the department. He said he doesn't know the provisions of the will because he is not involved in the probate.

Mr. Kealoha asked whether the parents intend to stay here or move back to Alaska.

Mr. Luna said they plan to stay here. They are helping to take care the granddaughter, and they have her enrolled in a school in Lahaina. The natural father is the guardian and has custody of the child, and he lives within half a mile from this house, so the child stays at both places.

ACTION Mr. Yagi said he would like to have this matter deferred until the next meeting for further clarification from the Attorney General's Office.

The board had no objections to the deferral as requested by Mr. Yagi.

ITEM H-2 CDUA FOR SUBDIVISION AND CONSOLIDATION USE AT KOOLAUPOKO, KANEHOE, OAHU

Staff recommended denial as it felt that this proposed use is inconsistent with the objectives of the general subzone. Mr. Evans pointed out that staff was concerned that should the lot be sold, the new owner can wait a few years and, with a new board and new staff, request permission to build a house within the general subzone. At the present time, Mr. Evans said, the conservation process does not require a title search as a part of that process. Also if someone were to come in to build in the general subzone, there is no provision as such for a public hearing on that type of request.

Another concern of the staff was that if this is allowed to go in, there is a possibility that the area may be used for ohana zoning, which means a total increase in square acreage. Even if you don't build a second house in the conservation district and build it in another zone district, you would increase the problems with storm drains, etc., Mr. Evans said.

Mr. Evans suggested that the landowner and applicant get together and see if some accommodations could be met along the line of the landowner selling development rights over this area of the parcel, which may not require subdivision.

Mr. Kealoha asked what staff meant by selling development rights between the two parties.

Mr. Evans said although the present landowner retains the title to the land, he can sell the development rights to certain portion of the land to these people.

Mr. Kealoha said inasmuch as Mr. Campos is applying to preserve a portion of the 56 acres, he asked whether it would be better if he went to the Land Use Commission to convert that portion of the parcel that he is applying for to urban.

Mr. Evans said that is an alternative that is open to the applicant.

Mr. Ono also asked what Mr. Evans meant by development rights. He said he didn't want to convey to any of the parties the wrong impression that this board has the authority to grant such a thing.

Mr. Evans said he was not suggesting that we are giving or taking away any development rights. He was merely suggesting that the question be pursued with the present landowner. He was drawing basically from his understanding of some cases which have occurred. For example, where a firm want to build on a piece of property, and the zoning over that piece of property prohibited the building of any kind of a structure, they were allowed to make some trade-offs in terms of what would be permissible and what would not be permissible. He said it is only on this light that he was bringing this up.

Mr. Ono said the example that Mr. Evans cited would be before the body that has the authority to transfer development rights. Right now he didn't see such mechanism existing, and he didn't want to give the applicant or the people that testified against this project the wrong impression that we can deal with "development" rights. He said if you talk about the possibility of dealing or transferring development rights, the applicant may go for that, but where does he go?

Mr. James Lee Farley, spokesman for the applicant, said they met with the landowner, John Cascavilla. Mr. Cascavilla told them that he had been approached by someone to buy the entire area. He said the offer was not favorable, but that in the future if someone came along with a deal acceptable to him, that he would probably sell it, and there would be no guarantee in the future that this piece of land would be preserved. Mr. Farley said in the course of the discussion, Mr. Cascavilla suggested and gave him a signed affidavit, witnessed by a notary public, stating that he wishes to give Albert & Margaret Campos the subject 8,257 square-foot parcel as described in CDUA 1246.

Mr. Higashi asked Mr. Farley whether this is an outright gift, or is the offer subject to approval. He said it doesn't say how he is going to give the land, whether there are conditions.

Mr. Farley said he believed that would be with the approval of the Land Board. He didn't tell him that there are conditions.

Mr. Ono said one of the concerns that was expressed at the public hearing by the neighbors of Mr. Cascavilla's property was that he can subdivide the backyard of somebody's property, and he can start subdividing right around the perimeter. Eventually you are going to have a whole subdivision up there, he said.

Mr. Farley said he understands that. However, there are few properties there that have already been leveled, graded, etc. Most of the yards drop off, at different angles, etc., and need much preparation.

ACTION Mr. Kealoha moved to approve staff's recommendation for denial, Mr. Higashi seconded and the motion was unanimously carried.

ITEM H-3 CDUA FOR DRAINAGE, ROADWAY AND RELATED IMPROVEMENT USES AT HALAWA MEDIUM SECURITY FACILITY AT HALAWA, OAHU

ACTION Unanimously approved as submitted. (Kealoha/Higashi)

ITEM H-5 CDUA FOR CONSTRUCTION AND USE OF A SECOND HYDRO-ELECTRIC PLANT ON THE WAINIHA RIVER, WAINIHA VALLEY, HANAIEI, KAUAI

Mr. Evans said he has just received a letter dated September 20, 1983 from

the U. S. Fish and Wildlife Service which was not included in the staff's analysis. A copy of that letter was distributed to the board members.

Staff's recommendation was for approval of the project, subject to the conditions that were listed in the submittal. Staff, however, did have some concern with Condition 19, "That a continuous maintenance stream flow of 15 cfs be maintained at all times."

The applicant's proposal was a continuous maintenance stream flow of 1 cfs. Staff felt that 1 cfs would not meet the standard conditions that the board placed upon the project to insure compatibility and protect the natural resources in the area.

Mr. Yagi said according to the submittal, "there is a flow of 50 cfs of more than 90% of the time, and a flow of 80 cfs more than 50% of the time." He wanted to know how the staff came up with the 15 cfs figure to be maintained at all times.

Mr. Evans said staff used the average annual flow, which was 139 cfs. The 15 cfs figure represents 10% of that. The reasoning behind that was the Aquatic Resources staff felt they needed to have 30%. The Aquatic Resources staff informed him that if you don't have 10%, you lose the habitat. Staff felt that if they used this 10% at least they could then argue that they have met the guidelines.

Mr. Ono asked whether the less than 10% flow would adversely affect the entire length from the proposed weir down to the mouth of the river.

Mr. Evans said no. It would affect an area immediately below the proposed weir. However, as you go farther down to the river, the flow builds up on both sides of the river. So the critical area is really the area immediately below the proposed weir, he said.

Mr. Ono asked whether the water ownership question on the Wainiha River has been resolved.

Mr. Evans said the applicant informed us that there was a court ruling that allowed the applicant to take the water.

Mr. Ono asked how do you address the state's position.

Mr. Evans said the correspondence referred to a legal decision so he felt that this question should be referred to the Deputy Attorney General.

Mr. Ono said staff did not address what action to take in the recommendation. He said normally staff's recommendation would call for referral to Land Management Division for disposition if it is a disposition question. If it's a legal question, it's referred to the Attorney General's Office. In this particular case, he didn't see any reference on referrals to anybody to protect the state's interest. He said he was not challenging the applicant's position. He just wanted to make sure, whichever the courts decide on this question, that the state's interest is protected in the future.

Mr. Ono said he read somewhere that the Kauai people would benefit from this project. He asked how the consumers are going to benefit from this.

It was Mr. Evans' understanding that if the board approves this project, this project will bring Kauai over the 50% mark in terms of supplying Kauai's electrical needs with alternate energy sources.

Mr. Higashi questioned Condition 7, "Fish screens should be installed at the intake to minimize mortality and maintenance problems." He asked whether we are talking about one weir or both weirs, although one may be already installed and not under consideration at this time. He wanted to know whether we can impose the condition of the use. His thinking was that if the fish cannot go upstream, they cannot pass the first weir. So why do you need the screen in the second weir? He asked whether it is proper to include a condition on something that is already there.

In connection with Mr. Higashi's question about the fish screen for the existing power plant, Mr. Ono asked whether that would fall within the realm of this particular application, if an additional condition is added, so that fish screen for the existing plant which would be required and is considered a mitigating measure.

Mr. Evans said yes. It is considered a mitigating measure, and it would be appropriate to consider that as an additional condition.

Mr. Yagi said the question of the oopu is involved because they are taking away the water and the oopus will be affected. He asked where the water is going.

Mr. Evans said the water is eventually going back into the stream, but not immediately below the weir. He said although it does basically go back to the stream, it doesn't go back to the stream immediately below the proposed weir. This is the critical area where they need the water to insure the survival of the species and the habitat.

Mr. Kealoha said Mr. Evans earlier stated 10% cfs. He asked whether that is under ideal conditions.

Mr. Evans said that is under minimal conditions to insure that the species remain, and the habitat remain. He said under 10% cfs, according to our technical people, we will lose the habitat.

Mr. Kealoha asked Mr. Evans whether he has the data to support that statement.

Mr. Evans said he has statements, both verbally and in writing, from our Division of Aquatic Resources. However, the data did not accompany this statements.

The board gave the applicant an opportunity to respond to some of the questions that were discussed. The applicant was reminded that this is not a public hearing. It was a time to give them one final chance to restate their position and to respond to questions that were raised and additional questions that might be raised, and some more additional information that may help the board to arrive at a proper decision.

Mr. Phil Scott, Vice President and General Manager of McBryde Sugar Company, and Mr. Randy Hee, the project engineer for this project, made

the presentation on behalf of the applicant. To help answer some of the questions that were brought up, Mr. Hee gave a brief slide presentation of the project.

Mr. Hee said unfortunately no studies have been done in Hawaii on the oopu for minimum streamflow requirements. So they tried to analyze this based on operation of the existing project. They analyzed it on economic basis and came up with a flow of 1 cfs which they could release continuously. As a mitigated measure, he said, they proposed in their EIS to install fish screens at the existing project.

Mr. Hee said one major reason they are looking at this project is that the sugar situation is quite bad. McBryde is looking for other sources of income that can help it through times of bad sugar prices, and they see this as a real strong point in helping them to survive.

Mr. Yagi said there is no guarantee that McBryde will survive even though the hydroelectric plant would be in effect.

Mr. Scott said there is no guarantee but it would certainly help McBryde to survive.

Mr. Yagi asked whether there was any legal determination made as to who owns the water.

Mr. Scott said they have a 5th Circuit Court (Territorial) decree that said McBryde owns the water and the right to divert this water in the stream.

Mr. Ono said he made the comment earlier about the ownership of water in case future decisions affect the ownership question. He didn't want the state to be denied the opportunity to go back and claim whatever rights the state may have.

Mr. Higashi asked whether they are firm on the 1 cfs.

Mr. Scott said they've tried to look at this from an economic basis. If they can't get a return out of it, then they can't afford to build the project. They felt that they could go up to a maximum total flow of 3 cfs, but any more than that they just don't see this as a viable economic project.

Mr. Yagi asked how many cfs they have at the present time.

Mr. Hee said 139 average, but that average flow includes 8 flows that are several cfs. He said the river ranges in flows of several thousand cfs down to about 30 to 35 cfs at minimum. He said they would divert a maximum of 150 cfs so all the flows that exceed 150 would go down the river.

Mr. Ono asked whether the constant 3 cfs flow would be easier to manage.

Mr. Hee said it would. The controls in the power plant would monitor flow release and insure that they are maintained.

Mr. Ono asked whether it would be better to have more than 3 cfs flowing at any given span of time so that you are sure you are going to have water flowing at least everyday for the first thousand feet, right below the proposed weir. So at times you're going to have 1 cfs flowing. But to assure

that you're going to have a flow everyday connecting the first thousand, he asked whether they can work out a formula that will assure 3 cfs flowing on the average.

Mr. Hee said they could have larger flows. It would mean fluctuating their power generator. They would have to schedule that with the Kauai Electric who receives the power. If it's on a scheduled basis, there would be no problem. The other thing is that the amount of flow that they release, especially during minimum flows, would have to be at a level that would permit their generators to run. If they release real large slug, then you approach an area where so little water is running through the turbine that it shuts down. He thought they could release as large a quantity as 8 cfs during the minimum flow.

He further stated that they would always have a minimum flow always going over the weir of 1 cfs. They would bank the other 2 cfs, or save it up, and put a slug down for some period of time that would come up to a total of 3 cfs, but at periods during the day it would be somewhat higher than that.

Mr. Yamamoto asked whether they would go along with the 3 cfs.

Mr. Hee thought they could go that high. They would have to go back to the A&B board and get money for this. He said they could go 3 cfs to go all the time, or an equivalent amount, so maybe 1 cfs continuously and at times they could release, say 3 cfs for six hours, which would amount to the same total amount of water, same amount of energy lost.

Mr. Kealoha asked what time that six-hour period would occur.

Mr. Hee wasn't sure. They would have to consult with Kauai Electric. However, he was sure that if they scheduled it that they could work it out.

Mr. Ono said there is another area which has been the concern of the board and the staff. That is the lack of information on the base line data. He said the board would like to formally enter into some kind of an arrangement where the state and the Federal government and McBryde participate in funding a study, gathering data not only for this project, but information that can be used in other proposed hydro plants, and also to determine if the 3 cfs can be lowered. He said these kinds of things need to be looked into further.

Mr. Scott said they would certainly be willing to cooperate in some sort of a study. However, he said, they do have financial constraints.

Mr. Yamamoto asked for a short recess. The board reconvened its meeting after a five-minute recess.

Mr. Ono said the board recessed for a few minutes to determine whether the next board meeting has been officially rescheduled for October 7 (which is the deadline to act on this particular CDUA). He said the staff has informed the board that October 7, 1983 is our next board meeting, which happens to fall on the cut-off date for this particular application.

ACTION Since the board just received new information from the U. S. Fish and Wildlife Service, Mr. Ono said before the final decision is made, he would like to have the Aquatic Resources staff look at the new information, and incorporate all of that, put it in writing so there is no misunderstanding what has been agreed to, what has been proposed, and take formal action at the October 7, 1983 meeting.

The board had no objection to Mr. Ono's suggestion.

Mr. Ono reminded all those in the audience that the board doesn't want to open this up again as a brand new ballgame. He wants it narrowed down so we can come to some kind of a recommendation, incorporating what was discussed this morning. Besides the go or no go decision on the project itself (assuming it's a go from their board and this board also gives a favorable ruling), Mr. Ono said he would like to have some kind of a feedback on the contribution funds for the study.

Mr. Yagi said in the event the Appeals Court rules that the water is natural resource, he didn't know whether there will be conditions setting forth some right for the state. He said he would like to have the Attorney General's Office look into that.

Mr. Richard Cox of A&B said the Appeals Court ruled only on the Hanapepe Stream. It doesn't affect Wainiha. As pointed out by Mr. Scott, he said, there was a decree entered in the 5th Circuit Court on Wainiha water saying McBryde does have the use of the water.

Mr. Ono said the Aquatic Resources staff will be asked to look at the things that were brought up this morning. This matter will be left open until the next board meeting, with the understanding that both sides will be refining whatever was discussed and eventually have our Planning Office bring back a refined package to the board.

HILO MEDICAL BUILDING PARTNERSHIP REQUEST FOR CONSENT TO ASSIGNMENT OF G. L. NO. S-4344 AND ASSUMPTION OF MORTGAGE, PIIHONUA, SOUTH HILO, HAWAII

Item F-1-g

HILO MEDICAL GROUP, INC. REQUEST FOR CONSENT TO PURCHASE MONEY SECOND MORTGAGE, GENERAL LEASE NO. S-4344, PIIHONUA, SOUTH HILO, HAWAII

Item F-1-h

Mr. Shimabukuro asked to delete Recommendation A (Review by the staff appraiser to determine if increase in basic lease rental is required.) from Item F-1-g. He said the lease does not require such a review on an assignment.

ACTION The board, on Mr. Higashi's motion and seconded by Mr. Kealoha, unanimously approved Items F-1-g (as amended) and F-1-h as presented.

ITEM C-1 DISTRICT 13 FIRE WARDEN, ISLAND OF HAWAII (FOR INFORMATION ONLY)

Item C-1 was for information purposes only and no action was required by the board.

ADDED ITEM C-2 OFFICIAL DUTY AND PER DIEM STATUS - NATIONAL ASSOCIATION OF STATE FORESTERS

ACTION Unanimously approved as submitted. (Kealoha/Yamamoto)

ITEM E-1 REQUEST TO NEGOTIATE WITH KONA COAST CHAMBER OF COMMERCE FOR THE MANAGEMENT OF THE EVENTS PAVILION AT THE OLD KONA AIRPORT STATE PARK

ACTION Mr. Higashi moved to defer Item E-1, Mr. Kealoha seconded, and the motion was unanimously carried.

REQUEST BY THE HAWAII FIRE DEPARTMENT TO USE A PORTION OF THE
OLD KONA AIRPORT STATE PARK FOR DRIVER TRAINING OF EMERGENCY
ITEM E-2 VEHICLE OPERATORS

ACTION Mr. Higashi moved to approve Item E-2 as recommended by staff, which was for denial, Mr. Kealoha seconded, and the motion was unanimously carried.

ITEM E-3 SPECIAL USE PERMIT TO THE KONA YOUNG FARMERS FOR USE OF THE OLD KONA AIRPORT STATE PARK, KAILUA-KONA, HAWAII

ACTION Mr. Higashi said he was informed by the applicant to have this item withdrawn. The board had no objection to the withdrawal of this item.

ITEM F-1 DOCUMENTS FOR CONSIDERATION

MAUI

Item F-1-a ASSIGNMENT OF LEASE

KLAUS ORLEANS, unmarried, and MURRAY HUNTER, husband of Georgina M. Hunter, Assignor, to MURRAY HUNTER, husband of Georgina M. Hunter, Assignee - Government land of Papaea, at Hamakualoa, Makawao - GL No. S-4535

HAWAII

Item F-1-b MORTGAGE

INOUYE, INC., Mortgagor, to FEDERAL LAND BANK OF SACRAMENTO, Mortgagee - Lot 18, Waiakea Homesteads, 1st Series, Block 601, Waiakea, South Hilo - GL No. S-3837

OAHU

Item F-1-c SUBLEASE

MOKULEIA HOMESTEADS, a Hawaii joint venture composed of the Northwestern Mutual Life Insurance Company and Melim, Ltd., as sublessors, and the UNITED STATES OF AMERICA, as sublessee - GL No. S-4266

Item F-1-d REVOCABLE PERMIT

SERVCO PACIFIC, INC. - Kelikoi Street, makai of the Food Distribution Center, Honolulu - monthly rental to be determined by appraisal, same subject to review and approval by the chairperson

Mr. Ono asked the board to take this item separately.

Mr. Higashi moved to approve Item F-1-d as presented, Mr. Yamamoto seconded, and the motion was carried.

Mr. Kealoha was excused from voting on this item.

HAWAII

Item F-1-e ASSIGNMENT

YOSHIO AND MARJORIE WATANABE, Assignors, to KONA ORCHIDS, INC., a Hawaii Corporation, Assignee - Keahole Agricultural Park, Kalaoa-Ooma, North Kona - GL No. S-4687

OAHU

Item F-1-f SUBLEASE

DAVID L. ROVENS and HISASHI TANAKA, Lessees, to HONOLULU TELEVISION & COMMUNICATION CORPORATION dba Oceanic Cablevision, Sublessee, and to KOGA TIRE SERVICE, an additional sublessee - Lot 19, Shafter Flats Industrial Development, Unit I, Moanalua, Honolulu - GL No. S-4126

(See page 9 for Items F-1-g and F-1-h.)

Item F-1-i REVOCABLE PERMIT
H. TANAKA, GENERAL TRUCKING SERVICE - Lot 414, Sand Island,
Honolulu - for trucking business - \$1,884.00 per month

HAWAII

Item F-1-j ASSIGNMENT OF LEASE WITH ASSUMPTION OF MORTGAGE
RAYMOND K. HAYASHI, Assignor, to VERNON B. INOUE, Assignee - Lot
19, Keonepoko Iki Farm Lot Subdivision (Pahoa Agricultural Park), situate
at Keonepoko Iki, Puna - for diversified agriculture - GL No. S-4432

MAUI

Item F-1-k REVOCABLE PERMIT
RUPERT D. MOORE and MAYBELLE A. MOORE - portion of Homestead Road
situate at Waiohuli-Keokea Homesteads at Kula - for right, privilege and
authority to construct, reconstruct, use and maintain area for water pipe-
line purposes - \$10 per month

Item F-1-l LAND PATENT
To be issued in confirmation of Land Commission Award No. 10813, Apanas
1, 2, 3, 4 and 5 to PALINA by application of Maui Land & Pineapple Company,
Inc. - land situate at Kahananui, Kaanapali

MAUI

Added
Item F-1-m MORTGAGE
MAUI C & A, INC., a Hawaii Corporation, Mortgagor, to FIRST HAWAIIAN
BANK, a Hawaii Corporation, Mortgagee - Land License No. S-264

ACTION The board, on Mr. Kealoha's motion and seconded by Mr. Yamamoto, unani-
mously approved Items F-1-a, b, c, e, f, i, j, k, l and m. (Separate actions
were taken up on Items F-1-d, g and h.)

ITEM F-2 STAFF RECOMMENDATION FOR AMENDMENT OF PREVIOUS BOARD ACTION
(9/24/83, AGENDA ITEM F-2) AUTHORIZING PUBLIC AUCTION SALE OF A
LEASE COVERING GOVERNMENT LAND AT KAIMU-MAKENA, PUNA, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Yamamoto)

ITEM F-3 ALII PAPAYA COOPERATIVE, INC. APPLICATION TO LEASE GOVERNMENT
LAND AT KAIMU-MAKENA, PUNA, HAWAII (TMK 1-2-06:33 AND 73)

ACTION Unanimously approved as submitted. (Higashi/Yamamoto)

ITEM F-4 ALII PAPAYA COOPERATIVE, INC. APPLICATION TO LEASE GOVERNMENT
LAND AT KAIMU-MAKENA, PUNA, HAWAII (TMK 1-2-06:19, 20, and 21)

ACTION Unanimously approved as submitted. (Higashi/Yamamoto)

ITEM F-5 STAFF RECOMMENDATION FOR CANCELLATION OF G. L. NOS. S-4813,
S-4814, AND S-4815, PAHOA AGRICULTURAL PARK, PHASE II, PUNA,
HAWAII

Mr. Higashi suggested that the chairman be authorized to negotiate directly
with these three people for the issuance of any of the other lots within the
Pahoa Ag Park that are given up.

Mr. Ono said we should check it out first with the Attorney General's Office to see whether we can legally do this. He thought perhaps they can be considered as displaced farmers.

- ACTION Unanimously approved as amended above. (Higashi/Kealoha)
- ITEM F-6 COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY, APPLICATION FOR WATERLINE EASEMENT, KEOKEA, KULA, MAKAWAO, MAUI
- ACTION Unanimously approved as submitted. (Yagi/Higashi)
- (See pages 2 and 3 for Item F-7.)
- ITEM F-8 MAUI LAND & PINEAPPLE CO., INC. APPLICATION TO LEASE PORTION OF GOVERNMENT LAND OF NAPILI 4 AND 5, LAHAINA, MAUI
- Mr. Shimabukuro asked that the submittal be amended to include Recommendation D as follows: "Authorize the cancellation of the existing Revocable Permit No. S-5978 effective as of the date of the lease."
- ACTION Unanimously approved as amended above. (Yagi/Higashi)
- ITEM F-9 ULUPALAKUA RANCH, INC. APPLICATION TO LEASE PORTION OF THE GOVERNMENT LAND OF HONUULA, MAUI
- Mr. Shimabukuro asked that Item F-9 be amended (similar to Item F-8 above) by adding Recommendation C, "Authorize the cancellation of the existing Revocable Permit No. S-6001 effective as of the date of the lease."
- ACTION Unanimously approved as amended above. (Yagi/Higashi)
- ITEM F-10 DOFAW REQUEST FOR EXECUTIVE ORDER SETTING ASIDE WILDLIFE SANCTUARY, PAUWALU POINT, HANA, MAUI
- ACTION Unanimously approved as submitted. (Yagi/Higashi)
- ITEM F-11 DOT REQUEST FOR ACCEPTANCE OF EASEMENT FROM U. S. GOVERNMENT AND SUBSEQUENT ISSUANCE OF AN E. O. SETTING ASIDE SAME FOR SOUND ATTENUATION BERM PURPOSES, HICKAM AFB, HONOLULU, OAHU
- ACTION Unanimously approved as submitted. (Kealoha/Higashi)
- ITEM F-12 BLACKFIELD-LUSK PARTNERSHIP REQUEST FOR DELETION OF ENCUMBRANCES, WAIMALU, EWA, OAHU
- ACTION Unanimously approved as submitted. (Kealoha/Yamamoto)
- ITEM F-13 MASUO MORIGUCHI APPLICATION TO PURCHASE HIGHWAY REMNANT PARCELS 44-A & 45-A OF THE FAP NO. I-H1-1(2), HONOLULU, OAHU
- Mr. Shimabukuro said the area on page 1 of the submittal should correctly read 4,047 square feet, more or less, for Parcel 44-A, and 1,393 square, more or less, for Parcel 45-A. Under Appraised Value, the submittal should correctly read, "To be determined by an independent appraisal or by staff appraisal, same subject to the review and approval of the chairperson."
- ACTION Unanimously approved as amended above. (Kealoha/Higashi)

ITEM F-14	CAROLINE KIM, ET AL, APPLICATION TO PURCHASE HIGHWAY REMNANT PARCELS M-11-A & M-12-A OF THE LUNALILO FREEWAY, FAP NO. I-H1-1(93), HONOLULU, OAHU
ACTION	Mr. Shimabukuro asked for deferral of Item F-14. The board had no objection to the deferral.
ITEM F-15	OAHU HAWAIIAN CANOE RACING ASSOCIATION REQUEST FOR RIGHT OF ENTRY TO PORTION OF FT. DERUSSY BEACH FOR MOLOKAI-OAAHU CANOE RACE AWARD CEREMONIES AND CANOE PARKING, HONOLULU, OAHU
ACTION	Unanimously approved as submitted. (Kealoha/Higashi)
ITEM F-16	R.Y.M. KANEOHE SUBDIVISION VENTURE REQUEST FOR APPROVAL AND CONSENT TO JOIN IN PETITION FOR DELETION OF ENCUMBRANCE, KANEOHE, OAHU
ACTION	Mr. Ono asked about these abandoned stream flows. He asked whether there is any way the state can be held liable. What happens if there is a big storm and water goes back to its original flow pattern?
ACTION	Mr. William Tam we could require a waiver of the liability and take the encumbrance off.
ACTION	Mr. Ono said he would like to see such a clause inserted in the document. We should let the applicant assume the liability.
ACTION	Unanimously approved as submitted. (Kealoha/Higashi)
ITEM F-17	RESUBMITTAL - STAFF RECOMMENDATION FOR AMENDMENT OF PREVIOUS BOARD ACTION (4/8/83, AGENDA ITEM F-7) AUTHORIZING SALE OF A LEASE COVERING LAND AT HALAWA, EWA, OAHU
ACTION	Mr. Shimabukuro asked for withdrawal of this item. After reviewing this submittal further, he didn't feel there was enough justification to ask for this amendment.
ACTION	The board had no objection to the withdrawal.
ITEM F-18	QUEEN'S MEDICAL CENTER REQUEST FOR DISPOSITION OF SEWER AND ROAD RESERVATIONS, AUWAIOLIMU, HONOLULU, OAHU
ACTION	Unanimously approved as submitted. (Kealoha/Yamamoto)
ITEM F-19	RONALD SHIMIZU REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO SATISFY BUILDING REQUIREMENT, LOT 38, UNIVERSITY HEIGHTS RES. SUBDIVISION, 3RD INCREMENT, WAIAKEA, SOUTH HILO, HAWAII
ACTION	Unanimously approved as submitted. (Higashi/Kealoha)
ITEM Z-1	RESULTS OF AUCTION SALE OF GOVERNMENT LEASE HDLD ON AUGUST 18, 1983, ON THE ISLAND OF KAUAI
ACTION	This was a report on the sale of a lease on Kauai at Wailua Coconut Grove, which was sold at public auction on August 18, 1983, at the upset rental of \$7,300 to Fort Associates Limited Partnership.

ITEM H-1

CDUA FOR A LAVA DIVERSION BARRIER AT NORTH SLOPE OF MAUNA
LOA, HAWAII

Mr. Evans said although staff was recommending approval, there is a liability question as it relates to Condition 12. Since this question was referred to the Attorney General's Office, he recommended that Item H-1 be deferred. Another question that came up was whether or not a public hearing is required to withdraw the easement area from the forest reserve. Mr. Evans said they were informed that the easement area need not be withdrawn from forest reserve so no public hearing is required.

On the liability question, Mr. Higashi asked Deputy Attorney General Tam how he would look at the situation on the burden of proof as to the effect of the lava barrier causing the diversion to other properties.

Mr. Tam said it's going to depend on the facts of that particular case. It will depend on whether you could argue that the barrier was the causing factor and the legal cause of somebody else's property being harmed. It depends on the size of the barrier, how close it is to the other properties, etc. In this case, apparently the state owns all the surrounding lands. The magnitude of the diversion would seem to be minor, compared to the size of the surrounding state land.

Mr. Higashi asked Mr. Tam whether he would require a waiver from the Federal Government in this specific case.

Mr. Tam said in the past they have had some difficulty with the Federal Government as to whether they would agree to indemnify the state or vice versa. He said it may require some discussion with them as to what they are willing to sign. He said the board can approve this subject to an agreement between the Federal government and the state.

ACTION

Mr. Higashi moved that the board approve this request subject to Attorney General's approval. Mr. Yamamoto seconded. On the call of the question, the motion was carried with Mr. Kealoha casting the dissenting vote.

(See pages 3 and 4 for Item H-2, page 4 for Item H-3, pages 1 and 2 for Item H-4 and pages 4 to 9 for Item H-5.)

ITEM H-6

APPROVAL TO PROCEED WITH A FINANCIAL AND COMPLIANCE AUDIT OF
OUR DEPARTMENT'S FEDERAL AID PROGRAMS

ACTION

Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM J-1

LEASE - INSTALLATION, OPERATION AND MAINTENANCE OF SIX LOW-
LEVEL WINDSHEAR ALERT SYSTEMS (LWAS) FACILITIES, HONOLULU
INTERNATIONAL AIRPORT, OAHU (FAA)

ACTION

Unanimously approved as submitted. (Kealoha/Higashi)

ITEM J-2

APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS, AIRPORTS
DIVISION

Mr. Ono questioned the permit to Kenai Air of Hawaii, Inc.

Mr. Garcia said it was his understanding that Kenai is not outstanding in any obligations.

Mr. Ono said he would like to have the DLNR staff check that out and work with DOT on this. Approval, therefore, should be subject to the condition that they not be delinquent.

ACTION Mr. Yagi moved, Mr. Kealoha seconded, and the board unanimously approved Item J-2 as amended.

ITEM J-3 ADDENDUM NO. 2 TO LEASE NO. DOT-A-78-28, MOLOKAI AIRPORT (ALOHA AIRLINES, INC.)

ACTION Unanimously approved as submitted. (Kealoha/Yamamoto)

ITEM J-4 MODIFICATION NO. 8 TO LEASE NO. DOT-A-73-38, HONOLULU INTERNATIONAL AIRPORT, OAHU (PHILIPPINE AIRLINES, INC.)

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)

ITEM J-5 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT NO. 3777, UPOLU AIRPORT, HAWAII (NOAA/NATIONAL WEATHER SERVICE)

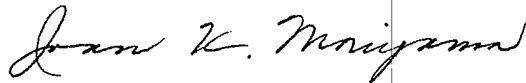
ACTION Unanimously approved as submitted. (Kealoha/Yagi)

ITEM J-6 USE OF HARBORS DIVISION FACILITIES, PIER 9 PASSENGER TERMINALS, HONOLULU, OAHU (HGEA)

ACTION Unanimously approved as submitted. (Yagi/Yamamoto)


ADJOURNMENT: There was no further business and the meeting was adjourned at 11:55 A. M.

Respectfully submitted,



JOAN K. MORIYAMA
Secretary

APPROVED



SUSUMU ONO
Chairperson

jkm