

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

DATE: April 26, 1985
TIME: 9:00 a.m.
PLACE: Council Chambers
Kauai County Building
Lihue, Kauai, Hawaii

ROLL CALL

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

MEMBERS Mr. J. Douglas Ing
Mr. Moses W. Kealoha
Mr. Thomas S. Yagi
Mr. Roland H. Higashi
Mr. Leonard H. Zalopany
Mr. Susumu Ono

STAFF Mr. James Detor
Mr. Gordon Soh
Mr. Libert Landgraf
Mr. Ralston Nagata
Mr. Sam Lee
Mr. Manuel Andrade
Ms. Dorothy Chun

OTHERS Deputy Atty Gen. Johnson Wong
Mr. Peter Garcia, DOT
Mr. Joseph Magaldi (Item F-14)
Mr. Kanamichi Sakata (Item H-3)
Mr. Sidney Quintal (Item F-6)

ADDED ITEMS

Motion was made by Mr. Higashi to add the following items to the agenda:

F-14 General Lease No. S-4341, Sand Island, Honolulu, Oahu.

H-7 Petition for Declaratory Ruling need for CDUA to harvest trees from Waiakea/Olaa Forest Reserve, Hawaii.

H-8 Filling of Position No. 15705, Account Clerk III, Administrative Services Office, Oahu.

Motion was seconded by Mr. Yagi and carried unanimously.

To accommodate those applicants present at the meeting, items on the Agenda were considered in the following order:

ITEM F-13

U.S. ARMY REQUEST FOR RIGHT OF ENTRY FOR MILITARY TRAINING EXERCISE AT KIHOLE BAY, NO. KONA, HAWAII

Mr. Detor informed the Board that action was deferred at the last meeting on the U.S. Army's request to use the Hapuna Beach recreation area because of the concern that the military exercise would interfere with the public use of the beach (presented by the Division of State Parks under agenda Item E-3).

The Army has now requested permission to use State land at Kiholo Bay for the same dates and in the same manner as detailed in State Parks' submittal of April 12, 1985.

Mr. Detor mentioned that this request would be subject to a Special Management Area (SMA) permit if required.

Mr. Higashi suggested that there should be included in the recommendation the responsibility for any clean-up cost and repair of any road damage. Mr. Detor said that this could come under condition No. 4.

ACTION

Mr. Higashi moved for approval as amended. Motion was seconded by Mr. Kealoha.

Chairperson Ono then called upon the representative from the military that was present. Major Don Spradling, Operations Officer for the 19th Special Forces Group that is sponsoring this overall operation said that he was familiar with the context of the recommendations made by the staff. When questioned if there would be any serious problems in complying he said no, in fact the hours stated comply with what they had hoped to have and they also want to stay very low or no profile on the area. They will inform the people in the area that they're operating. He also replied that the rental charge would be no problem.

There being no further questions, Chairperson called for a vote of the board. Motion carried unanimously.

ITEM H-3

CDUA FOR A JET SKI AND WINDSURFING VENTURE AT KEEHI LAGOON, HONOLULU, OAHU BY SEA WIND CHALLENGE, INC.

Mr. Soh presented item H-3 to the Board recommending approval by staff.

Mr. Ing questioned what describes the area of operation of this applicant in the water, does the Department of Transportation (DOT) have boundaries?

Mr. Soh said he believed that DOT has jurisdiction over such matters.

Mr. Ing asked that condition No. 17 be expanded to include some sort of permission by DOT describing the physical limits of operation on the water surface.

Chairman Ono questioned the intent of condition No. 17. Mr. Soh said that they had in mind the same kind of arrangement they had with the present permittee, which includes land rental.

Mr. Kealoha then asked that within the Analysis section, item no. 4 under considerations, this section be amended to read that the allowed permittee or the permit was issued by DOT so it's not inferred that the Department of Land and Natural Resources had issued the previous permit.

Mr. Higashi questioned how condition no. 13 regarding the speed limit of 5 miles per hour was going to be enforced. Mr. Soh said that citations will be issued upon complaints.

Chairman Ono asked the applicant, Mr. Kanamichi Sakata if he had the correct figures regarding the liability insurance. Mr. Sakata said they had \$1,000,000.00 liability and \$5,000.00 medical insurance coverage.

Mr. Sakata said he had no objections to the staff's recommended conditions. He also was aware that the approval if forthcoming was only for a year.

Mr. Higashi also posed the question to Mr. Sakata on how he proposed to enforce the 5 mph speed limit. He replied that they always instruct and caution the users to slow down when they return to the island for safety for everyone.

ACTION

Mr. Ing moved for approval as amended. Motion was seconded by Mr. Higashi and carried unanimously.

ADDED
ITEM H-7

PETITION FOR DECLARATORY RULING NEED FOR CDUA TO HARVEST TREES FROM WAIAKEA/OLAA FOREST RESERVE, ISLAND OF HAWAII

Mr. Soh presented this submittal to Board with Staff's recommendations.

In answer to Mr. Ing's questions, Mr. Soh said the Division of Forestry and Wildlife operates the plantation and it has been in continual operation since 1956.

Mr. Ing said the concern he would have is that there would be other areas in the forest where there has been traditional harvesting, even for commercial purposes and that fact alone, prior harvestings before the 1964 break, doesn't necessarily mean that it's a grandfathered use. Otherwise anyone could come in and say that it was done before and I can do it now, I don't need a CDUA. We've had numerous complaints about the harvesting of koa, in particular, now that it has become more scarce. How are we going to distinguish that situation from this one?

Mr. Higashi commented that it bothered him when he read in the submittal where DOFAW was advised by the Attorney General's office that this is an administrative matter.

Mr. Johnson Wong explained that the phrase, "administrative matter" is a mis-statement because in his discussion with Mr. Landgraf, the administrative matter was in respect to the procedure to process the harvesting, as to whether they wanted formal application for CDUA or just a request for verification of whether the use was a nonconforming use or what. They did make a legal determination at that time based on the representation made to them that the plan for a plantation farm was conceived and implemented prior to the 1964 date and based on that representation, their office has taken the position that any nonconforming use must still be verified by the Planning Division, otherwise they just can't have anyone say, "I'm a grandfathered use." So, the administrative reference was only to the mechanics as to how it's going to be verified by Planning. As to the

question raised by Mr. Ing as to whether such a nonconforming use may apply to any forest area, he said the distinction is whether this particular plantation farm was intended to be planted and harvested for that particular purpose at that time.

Replying to Mr. Higashi's inquiry, Mr. Wong said he is going on the basis that this proposed tree plantation was conceived prior to 1964 and is therefore nonconforming. This commercial activity was started then and this is the consummation of the activity. Any proposed commercial activity now would have to follow the CDUA requirements.

Mr. Ing asked where is the original 1956 plan? What in the record establishes that there was a plan for commercial harvesting in 1956? Are there documents that the Board could look at which could say this was planned and conceived back in 1956?

Mr. Ing asked if there were documents or records to supplement the submittal, then the Board would be in a better position to rule on it.

Mr. Landgraf was called upon by the Chairman to answer the last question that was posed. Mr. Landgraf said he does have documentation and he was ready to present it or enter it in the files of Planning. To answer Mr. Higashi's question, yes, this is the only one area that was established and has continuously been maintained or farmed. The records show that this is the only plantation in existence on State owned forest reserve lands that has this continuous unbroken activity since 1956 until 1985. There were formal reports that were made in 1956 and 1962. It was a plan in five year increments. In each one, the introduction clearly states the intent of planting those non-native species in that area and after each five year period, there were reports as to what was accomplished.

Mr. Ing asked is what you intend to do today, covered in the original plan and is there any expansion of the originally conceived commercial harvesting or use.

Mr. Landgraf said, "No," they did not consider it an expansion. The total area in that plantation is approximately 13,000 acres and the license they propose for the eucalyptus is 1,500 acres.

Mr. Higashi asked if contact had been made with people that are traditionally interested in environmental concerns.

Mr. Landgraf said, yes, and in every case it was favorable. In a couple responses they thought that we were already in there, logging and they supported the intent in the harvesting and the chipping of eucalyptus rather than native trees.

ACTION

Mr. Higashi moved for approval of this Petition for Declaratory Ruling only for the Waiakea/Olaa Forest Reserve with the amendment to add condition no. 3, that the Chairperson may impose any other conditions necessary.

Mr. Zalopany seconded and the motion carried unanimously.

Instructions were then given to staff that they should work with the successful bidder and stay on top of everything, monitoring and enforcing the rules.

ITEM H-2

CONSERVATION DISTRICT USE APPLICATION FOR THE OAHU-KAUAI
MICROWAVE SYSTEM TOWER AT TANTALUS, OAHU, HAWAII

Mr. Soh passed out photos of the area and how it appeared.

Discussion followed on amending the recommendations.

This item was deferred, to be taken up later on the agenda to allow Mr. Detor, Mr. Landgraf and Mr. Soh to confer on the recommendations.

ADDED
ITEM F-14

REQUEST TO AMEND GENERAL LEASE NO. S-4341, SAND ISLAND,
HONOLULU, HAWAII

Mr. Detor said the City has requested that General Lease No. 4341 be amended to allow use of a portion of the leasehold for heavy duty bus maintenance use.

Mr. Joe Magaldi of the City and County Transportation Services Department said the bus repair shop won't require any more than about 6 to 6½ acres at the most, so there's still ample land available and the type of building that would be put on there would be a butler type building. If they had to go further, that could be torn down and that wouldn't be a problem. They are asking a change of use strictly for a bus maintenance which will be for about 6 acres of the total 50 acres that are already under the lease.

Mr. Ono addressed Mr. Magaldi, that should the board approve the request for the bus repair shop, impose a condition on it, that should any future expansion of the sewage treatment plant become necessary, will you do it in the confines of the 50 acres. If more land is needed, the City would not rely on the State to provide the additional land.

Mr. Magaldi replied that the City would have no problem with that.

Mr. Kealoha asked in clarification, the change in use is for approximately 7 acres only and should there be changes in the EPA or Federal regulations, you could eliminate this use and then expand the facilities within the same 50 acres?

Mr. Magaldi said that's correct. If we have to move it, we could move it later on in the future. That's why we're putting up that kind of building.

Mr. Ono wanted to get a clear understanding that if the bus repair shop has to move, the City would have to find its own land and the City would have to assume their own responsibility.

ACTION

Mr. Ing moved for approval with the following amendment, that the area set aside be in agreement with the 7 acres and with the addition of the following conditions that should the City need to expand the existing sewage treatment facility that it be done within the existing 50 acres;

and as a result of any expansion or move necessitated by future growth, the City acquire the land by its own. Motion was seconded by Mr. Kealoha and carried unanimously.

- APPLICATION FOR LAND LICENSE BY GROVE FARM ROCK CO., INC. SITUATED AT KEKAHA, WAIMEA (KONA), KAUAI, BEING TMK 1-2-02:01, APPROXIMATELY 15 ACRES
- Item F-1a
- ACTION Unanimously approved as submitted. (Zalopany/Yagi)
- ITEM D-1 PERMISSION TO ADVERTISE FOR BIDS-JOB NO. 3-9W-49, LIHI PALI PIPELINE EXTENSION, MOLOKAI IRRIGATION SYSTEM, HOOLEHUA MOLOKAI
- ACTION Unanimously approved as submitted. (Yagi/Zalopany)
- ITEM E-1 REQUEST TO USE WAILOA RIVER STATE RECREATION AREA, HILO, HAWAII, FOR RADIO CLUB "FIELD DAY" EXERCISE
- ACTION Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM E-2 REQUEST PERMISSION TO ALLOW DEVELOPMENT OF, AND ADVERTISE FOR BIDS FOR A FOOD CONCESSION AT HAPUNA BEACH STATE PARK, HAWAII
- Mr. Nagata presented this submittal to the Board recommending approval.
- Mr. Higashi commented that people should be warned of the dangerous areas. He also would like to see an expansion of the food operation and include under the other services, providing security within the parking area, commenting there was a lot of vandalism during the weekends and holidays when cars were remotely parked.
- Mr. Nagata said if it were the board's desire, they would include beach related equipment in this concession contract. The request for security would be added in as an alternative and not as a requirement.
- Mr. Higashi suggested that the successful bidder be allowed to confer with the State before building is started as he may desire to use some private funds to enlarge the concession by additional construction and thus offset the rent for certain number of years, because in the end the building will belong to the State.
- Mr. Nagata said they will look into that.
- ACTION Mr. Higashi moved for approval with the suggested changes be incorporated into the concept; seconded by Mr. Ing the motion carried unanimously.
- ITEM E-3 CLARIFICATION OF THE PURPOSE OF THE KAHANA VALLEY ADVISORY BOARD
- ACTION Unanimously approved as submitted. (Ing/Zalopany)
- ITEM E-4 IOLANI PALACE COMPLEX RESTORATION PHASE XII HONOLULU, HAWAII
- ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1a GROVE FARM ROCK CO., INC. APPLICATION FOR LAND LICENSE, KEKAHA, WAIMEA, KAUAI, TMK 1-2-02:01.

(See Page 6 for Action.)

Item F-1b RESUBMITTAL - JOHN CONTRADES III APPLICATION FOR REVOCABLE PERMIT COVERING LOT 15 AND ADJOINING LAND, WAILUA RICE AND KULA LOTS, WAILUA, KAUAI, TMK 4-1-01:7.

After discussion on the issuance of permit to the original owner and the present owner, due to technical questions, Mr. Detor asked that this submittal be withdrawn.

Item F-1c TEXACO REFINING AND MARKETING, INC. APPLICATION REQUEST FOR REVOCABLE PERMIT, WAIAKEA, SOUTH HILO, HAWAII, BEING TMK 3rd/2-1-09:42, CONTAINING 2.660 ACRES. FOR BULK STORAGE OF PETROLEUM PRODUCTS. RENTAL: \$1,467.25 PER MO.

Item F-1d RESUBMITTAL-WM. K. MEDEIROS APPLICATION REQUEST FOR REVOCABLE PERMIT, HANAMAULU, LIHUE, KAUAI, BEING TMK 3-5-01:08, CONTAINING 15.84 ACS FOR PASTURE USE. RENTAL: \$20.00 PER MO.

Item F-1e MASONS' UNION APPLICATION REQUEST FOR REVOCABLE PERMIT, SAND ISLAND, LOT NO. 210A, BEING TMK 1-5-41A:PORTION OF 82, CONTAINING 15,390 SQ. FT., MORE OR LESS, FOR FIELD TRAINING PURPOSE. RENTAL: \$923.00 PER MO.

Item F-1f NOBUO OKINO, ET AL, APPLICATION REQUEST FOR REVOCABLE PERMIT, WAIMANALO, OAHU, BEING PARCEL 76 OF TMK 4-1-08, CONTAINING ONE ACRE, +, FOR DIVERSIFIED AGRICULTURE-RESIDENTIAL PURPOSES. RENTAL: \$250.00 PER MO.

ACTION Mr. Kealoha stated in clarification that F-1a was acted upon already, and F-1b and F-1e were withdrawn. Mr. Kealoha made a motion to approve items F-1c, F-1d, and F-1f; seconded by Mr. Higashi, the motion was unanimously approved.

ITEM F-2 STAFF RECOMMENDATION FOR AWARD OF LEASES COVERING "GRANDFATHERED" RESIDENCES AT MILOLII, SO. KONA, HAWAII

Mr. Detor said that this was a follow-up of previous meetings held regarding the issuance of leases at Milolii in Hawaii to the people who have been there since 1925 when the lava flow took place. There was a Conservation District Use Application filed which the Board approved and the Board also approved subsequent to that, the issuance of leases pursuant to the statute that was passed by the Legislature, Act 62 of the 1982 session.

Mr. Detor said the submittal says there are eleven parcels which is in error. There are actually 12 parcels.

Mr. Detor asked that this submittal be amended relating to Parcel 16 on page 2. The residence of Eugene H. Chang is within land that is set aside to the County of Hawaii for park purposes. This submittal does not cover it but he asked that the Board recommend to the Governor the withdrawal of this particular area from the operation of Executive Order No. 2435, rather than leaving it within the E.O. area.

Mr. Ono asked if the County agreed with that amendment, to which Mr. Detor answered, yes, they do.

ACTION

Mr. Higashi moved for approval as amended; seconded by Mr. Zalopany, the motion carried unanimously.

ITEM F-3

WARBIRD SALVORS REQUEST FOR AMENDMENT OF PREVIOUS BOARD ACTION (1/25/85, AGENDA ITEM F-3) AUTHORIZING RIGHT OF ENTRY TO KOHALA FOREST RESERVE, WAIMANU, HAWAII

ACTION

Unanimously approved as submitted. (Higashi/Zalopany)

ITEM F-4

MAY COOK APPLICATION TO PURCHASE ABANDONED ROAD SEGMENT, KIHALANI HOMESTEADS, NO. HILO, HAWAII, TO CONSOLIDATE WITH ABUTTING PROPERTY, TMK 3-5-04.

ACTION

Unanimously approved as submitted. (Higashi/Zalopany)

ITEM F-5

REQUEST TO AMEND SEWER PIPELINE EASEMENT GRANTED TO STATE OF HAWAII BY AMFAC PROPERTY DEVELOPMENT CORPORATION (LAND OFFICE DEED NO. S-27,436), KELAWEA, LAHAINA, MAUI, TMK 4-5-33:13

ACTION

Unanimously approved as submitted. (Yagi/Kealoha)

ITEM F-6

RESUBMITTAL-STAFF RECOMMENDATION FOR CANCELLATION OF REVOCABLE PERMIT NO. S-4943 TO MR. SIDNEY MICHAEL QUINTAL, PUPUKEA, KOOLAUPOKO, OAHU

Mr. Detor presented this resubmittal to the Board recommending cancellation of Revocable Permit No. S-4943.

Mr. Quintal said he was handed the staff recommendation dated April 26, 1985 and had not had an opportunity to read it. He said he also had not had an opportunity to review the on-site inspection documents as he believes those are in Honolulu and he attempted to see them yesterday at 4:00 p.m. but there was some mixup.

Mr. Quintal said his response to Mr. Detor's letter of April 26, 1985 is that contrary to the two statements made in the 2nd paragraph that he's not utilizing the property for diversified agriculture purposes, he wants the Board to know that he has been doing diversified agriculture purposes there. He has 12 bee hives, an apiary, no fewer than 40 fruit trees, avocado, citrus trees, a large manna hedge, papaya, mango and other fruit trees in an orchard. He also has vegetables and flowers growing. Besides those things in diversified agriculture, he has fenced in the west side of the area for pasture purposes and has three cows pasturing there and in the adjoining property. He has been improving the pasture area from noxious weeds and clearing it basically and slowly improving the general area.

Mr. Quintal said with regards to the second statement by the staff that he's using it for pasture purposes, he admits that he has been pasturing a number of cows there but not over grazing it. He didn't think that was a violation of the permit.

With regards to the part that he constructed a number of dwellings, he has admitted that in writing to the Board. The three dwellings were built at least eight years ago and for the last eight years his permit has been renewed and occasionally the rent increased and he did not think that there was a real problem. He said he now knows that there's a real problem and he would like to try and take care of it in any reasonable manner that the Board feels .

With regards to the recommendations on page two of the submittal Mr. Quintal feels he is using it for diversified agriculture purposes and would like to be allowed to continue to use it for diversified agriculture purposes. He feels that most, if not all of what he's built there is in compliance with the building codes and if the Board would allow the continuation of some sort of permit, he would be agreeable to the requirement by the Board that any structure remaining be in compliance and comply with all zoning and building codes. If they are not in compliance that they be torn down.

He knows that he did not get prior written consent and he is asking now for consent to allow part or all of what has been going on there for eight years to continue.

Mr. Quintal expressed his hope and request to the Board that if it feels that the permit issued to him 12 years ago is restrictive of the uses that he's using it for now, that they can temporarily grant him an ag residential permit on the condition that he comply with all the building permits and zoning laws and to remove any structures that either do not comply with the zoning or building code or make adequate, or do whatever is necessary. He asks that he be given one year to comply by either demolition or by improvement application for building permits and that his rent be increased by twenty-fold or to any amount that the Board feels is fair and reasonable. That is his first request.

His second request is that if the Board doesn't want to allow the permit to continue, that it allows the permit to continue until such time as a lease be negotiated or put up for auction and he would like to request that he be given preferential rights and some credits for the improvements.

His third alternative would be relocation permit. If the Board wants this particular property bad enough and does not wish to try to find a solution to allow him continued use, that the Board consider granting him a lease on an alternative site at which time he would reluctantly move. He would prefer to stay there and work it out with the Board and bring that place up.

Mr. Ing asked how much money he had invested in the improvements.

Mr. Quintal said he would conservatively estimate in the last 10 years that he put in about \$100,000 in cash.

Mr. Higashi asked, "When you first got the lease, you knew what the lease was for."

Responding to Mr. Higashi's question, Mr. Quintal said he did not get a pasture or diversified ag lease. He applied for an agriculture residential lease. He said he was not at the Board meeting and all he knew was Mr. Bender called him and gave him the permit. He had long discussions with Mr. Bender about what his intentions were. He said he was a poor student at that time, couldn't afford the high price of real estate in Hawaii and couldn't afford to buy anything.

Mr. Higashi said all he wanted to know is if he knew what the permit was for.

Mr. Quintal said he thought he did at the time but it seems that the staff is taking an extreme view which is different than his at the time. He said he thought he knew at the time. He said he didn't know what the staff is now saying. He then said that he thought staff has changed their position about what the permit was for 12 years ago and what they say it's for now.

Answering Chairman Ono's question, he said there are four structures, one workshop, one full-time residence and the other two part-time weekend residences.

Mr. Yagi asked why he failed to get a building permit from the City and County.

Mr. Quintal said he did not have a good reason to tell him why he didn't.

Mr. Yagi asked if he did it (build) arbitrarily without a building permit.

Mr. Quintal said unfortunately that's accurate.

Mr. Yagi then asked how much he was paying to the State.

Mr. Quintal said he wasn't sure but thinks it's about \$7.00 a month.

Mr. Yagi commented that there are four buildings on the property.

Mr. Quintal said yes and that he was never opposed to paying fair rental. In his first letter to the Board in December, he said he suggested a reasonable increase.

Mr. Yagi reiterated that he had been living there for 12 years and originally he paid \$5.00 a month. Then they raised it up to \$7.00.

Mr. Quintal said that he substantially improved the State land, put in two-inch copper lines over 300 feet. He said that he wouldn't mind paying retroactive rent if that's what the Board feels. He claimed that he'd never asked for the rent to be kept low and to be honest he said he felt quite shocked that even for diversified agriculture, \$5 or \$7 is ridiculously low. He said he never demanded to pay more, but he just kept quiet and did his thing.

Mr. Yagi asked him how was he approached that he was in violation.

Mr. Quintal said Mr. Mason Young showed up at his place in December after 12 years; after annual inspections and after 12 renewals of his permit.

Chairman Ono questioned him being an attorney, that he would know what the conditions were as far as the permit is concerned.

Mr. Quintal said he knew it was written on there and also knew what Mr. Bender told him.

Mr. Ono reminded him being an attorney that he would know the significance of a document issued by the department. Also that he should know he is supposed to get permits from the various governmental agency, be it County or State before proceeding with construction of the structures.

Mr. Quintal said yes he knew, but when when he built the structures he was not an attorney. He built all that 8 years ago while he was in college. At the time he did know there were governmental requirements and also he knew they would make some of the things he wanted to do prohibitively expensive and more difficult to complete the improvements of the property and he didn't do it maliciously while he was an attorney.

Mr. Ono asked Mr. Quintal, since he became an attorney whether he has made any effort to correct the deficiencies.

Mr. Quintal said he has stopped any building and is willing to retroactively correct the deficiencies starting today. He said with regards to the Health Department, he has a cesspool in compliance and the government comes and pumps it out regularly.

Mr. Ono said you're assuming that because they come out to pump out your cesspool that there is an approval.

Mr. Quintal said no sir, he didn't imply to say that, but he's willing to get a document that says his cesspool is approved. He said he went ahead and built the cesspool himself.

Mr. Higashi asked if the agriculture products grown were for personal consumption.

Mr. Quintal said mostly for personal consumption. His dad is a member of the Hawaii Beekeepers Association and he sells honey. The fruit trees are just now starting and he's sold a few cows, calves when they were born as he didn't want to over graze, but besides that he hasn't used it for commercial purposes. The fruit trees, vegetables and flowers that they grow are substantially for domestic consumption.

Mr. Ono reiterated, you stated in your opening comments that you would like the State to do several things, (1) if the parcel is put out for competitive bidding, that you would like to get some preferential treatment and (2) the other option you mentioned was that you would like to be relocated and the State assuming some of the relocation costs. Chairman Ono asked what makes you think that you have such a right to make this request of the State,

Mr. Quintal said that he did not mean to make the request of the Board regarding relocation costs, what he meant to say was that if the Board feels that it should be put up for competitive bidding, that he be allowed a credit for the improvements if he were the successful bidder, and he intends to be the successful bidder on the property. Unfortunately other people may be interested in bidding higher on the property because of the improvements he's done over the 10-12 years. He feels it would be reasonable and fair to him if the Board allows him to have some sort of credit if he were not the successful bidder for that parcel, that's what he meant. With regards to relocation expenses, he says he is not asking the State for any, that's not one of his requests.

Mr. Ono said you did mention relocation to another site if all of the other options do not work out.

Mr. Quintal said he has a list of all the land that the State has on all the islands and he knows there are lots of vacant land around, so if it wants to kick him off this place he said he can probably find a place and start from the beginning. When he applied for this place, he applied for three places, one in Wahiawa which later became a park; one in Helemano which was later turned into a rehabilitation school-type thing and this parcel. He said he drove Mr. Herbert Yanamura, the ag inspector to this property and showed him that it did exist. He did some research to see how it was acquired and purchased by condemnation. He showed Mr. Yanamura the boundaries, and Mr. Yanamura looked at it and said, "Fine, you want it, you can have it." So he got a permit on a month to month basis. Mr. Quintal said he requested a lease at the time and was told by Mr. Bender and by the staff how to get occupancy of the land. They directed him to exactly what papers he ended up with. They told him to go out and do what you want on there, basically what he was told 12 years ago.

Mr. Ing had further questions for Mr. Detor. Does the land extend, continue all the way down to the public road? Mr. Detor wasn't sure if it went all the way down to the bottom of the gulch or not, but it's two and a half acre altogether.

Mr. Quintal added that it does go to the gulch to Pupukea Homestead Road and it goes from Puuomahuku Heiau Road to approximately the turn off the cliff. It includes the large gulch where he said he got rid of the koa and where most of the fruit trees are planted.

In reply to Mr. Kealoha's question, his permit boundaries go past the hairpin turn, past the water tank right where you start to level off before you turn to the heiau, that whole corner is his permit and that corner is the gulch and then there's flat land along the heiau road.

Mr. Ing asked of Mr. Detor how long would it take to process a documentation to get the approvals to have this put up for bid?

Mr. Detor said as far as the processing goes, say three months, but the zoning problem has to be settled. The zoning is Ag-1. There are three dwellings on the property and his understanding is that on Ag-1 there should be one dwelling on one acre.

Mr. Kealoha asked what is the minimal lot size in Ag-1. Mr. Detor said one acre is the smallest lot size. If the lot is a lot of record that is smaller, then it's grandfathered. In this case, it's 2½ acres so it's okay, but his understanding is that this will have to be checked out whether only one dwelling will be allowed.

Mr. Ing asked if part of that process would involve bringing those structures in conformance with the government.

Mr. Detor said he was not sure if they had to be removed at this point and this would have to be checked out.

Mr. Ing said that they would also have to be inspected by the building department.

Mr. Kealoha asked in clarification, one lot under Ag-1, what is the minimum size.

Mr. Detor said the minimum size is one acre and he wasn't sure whether you could put one dwelling or two, this has to be checked out.

Mr. Quintal said his belief is two dwellings, one main structure and an auxiliary structure. This is based on the agriculture zoning which seems to say one main structure and the auxiliary structure more for farm workers. He said he recalled reading two dwellings on a legal agriculture lot, but hadn't read it recently.

Mr. Yagi questioned the auxiliary structure to mean more like a tool shed or a removable type of structure.

Mr. Quintal said that he would be willing to remove one of the structures, to do whatever the Board wants him to do. One of the problems he has he said is removing structures and expending monies to finish it and then possibility of the Board revoking his permit.

Mr. Higashi said, "You knew that permission was supposed to be granted before you proceeded."

Mr. Quintal said that's what your document says but that's not what your practice is sir.

Mr. Higashi said, "You understood that was required. Your feeling was that you didn't require Board of Land and Natural Resources permit or permission to build your house. Now you're saying it's going to cost you money to move now."

Mr. Quintal said he meant to say that the offer he made to get a building permit and get the City certification to bring what he has there legal, he's willing to do, but he would like some indication from the Board that if he does that, that it's for some long term use for him.

Mr. Ono reminded him that as long as it's a month to month permit, that's all you'll have, thirty days at a time.

Mr. Quintal said in clarification, he thought we were talking about putting it up for auction for long term. He thought that he was going to be bidding along anybody else. Then the question was, "Should it be improved before it's put up for auction," and that's what he was reacting to.

Mr. Ono said one major problem he has is that, you keep saying you're willing to correct all of these deficiencies that you yourself created. It's easy to say that but the problem I have is why did you proceed, not only one time, but several major processes or permits you would have to get under any circumstances, but you've seemed to overlooked these major steps. Now you're saying, give you a chance to correct it and you'll do it, but what about the time, the actual instance where you needed the permit and you didn't get it. That never bothered you?

Mr. Quintal said that the whole thing has bothered him from the first day that he walked into the DLNR office to try to get some land. He said he's been bothered by the whole process for 12 years and he has no excuse and he's not trying to make believe that he was somehow above the permit process. To be very frank with the Board, he got what's there and the history is true and he would like the Board to open its mind and consider giving him an opportunity to correct it, if the Board feels that there's something there. He's not denying that what he did in the last 12 years was questionable.

Mr. Kealoha addressed the applicant that he talks about a possibility of a lease. If the Board considered a lease then the structures could not remain there before the auction because the present status is a month to month permit. So should the Board entertain an auction, the structures would have to be removed within a reasonable time or be declared State property.

Mr. Quintal replied that he expects to be the successful bidder and to have him remove all the structures and rebuild some of the structures which may be legal and allowable, he feels does not make a lot of sense.

Mr. Kealoha reiterated that the State faces the problem whether or not to remove the structure. After the permit is cancelled, and within a designated time frame, if those dwellings or improvements are not removed under the permit system, then that becomes State property. Should you win the lease rental bidding, now you will have to buy that from the State. Mr. Kealoha wanted to be sure that the applicant understood all that. He said he is getting the impression that applicant wants commitments from the State and not vice versa.

Mr. Quintal again remarked that all he's trying to do is look for a solution to this problem. He feels he cannot make a commitment to tear the place down so that the State can auction it off when he believes that he will be the successful bidder. He would like to make a commitment that is fair and reasonable for everybody.

Mr. Ing asked staff, would tearing down the structures be required for them to bid. Mr. Detor said it depends on what the zoning calls for.

If the permit is cancelled for job performance violation of the terms, then he wouldn't be eligible to bid for a period of five years under the law.

Mr. Ing continued, if he voluntarily gave up or surrendered the permit would that still apply.

Mr. Detor was not sure but would have to check it out.

Responding to Mr. Ing's question if he would be willing to surrender the permit voluntarily so that the place could be put up for auction, assuming that's what the Board will rule, Mr. Quintal said he is willing to consider anything the Board feels is reasonable and sort of gets him to where he wants to be and he wants to end up with some security and long term tenancy on this property. He's always wanted to go through the bidding process and had hoped earlier before he built these structures 12 years ago that it would be put up for auction and it wasn't. The land was given to him by permit.

Mr. Ono stated that you're saying that it was the State's fault.

Mr. Quintal said he wasn't blaming anyone, he was trying to explain what his goals were and he will take responsibility for 80% of the problem.

Responding to Mr. Higashi's question, Mr. Quintal said the first house was started within a year of the permit, roughly 1973. They all were substantially built at the same time, within the first three years of the permit. The only thing that was built after that was the workshop about six years ago.

Mr. Higashi said if a condition were imposed that you pay a back rental at highest and best use, Ag-1 residential at say \$8000 a year, would you be willing to pay that?

Mr. Quintal asked what would he get for that. He claims he would be willing to pay that but...again asked if he paid \$80,000 what would he get.

Mr. Yagi addressed a question to Mr. Detor regarding back rental. Should this permit be revoked, would there be any provision to collect back rental or would it be considered to collect back rental.

Mr. Detor replied that it could be based on the use. When the permit was originally issued, the rent was based on Ag use, \$5.00 per month and \$60.00 per year at that time. If the rent were based on residential use made retroactive, he's not sure what the residential rate would be, also this is not proposed at this time.

In clarification, Mr. Detor said the original permit was issued for ag purposes only. If the permit were issued for residential/ag then the rent would be higher.

Mr. Ono recalled the original application was for a broader use than ag, but the Board at that time decided to restrict the use for ag purposes only

Mr. Yagi reminded the applicant that should the Board act on this submittal and recommendations, that by law he would not even be allowed to bid on the property.

Mr. Quintal said he was understood that and was very thorough with Section 171, HRS.

Mr. Yagi continued that it was one of the reasons why Mr. Ing had asked him to volunteer to terminate his permit so that he would not be jeopardizing his position of bidding.

Mr. Ing made the following motion, first, permit be eventually terminated but that the permittee be allowed to voluntarily surrender the permit at a date specific and if he does not surrender it at that time, that the permit be cancelled. Further, that the parcel be put up for bid, however, prior to the time it goes up for bid, that the structures and improvements on the parcel be brought into conformity with the existing county zoning and building code and any other county regulation. Prior to the time of bidding, the permittee be required to vacate from the premises consistent with the time of voluntary surrender, if he elects to go that route. Mr. Ing suggested that the subject of return to the Board to determine when those items should be accomplished, that would be, the termination, whether by voluntary surrender or by cancellation, that particular date. That would involve some period of time to allow permittee to vacate the premises and all of the personal and other improvements that he wishes to remove. In addition to the termination date, that the issue of back rent be brought back to the Board. Mr. Higashi suggested that the term back rent not be used but adjusted rent based on the use of the land be included in the motion. Motion was seconded by Mr. Higashi. Motion did not carry for lack of quorum.

To answer Mr. Yagi's question whether the permittee would be allowed to bid if he were found in violation, Deputy Attorney General Johnson Wong said according to the statute, it says notwithstanding the failure to satisfy the terms and conditions of the permit, there must be a cancellation before he becomes ineligible. So, assuming there is a breach or non-compliance he would become ineligible only if the Board makes a determination to cancel. He notes that Mr. Ing is trying to avoid that by allowing the permittee to withdraw, so that he still would be eligible and therefore according to the law there is no cancellation as a result of the noncompliance.

Mr. Ono stated that from the point of withdrawal by the permittee, he loses whatever interest he might have had previously. It's similar to the Board cancelling not because of violation, as the Board has cancelled permits for other reasons too, so the Board is cancelling the permit as of the day he surrenders and he has no "rights attached to the permit or the parcel." With respect to the improvements that are on the parcel, the terms of the permit might say that he could remove the improvements within a period of 30 days or so.

Mr. Kealoha said there should be a removal clause included, that should be reasonable for the permittee to remove his improvement otherwise it becomes the property of the State.

Mr. Detor said they have had permits cancelled because of violations. They've also had cases where there was a different use involved where the rent was increased. Depending on the circumstances, severity and extent of the violation they have gone on a case by case basis.

ACTION

Mr. Ing then entertained another motion. Motion No. 2, first that the permittee be found in violation of the permit; that as a result of the violation he be charged back rent in the amount to be determined by Mr. Detor's staff; that the permit be terminated but that the permittee still be allowed to withdraw, voluntarily surrender by a date certain and if he does not, that it be cancelled; that the parcel be put up for bid; prior to bidding it be brought up to conformity with State and County regulations.

Mr. Higashi asked for clarification on the motion, regarding the bidding.

Mr. Ing clarified that if it goes to bid, his understanding is that it will become State property. Whatever is to remain there would become the State's property.

Mr. Ono asked what happens to the portion that is not in conformity with the State or City by the current permittee.

Mr. Ing said it would have to be removed by the permittee.

Mr. Ono questioned what would be the status of the permittee between the time the Board takes action and the time he surrenders the permit, is he still expected to pay rent.

Mr. Ing said yes.

By request of Mr. Detor, Mr. Ing repeated the motion. First the fines and violations, that the permittee be required to pay some form of compensation as a result of the higher than allowed use; that the permit be terminated but that the permittee be allowed to withdraw by a date certain; the parcel be put up for bid and prior to bidding, that the parcel be brought into conformity with the County and State regulations including zoning and building codes; the permittee be required to vacate at the time of the termination, and; the permittee be allowed 120 days within which to vacate and bring the parcel up to code.

With a second to the motion by Mr. Zalopany, the motion carried unanimously.

ITEM F-7

CONSENT TO SUBLEASE-GENERAL LEASE NO. S-4644 TO CORMAX CORPORATION, KALAUAO, EWA, HONOLULU, HAWAII

ACTION

Unanimously approved as submitted. (Ing/Kealoha)

- ITEM F-8 REQUEST BY LIHUE PLANTATION COMPANY, LTD. TO SELL WATER FROM GENERAL LEASE (WATER LICENSE) NO. S-3828, TO THE DEPARTMENT OF WATER, COUNTY OF KAUAI, MOLOAA FOREST RESERVE, MOLOAA, KOOLAU, KAUAI
- ACTION Mr. Zalopany moved for approval with the following amendment:
That under Recommendation, condition no. 2 the wording shall be changed to Lihue Plantation Company, Ltd. shall sell the water to the Department of Water at a rate to be charged subject to approval by the Chairperson.
Seconded by Mr. Yagi, the motion carried unanimously.
- ITEM F-9 GRANT OF EASEMENT FOR OVERHEAD ELECTRICAL TRANSMISSION LINES, SAMUEL MAHELONA MEMORIAL HOSPITAL SITE, KAPAA, KAUAI
- ACTION Mr. Zalopany moved for approval subject to review by staff to assure that alignment of pole or poles does not encroach on private property.
Motion was seconded by Mr. Yagi and unanimously approved.
- ITEM F-10 REQUEST FOR ONE (1)-YEAR HOLDOVER OF GENERAL LEASE NO. S-3910, HANAPEPE, KAUAI BY BETTY W. USHIGOME
- ACTION Mr. Detor said that this is a request for a holdover tenancy involving a lease that expired last week. However, he has amended it to a permit instead of a holdover tenancy.
Mr. Zalopany moved for approval as amended. Seconded by Mr. Yagi, the motion carried unanimously.
- ITEM F-11 LEASE OF OFFICE SPACE FOR THE GOVERNOR'S OFFICE, STATE IMMIGRANT SERVICES CENTER, ISLAND OF OAHU
- ACTION Unanimously approved as submitted. (Yagi/Zalopany)
- ITEM F-12 LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, ISLAND OF OAHU
- ACTION Unanimously approved as submitted. (Yagi/Zalopany)
- ITEM F-13 U.S. ARMY REQUEST FOR RIGHT OF ENTRY FOR MILITARY TRAINING EXERCISE AT KIHOLE BAY, NO. KONA, HAWAII
- (See page 2 for Action.)
- ADDED ITEM F-14 REQUEST TO AMEND GENERAL LEASE NO. S-4341, SAND ISLAND HONOLULU, HAWAII
- (See page 5 for Action.)
- ITEM Z-1 REPORT ON THE RESULTS OF THE AUCTION OF AGRICULTURAL LEASES HELD IN HILO, HAWAII ON APRIL 11, 1985
- Mr. Detor presented his report on the results of the auction where two ag leases in Puna, Hawaii were sold at the upset rental rate, both to Paradise Pacific Inc.

ITEM G-1 FILLING OF ABTRACTOR VI, POSITION NO. 138, OAHU

ACTION Mr. Higashi moved to approved the appointment of Fay Kido to fill the position of Abstracting Assistant V, Position No. 9054, in the Bureau of Conveyances. Mr. Kealoha seconded, motion carried unanimously.

ITEM H-1 APPROVAL TO PROCEED WITH A FINANCIAL AND COMPLIANCE AUDIT OF THE DEPARTMENT'S FEDERAL AID PROGRAMS

ACTION Unanimously approved as submitted. (Zalopany/Yagi)

ITEM H-2 CDUA FOR THE OAHU-KAUAI MICROWAVE SYSTEM TOWER AT TANTALUS, OAHU BY DAGS

Given time to confer with Mr. Detor and Mr. Landgraf, Mr. Soh presented their changed on the Recommendations to the Board.

Recommendation be labeled A. to read: That the Board approve this application for the Oahu-Kauai microwave tower and radio system with subdivision and withdrawal of the subdivided area from the Forest Reserve at Tantalus, Oahu, subject to the following conditions:

Striking or omit condition no. 2 and renumbering the conditions.

Add recommendation B: That the Board authorize the Division of Land Management to proceed with issuance of executive orders for withdrawal and re-set aside of the subdivided area.

Add recommendation C: That the Board authorize the Department of Accounting and General Services right-of-entry to construct.

ACTION Mr. Ing moved for approval as amended with the following additional amendment, that a landscape plan be submitted for review by State Parks to be in conformity with the discussions already held and for approval by the Chairperson.

Seconded by Mr. Higashi, the motion carried unanimously.

ITEM H-3 CDUA FOR A JET SKI AND WINDSURFING VENTURE AT KEEHI LAGOON, HONOLULU, OAHU BY SEA WIND CHALLENGE, INC.

(See page 3 for Action.)

ITEM H-4 CONSERVATION DISTRICT USE APPLICATION FOR CONSOLIDATION AND RESUBDIVISION AT KALIHI, HONOLULU, OAHU (BOARD OF WATER SUPPLY)

Mr. Soh said staff recommends approval with standard conditions. Staff would like to add another condition that the applicant submit another new map clearly showing the lots existing before the consolidation and designating which lots are registered with the Land Court and which are not and to avoid ambiguity, to avoid mixed use of alpha numerics.

ACTION Mr. Ing moved for approval. Motion was seconded by Mr. Kealoha and carried unanimously.

ITEM H-5 REQUEST FOR TIME EXTENSION TO CONSTRUCT SINGLE FAMILY RESIDENCES AT KIHOLLO BAY, NORTH KONA, HAWAII (BERNARD LEHMAN)

ACTION Mr. Zalopany moved for approval, seconded by Mr. Yagi the motion carried unanimously.

- ITEM H-6 CONSERVATION DISTRICT USE APPLICATION FOR TELEPHONE LINE AND LAND CLEARING AT MAULUA NUI, NORTH HILO, HAWAII
- ACTION Mr. Higashi moved for approval of this application submitted by Hawaiian Telephone. Seconded by Mr. Yagi, the motion carried unanimously.
- ADDED
ITEM H-7 PETITION FOR DECLARATORY RULING NEED FOR Cдуа TO HARVEST TREES FROM WAIAKEA/OLAA FOREST RESERVE, ISLAND OF HAWAII
- (See page 4 for Action.)
- ADDED
ITEM H-8 FILLING OF POSITION NO. 15705 ACCOUNT CLERK III, ADMINISTRATIVE SERVICES OFFICE, OAHU
- ACTION Motion was made by Mr. Kealoha to approve the appointment of Ms. Mary Freitas to Position No. 15705, Account Clerk III. Seconded by Mr. Zalopany, motion carried unanimously.
- ITEM J-1 CONSENT TO MORTGAGE AND CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-81-14, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (FLIGHT EXECUTIVES, LTD.)
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-2 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 3960, ETC. AIRPORTS DIVISION
- ACTION Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS, AIRPORTS DIVISION
- ACTION Unanimously approved as submitted. (Yagi/Zalopany)
- ITEM J-4 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS, AIRPORTS DIVISION
- ACTION Unanimously approved as submitted. (Higashi/Yagi)
- ITEM J-5 SALE OF LEASE BY PUBLIC AUCTION, HARBORS DIVISION, ALA WAI BOAT HARBOR, HONOLULU, OAHU
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KAILUA-KONA PIER AND KEAUHOU HARBOR, HAWAII (AKANA PETROLEUM, INC.)
- ACTION Unanimously approved as submitted. (Higashi/Zalopany)
- ITEM J-7 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI SMALL BOAT HARBOR, HONOLULU, OAHU (ALEXANDER SOKOLOV)
- ACTION Unanimously approved as submitted. (Ing/Yagi)

ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIERS 2, 7, 8-12, 13-15, 17-29, 31-36, 39-40, AND 51A-53, HONOLULU HARBOR, KEWALO BASIN AND WAIANAE SMALL BOAT HARBOR, OAHU (ED YAMASHIRO, INC.)

ITEM J-8

ACTION

Unanimously approved as submitted. (Higashi/Yagi)

ITEM Z-1

REPORTS

(See page 18.)

The Board adopted a Resolution honoring Mr. Isamu Kano, Tractor Operator of the Division of State Parks, Outdoor Recreation, and Historic Sites who will be retiring on the thirtieth day of April 1985 after more than thirteen years of service.

ADJOURNMENT: The meeting adjourned at 12:35 p.m.

Respectfully submitted,


Dorothy C. Chun
Secretary

APPROVED:


SUSUMU ONO
Chairperson

dcc