

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

DATE: May 12, 1989
TIME: 8:30 a.m.
PLACE: Community Service Building
Maui Community College
310 Kaahumanu Avenue
Kahului, Maui

ROLL
CALL

Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 8:30 a.m. The following were in attendance:

MEMBERS: Mr. J. Douglas Ing
Mr. Moses W. Kealoha
Mr. John Arisumi
Mr. Herbert Apaka
Mr. William W. Paty (Excused at 9:00 a.m.)

Absent and Excused

Mr. Herbert Arata

STAFF: Mr. Ronald Walker
Mr. Ralston Nagata
Mr. Wayne Ching
Mr. Mike Shimabukuro
Mr. Alan Tokunaga
Mr. Eddie Ansai
Mr. Roger Evans
Mr. Keith Keau
Mr. Libert Landgraf
Mrs. LaVerne Tirrell

OTHERS: Mr. Johnson Wong, Deputy A.G.
Mr. Peter Garcia, Dept. of Transportation
Dr. Park and Mr. Allan Lee (Item F-1-c)
Messrs. Arthur Trask and George P. Ferreira
(Item F-2)
Mr. Bob Fullerton (Item H-1)
Mr. Eric Gunther (Item H-2)
Mr. Martin Luna (Item H-3)

MINUTES: Mr. Ing moved for approval of the February 24, 1989 minutes as circulated. Mr. Kealoha seconded; motion carried unanimously.

ADDED
ITEMS Upon motion by Mr. Ing and a second by Mr. Kealoha, the following items were added to the Agenda:

Item E-3 -- Filling a Vacant Groundskeeper I Position for Launiupoko State Park, Island of Maui.

Item H-6 -- Permission for a Cost Extension for Contract No. 21493 with the Research Corporation of the University of Hawaii to Assist in Carrying out Aquaculture Market Research and Development.

Items on the Agenda were considered in the following order to accommodate those applicants and interested parties present at the meeting:

CDUA FOR A CABLE SHIP TERMINAL AND STORAGE FACILITY, SAND ISLAND, OAHU -
APPLICANT: AMERICAN TELEPHONE AND TELEGRAPH CO. (AT&T); AGENT: R. M.
TOWILL CORPORATION.

ITEM H-1

Mr. Evans said that staff's recommendation is for approval, but for reasons other than that asked for by the applicant. The applicant basically asked for the terminal and the storage facility. Staff is asking that a subdivision of the lands in the conservation district also be approved. With that subdivision approval staff can more appropriately define the area that will eventually be leased to the applicant.

Mr. Evans said that, based upon the most recent discussions with the Army Corps of Engineers, staff would like to insure consistency with the Corps of Engineers project line. This project line goes all through the Harbor and the purpose of this line is to show where the Corps of Engineers dredge, and Honolulu Harbor is dredged to a depth of 40 feet. This line was done some years ago and defines the limits of dredging to 40 feet. The problem is that the wharf apron extended about 5 feet into the line. In order for the applicant to do that, they would have to change the Corps of Engineers project line and this is rarely done. Rather than go through this, the applicant has agreed to having the wharf apron back so that the line is not crossed. This is what is being presented today and has been agreed by the company.

Mr. Apaka asked whether there was an agreement by AT&T that they would be willing to relocate after a ten year period. Mr. Evans called Mr. Apaka's attention to Condition No. 12 which says that not only do they relocate but they will have to return this area to an acceptable condition to the department.

Mr. Bob Fullerton, representing AT&T said that they have reviewed staff's submittal and agree with the recommendations.

ACTION

Mr. Kealoha moved to approve as submitted. Mr. Apaka seconded; motion carried.

Mr. Ing was excused from acting on this item.

REQUEST FOR A TIME EXTENSION ON CDUA FOR OA-2025 FOR OA-2025A THE ATLANTIS
SUBMARINE TOUR OPERATION OFFSHORE OF WAIKIKI, HAWAII - APPLICANT:
ATLANTIC SUBMARINES, INC. - AGENT: ERIC GUNTHER.

ITEM H-2

Mr. Paty called Mr. Eric Gunther to come forward. He then asked Mr. Gunther where they were relative to development of the reef material. Mr. Gunter said that the concrete modules are being built right now. Basically they are flat plates with TBC columns which can be adjusted in heights so they would create a series of sandwiches making a low tower.

Mr. Ing called Mr. Gunther's attention to the requirement of construction plans being approved by the department before work is done. Mr. Gunther said that the plans were partially submitted.

ACTION

Unanimously aproved as submitted. (Ing/Arisumi)

Mr. Paty announced that he had to leave and Mr. Ing would be chairing the meeting.

RECESS:

8:55 - 9:02 a.m.

RESUBMITTAL - ENCROACHMENT UPON PUBLIC LANDS AND VIOLATION OF CHAPTER 13-221, HAWAII ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES RELATING TO UNENCUMBERED PUBLIC LANDS, MAKENA, MAKAWAO, MAUI.

Mr. Shimabukuro presented staff's recommendation to the board and also presented to the board a letter dated May 3, 1989 from Arthur K. Trask, Jr., attorney for George Ferreira.

In answer to Mr. Arisumi's question, Mr. Shimabukuro said that the 160 hours involved time spent by both the Land Management staff and the Enforcement Officers. The minimum rate for administrative costs is \$12.50 per hour. This is how staff came up with the \$2000.00 charge.

Mr. Arisumi felt that only George Ferreira, Jr. should be fined and not all of the tourists. Mr. Shimabukuro said that the riders themselves are not being fined. But since Mr. Ferreira owns all of the horses staff is saying that each horse is a violation. Mr. Arisumi went on to explain why he did not think this was right.

Mr. Arisumi also did not agree with Condition E, which asks that the board request the County of Maui (Planning Department) to revoke or suspend the Special Use Permit issued to Holo Lio Stables for the purpose of operating a commercial boarding and riding stable within an Agricultural District (specifically on Tax Map Key: 2-1-05:85). He felt that they are operating on a Special Use Permit provided by Maui County and this board should not be recommending to Maui County to revoke this permit.

Mr. Kealoha asked Mr. Shimabukuro how many times this item was deferred. Mr. Shimabukuro said that this item was first deferred January 13, 1989 and also February 10, 1989 and March 10 and 23, 1989.

Since the January deferral, Mr. Kealoha asked how many discussions were held with Mr. Trask in trying to work out the violations. Besides the discussion on this submittal, Mr. Shimabukuro said that he did not sit down in a discussion but did speak to Mr. Trask about two other times on the phone. Mr. Kealoha said that when this item was first brought up on the island of Kauai Mr. Trask was given, because he was new on the case, time to discuss this with staff to go over the violations and penalties. Subsequent to that meeting, the deferral was based on the fact that they did not have time or they were continuing discussions with the department relative to the fine. Mr. Kealoha said that he is of the impression today that nothing had occurred in trying to settle the violations and/or the fines. Besides taking up staff's time, the applicant is also taking up the board's time in dealing with this matter. Mr. Kealoha then asked if the fine being recommended today is essentially the same as that of the original submittal. Mr. Shimabukuro said yes, with the exception of the last paragraph before RECOMMENDATION indicating the dates this item was deferred. Also, after the first submittal, there were three additional dates of violations.

Mr. Trask addressed some of the the issues raised by the board.

First of all, Mr. Arisumi questioned, and he is correct, that the pending civil law suits involving the State of Hawaii, County of Maui, Mr. Ferreira and Seibu are separate and apart from this issue. However, Mr. Trask said his position is that it is not. The reason being that the land in question was acquired by the State from Seibu and his contention all along has been that this was an illegal transfer of land. He referred the board members to a report which was made on October 14, 1988 on one of the violations where one of the land agents spoke to Mr. Ferreira's son (Mr. Trask quoted

as follows): "I then asked him if he had talked to Eddie Ansai or the land agent regarding the use of State lands or beach areas for commercial purposes." He related -- "Number 1, with regards to filling out the application to use state lands, when that was hand delivered to him by land agent Tokunaga, witnessed by writer, he filled it out but did not turn it in pending their suit against Seibu, County and the State." He further stated "that the land in question, until he is properly notified, is to cease his activities on said lands that it appears that he wants this letter in writing."

Mr. Trask felt that in order for Mr. Ferreira to maintain a legal claim to this property, as is claimed in the law suits, he had to continue to exercise some kind of use of that property.

Mr. Trask said that there are seventeen instances and requested that the board assess a maximum of \$500 and that a \$100 fine for the seventeen occasions would serve its purposes for it being punitive and his clients have not and will not continue to violate. As far as the 160 hours of administrative time, he said that if there were 17 occasions then we are looking at 9 hours per occasion and he finds that hard to believe.

Mr. Kealoha asked Mr. Trask, "where were you since January, 1989 in dealing with the violation?" Mr. Trask said that he is dealing with the violation but that they were dealing it together with the law suits. Even though these are separate he did not think he could proceed separately.

Mr. Shimabukuro asked Mr. Trask whether he represented George Ferreira Jr. or Sr. Mr. Trask said that he represented both. There is no junior or senior. Holo Lio stables is owned by George P. and managed by George W.

Mr. Ferreira explained the boundaries of Big Beach and why the problems may have occurred. He felt that there was no way in determining which is sand and which is private property. Mr. Kealoha said that if this information had been brought to the board in January these violations and probable remedies could have been worked out. However, you are now coming back to the board with the same thing after four months and it is hard to be sympathetic. Mr. Trask said that he in no way meant to insult the board and that this was his fault and not Mr. Ferreriras.

ACTION Mr. Arisumi moved as follows:

1. Whereever George Ferreira, Jr. appears, this is to be changed to George P. Ferreira.
2. Amend Condition B. so that there are seventeen (17) violations at \$500 per violation for a total of \$8,500.00.
3. Amend Condition C. to read \$1500.00 total.
4. Amend Condition D. to read \$1500 for administrative costs and the balance between that and the \$5000 would be \$3500 for penalties which are to be paid within ninety days from May 12, 1989 or this matter is to be referred to the Attorney General for follow-up action.
5. With respect to the balance of the \$5,000, this will be suspended for six months on the condition that there be no further violations.
6. That Condition E. be deleted.

7. With respect to Condition D., the suspension is conditioned upon no further violations and payment of the initial \$5000 within the time specified.

Mr. Kealoha seconded; motion carried unanimously.

ITEM F-1-c CONSENT TO ISSUANCE OF REVOCABLE PERMIT NO. DOH 89-04 BY THE DEPARTMENT OF HEALTH TO CLINICAL LABORATORIES OF HAWAII, INC. A HAWAII CORPORATION; MAUI MEMORIAL HOSPITAL, WAILUKU, MAUI.

Mr. Arisumi asked if the \$35,000 per month rental included the equipment and whatever else that is presently in the hospital. Dr. Park said that the \$35,000 per month is just for rental of the space. Mr. Arisumi then asked about the \$15,520 charge for floor space. Dr. Park said that the \$35,000 is based upon two components: one is \$2.00 per sq. foot for the base rent and the other is 6% of the estimated gross earnings, which is adjustable. The \$35,000 does combine both.

Allan Lee, Assistant Administrator, Maui Memorial Hospital, was also present to answer questions the board might have had.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM C-1 CONSULTANT SERVICES TO CONDUCT BOTANICAL SURVEY OF PUU WA'AWA'A AND WESTERN PORTION OF PUU ANAHULU, HAWAII.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM D-1 PERMISSION TO HIRE CONSULTANT FOR PUU WAAWAA WILDLIFE SANCTUARY DEVELOPMENT, NORTH KONA, HAWAII.

ACTION Unanimously approved as submitted. (Kealoha/Apaka)

ITEM D-2 FILLING OF CIVIL ENGINEER VI, POSITION NO. 11270, DIVISION OF WATER AND LAND DEVELOPMENT, OAHU.

ACTION Unanimously approved the appointment of Hiram Young to Position No. 11270. (Kealoha/Apaka)

RECESS: 10:05-10:10

ITEM E-1 COOPERATIVE AGREEMENT FOR THE PRESERVATION OF NATURAL AND CULTURAL RESOURCES, KALAUPAPA NATIONAL HISTORICAL PARK.

Mr. Kealoha felt that this item should be deferred in order for the board to visit the area and then bring this back to the board inasmuch as the board does not know which lands belong to Hawaiian Homes or which lands belong to the State.

ACTION Deferred.

ITEM E-2 PERMISSION TO ENTER INTO AGREEMENT BETWEEN THE DIVISION OF STATE PARKS AND R. W. MEYER, LTD. REGARDING THE WATER PURCHASE AGREEMENT OF WAIALALA WATER SYSTEM, MOLOKAI.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ADDED
ITEM E-3 FILLING OF VACANT GROUNDSKEEPER I POSITION FOR LAUNIUPOKO STATE PARK, ISLAND OF MAUI.

ACTION Unanimously approved the appointment of Mr. Carl V. Pokipala, Jr. to Position 22305. (Arisumi/Kealoha)

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1-a ISSUANCE OF REVOCABLE PERMIT TO ROBIN T. MIZUTA, TAX MAP KEY 4-1-10:49 AND 51, WAIMANALO, OAHU.

Item F-1-b CONSENT TO ASSIGNMENT OF GRANT OF EASEMENT, ALEXANDER & BALDWIN, INC., ASSIGNOR TO A&B HAWAII, INC., ASSIGNEE; GRANT OF EASEMENT COVERED BY LAND OFFICE DEED NO. S-27,608, OFFSHORE OF TAX MAP KEY 3-7-11:13, KAHULUI, MAUI.

Item F-1-c (See Page 5 for Action.)

Item F-1-d CONSENT TO ASSIGNMENT OF LEASE, GENERAL LEASE NO. S-3597, LOT C-1, KAMEHAMEHA AVENUE BUSINESS LOTS, WAIAKEA, SO. HILO, HAWAII.

ACTION Mr. Apaka moved to approve Items F-1-a, b and d as submitted. Mr. Kealoha seconded; motion carried unanimously.

ITEM F-2 RESUBMITTAL - ENCROACHMENT UPON PUBLIC LANDS AND VIOLATION OF CHAPTER 13-221, HAWAII ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES RELATING TO UNENCUMBERED PUBLIC LANDS, MAKENA, MAKAWAO, MAUI.

ACTION See Pages 4 and 5.

ITEM F-3 CONCURRENT TERMINATION AND ISSUANCE OF NON-CONFORMING USE PERMITS AT KAHULUI AIRPORT, KAHULUI, WAILUKU, MAUI.

ACTION Unanimously approved as submitted. (Apaka/Kealoha)

ITEM F-4 AMENDMENT OF BOARD ACTION OF DECEMBER 16, 1988 (ITEM F-10) RE PERPETUAL NON-EXCLUSIVE EASEMENT FOR ONE FIRE HYDRANT AND ONE WATER SERVICE METER, EWA ELEMENTARY SCHOOL, EWA, OAHU, TAX MAP KEY 9-1-17:PORTION 02.

ACTION Unanimously approved as submitted. (Kealoha/Apaka)

ITEM F-5 SET ASIDE OF STATE LAND FOR THE KANEOHE BASEYARD, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, TAX MAP KEY 4-5-23:01, KANEOHE, OAHU.

ACTION Unanimously approved as submitted. (Kealoha/Apaka)

ITEM F-6 DIRECT SALE OF RECLAIMED (FILLED) LAND AT KANEOHE, OAHU, SEAWARD OF TAX MAP KEY 4-4-07:21.

ACTION Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM F-7 REQUEST FOR CONSTRUCTION RIGHT OF ENTRY TO CONSTRUCT DRIVEWAY ACCESS AT WAILUA, KAUAI, TAX MAP KEY 4-1-09:17.

ACTION Unanimously approved as submitted. (Apaka/Kealoha)

ITEM F-8 AMENDMENT TO LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HUMAN SERVICES, VOCATIONAL REHABILITATION, DISABILITY DETERMINATION BRANCH, HONOLULU, OAHU.

ACTION Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM F-9 LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HUMAN SERVICES, FAMILY AND ADULT SERVICES, KAUNAKAKI, MOLOKAI.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM F-10 AMENDMENT TO LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF HEALTH, MEDICAL HEALTH SERVICE DIVISION, AIR POLLUTION SECTION, PUNA, HAWAII.

ACTION Unanimously approved as submitted. (Kealoha/Apaka)

ITEM F-11 LEASE OF OFFICE SPACE FOR THE DEPARTMENT OF DEFENSE, OFFICE OF VETERANS' SERVICES, KAHULUI, MAUI.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM F-12 REQUEST FOR HOLDOVER OF GENERAL LEASE NO. S-4226, NO. KOHALA, HAWAII.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM G-1 FILLING OF CLERK II, POSITION NO. 158, OAHU.

ACTION Unanimously approved the appointment of Cheryl T. Medina to Position No. 158. (Kealoha/Apaka)

ITEM G-2 FILLING OF CLERK TYPIST I, POSITION NO. 156, OAHU.

ACTION Unanimously approved the appointment of Alan L. Bennett to Position No. 156. (Kealoha/Apaka)

ITEM H-1 CDUA FOR A CABLE SHIP TERMINAL AND STORAGE FACILITY, SAND ISLAND, OAHU - APPLICANT: AMERICAN TELEPHONE AND TELEGRAPH CO. (AT&T); AGENT: R. M. TOWILL CORPORATION.

ACTION See Page 2.

ITEM H-2 REQUEST FOR A TIME EXTENSION ON CDUA FOR OA-2025 FOR OA-2025A THE ATLANTIS SUBMARINE TOUR OPERATION OFFSHORE OF WAIKIKI, HAWAII; APPLICANT: ATLANTIS SUBMARINES, INC.; AGENT: ERIC GUINHER.

ACTION See Page 2.

ITEM H-3 VIOLATION OF LAND USE ON STATE-OWNED CONSERVATION DISTRICT LANDS AT KAHALA, LAHAINA, MAUI, TMK 4-3-05:26 - FILED BY OCEA.

Mr. Evans said that staff did go out to see the seawall since the item was deferred on March 23, 1989 and saw no real reason for changing staff's original recommendation.

Mr. Arisumi asked Mr. Evans to explain exactly what we are talking about. Mr. Evans said that we are talking about two specific violations. In terms of this violation, you have a certified shoreline surveyed. Once we have that survey then staff will know for certain where the private property ends and the public property begins. From that shoreline survey staff knows that there was a specific encroachment, which is the seawall, and that it occurred on stateowned land. Staff also knows that that encroachment, because of the same survey, encroached in the state conservation district.

Discussions continued while viewing photos presented by staff. Mr. Martin Luna, representing the applicant, answered questions posed by the board.

Mr. Luna said that there was confusion on where the property line was for the owner inasmuch as the deed does say along the shoreline. Mr. Wong said that based on that language you would have to follow the shoreline. Mr. Luna agreed. He said that the lawyers and the surveyors know this; however, the people who bought the property did not know this.

ACTION

Mr. Arisumi moved:

1. To delete Condition A.1.
2. To delete Condition B.1.
3. That the total fine shown in Condition B. 2. be for a total of \$1000.00.
4. To delete Condition C.
5. To delete the "s" after the word Part shown on line one of Condition D. and delete "and C" on the same line.
5. That the encroachment violation be referred to the Division of Land Management and that this come back to the board when the disposition aspect as been decided.

Mr. Kealoha seconded; motion carried unanimously.

ITEM H-4

APPROVAL TO ATTEND AMERICAN ASSOCIATION FOR AFFIRMATIVE ACTION 15TH ANNUAL NATIONAL CONFERENCE.

ACTION

Unanimously approved Melvin H. C. Young's attendance at the Conference in New Orleans, Louisiana June 4-7, 1989. (Kealoha/Apaka)

ITEM H-5

APPROVAL TO PROCEED WITH THE SINGLE AUDIT OF THE DEPARTMENT'S FEDERAL AID PROGRAMS.

ACTION

Unanimously approved as submitted. (Kealoha/Apaka)

ADDED
ITEM H-6

PERMISSION FOR A COST EXTENSION FOR CONTRACT NO. 21493 WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII TO ASSIST IN CARRYING OUT AQUACULTURE MARKET RESEARCH AND DEVELOPMENT.

ACTION

Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM I-1

APPOINTMENT OF LICENSE AGENT: MAUI EXPEDITION, ISLAND OF MAUI.

ACTION

Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM J-1

LEASE - HONOLULU INTERNATIONAL AIRPORT, OAHU (U.S. DRUG ENFORCEMENT ADMINISTRATION).

ACTION

Unanimously approved as submitted. (Apaka/Arisumi)

ITEM J-2

CONSENT TO SUBLEASE - HONOLULU INTERNATIONAL AIRPORT, OAHU (DUTY FREE SHOPPERS, LTD. PARTNERSHIP - AIRPORT ELECTRONIC, INC.).

ACTION

Unanimously approved as submitted. (Kealoha/Arisumi)

ITEM J-3

APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4546, 4547 AND 4548, AIRPORTS DIVISION.

ACTION

Mr. Kealoha moved to approve Permit Nos. 4546 and 4548. Motion carried with a second by Mr. Arisumi.

Mr. Ing was excused from acting on Permit 4547. Action was not taken on this permit for lack of a majority vote.

ITEM J-4 RENEWAL OF REVOCABLE PERMITS 3858, ETC., AIRPORTS DIVISION.

ACTION Mr. Kealoha moved to approve all permits as submitted, except Permit No. 4322 to Delta Airlines. Motion carried with a second by Mr. Arisumi.

Mr. Ing was excused from acting on Permit 4322. Action was not taken on this permit for lack of a majority vote.

ITEM J-5 TRI-PARTY AGREEMENT BETWEEN CAMPBELL ESTATE, COOK INLET REGION, INC. AND THE STATE OF HAWAII, BARBERS POINT HARBOR, OAHU.

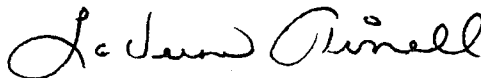
ACTION Unanimously approved as submitted. (Kealoha/Apaka)

ITEM J-6 ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, KEEHI COMMERCIAL SUBDIVISION, HONOLULU, OAHU (TRANSCEND, INC.).

ACTION Unanimously approved as submitted. (Apaka/Kealoha)

ADJOURNMENT: The meeting was adjourned at 11:25 a.m.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



WILLIAM W. PATY
Chairperson

It