

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

DATE: SEPTEMBER 8, 1989
TIME: 8:30 A.M.
PLACE: CONFERENCE ROOMS A,B, AND C
STATE OFFICE BUILDING
75 AUPUNI STREET
HILO, HAWAII

ROLL CALL: Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 8:28 a.m.

MEMBERS: Mr. Moses W. Kealoha
Mr. John Arisumi
Mr. Herbert Arata
Mr. Herbert Apaka
Mr. William W.L. Yuen (arrived at 9:20 a.m.)
Mr. William W. Paty

STAFF: Mr. Manabu Tagomori
Mr. Michael Buck
Mr. Mike Shimabukuro
Mr. Roger Evans
Mr. Richard Kanayama
Mr. Glenn Taguchi
Mrs. Geraldine M. Besse

OTHERS: Johnson H. Wong, Esq., Deputy Atty. Gen.
Mr. Ronald Hirano, Dept. of Transportation
Pastor Ken Smith (Item F-2)
Mrs. Kiyono Kunitake (Item F-2)
Mr. Larry S. Tanimoto (Item F-2)
Mr. Joe Correa (Item H-1)
Mr. Ernie Shima (Item H-2)
Mr. Alan Konishi (Item H-3)

MINUTES: Mr. Arisumi asked to amend the minutes of the meeting of August 25, 1989, on page 6, Item No. C-4; the contract being for 12 months instead of 24 months. The motion was seconded by Mr. Arata, and the minutes were unanimously approved as amended.

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

Item G-1 -- Filling of Abstracting Assistant III, Position No. 6619, Oahu

Item H-8 -- Request for Approval of Out-of-State Travel to Attend Planning Meeting

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

ITEM H-7: FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER FOR CONTESTED CASE ON CDUA FOR A HYDROELECTRIC POWER PROJECT ON THE HONOLII STREAM, SOUTH HILO DISTRICT, HAWAII (APPLICANT: MAUNA KEA POWER COMPANY)

Mr. Paty stated that:

"I realize there was considerable interest in this matter because of all the surfing beaches and so on that people were concerned with; however, we have encountered a legal problem with respect to this situation and we need to address that. Before we can arrive at our findings and conclusion of law, decision and order, we have to address this legal matter.

"The Chair has been made aware of the fact that as part of the Board's normal field trip activities, in which they go out and take a look at facilities and properties of interest and concern to them, that in this case they may have inadvertently exposed themselves to what is known in the legal circles as 'ex parte investigation.' 'Ex parte' means that in a contested case you are not supposed to hear any evidence or information other than that which is presented in the contested case. In this particular case, they may have been inadvertently exposed in part of the field trip they were involved with and, as a result of that, a legal question has been raised and until we've had a chance to address that legal question, we feel that this matter should be deferred.

"In this connection, the Chair would like to remind all parties and attorneys involved in this thing that we have to be very careful to refrain from any ex parte activities with respect to this. A contested case is much like a court case, and the people involved are to only consider that evidence which is presented before them at that particular time. And so, we're going to refer this matter to the Attorney General to resolve the issues and evaluate that situation."

ACTION Mr. Kealoha then moved to defer action. Mr. Apaka seconded the motion which was unanimously approved (with the exception of Mr. Yuen, who was not present).

ITEM F-3: DIRECT LEASE TO COUNTY OF HAWAII, OLD KONA AIRPORT STATE RECREATION AREA, TAX MAP KEY 7-5-05:83 AND 07, KAILUA-KONA, HAWAII

Mr. Shimabukuro stated that the staff proposes to cancel the existing lease to the County as well as the Executive Order and to lease the entire 103 acres to the County of Hawaii on a gratis basis for the purpose of park and recreational purposes for 65 years. The staff proposes a right-of-entry to the County for planning purposes, including environmental and archaeological studies.

In response to a question from Mr. Kealoha, Mr. Kanayama responded that the 34 acres already leased by the County includes the ballfield. He also stated that the County has not presented a long-term plan for the area. He further stated that he was only aware of the fact that the County was interested in building a gymnasium in a section of the 34 acres but if they were able to obtain the entire parcel they would construct the gymnasium on the mauka side of the present pavilion. Mr. Kanayama stated that the Department would have to approve all plans prior to any construction. Mr. Kealoha stated that he believed the County should come to the Board with the plans before the lease is turned over. Mr. Kanayama stated that the Governor's Task Force on State-County Relations recommended the transfer of several park areas to the County and in exchange the State would receive some County parks. This was presented to the Legislature, and the Department did concur with the intent of the bill, although it did not pass because it was tied in with the "sin tax" bill.

Mr. Kealoha asked whether the Division of State Parks could provide more information to the Board with respect to the trade-off and the County's plans for the area.

Mrs. Kiyono Kunitake read a request from the Kona Sports Directors dated June 30, 1989, to Governor Waihee, requesting the mauka side of the runway to site the gym and a swimming pool near the gym. The letter further stated that the proposed County gym site was the area the community has planned open fields unless the Governor issues an executive order. She said they were 17 groups supporting the intent of the letter and that she had circulated a petition opposing the transfer to the County.

"We love the Old Airport so deeply, we want the Old Airport left as is." She stated that the valuable open space should not become a sports complex and did not want the County to take over the park. She asked that this item be deferred until a firmer solution could be found.

She stated that the State has a Master Plan for the mauka side for a jogging path, bikeway, cabins and caretaker cabins and parking for the mauka area. There is a request for a Hawaiian village and a launching area in the northern section. That area also was of historical significance, she said. Mrs. Kunitake asked to beautify the area, if allowed.

Mr. Paty thanked Mrs. Kunitake for her concern and interest in the State's activities.

Mr. Larry Tanimoto from County Parks and Recreation stated that the County is much "in tune" with the State Master Plan. He emphasized that it is not the intent of the County to use the mauka section for a race or car track. He stated that they would encroach 50 yards north of the present pavilion site. He stated maybe the cabins are not in the right section and would be willing to look at alternative sites.

Erecting the gym at the intended site would expedite matters and save some funds in site preparation and construction of the parking stalls, he said. The initial plans called for 2,000 seats and 500 parking stalls. The seating capacity has now been lowered and would be a district gym, which is very much needed in Kona. He said the people of Kona have waited 29 years and feels it is the right thing to do for the people.

Mr. Tanimoto stated that as in East Hawaii gyms, they do not feel they need 2,000 seats and that the Kealahou Sports Complex would complement the Kailua-Keahole situation and would serve South Kohala and North Kona. The swimming pool would not be like the Kawamoto gym. Mr. Tanimoto stated the runway near the State area would be parking. He anticipated users at 550,000 per year.

Mr. Tanimoto stated that the County would like to expedite the take-over.

Mr. Apaka noted that there was a conflict between the County and Mrs. Kunitake. Mr. Tanimoto felt that Mrs. Kunitake didn't have a problem with the gym but the concern was for the area north and mauka. He reiterated that where the cabins are set aside, bike pathways are in tune with the State Master Plan, which would need prior approval from the State. Mr. Paty noted that there appears to be some common ground, and it should not be too difficult to work out.

In response to a question from Mr. Kealoha, Mr. Tanimoto stated that the County does not have their own plan because they are very much in tune with the State plan. All they are talking about, he said, is putting the gym next to the events center. That would be the "first phase." The second phase would be the function of funding. To mitigate costs they have been working with the Corps of Engineers when the Corps was working in the area.

Mr. Kealoha recalled that another group had requested use of the mauka portion of the area for an arboretum.

ACTION

Based on Mrs. Kunitake's concerns and a request to review the County's plans, Mr. Arata moved for deferral to the Kona meeting. The motion was seconded by Mr. Kealoha and unanimously approved.

CDUA FOR A CO-HABITATION TELECOMMUNICATION FACILITY, MT. LAAUKAHI, KAUAI
(APPLICANT: MOTOROLA COMMUNICATIONS AND ELECTRONICS, INC.; AGENT:
CORREA AND SON, INC.)

ITEM H-1:

Mr. Evans stated that the staff's position is that there is a violation because 11 of the 13 antennas are unauthorized and subject to sanction of \$500 per violation, for a total of \$5,500. Mr. Evans suggested the following addendum:

3.A That the Board require payment of the financial sanction under the following auspices:

That the applicant enter into a contract in the amount of \$5,500, to be administered by the Division of Forestry and Wildlife under the direct supervision of the Kauai District Forester, to pick up trash at the Waiialae cabin and trail maintenance along the Mahihi-Waiialae Trail.

Mr. Arisumi recalled a similar case several years ago. Mr. Evans stated that there was a case on Kauai where the antenna could be seen from downtown Lihue. In that case, the Board imposed a financial sanction and determined the fine would not be taken out of the ratepayers' base, and required modification to the existing tower. Mr. Arisumi asked whether this tower was in the proximity of the first tower. Mr. Evans replied in the affirmative. Mr. Arisumi expressed his concern on the length of time it took to become aware of the violations. Mr. Evans stated that the possibility of violations was prompted upon receipt of the CDUA and analysis by staff. The question regarding the number of antenna was brought out at the public hearing. A discrepancy was discovered between what was on the ground and the number alleged by the applicant.

Mr. Arata asked whether the Board needed to request removal of the antenna as part of the sanctions, and Mr. Kealoha asked why the staff was not recommending removal of the antenna. Mr. Evans replied that possibly some of the antenna may be for government purposes and that many times the staff does ask for removal of violating structures. However, they did not in this case, and in a very strict sense, Mr. Evans stated, maybe they should have to remain consistent with past action.

Mr. Yuen arrived at 9:20 a.m.

Concerning the antenna, Mr. Evans stated that whether they were needed was a judgmental question and produced a list of users. He stated that when a fine is levied, it is levied against the landowner, who, in this case, is separate from the applicant. There was discussion between the parties, the result was that the violation was the applicant's problem. At the public hearing, the Board wanted to know who could come in as a user. In this case, the applicant wanted to retain control, and that was the reason the case is focused on the applicant.

Mr. Paty stated that removal was not practical. Mr. Evans stated that if the antenna were removed, the users would probably be right back with a new application.

Mr. Joe Correa, agent for the applicant, stated that the information regarding the antenna was "confusing" from the start, passing from one department to another. The confusion, he said, began when the tower was damaged--the question was which antennas had to be removed. He stated that two months before the public hearing a master plan was submitted to the State which indicated there were 13 antennas. He stated it was not a wilfull act to conceal anything but a result of confusion. The idea was "to clean up the mess, get rid of the antennas that were attached to an old boiler up there."

He circulated a photograph of the old boiler, which was installed by Grove Farm, and indicated the broken antenna. At that time, he said, there was insufficient funding to fix the tower and now that there is they want to clean up the mess. He also stated that over the years several existing antenna had deteriorated and instead of being removed another antenna would be added. Mr. Correa stated that it was an honest, unintentional and collective mistake.

ACTION Mr. Apaka moved for approval with the following additional conditions: (1) that under "Violation" on page 12 addendum 3.A be added, and (2) that Cдуа 2260 be amended to leave the antenna intact. The motion was seconded by Mr. Arata and unanimously carried.

ITEM H-2: Cдуа AMENDMENT FOR A CO-HABITATION TELECOMMUNICATION FACILITY AT PUU KILEA, LANAI (APPLICANT: INFORMATION AND COMMUNICATION SYSTEMS DIVISION, DEPT. OF BUDGET AND FINANCE)

ACTION Unanimously approved as submitted (Arisumi/Arata).

ITEM F-2: REQUEST TO AMEND GENERAL LEASE NO. S-5152 TO HAWAII CONFERENCE FOUNDATION HALE HALAWAI O HOOLUALOA CHURCH SITE, TAX MAP KEY 7-6-16:13, NORTH KONA, HAWAII

Mr. Shimabukuro stated that at the time of the issuance of the lease a representation was made by the Hawaii Conference Foundation that improvement to be done on the property would be at their cost and expense; therefore, the lease was drafted as such. The 1989 legislative session approved a grant-in-aid to the church. As part of that appropriation, it was made subject to the condition that the lease be amended by deleting "at its own cost and expense" in order to qualify for the grant-in-aid.

Pastor Ken Smith spoke of restoration plans for the church and property, including the seawall.

Mr. Yuen expressed concern with the language and suggested additional language: ". . . or at the cost of parties other than the lessor." Pastor Smith indicated that the language was in the original as they never assumed that the landowner had any obligation.

ACTION Mr. Arata moved for approval. Mr. Paty asked that a condition be added, subject to review by the Attorney General to address Mr. Yuen's concern relative to the State's obligation. The motion, as amended, was seconded by Mr. Arisumi and unanimously carried.

ITEM H-3: Cдуа FOR A SINGLE FAMILY RESIDENCE AT ALIOMANU, KAUAI (APPLICANT: RICKEY B. CARLSBERG)

Mr. Evans asked to correct his submittal regarding "use" from "permitted use" to "conditional use" on page 5, under "analysis." He also asked to add another condition under staff's recommendation: The board approve this application as a non-conforming use for a single family residence."

Mr. Alan Konishi appeared on behalf of applicant to answer any questions.

ACTION Unanimously approved as amended (Apaka/Arisumi).

RECESS: A recess was called from 10:20 to 10:35 a.m.

ITEM C-1: OUT-OF-STATE TRAVEL REQUEST FOR MICHAEL G. BUCK, ACTING ADMINISTRATOR, DIVISION OF FORESTRY AND WILDLIFE

ACTION Unanimously approved as submitted (Kealoha/Apaka).


- ITEM C-2: OUT-OF-STATE TRAVEL REQUEST FOR PATRICK G. COSTALES, PROTECTION FORSTER, DIVISION OF FORESTRY AND WILDLIFE
- ACTION Unanimously approved as submitted (Kealoha/Apaka).
- ITEM D-1: APPOINTMENT AND CERTIFICATION OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS
- ACTION Unanimously approved as submitted (Kealoha/Apaka).
- ITEM F: DOCUMENTS FOR CONSIDERATION:
- ITEM F-1-a: CONSENT TO ASSIGNMENT OF SUBLEASE NO. S-3662-32, MATSU SHIMABUKURO, ASSIGNOR TO SACHIKO KISHIMOTO, ASSIGNEE, GENERAL LEASE NO. S-3662 TO MAUNA KEA AGRIBUSINESS, RESIDENTIAL LOT AT PIIHONUA CAMP 3, PIIHONUA, SOUTH HILO, HAWAII
- ITEM F-1-b: ISSUANCE OF REVOCABLE PERMIT TO MR. BREN JOSHUA DONOFRIO DBA KOKEE MOUNTAIN BIKES FOR COMMERCIAL BICYCLE TOURS AT WAIMEA CANYON STATE PARK AND PUU KA PELE FOREST RESERVE, WAIMEA, KAUAI
- ITEM F-1-c: CONSENT TO MICROWAVE FACILITY AND TOWER STRUCTURE LICENSE AGREEMENT, SUPPLEMENTAL AGREEMENT NO. 2, FOR THE DEPARTMENT OF BUDGET AND FINANCE, KAALA AIR FORCE STATION, MOKULEIA, OAHU
- ITEM F-1-d: CONSENT TO VHF-FM RADIO REPEATER STATION LICENSE, SUPPLEMENTAL AGREEMENT NO. 2, FOR THE DIVISION OF FORESTRY AND WILDLIFE, KAALA AIR FORCE STATION, MOKULEIA, OAHU
- ITEM F-1-e: CONSENT TO TOWER SPACE AND CONSTRUCTION OF TELEVISION RELAY FACILITY FOR THE DEPARTMENT OF BUDGET AND FINANCE, U.S. COAST GUARD'S MAUNA KAPU COMMUNICATIONS FACILITY, OAHU
- Mr. Shimabukuro asked that wherever the place "Waianae" appears, correction should be made to "Honouliuli, Ewa."
- ITEM F-1-f: CONSENT TO MULTIPLE ASSIGNMENT OF GRANT OF EASEMENT (LAND OFFICE DEED NO. S-27,321 DATED NOVEMBER 19, 1982), FOR ACCESS AND UTILITY PURPOSES, TAX MAP KEY 2/3-9-09:PORTION 13, WAIOHULI, WAILUKU, MAUI
- ACTION Unanimously approved Item Nos. F-1-a, -b, -c, -d, -e, as amended, and -f (Apaka/Kealoha).
- ITEM F-2: See page 5.
- ITEM F-3: See page 3.
- ITEM F-4: GRANT OF NON-EXCLUSIVE EASEMENT FOR A SEAWALL AND OTHER IMPROVEMENTS AT KAALAEA, OAHU, TAX MAP KEY 4-7-16:61
- Mr. Shimabukuro asked to amend the type of appraisal from "staff" to "independent."
- Mr. Arisumi questioned the method of payment. Mr. Shimabukuro stated that it could be worked out. Mr. Arisumi suggested that the method of payment be determined by the Chairperson.
- ACTION Unanimously approved as amended (Yuen/Arisumi).
- ITEM F-5: GRANT OF PERPETUAL NON-EXCLUSIVE WATER PIPELINE EASEMENTS FOR THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU, TAX MAP KEY 1-1-63:PORTION 14, MOANALUA, OAHU
- ACTION Unanimously approved as submitted (Kealoha/Arisumi).

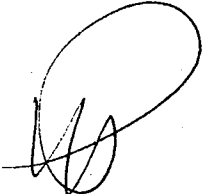
- ADDED
ITEM G-1: FILLING OF ABSTRACTING ASSISTANT III, POSITION NO. 6619, OAHU
 Unanimously approved the appointment of Rebecca L. Kelikupakako as Abstracting Assistant III, Position No. 6619, Oahu (Kealoha/Apaka).
- ITEM H-1: See 2.
- ITEM H-2: See 5.
- ITEM H-3: See 5.
- ITEM H-4: CDUA FOR A WATER PIPELINE, WEST MAUI FOREST RESERVE, MAUI (APPLICANT: NED NAKOA)
 Mr. Evans asked to amend the conditions as follows:
- (1) Condition No. 3 -- modify to read: "Since this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands and for the disposition of State-owned waters;"
- (2) Delete Condition No. 4.
- (3) Delete Condition No. 5.
- (4) Delete Condition No. 9.
- (5) Delete Condition No. 11
- (6) Modify Condition No. 12 to read: "That no work or modification of any kind, other than in the course of normal maintenance, be done on the existing diversion structure that would result in additional water being diverted from Makamakaole Stream;"
- (7) Delete Condition No. 13, which has been incorporated in Condition No. 12.
- ACTION Unanimously approved as amended (Arisumi/Arata).
- ITEM H-5: REQUEST FOR TIME EXTENSION OF CDUA FOR A TELECOMMUNICATION FACILITY AT KAMEHAME RIDGE, OAHU (APPLICANT: GENERAL TELCOURIER, INC.; AGENT: KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA (ATTORNEYS AT LAW))
 ACTION Unanimously approved as submitted (Yuen/Arisumi).
- ITEM H-6: REQUEST FOR TIME EXTENSION OF CDUA FOR A TELECOMMUNICATION FACILITY AT MOKAPU, OAHU (APPLICANT: GENERAL TELCOURIER, INC.; AGENT: KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA, ATTORNEYS AT LAW)
 ACTION Unanimously approved as submitted (Yuen/Arisumi).
- ITEM H-7: See page 2.
- ADDED
ITEM H-8: REQUEST FOR APPROVAL OF OUT-OF-STATE TRAVEL TO ATTEND PLANNING MEETING
 ACTION Unanimously approved as submitted (Yuen/Arisumi).
- ITEM J-1: ISSUANCE OF A 35-YEAR LEASE THROUGH DIRECT NEGOTIATION, SAND ISLAND CONTAINER FACILITY, HONOLULU, OAHU (SEA-LAND SERVICE, INC.)
 ACTION Unanimously approved as submitted (Yuen/Arata).

- ISSUANCE OF NEGOTIATED LEASE, HARBORS DIVISION, PIER 32 TRANSIT SHED, HONOLULU HARBOR, OAHU (HONOLULU AGENCY, INC. (HAI), A HAWAII CORPORATION AND OCEANIC GLOBAL TRADING (OGT), A HAWAII CORPORATION)
- ITEM J-2: _____
- ACTION Unanimously approved as submitted (Yuen/Arata).
- DIRECT SALE OF LEASE OF EASEMENT AT BARBERS POINT HARBOR, BARBERS POINT HARBOR, OAHU (TEXACO, INC.)
- ITEM J-3: _____
- ACTION Unanimously approved as submitted (Yuen/Arisumi).
- ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, NAWILIWILI HARBOR, KAUAI (LADY ANN CRUISES, INC.)
- ITEM J-4: _____
- Regarding questions asked by the Board previously, Mr. Hirano noted that they have received assurances from the applicant that the restrooms are always available to the general public. Concerning the ownership of the submerged lands, he stated they have EO's to the Department of Transportation.
- ACTION Unanimously approved as submitted (Apaka/Kealoha).
- ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, HONOLULU HARBOR, OAHU (HAWAII METAL RECYCLING COMPANY)
- ITEM J-5: _____
- ACTION Unanimously approved as submitted (Yuen/Arisumi).
- ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 40 SHED, HONOLLU HARBOR, OAHU (BLUE HAWAII ENTERPRISES, INC.)
- ITEM J-6: _____
- ACTION Unanimously approved as submitted (Yuen/Arata).
- ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION PIER 42, HONOLULU HARBOR, OAHU (SEA PRODUCTS, INC.)
- ITEM J-7: _____
- ACTION Unanimously approved as submitted (Yuen/Kealoha).
- ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 21, HONOLULU HARBOR, OAHU (MR. HARRY H. SUMIYE)
- ITEM J-8: _____
- ACTION Unanimously approved as submitted (Yuen/Arata).
- RIGHT OF ENTRY, TO CONDUCT SUBSURFACE INVESTIGATIONS AND TOPOGRAPHIC AND HYDROGRAPHIC SURVEYS, KAWAIHAE HARBOR AND KAWAIHAE SMALL BOAT HARBOR, HARBORS DIVISION (ARMY CORPS OF ENGINEERS, PACIFIC OCEAN DIVISION, DEPARTMENT OF THE ARMY)
- ITEM J-9: _____
- Mr. Hirano, in response to a question raised at a previous meeting, stated that a CDUA was required but the Corps had obtained a variance and was assured that approval had been given for all the proposed work.
- ACTION Unanimously approved as submitted (Arata/Arisumi).
- CONSTRUCTION RIGHT-OF-ENTRY, KAHULUI HARBOR, HARBORS DIVISION, MAUI (A & B PROPERTIES, INC.)
- ITEM J-10: _____
- ACTION Unanimously approved as submitted (Arisumi/Arata).
- APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4544 AND 4587, AIRPORTS DIVISION
- ITEM J-11: _____
- ACTION Unanimously approved as submitted (Yuen/Arata).

AJOURNMENT: There being no further business, the meeting was adjourned at 11:17 a.m.

Respectfully submitted,


Geraldine M. Besse
Secretary

APPROVED: 

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