

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

DATE: FEBRUARY 22, 1991
TIME: 9:00 A.M.
PLACE: BOARD ROOM
KALANIMOKU BUILDING, ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

**ROLL
CALL**

Chairperson William Paty called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS: Mr. John Arisumi
Mr. Herbert Apaka
Ms. Sharon Himeno
Mr. Christopher Yuen
Mr. William W. Paty

STAFF: Mr. Ralston Nagata
Mr. W. Mason Young
Mr. Roger Evans
Mr. Gordon Akita
Mr. Henry Sakuda
Ms. Dorothy Chun

OTHERS: Mr. Edwin Watson, Deputy Attorney General
Mr. Peter Garcia, Department of Transportation
Ms. Alice Guild (Items E-1 and E-2)
Mr. William and Charlotte Fuller (Item F-7)
Mr. Guy Kaaiai, Ms. Bonnie Shea Echiberi
(Item F-8)
Mr. Ben Henderson, Mr. Rhett C. Hurless
(Item F-3)
Mr. Paul Lucas (Item H-2)
Mr. Ivan Lui Kwan (Item H-5)
Ms. Gretchen Duplanty, Mr. Tompkins (Item H-4)

MINUTES The minutes of the meeting of February 8, 1991 were approved as circulated.
(Arisumi/Apaka)

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

ITEM E-1 IOLANI PALACE COMPLEX RESTORATION PHASE XIV, HONOLULU, HAWAII

Ms. Alice Guild of the Friends of Iolani Palace said they had been advised that the air conditioning system is failing in the palace and needed to be repaired. Humidity is the worst enemy of the artifacts. The roof is also badly in need of repair.

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM E-2

REQUEST TO PLAN AND CONDUCT 100TH ANNIVERSARY OBSERVANCE OF THE OVERTHROW OF THE HAWAIIAN MONARCHY

Question was raised by Mr. Yuen if there were other groups that want to be the overall coordinator of this event.

Ms. Guild said to her knowledge there is no competition for overall. There are several organizations that have special interest in this event and they would like to be sure that there is an appropriate program. The Friends primary concern is the site. They would like to be able to take the lead by having the permit and then they can call all the interested organizations to a meeting to develop something appropriate.

ACTION Unanimously approved as submitted. (Himeno/Yuen)

ITEM F-7

REQUEST OF WILLIAM AND CHARLOTTE FULLER FOR CONSENT TO MORTGAGE AND EXTENSION OF TERM ON GENERAL LEASE NO. S-3763, LOT 15, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:48

Mr. Arisumi had concerns on the mention of a default in the submittal and he also questioned the need for an additional 21 years for an \$86,000.00 loan.

Mr. Young said that it was the requirement of the bank for the additional number of years. The way the statutes are written, in the event the lessee extends his ag lease, to get financing by way of the Federal Land Bank, they may grant the loan subject to the extension of the lease term.

Mr. Young informed the Board that the Fullers are coming in for a second extension. They are doing some improvement to the leasehold and expanding their business. For the Board's information, he said that they are one of the few properties in Waimanalo that is fully developed and utilized.

Mr. Arisumi then posed the same question to the applicant, of why they needed the 21 years.

Mr. Fuller responded that the loan institute was requiring the additional years. He also stated that with a shorter lease it would put a burden on them to make monthly payments.

Ms. Himeno addressed the Chair, she said that she understands the concerns of Mr. Arisumi as far as the term and length of the lease, but she felt that is something out of the Fuller's control as it is being dictated by the lending institute. They were trying to expand and make a go during these hard economic times.

MOTION Ms. Himeno then moved to approve item F-7, seconded by Mr. Yuen.

Discussion followed on the Federal Land Banking requirements.

Deputy A. G. Watson posed a question to Mr. Young, whether the Land Bank specifically say that to qualify for the additional \$42,000, they are requiring an additional 21 years and is there something in writing from the land bank to that effect.

Mr. Young said that he didn't know if there was something in writing.

**AMENDED MOTION
AND
ACTION**

Ms. Himeno amended her motion, making it subject to getting it established whether the additional 21 years are required. If a lesser term is possible to qualify for the mortgage loan, then the submittal is amended accordingly. There were no objections to the amendment. Motion unanimously carried.

**RESUBMITTAL--AUTHORIZATION TO ACQUIRE THROUGH EMINENT DOMAIN
PROCEEDINGS AN ACCESS AND UTILITY EASEMENT ACROSS GENERAL
ITEM F-8 LEASE NO. S-4906, TAX MAP KEY 2-5-24:22**

Mr. Young gave a brief summary of what took place two meetings ago whereby staff asked the board to consent to the authorization to acquire through eminent domain an access and utility easement to provide an access over and across a lessee of the State at Maunaloa. The purpose was to provide an easement through Mr. Kaaia's lease lot and provide ingress and egress to Mr. Brandt, an adjoining lessee. The Board at that time had requested that the matter be deferred until such time that they had a chance to visit the site. The members visiting the site are now aware that the front portion of the Brandt lot is severely steep and on an incline which makes it pretty much impossible for Mr. Brandt to get to and from his lot. In order to use his lot fully, staff is recommending that an easement over and across Mr. Kaaia's lot .

Present today were Mr. Kaaia and his dad and Mr. Brandt's sister to answer any questions.

EXECUTIVE SESSION Mr. Arisumi requested an executive session on this matter to consult with the Attorney General on questions he had. Seconded by Ms. Himeno, motion carried.

9:35 a.m. - 9:55 a.m.

The meeting was called back to order by Chairperson Paty. He called upon Mr. Young to see if he had anything to add at this point in his presentation.

Mr. Young said he would like to make two amendments under Recommendation in the submittal. One under paragraph A:

To read: "approve the acquisition of the above access and utility easement through negotiation first and, if necessary, through eminent domain proceedings.

Under paragraph B: A proviso should be added in there whereby Mr. Herman Brandt shall reimburse the State of Hawaii for the cost of the acquisition, consultant appraiser and any other administrative fees relating to the acquisition.

Chairperson Paty then addressed both parties that it's regrettable that this couldn't be worked out between the parties concerned. The Board is seeking to try to find a way to address the property values, or the property that are State lands and try to accommodate the interests of both parties.

Mr. Kaaia again said that they were trying to help him (Mr. Brandt), during their own time with their machines. He said that he would need his area for his garage and septic tank.

Ms. Himeno asked if the combination goes through as staff recommends, couldn't you still keep your septic tank where you have it planned. Mr. Kaaiai replied, "No, as I would need the area to come up and turn around whatever it is. It would mean I would have to cut back more into the mountain and it would cost me more."

Ms. Himeno again emphasized that they should consider going to the neighborhood board or some kind of alternative resolution that helps people resolve these things amicably amongst themselves.

Ms. Bonnie Echiberi, sister of Mr. Brandt, said that her brother would be more than willing to go into mediation or negotiation. She said that they were open to anything that can be worked out.

Ms. Himeno suggested that it might be helpful if they met with Dr. Peter Adler or he might refer them to the neighborhood board or he might be able to do it. Mr. Young said he would call Dr. Adler and see if he could recommend someone and he would get back to the Kaaiai's and Brandt's.

Ms. Himeno asked if it would be helpful to defer action until the two parties can meet with Dr. Adler or with one of his people that he recommends.

Mr. Young felt that the Board could take action and the negotiation could be part of the amendment.

ACTION Ms. Himeno moved to approve Item F-8 with staff's amendment and with the understanding that in the term negotiation, the parties are to get together with the recommendation of Dr. Peter Adler. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM F-3 PUBLIC AUCTION OF WATER LICENSE AND DIRECT ISSUANCE OF NON-EXCLUSIVE GRANT OF EASEMENTS AT PIIHONUA, SO. HILO, HAWAII, TAX MAP KEYS 2-5-09:POR. 2, 3 & 4; 2-6-18:POR. 4

Mr. Young informed the Board that they approved a Conservation District Use Application (CDUA) September of 1989 for the purpose of the Wailuku Hydroelectric Plant at the Wailuku River. As part of the condition of the CDUA the applicant has to come before the Board for a formal disposition of a water license with certain easements.

Mr. Young said that staff would like to make several amendments to the submittal before making their recommendation to the Board:

1. Area for non-exclusive easements amended to approximately 38 acres as a result of the deletion of the hydroelectric power plant site.
2. Area for hydroelectric power plant site and water license is about 2.00 acres.
3. Under the heading "Effective Rental" shall read:

The effective annual rental for the hydroelectric power plant site and water license shall be the bid rental or the additional rental, whichever is greater. The additional rental shall be calculated in accordance with the rates established by the Federal Energy Regulatory Commission (18 CFR Chapter 1, Pages 185 and 186) which are as follows:

For the first ten (10) years of the lease term:

- A. 1 mill (\$0.001) per kilowatt-hour for the first 40 megawatt hours (40 million kilowatt hours) of energy produced (energy produced shall be the total amount of energy generated by the licensee which may be sold and/or utilized with the hydroelectric plant operation);
- B. 1.5 mill (\$0.0015) per kilowatt-hour for over 40 gigawatt hours up to and including 80 gigawatt hours of energy produced, and
- C. 2 mill (\$0.002) per kilowatt hour for any energy produced over 80 gigawatt hours.

For the second ten (10) years of the lease term; the additional rental shall be one and one-half (1-1/2) times the rates described in A, B, and C above; and,

For the third ten (10) years of the lease term, the additional rental shall be twice the rates described in A, B, and C above.

Under the heading "Rental Reopenings", the reopening dates are changed to be at the end of the 30th, 40th and 50th years of the lease term.

With that, staff is recommending that the Board approve the two dispositions, (1) for the sale of the lease at public auction covering with the plant site together with the water license and (2) direct award of an easement covering the corridors, penstocks, transmission lines as described in the submittal and subject to the amendments upon approval of the Attorney General's Office giving this authorization to the Chairman to make the amendments.

Deputy A.G. Watson asked for a clarification, "This is water approval for the sale at public auction of a general lease covering the hydroelectric power site together with the structures, including water license and the direct issuance of a non-exclusive easement." Mr. Young responded, "Correct, the only difference is we need to clarify the easements with the structures, is a direct issuance to the successful bidder."

Mr. Ben Henderson addressed the Board, saying he was representing the Wailuku River Hydroelectric Power Company. To answer the Chair's previous question, he said that a gigawatt is a million kilowatt hours of electricity.

Mr. Henderson said they have tried to structure this lease with staff to allow the State and the applicant to share in the project as it begins to grow and generate power. These types of projects are extremely intense from the beginning. As it moves along and generates more revenue, the State will share in that revenue also.

Responding to questions of the Board, Mr. Henderson said that the project, based on the stream flow that's been recorded in the stream to generate approximately between 34 and 35 million kilowatt hours of electricity a year, which would translate into 35,000 a year for the first ten years, 50-52 thousand during the second ten years and up to 70,000 during the third ten years.

Mr. Henderson said they had reviewed the conditions with staff and their concern is to try to put together a lease that they can finance.

Mr. Yuen asked if they are expected to run 4 to 5 megawatts regularly. Mr.

Henderson said, "yes, it would be what they call non-firm power, subject to the amount of stream flows available."

ACTION Mr. Yuen moved for approval with the amended conditions presented by staff this morning. Seconded by Ms. Himeno, motion carried unanimously.

ITEM H-2 **CDUA FOR AGRICULTURAL USE OF A PARCEL AT HAENA, KAUAI, TAX MAP KEY 5-9-3:05; APPLICANT: JAMES K. ZAIMA**

Mr. Evans requested to make several changes to the submittal, on pages 6 through 9. On page 6, delete condition no. 8 as this is not on state land; on page 7, add two additional conditions, 1) Condition No. 15, That the applicant specifically understand that this application does not include any structure or residence; and 2) Condition No. 16, That the applicant be held liable for any harm to the neighboring parcels as a result of activity conducted under this CDUA.

It was discovered at the public hearing that work had been done on the property prior to this Board's approval, as a result, the applicant will be fined \$500.00.

Discussion followed regarding the definition of Condition No. 16. Mr. Yuen mentioned that if the applicant doesn't alter the natural flow onto his neighbors property, I suppose he's liable without the Board saying so but he shouldn't be liable for anything that happened to his neighbor. Mr. Evans clarified that staff is specific in its recommendation that it has to be a result of this activity.

Mr. Paul Lucas, attorney for the applicant, asked to point out that the applicant is going to do the clearing mostly by hand with sickle and machete trying to preserve the area as much as he can. According to his discussion with the applicant, there's not a house within a quarter of a mile and that is a very open area. If in the event that he does harm someone, like if there is water that runs over the land or should a hau bush accidentally fall and hurt someone he would think that the case law here in Hawaii would be sufficient.

The chairperson asked Mr. Evans if there were any questions on this issues.

Mr. Evans replied, "In terms of staff looking at it, people respect the discussion of no intent, but notwithstanding intent, we read in the papers everyday about one person's lot, something occurring, going down to another person's lot, people running to...especially in this county. Where it was built, the size of the slope and having a very difficult time in terms of who is really liable.... people are suggesting the government agencies, notwithstanding hold harmless, are the liable people, bail people that bail people out. So we're looking at it as we indicated to you earlier, we are in a very conservative position."

Chairperson Paty commented that if there's substantial flooding for example, sometimes you get flood conditions and nobody's quite sure whether somebody's land contributed more than it should have to the flooding.

Deputy A.G. Watson referred to condition no. 7, indemnification and hold harmless pertains to the State, not to adjoining neighbors and that should be spelled out a little more and strengthened. When it goes to the A.G.'s office they will strengthen it because the agreed can indemnify and hold the State harmless not only as a result of the granting of this, it could be the result because of their actions, damages caused to their neighbors and we're stuck for it for issuing the permit. That is reason

the A.G.'s office usually tightens up the language. However, counsel is correct, whatever the law allows, so long as the neighbors can prove that their damage was the direct results of their neighbors work, the law allows them. There's no harm in putting it in, as you stated, to the extent allowed by law. If the law doesn't allow it, it doesn't allow it.

Mr. Yuen questioned Mr. Evans on the amount of the fine. Mr. Evans replied that this application was being processed as a before the fact until the evening of the public hearing when it was made known that some work had been started.

Mr. Lucas said that their client had received a letter from the Historic Preservation Office. It basically evolved out of a misunderstanding for which he apologized. His client is very strapped for funds now. He had agreed to do an archaeological survey but right now the area is thickly covered with hau bushes. In order to assist the surveyor, he wanted to cut his costs as much as possible and so he was asking if the area could be cleared before they send out their archaeological team. Right now it's about 80% hau bushes. His client wanted to preserve his property also and has worked out an agreement with the staff archaeologist of the Historic Preservation Office at DLNR that he would hand clear the area, he would not use any machines or heavy equipment. The point was that he received permission from the archaeologist to hand clear the area so when he appeared at the public hearing he thought it was okay and said yes, he's working on the property.

Mr. Evans added that he could elaborate a little on it. Yes, we have to recommend the fine. No, OCEA was never involved in any conversations between the applicant and our Historic Sites people. Yes, we understand that conversations did occur and someone apparently authorized the individual to go and do this work, that was in their view not in the functional responsibilities of the Historic Preservation Program and they have been informed.

Ms. Himeno said that it appears that the applicant was misled to believe he had received the State's permission even though the person he talked to didn't have the authority. She said that it did not seem fair that the applicant should be fined for that violation.

Mr. Evans said that they did indicate to the Division of Historic Preservation that they needed to bring this violation to the Board. At the same time, they would insure that the Board would be made aware of the circumstances.

Deputy A.G. Watson asked Mr. Evans if OCEA allowed for maintenance clearing without getting a permit? Does the extent of the work done qualify following the realms of the landowner merely clearing a path so he can go onto the land to see what's there?

Mr. Evans responded that he could not answer that. ~~Staff is coming to the Board~~ based solely upon the statements at the public hearing. There was no follow up on their part to determine exactly what was done.

Mr. Apaka asked Mr. Evans if he had received any correspondence from the applicant regarding this violation. Mr. Evans said, "no, he didn't think so." He said that he had seen some correspondence from the Historic Preservation Program.

Mr. Apaka said he had received a call from the applicant before he left Kauai regarding the fine for the violation. The applicant informed him that he had received

authorization from the department to start work and Mr. Apaka agreed with Commissioner Himeno that it's very difficult to fine someone when they had gotten some kind of approval. But then, the statutes call for some kind of fine.

Mr. Evans informed the Board, because of this discussion of the misunderstanding, the Board could mitigate the fine to '0' because of the miscommunication.

Responding to Mr. Yuen's question, Mr. Evans said if the applicant asked to clear part of his land for an archaeologist to look at it, generally they would allow it under a Temporary Variance as it would be quicker and less time consuming. It would allow a person on the property to do the work for a subsequent CDUA.

Chairperson questioned the condition of no structures. If the applicant wanted to keep some tools there, would he be allowed a tool shed.

Mr. Evans said by structures, staff meant a tool shed. He said that if a tool shed was part of the application, staff would probably have approved it but it was not included in the application. The applicant indicated at the public hearing that he did not want to do anything other than what he said in his application.

Mr. Lucas said that in the application his applicant does state that he plans to use the area as a family retreat, picnics and different stuff like that. They're not talking of a commercial operation. He has less than two acres and plans to keep it as a family retreat to farm taro and unchoy and in the application as part of the family retreat is going to envision certain structures. A tool shed is number one. He's going to be carrying his tools all the way to the patch and back, to him it just seems like a burden.

Mr. Yuen informed him that they probably would not have a problem approving a tool shed but he has not included it in his application.

Mr. Lucas said he has not put in specific terms, like design, dimensions as yet. He understood that condition no. 11 mentions that he shall submit copies of construction plans and specifications of exactly what he wants.

Deputy A.G. Watson informed him that there may be a difference of opinion. A tool shed has played an important role in CDUA applications. If it weren't in there, their office stepped in because there was a lot of community flack about tool sheds being placed in certain type of agricultural areas.

Mr. Evans mentioned they've had a lot of difficulty in the past with tool sheds. In many cases it starts out as a tool shed and ends up being living quarters.

Mr. Lucas said that his applicant is specifically not going to build a house on this property. Not for living quarters as stated in the CDUA. He understands that any plans for approval of any structure on his property, regardless if it's for irrigation or a tool shed will have to be approved under condition 11.

Mr. Apaka addressed his question to Mr. Evans, if this were correct, that the applicant could come back with an application for a tool shed.

Mr. Evans replied that if he wanted a tool shed at some time in the future, the route he could take would be to have his permit amended. A tool shed was clearly not included in this application and it was never discussed at the public hearing.

ACTION Mr. Apaka moved that the violation be mitigated to 'zero' as the applicant had no intentions of violating the statutes of the Department of Land and Natural Resources and that the application as amended be approved. Motion was seconded by Mr. Arisumi.

Mr. Evans said the wording of the amendment will be subject to the approval of the Attorney General's Office.

The Chairperson called for the question and motion carried unanimously.

Discussion for Clarification Mr. Lucas addressed the Chair requesting a clarification of Condition No. 6 which says, "The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, ..." He felt this was very vague in terms of what he has to comply with. He asked if there were some way the department could add in, like a notice provision to apprise him of whatever violation he is in and have a notice and an opportunity?

Mr. Evans informed him that was a standard condition that has arisen as part of the Administrative Rule. The Administrative Rule is part of a public policy document. That condition with that wording goes on every application this Board approves. For staff to discuss any change in that wording would require that we change our Administrative Rule, go through a series of public hearings and then come back to the Board. That is a standard condition and the burden is on the applicant to comply with all applicable laws.

Deputy A.G. Watson added, "I believe the point you raised, is a matter of course. If the landowner does fail to comply with one of them, he would be informed by the State, one way or another that there is this violation and to correct it. In other words, that's the only way you would know that you're violating something in general. It's a requirement in all State documents."

REQUEST FOR RECONSIDERATION ON CONDITION TO GRANTING OF PERMIT EXTENSION AGREED TO BY COMMUNITY REPRESENTATIVES AND MINAMI GROUP (USA), INC., TAX MAP KEY 4-5-42:1 & 6; APPLICANT:

ITEM H-5 MINAMI GROUP (USA), INC.

WITHDRAWAL Mr. Evans addressed the Board saying that staff is making a request to withdraw Item H-5 from today's agenda.

REQUEST FOR TIME EXTENSION ON CDU PERMIT FOR A SINGLE FAMILY RESIDENCE AND OTHER PROPERTY DEVELOPMENT, ROUND TOP, HONOLULU, OAHU, TAX MAP KEY 2-5-16:01; APPLICANT: RANDOLPH GALT, DONALD TAY KONG HO AND MILDRED QUON HO; AGENT: GRETCHEN DUPLANTY, DUPLANTY LTD.

ITEM H-4

Mr. Evans explained that the applicant has had difficulty in commencing work on the property within one year and completing the work in three years. Correspondence has been received making the request. After reviewing the rationale, staff felt it was reasonable and are recommending an approval of a one year time extension to initiate construction. However, the date to complete construction would be set at January 12, 1993, and that the applicant basically comply with all the other permit conditions.

Ms. Gretchen Duplanty, agent for the applicant, said she signed the request for the

the extension. Also present with her today, are the architect who is doing the plans to be completed in two weeks and Mr. Tompkins who will be constructing the home. She said that she had seen the conditions and had no problems with the recommendations.

ACTION Unanimously approved as submitted. (Apaka/Himeno)

ITEM D-1 **EXTENSION OF CONSULTANT SERVICES FOR GEOTHERMAL AND CABLE DEVELOPMENT PERMITTING PROGRAM**

Mr. Akita presented Item D-1 to the Board.

In response to the Chair, Mr. Akita said the consultant would be assisting in the conducting of meetings, advising staff regarding geothermal permitting activities and also advising the Governor as well as the chairperson and various agencies on the matters. He also coordinates between the Federal, State and County organizations in matters regarding geothermal and cable permitting uses.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM E-1 **IOLANI PALACE COMPLEX RESTORATION PHASE XIV, HONOLULU, HAWAII**

See Page 1 for Action.

ITEM E-2 **REQUEST TO PLAN AND CONDUCT 100TH ANNIVERSARY OBSERVANCE OF THE OVERTHROW OF THE HAWAIIAN MONARCHY**

See Pages 2 for Action.

ITEM F-1 **TRANSMITTAL OF DOCUMENTS**

Item F-1-a Termination of Revocable Permit No. S-6268 to Mr. Walter Kim and Issuance of New Revocable Permit to Mr. Keith George, Kahana Valley, Kahana, Koolauloa, Oahu, Tax Map Key 5-2-01:Por. 1

WITHDRAWN Mr. Young requested that F-1-a be withdrawn. Permittee is delinquent in monthly rental payments.

Item F-1-b Assignment of Sublease Interest, Grayson Inouye, Assignor, to Bank of Hawaii, Assignee, General Lease No. S-4306, Waiakea, So. Hilo, Hawaii, Tax Map Key 2-2-58:4

Item F-1-c Issuance of Revocable Permit to Steven J. and Carol Jean Franco, Government Roadway Lot at Waiohuli-Keokea Homesteads, Keokea, Makawao (Kula), Maui, Tax Map Key 2-2-03:Por. 1

Item F-1-d Issuance of Revocable Permit to Norman M. Hill, Portion of Government Beach Reserve At Waiohuli-Keokea, Wailuku, Maui, Tax Map Key 3-9-07:Por. 5

Item F-1-e Assignment of General Lease No. S-4978, Lot 12, Kokee Camp Site Lots, Waimea (Kona), Kauai, Tax Map Key 1-4-03:10

Should the Board consent to the assignment of Item F-1-e, Mr. Young requested an amendment be made. The assignees, Taubman would like to hold it as tenants

by the entirety rather than joint tenants. David Scott McCaffery, he is unmarried and he will have 10% of the leasehold interest and both the Taubman/Freeman and McCaffery will hold it as tenants in common. There is an assignment of lease from the Hees to three individuals, one pair is husband and wife and one unmarried. Husband and wife wish to hold it as T/E and the single individual wishes to hold it as Tenants in Common and all hold it as Tenants in Common.

Item F-1-f Issuance of Revocable Permit to Ralph E. L. and Mary M. Hertz, Government Land of Mooloa, Mooloa, Makawao, Maui, Tax Map Key 2-1-05:77

Item F-1-g Issuance of Revocable Permit to GTE Hawaiian Telephone Company, Government Land of Upper Pouhala, Waikele, Ewa, Oahu, Tax Map Key 9-4-12:Por. 3

Item F-1-h Issuance of Revocable Permit to Mrs. Shigeko Makino for Recreational Boat Pier, Submerged Land at Kaneohe Bay, Kaneohe, Koolaupoko, Oahu, Tax Map Key 4-6-01:Seaward of 10

Item F-1-i Assignment of General Lease No. S-5073, Lot 38, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, Tax Map Key 1-4-02:43

WITHDRAWN Mr. Young requested that this item be withdrawn. Lessees are delinquent in lease rental payments.

ACTION Mr. Yuen moved to approve Items F-1-b, F-1-c, F-1-d, F-1-f, F-1-g, F-1-h as submitted and F-1-e as amended. Seconded by Ms. Himeno, motion carried unanimously. (Items F-1-a and F-1-i were withdrawn.)

ITEM F-2 SELECTION OF LESSEE FOR DIRECT AWARD OF LEASE, GOVERNMENT LAND OF OPIHIPAU AND HUKIAA, NO. KOHALA, HAWAII, TAX MAP KEY 5-5-03:4, 5 AND 6

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM F-3 PUBLIC AUCTION OF WATER LICENSE AND DIRECT ISSUANCE OF NON-EXCLUSIVE GRANT OF EASEMENTS AT PIHONUA, SO. HILO, HAWAII, TAX MAP KEY 2-5-09:POR. 2, 3 & 4; 2-6-18:POR. 4

See Page 6 for Action.

ITEM F-4 DIRECT SALE OF REMNANT AT WAIAKEA, SO. HILO, HAWAII, TAX MAP KEY 2-4-10:RAILROAD RIGHT OF WAY

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM F-5 LEASE OF STORAGE SPACE FOR DEPARTMENT OF HEALTH AT KAHULUI, MAUI

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

ITEM F-6 GRANT OF NON-EXCLUSIVE EASEMENT FOR SEAWALL AT KAHALUU, OAHU, HAWAII, TAX MAP KEY 4-7-10:33

After Mr. Young's presentation, Ms. Himeno asked how was the state handling the seawalls on the occasions where they find out they are encroaching on state land.

Have we been dealing with them differently?

The Chairperson said that there were different circumstances, in certain ways and where they are.

Mr. Young responded that at times the owners were made to take them down if it restricted public access along the beach where there's not enough sand.

In this instance it's mostly mud flats and people would not get to that area.

MOTION Moved for approval by Ms. Himeno, seconded by Mr. Apaka.

DISCUSSION Deputy A.G. Watson addressed Mr. Young with the question, "In this particular case, since the seawall was built in the 1930's, to avoid problems like they've had in other similar cases, did you verify, since the seawall was built on state land in the '30's, is there a strip of filled land between his deed line and the seawall?"

Mr. Young answered that will be part of the easement.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

ITEM F-7 REQUEST OF WILLIAM AND CHARLOTTE FULLER FOR CONSENT TO MORTGAGE AND EXTENSION OF TERM ON GENERAL LEASE NO. S-3763, LOT 15, WAIMANALO AGRICULTURAL SUBDIVISION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-10:48

See Page 2-3 for Action.

ITEM F-8 RESUBMITTAL--AUTHORIZATION TO ACQUIRE THROUGH EMINENT DOMAIN PROCEEDINGS AN ACCESS AND UTILITY EASEMENT ACROSS GENERAL LEASE NO. S-4906, TAX MAP KEY 2-5-24:22

See Page 4 for Action.

ITEM F-9 KAUAI HILTON REQUEST FOR RIGHT-OF-ENTRY TO MAINTAIN PORTION OF NUKOLII BEACH, WAILUA, KAUAI

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM F-10 LEASE--PUBLIC AUCTION, LOT 3, BRODIE LOTS, HANAPEPE, WAIMEA, KAUAI, TAX MAP KEY 1-8-08:50

ACTION Unanimously approved as submitted. (Apaka/Arisumi)

ITEM F-11 RESUBMITTAL--STAFF RECOMMENDATION TO ADOPT GUIDELINES FOR DISPOSITION OF STATE LANDS STATEWIDE TO HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR HOUSING DEVELOPMENT PROJECTS

Mr. Young said that there were several interpretations with respect to the entitlement. The Attorney General's office is trying to work this out and it may have to petition the circuit court for instructions as to how to interpret and for the disbursements to OHA as well as to any other agency.

WITHDRAWN Staff requested that this item be withdrawn.

**SELECTION OF PLANNING FIRM TO PREPARE A STRATEGIC
MANAGEMENT PLAN FOR STATE-OWNED AGRICULTURAL LANDS,
STATEWIDE**

ACTION Unanimously approved as submitted. (Arisumi/Himeno)

**REQUEST TO EXTEND CONTRACT FOR COORDINATOR OF THE
STRATEGIC MANAGEMENT PLAN**

Mr. Young asked the Board to extend the contract for the coordinator of the Strategic Management Plan. He also stated that Mr. Jack Keppeler was doing a very good job.

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

**APPROVAL TO ENGAGE THE SERVICES OF A CONSULTANT FOR A
SOFTWARE MAINTENANCE AGREEMENT**

At this time Mrs. Furukawa introduced Mr. Carl Watanabe, Deputy for Conveyances on an emergency hire basis.

Mrs. Furukawa requested approval to engage the services of a consultant to assist their office by providing the technical expertise in software maintenance.

ACTION Unanimously approved as submitted. (Himeno/Apaka)

**CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR MULTIPLE
POINT BOAT MOORING SYSTEM AT THE MOLOKINI SHOAL MARINE LIFE
CONSERVATION DISTRICT (SUBMERGED LAND IN NEARSHORE WATERS
AT MOLOKINI ISLAND); APPLICANT: DIVISION OF AQUATIC RESOURCES,
DEPARTMENT OF LAND AND NATURAL RESOURCES**

ACTION Unanimously approved as submitted. (Arisumi/Apaka)

**CDUA FOR AGRICULTURAL USE OF A PARCEL AT HAENA, KAUAI, TAX
MAP KEY 5-9-3:05; APPLICANT: JAMES K. ZAIMA**

See Page 9 for Action.

**CDUA FOR STORAGE SHED, FENCING, DRIVEWAY AND OTHER PROPERTY
IMPROVEMENTS, KUMUELI, MOLOKAI, TMK 5-6-10:24; APPLICANT:
MITSUO & GENEVIEVE SHITO**

Mr. Evans said that the applicant came in and requested a storage, fencing, driveway and other property improvements. Eventually they expect to build a house on it under the non-conforming aspect.

During the application process, staff received comments and reviews from the divisions and were informed there were violations. Mr. Evans had photos to show what had transpired on the property to show the Board. Three different agencies informed them of a violation.

There are four different violations consisting of illegal clearing of trees and ground

cover, illegal grading and construction and access driveway, potential illegal construction of fence with gate and illegal construction of storage shed. At \$500.00 per violation, this totals to \$2,000.00. Staff is recommending that the applicant remove the things from the properties and based upon this at this time that the Board deny the application.

Mr. Evans said that staff would like to re-establish or re-affirm some guidance to them from the Board as the Board takes this under consideration. There will be future cases and should the future cases be where you have a violation, deny the application, remove the illegal structures and then come in with a clean application. Or when there is a violation should there be a fine and approval after-the-fact. Staff wants to be consistent approaching these types of situations in the future.

Ms. Himeno said that it seems kind of a waste to make them tear it down and then they come back in with another application and assume the Board gives an approval, they can put it up again.

Mr. Evans remarked that in the past, they have gone both ways. He informed the Board that were this application free of any violations, staff have would recommended approval of this application. The situation here is not recommendation for denial. They're just asking for some guidance.

Mr. Arisumi said he agreed with Ms. Himeno's comments. For us to tell these people to tear down something that is already up and have them come in with a new application to put it up again is kind of ridiculous. He said that he understood where staff is coming from that they're trying to do their job, he has no qualms about that. He then asked how big an area are we talking about.

Mr. Evans replied, "14,000 square foot parcel and it's fenced. The storage shed is one that's pre-fab metal type you get at a department store."

Mr. Arisumi suggested that the staff look at the construction and if it's something that can remain there, then I think we should not ask them to demolish what they did and secondly, he realizes there is a violation and there should be a fine and these people should be made aware that they've been doing things that they shouldn't do.

MOTION Mr. Arisumi entertained a motion that staff inspects the structure and if the structure is something that can remain there, and reduce the fine to \$500.00. Motion was seconded by Ms. Himeno.

DISCUSSION Mr. Yuen said that he guessed he would be concerned about not so much this case, but in general, that because it is cumbersome to make an application to do some of these small projects that people want to do, they may develop a philosophy of go and do it and if you get caught, well, you're going to have to pay a fine, then you'll make an application. He also felt that we shouldn't be afraid to inform someone to remove something if it is a use that the Board wouldn't approve.

Mr. Evans said he appreciated having this kind of discussion with the Board. He mentioned that there has been a lot of criticism from the public.

Chairman Paty commented that he thought more of what we're saying too is that it depends on the situation, if you had a highly developed ecosystem and then you

came in and did something and violated the stream diversions or got involved in destroying archaeological sites and what have you, then each case has a different thing. You might say take it all down or start over. I don't think the staff should feel that we are looking the other way and letting people do their thing.

Deputy A.G. Watson commented that their office has encountered difficulty in the past, collecting fines imposed on an after-the-fact application. He suggested that the approval should be contingent upon the fine being paid within 30 or 60 days on an after-the fact approval or any approval.

Mr. Evans stated that at times it costs our A.G. more than \$500 to go out and collect the \$500 fine.

Mr. Arisumi said that he wants to make it very clear to the staff that they are doing a very good job. He did not want his recommendation to indicate otherwise to the staff. He feels this applicant did this unintentionally and he felt that we should find a way that the fine is collected before an approval is given.

Mr. Evans said basically regarding the fine in Part A, if the Board allows it to stay, staff has 12 conditions, they are the standard conditions and the added condition no. 8 would be the proposed storage shed, used for storage only, not for residential camping dwelling; applicant will notify our Molokai Office of DOCARE, thirty (30) days prior to completion of the proposed storage shed.

ACTION There being no further discussion the Chairperson called for the question and motion to approve Item H-3 as amended carried unanimously.

ITEM H-4 REQUEST FOR TIME EXTENSION ON CDU PERMIT FOR A SINGLE FAMILY RESIDENCE AND OTHER PROPERTY DEVELOPMENT, ROUND TOP, HONOLULU, OAHU, TMK 2-5-16:01; APPLICANT: RANDOLPH GALT, DONALD TAY KONG HO AND MILDRED QUON HO; AGENT: GRETCHEN DUPLANTY, DUPLANTY LTD.

See Page 10 for Action.

ITEM H-5 REQUEST FOR RECONSIDERATION ON CONDITION TO GRANTING OF PERMIT EXTENSION AGREED TO BY COMMUNITY REPRESENTATIVES AND MINAMI GROUP (USA), INC., TMK 4-5-42:1 & 6; APPLICANT: MINAMI GROUP (USA), INC.

See Page 9 for Action.

ITEM J-1 RESTAURANT AND BEVERAGE CONCESSION LEASE, HILO INTERNATIONAL AIRPORT, HAWAII

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ITEM J-2 RIGHT-OF-ENTRY, HONOLULU INTERNATIONAL AIRPORT, SOUTH RAMP, OAHU (PACIFIC AVIATION SERVICES, INC.)

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4745, ETC.,
AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Himeno/Yuen)

ITEM J-4 APPROVAL OF CONSENT TO SUBLEASE, HARBORS DIVISION, PORTIONS
OF HARBOR LEASE NO. H-90-4 HELD BY HAWAII STEVEDORES, INC.

ACTION Unanimously approved as submitted. (Himeno/Arisumi)

ITEM J-5 ISSUANCE OF REVOCABLE PERMIT NO. HY-91-057, HIGHWAYS DIVISION,
WAIAKEA, SOUTH

ACTION Unanimously approved as submitted. (Yuen/Himeno)

ADJOURNMENT There being no further business, the meeting adjourned at 11:48 a.m.

Respectfully submitted,


Dorothy Chu
Secretary

APPROVED FOR SUBMITTAL



WILLIAM W. PATY, Chairperson

dc