

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

DATE: October 25, 1996
TIME: 9:00 a.m.
PLACE: Board Room
Kalanimoku Building, Room 132
1151 Punchbowl Street
Honolulu, Hawaii 96813

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS:

Mr. William Kennison	Mr. Colbert Matsumoto *
Ms. Lynn McCrory	Mr. Michael Nekoba
Mr. Christopher Yuen	Mr. Michael D. Wilson

STAFF:

Mr. Dean Uchida, Land	Mr. Michael Buck, DOFAW
Mr. David Parsons, DOBOR	

OTHERS:

Mr. William Tam, Esq. Deputy Attorney General	Mr. Peter Garcia, State Department of Transportation
Mr. Harold Edwards, Molokai Ranch, D-8	Mr. William Kalipi, Sr., Molokai Resident, D-8
Ms. Colette Machado, Molokai Resident, D-8	Mr. Al Lieberman, Peregrine Fund, C-1
Mr. Steve Oliver, County of Kauai, D-2	Mr. Ken Kitabayashi, County of Kauai, D-2
Mr. Kurt Bosshard, Esq., D-2	Ms. Pat Tummons, D-2
Ms. Michelle Matson, D-7	Mr. Peter Nakamura, Princeville Corp., D-1
Mr. Brian Takeda, R.M. Towill, D-5	Mr. Warren Ho, applicant, D-5

* Member Matsumoto arrived during discussion on Item C-1

Business:

ITEM D-8 REQUEST FOR CLARIFICATION/RECONSIDERATION ON A PRIOR BOARD ACTION OF SEPTEMBER 13, 1996 FOR PUBLIC ACCESS AND DEDICATION OF A ROAD TO HALE O LONO HARBOR, MOLOKAI, HAWAII, TMK: 5-1-2:12, 23 AND 30 (TO BE DISTRIBUTED)

In response to questions by Member Yuen regarding the proposed access and its maintenance, Mr. Uchida stated that the roadway would be a "cut" or "bladed" road similar to the type of road currently used by Molokai Ranch. Mr. Uchida further stated that the Land Division was currently working with the Forestry Division towards an agreement to maintain the road on an "as needed" basis.

Mr. Harold Edwards, representing Molokai Ranch, stated that the Ranch was satisfied with the agreement.

Mr. William Kalipi, Sr. thanked the Board for listening to the community's concerns regarding access to the harbor. He further assured the Board that the community accepted the twice monthly/weekend, daylight hour access for the remainder of the current lease, stating that this compromise solution would allow the community the chance to form education and conservation committees to help manage the area.

Ms. Colette Machado thanked the Board and the Department, and expressed her appreciation to the State for accepting the risk of taking control of the management of the harbor. Ms. Machado assured the Board members that the community would continue to work with the State to maintain the Hale O Lono area.

By a unanimous vote of the five members present, Item D-8 was approved as submitted (Kennison/Nekoba).

ITEM C-1 REQUEST FOR APPROVAL OF A CONTRACT WITH THE PEREGRINE FUND TO PROVIDE SERVICES TO OPERATE ENDANGERED BIRD CAPTIVE PROPAGATION FACILITIES ON MAUI AND CONDUCT RELATED FOREST BIRD PROPAGATION PROJECTS THROUGHOUT THE STATE

Mr. Al Leiberman of the Peregrine Fund summarized the ongoing forest bird propagation projects, and discussed with Board members the successes, problems, and challenges faced by the State in saving Hawaii's endangered forest birds.

By a unanimous vote of the six members present, Item C-1 was approved as submitted (Yuen/Nekoba).

ITEM D-2 ENFORCEMENT: UNAUTHORIZED WORK ON STATE-OWNED
CONSERVATION DISTRICT LAND AT WAIALUA, KAUAI, TMK: 3-9-
02:04

Mr. Uchida presented the Board with the background leading up to the subject enforcement action: In 1995, the County of Kauai began reconstruction of a rock revetment. In August, 1996, after discovering that the reconstruction was makai of the certified shoreline, the Army Corps of Engineers issued a cease and desist order. In September, 1996, the DLNR also issued a cease and desist order for unauthorized work on conservation lands. Mr. Uchida stressed to the Board that the issue before them was the enforcement action on the violation and not a decision on the Conservation District Use Application (CDUA). In regards to the enforcement action, Mr. Uchida recommended two amendments to the staff submittal:

That condition #3 require a shoreline survey instead of a shoreline certification, and that condition #4 require the county to comply with "conditions one (1) and two (2) or three (3)

Member Matsumoto further requested that the board action set out a 90-day timetable for the applicant to choose to apply for the CDUA or restore the beach.

In response a question by Member Kennison, Mr. Steve Oliver, Chief Engineer for the County of Kauai, stated that the deadline for the FEMA funding was currently March 31, 1997, but that the county had requested an extension. Mr. Oliver further stated, in response to Member Matsumoto, that the county did, in fact, intend to apply for the permit to rebuild the revetment.

Mr. Kurt Bosshard, a daily user of the subject beach fronting the Wailua Golf Course, recounted to Board members his involvement with the County of Kauai regarding the revetment. (A packet of photos and exhibits containing correspondence and a chronology of events was distributed to each Board member). Mr. Bosshard testified that the County was fully aware that they were violating the terms of their original permit during the revetment reconstruction, and, in fact, had violated the terms and conditions of their permit during construction of the original revetment. Mr. Bosshard displayed photographs showing 1) rocks placed within the wash of the waves, 2) a road built makai of the certified shoreline, 3) construction debris (concrete, rebar, etc.) placed on the beach, and 4) dirt and asphalt used as fill material for the beach. Mr. Bosshard expressed his feeling that a "rush was being put on" by government agencies in order to qualify for FEMA funding. He noted indications in various correspondence that the impending CDUA would be processed as an emergency permit and rushed through the permitting process. Member McCrory assured

ITEM D-2 (cont.)

Mr. Bosshard that expediting the permit in order to meet the FEMA funding deadline would not mean that the Board and the Department would not thoroughly, and carefully consider all aspects of the CDUA; she assured Mr. Bosshard that, if the application was not adequate in any way, it would not be approved.

Mr. Bosshard further requested that the County be ordered to restore the beach to its original condition before a shoreline survey is conducted, and that the Board defer any decision on the enforcement action until a hearing was held on the island of Kauai.

Chairperson Wilson, responded that the Board would probably not be inclined to delay the enforcement action due to the fact that many of the issues which needed to be resolved would be addressed during the CDUA process; the CDUA, in turn, could not be considered until the enforcement issue was settled.

Members of the Board requested that Mr. Oliver and Mr. Ken Kitabayashi address some of the photographs provided by Mr. Bosshard.

Mr. Oliver recounted that, at the time the original revetment was constructed, the County was unaware that they were outside of the county's jurisdiction. Mr. Oliver admitted that the revetment was not fully completed, and that, since its construction, rubble and fill material was placed behind the rocks in an attempt to stop the erosion; he further admitted that the rubble was "not aesthetically acceptable and should be removed."

Mr. Oliver testified that, when the county had gone to FEMA to request reconstruction of the revetment, FEMA had ordered the county to move the revetment from its original location at elevation 3' to elevation 0'. He stated that the county was unaware, at the time, that construction was seaward of the 1986 certified shoreline. Mr. Oliver further contended that had the cease and desist orders not been issued, the rocks placed below the toestones, as well as all of the rubble would have been removed. He noted that the Corps of Engineers ordered that the toestones be left in place for fear of further harming the environment.

Questions then focussed on the placement of the "new" revetment toestones and the extent of the county's knowledge that the stones were being placed makai of the certified shoreline.

ITEM D-2 (cont.)

Member Yuen stressed the fact that the county, regardless of whether it was working off of an old permit, should have been aware that it could not start construction in the "wash of the waves" without first checking with the Corps of Engineers and the State. He noted that it should have been obvious to the county that area onto which the stones were being dropped was occasionally under water. Member Yuen also questioned the county's contention that it was unaware that the original revetment was constructed makai of the certified shoreline; he noted a 1987 letter indicating that State enforcement officers alerted the county of an apparent violation.

Members Matsumoto and McCrory expressed their wish that all of the stones and rubble be removed from the beach. Mr. Oliver stated that, although the county would also like to see the stones and rubble removed, an ocean engineer would have to assess whether removing the stones and rubble would further harm the ocean environment.

The Board questioned whether further county permits (e.g. SMA permits) would be required before work could be done in the area. Member Matsumoto expressed his concern that the rocks and rubble be removed as expeditiously as possible. Mr. Kitabayashi stated that, although they had nothing in writing, indications were that further county permits were not necessary.

Ms. Pat Tummons alerted the Board to a policy on shoreline hardening released by the Office of Environmental Quality Control, and requested that any consideration of the forthcoming revetment CDUA be done in light of the policy.

Board members discussed the issue of the fine; Chairperson Wilson questioned whether the amount of the fine was too low in light of violations committed by the County. Member McCrory stated that the fine should be determined after a beach management plan is implemented. In response to the Board's question, Mr. Bill Tam, Deputy Attorney General, stated that, as long as the Board determines that a violation has occurred and a fine is to be assessed, the amount of the fine can be made subject to a larger State policy, i.e. the beach management plan.

Member McCrory therefore moved to accept the staff's recommendation with amendments:

- 1) That the County remove all material (toestones, rocks, concrete, rubble, and fill) on the beach makai of the access road;

ITEM D-2 (cont.)

- 2) That the County comply with condition #1, and condition #2 or #3 within 90 days;
- 3) That, should the county decide to construct a revetment, a CDUA, current shoreline survey, and Coastal Engineering Report be submitted to DLNR;
- 4) That, in the event of failure of the county to comply with condition #1, and condition #2 or #3 within 90 days, the matter shall be turned over to the Attorney General for disposition including all administrative costs;
- 5) That the county be assessed a fine for the unauthorized use of State-owned lands, and a fine for the unauthorized use of Conservation District lands, both amounts to be determined following the adoption of a state-wide management policy.

The motion was seconded by Member Matsumoto. By a unanimous vote of the six members present, Item D-2 was approved as amended (McCrorry/Matsumoto).

ITEM D-7 ISSUANCE OF GOVERNOR'S EXECUTIVE ORDER TO WITHDRAW LANDS FROM GOVERNOR'S EXECUTIVE ORDER NO. 3261 AND RESET ASIDE TO THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PARKS AND RECREATION, KAPIOLANI PARK, WAIKIKI, OAHU, TMK: 1ST/3-1-31:03 (PORTION)

Ms. Michelle Matson testified in support of the intent of the transfer but requested that the Board define the metes and bounds of the parcel before approving the transfer. (Written testimony submitted).

In response to Member Matsumoto's question regarding the "practical effect" of the transfer, Mr. Uchida responded that the transfer adhered to the court decision requiring that a certain amount of lands be kept in the Kapiolani Trust for park purposes.

By a unanimous vote of the six members present, Item D-7 was approved as submitted (Matsumoto/Kennison).

ITEM D-6 GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR PAIR GAIN AND CROSS CABINETS PURPOSES, KAHENA, KEEKEE, PUNA, HAWAII, TMK: 1-2-09:3

No public testimony was presented.

By a unanimous vote of the six members present, Item D-6 was approved as submitted (Yuen/Kennison).

ITEM D-1 REQUEST FOR AUTHORIZATION TO ACCEPT THE DONATION OF 1,500 ACRES, MORE OR LESS, OF LAND SITUATE AT HANAIEI, HALALEA, KAUAI, HAWAII, TMK: 4TH/5-3-10:POR OF 2, LOT 3, FROM PRINCEVILLE CORPORATION AND SUBSEQUENT SET ASIDE TO HAWAII STATE PUBLIC LIBRARY SYSTEM FOR LIBRARY PURPOSES

Mr. Peter Nakamura, representing Princeville Corporation, requested the Board's clarification of staff's recommendation A(2). He testified that the staff's submittal seemed to imply that Princeville must construct the off-street parking improvements instead of merely providing adequate land space for such improvements. Mr. Nakamura submitted a site map of the proposed library outlining the approved off-street parking area. (Written testimony submitted).

Board members agreed that Princeville had complied with the necessary County requirements by providing the land, and recommended the deletion of staff recommendation A(2).

By a unanimous vote of the six members present, Item D-1 was approved as amended (McCrorry/Nekoba).

ITEM D-5 CONSERVATION DISTRICT USE APPLICATION (OA-2815) FOR SMALL-SCALE FARMING AND PASTURAGE OF TEN (10) HORSES OR COWS ON AN AREA OF FOUR (4) ACRES AT KALAUAO, OAHU, TMKS: 9-8-11:01 and 9-8-34:120

Mr. Uchida stated that the Forestry Division had expressed the concern that the size of the parcel would not be large enough to sustain the number of livestock proposed. Mr. Uchida therefore requested that a condition #13 be added to the staff recommendation, requiring the applicant to submit a livestock management plan approved by the Division of Forestry and Wildlife prior to putting any cattle or horses on to the property.

Member McCrorry expressed her concern that the composting and waste disposal issue had not been dealt with in the submittal. Mr. Uchida responded that a recommendation requiring the applicant to get the Department of Health's approval of a waste disposal plan could be included in the board's action. Member McCrorry further requested clarification of condition #11 regarding the nullification of the permit. After some discussion with the deputy attorney general, members decided to keep the current phrasing of the condition, voiding the permit as soon as a violation occurs.

Member Yuen exited the meeting at 12:30 p.m.

Mr. John Callahan, representing the Association of Apartment Owners of the Colonnade on the Green condominium testified against granting the permit. Mr. Callahan reiterated three basic concerns with the proposed project:

ITEM D-5 (cont.)

- 1) Neighboring property owners, especially the PearlrIDGE area, were not given proper notification. Mr. Callahan stressed that all nearby residents should be notified when an agricultural project is proposed for a residential area.
- 2) The access road would be "gouged" out of the cliffside, within the view plain of dozens of single family homes, townhouses and apartments, and would create an eyesore out of pristine conservation land.
- 3) Although the CDUA is for 2-4 acres of land, the permit would allow for the livestock to graze on the entire 119 acres of land, bringing potential problems (odors, insects, etc.) much closer to the residential areas.

Mr. Brian Takeda (R.M. Towill), representing the applicant, summarized the proposed project (slide presentation). In discussion with Board members, Mr. Takeda stated that the applicant had made presentations to the Aiea Neighborhood Board (no Board position was taken) and the Pearl Country Club. He distributed to Board members, copies of comments and responses from the applicant's environmental assessment. Regarding resident's concerns about animal noise, Mr. Takeda stated that the applicant would limit the number of livestock to no more than ten total animals, with no large bulls and no calves.

In response to Member Matsumoto's concerns regarding the safety hazards of allowing livestock in the middle of a residential area, Mr. Takeda stated that the terrain prevents the animals from escaping into residential areas, and that the livestock will be penned or enclosed with portable fencing at all times.

Mr. Warren Ho, the applicant, stated that neighboring property owners along Kaamilo Street in Aiea were all aware of his proposed plans, and that there had been no objections.

Members Matsumoto and McCrory expressed their concern about the lack of letters of support for the project. They noted that the neighborhood board did not endorse the project, that there was no correspondence from the neighboring landowners in Aiea, and no letters of support from area representatives.

Member Matsumoto, while stating that he was not opposed to the project, emphasized his concern that the Board was not giving the public an adequate opportunity for input. He requested that approval be conditioned upon the receipt of letters of support (or no opposition) from area representative Tom Okamura and Councilmember Mufi Hannemann.

ITEM D-5 (cont.)

The staff recommendation was therefore amended to add conditions:

- 13) That the applicant submit a livestock management plan, approved by the Division of Forestry and Wildlife, prior to putting animals on the property;
- 14) That the applicant submit a waste disposal plan, approved by the Department of Health, prior to putting animals on the property; and
- 15) That approval of the permits is conditioned on the receipt of letters of support (or no objections) from area representatives.

By a unanimous vote of the five members present, Item D-5 was approved as amended (Nekoba/Kennison).

ITEM D-3 AUTHORIZE RIGHT-OF-ENTRY FOR CITIZENS UTILITIES COMPANY FOR TEMPORARY USE OF LOT 28, LAWAI HOMESTEADS, LAWAI, KAUAI, TMK: 2-5-5:4, 5, 6

No public testimony was presented.

By a unanimous vote of the five members present, Item D-3 was approved as submitted (McCrary/Nekoba).

ITEM D-4 CANCELLATION OF REVOCABLE PERMIT NO. S-5832 TO JOSEPH VENTURA AND REISSUANCE OF A REVOCABLE PERMIT TO MRS. ALICE C. VENTURA AND CALVIN PANG CHING

No public testimony was presented.

By a unanimous vote of the five members present, Item D-4 was approved as submitted (Kennison/Nekoba).

ITEM J-1 ACQUISITION OF CONSTRUCTION RIGHT-OF-ENTRY AGREEMENT AND GRANT OF EASEMENT, MAUNALUA BAY BOAT LAUNCHING RAMP, ISLAND OF OAHU

No public testimony was presented.

By a unanimous vote of the five members present, Item J-1 was approved as submitted (Nekoba/McCrary).

ITEM K-1 SEWER LINE EASEMENT, KAHULUI AIRPORT, MAUI (COUNTY OF MAUI)

No public testimony was presented.

By a unanimous vote of the five members present, Item K-1 was approved as submitted (Kennison/Nekoba).

ITEM K-2 DRAINAGE EASEMENT, KAHULUI AIRPORT, MAUI (ALEXANDER & BALDWIN, INC.)

No public testimony was presented.

By a unanimous vote of the five members present, Item K-2 was approved as submitted (Kennison/McCrory).

In response to a question by Member Matsumoto regarding a recent newspaper article criticizing the State's administration of airport lands, Mr. Peter Garcia stated that the subject item was not related to the issues highlighted in the article.

ITEM K-3 AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF HIGHWAY REMNANT, KANEOHE BAY DRIVE, FASP NO. 2-230(1), WAIKALUA-LOKO, KANEOHE (PACIFIC ATLAS, HAWAII, INC.)

No public testimony was presented.

By a unanimous vote of the five members present, Item K-2 was approved as submitted (Nekoba/McCrory).

In response to a question by Chairperson Wilson, Mr. Garcia stated that the subject remnant was non-ceded lands.

ITEM K-4 AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DISPOSE OF HIGHWAY REMNANTS, INTERSTATE HIGHWAY, FAP NO. I-HI-1(16), WAIMALU TO EAST OF AIEA STREAM (WAIMALU GRACE BRETHERN CHURCH)

No public testimony was presented.

By a unanimous vote of the five members present, Item K-3 was approved as submitted (Nekoba/McCrory).

In response to a question by Member Matsumoto, Mr. Garcia stated that the monies received through the disposition of remnants go back into the fund that was used for the original land purchase.

ITEM K-5 CONSENT TO SUBLEASE, LEASE NO. DOT-A-70-22, HONOLULU INTERNATIONAL AIRPORT, OAHU (TRANS WORLD AIRLINES, INC./JAPAN AIR LINES COMPANY, LTD.)

Member Matsumoto noted his representation of Japan Air Lines on a separate insurance matter. Although this was not seen as a conflict, because a quorum existed without his vote, Member Matsumoto recused himself from voting on Item K-5.

No public testimony was presented.

By a unanimous vote of the four remaining members, Item K-5 was approved as submitted (Nekoba/McCrory).

ITEM K-6 CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-95-27, HONOLULU, OAHU (JEAN EDMOND KINGSLEY/SERVEND OF HAWAII, INC.)

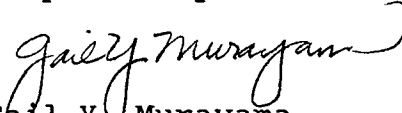
No public testimony was presented.

By a unanimous vote of the five members present, Item K-6 was approved as submitted (Nekoba/McCrory).

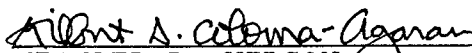
There being no further business, Chairperson Wilson adjourned the meeting at 2:04 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,


Gail Y. Murayama
Secretary

Approved for submittal:


MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources

