

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

DATE: November 8, 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 9:23 a.m. The following were in attendance:

MEMBERS:

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

STAFF:

Mr. Dean Uchida, Land	Mr. Ralston Nagata, State Parks
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OTHERS:

Ms. Dawn Chang, Esq. Deputy Attorney General	Mr. Peter Garcia, State Department of Transportation
Ms. Gladys Pualoa Ahuna, Pres. Koolauloa Hawaiian Civic Club, E-3	Mr. Roy Sumida, E-3
Ms. Agnes K. Choy, E-3	Ms. Dawn K. Wasson, E-3
Ms. Maren Au, E-3	Dr. Jim Anthony, E-3
Mr. Kalani Wilson, E-3	Ms. Victoria Kekuaokalani, E-3
Ms. Leilani Pinto, E-3	Ms. Roxie Apua Kehau, E-3
Ms. Verla Moore, E-3	Ms. Ipolani Tano, E-3
Mr. Ruben Pukahi, E-3	Mr. Joseph Ahuna, E-3
Ms. Geraldine Puanani Bergoli, E-3	Ms. Sherry Evans, E-3
Mr. Keith Fernandez, Molokai Ranch, D-13	Ms. Nani Lee, D-11
Ms. Dale Hardinger, D-5	Mr. Mike Munekiyo, D-13
Mr. R. Vitousek, D-9	Mr. Anthony Ranken, E-2
	Ms. Carla Hardinger, D-5
	Mr. Randall Young, Esq. Deputy Attorney General

Business:

ITEM K-1 APPLICATION FOR ISSUANCE OF REVOCABLE PERMIT, KAHULUI AIRPORT, MAUI (SEA-LAND SERVICE, INC.)

No public testimony was presented.

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

ITEM K-2 CONSTRUCTION RIGHT-OF-ENTRY AGREEMENT, SAND ISLAND CONTAINER FACILITY, OAHU (MATSON TERMINALS, INC.)

In response to a question by Member Matsumoto, Mr. Peter Garcia, Department of Transportation, stated that an appraisal, based on a "cleaned-up" property, had already been completed.

No public testimony was presented.

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

ITEM D-11 ASSIGNMENT OF GENERAL LEASE NO. S-4549, LOT 27, PARTS A AND B, LALAMILO FARM LOTS, LALAMILO AND LIHUE, WAIMEA, SOUTH KOHALA, HAWAII, TMK: (3) 6-6-05:26

Mr. Uchida stated that an appraisal of the property had been conducted and that the applicant owed the state some additional money. He requested that the recommendations be amended to add the condition that the applicant pay any outstanding debts to the state before the assignment.

Nani Lee, the applicant, stated that she was agreeable to the amendment.

By a unanimous vote of the four members present, Item D-11 was approved as amended (Yuen/McCrory).

ITEM D-12 CONSERVATION DISTRICT USE APPLICATION (SH-2823) FOR A STATEWIDE FIBER OPTIC CABLE SYSTEM

Member McCrory stated that the Office of Planning, Coastal Zone Management Program recommended: 1) that advance notices of beach and ocean restrictions be posted on site and published in local newspapers one week prior to work being done; and 2) that the public continues to have access to the beach and ocean areas. She noted that this conditions did not seem to be part of the staff submittal.

ITEM D-12 (cont.)

In response to Chairperson Wilson's question as to why staff did not include a condition of public notification, Mr. Uchida stated that the recommendations could be amended to include public notification.

No public testimony was presented.

By a unanimous vote of the five members present, Item D-12 was approved as amended (Yuen/Kennison).

ITEM D-13 CONSERVATION DISTRICT USE APPLICATION (MO-2806) FOR
WETLAND HABITAT CONSTRUCTION AT KAUNAKAKAI, MOLOKAI, TMK:
5-3-5: 6

Mr. Keith Fernandez, representing Molokai Ranch commented on Condition #3 of the staff submittal, requiring perimeter fencing. Mr. Fernandez testified that the Ranch and its consultants had designed, in conjunction with the U.S. Fish and Wildlife Service, a five-foot moat to act as perimeter fencing to keep out wild dogs and other animal pests, and requested that Condition #3 be deleted.

Mr. Uchida stated that the requirement for perimeter fencing was requested by the Department's Division of Forestry and Wildlife (DOFAW), and suggested that the submittal be amended to allow the applicant to work out some kind of agreeable solution with DOFAW rather than delete the condition.

In response to Member Kennison's question, Mike Munekiyo, the consultant for the Ranch, stated that the moat would be 5-ft. wide and 4-ft. deep, water-filled excavation that would act as a seasonal wetland area. He further stated that the Ranch would be coordinating with the U.S. Fish and Wildlife Service in the implementation and monitoring of the site.

Member McCrory questioned how mosquitoes and other insect pests would be controlled. Mr. Munekiyo stated that, although the Ranch had not considered that problem, they could investigate placing certain fishes into the moat to control insects.

In response to Member Yuen's question regarding why a moat was preferable to a fence, Mr. Munekiyo stated that the moat was suggested by the U.S. Fish and Wildlife Service because of successful experiences with using a moat in other locations.

Member Kennison recommended amending Condition #3 to allow a perimeter moat, with conditions to be worked out with the Department's Division of Forestry and Wildlife.

By a unanimous vote of the five members present, Item D-13 was approved as amended (Kennison/Matsumoto).

ITEM E-3 REQUEST BY FRIENDS OF MALAEKAHANA STATE PARK (FRIENDS) TO TERMINATE THE LEASE TO THE KOOLAULOA HAWAIIAN CIVIC CLUB AND ISSUE A NEW LEASE TO THE FRIENDS

During Member Matsumoto's extensive questioning of Mr. Nagata, the following facts were disclosed:

The termination of the current lease was being requested by the KHCC, pursuant to a 90-day written request, by a letter dated August 19, 1996; the 90-day period had not yet elapsed. The property in question is comprised of approximately 34 acres that the State acquired through condemnation about twenty years ago. The State, at the time, planned to develop the parcel for public camping and cabin use, however, due to the lack of funds, the State was unable to follow through with its plans. In the interim, the State decided to lease the park to a non-profit entity to operate the park area. A lease arrangement was selected to allow the operators to retain the funds generated by the operation.

The prior lessee was a corporation named Network, Inc. In the early '90's, the State considered placing a "homeless village" in the area, and the lessee, feeling that it could not run the park under the circumstances, decided to request termination of the lease. In 1995, the Friends of Malaekahana (FOM) came before the Board to apply for the lease. Because the Board felt that the FOM needed an organization with a "longer track record," the FOM came back to the Board with the backing of the Koolauloa Hawaiian Civic Club (KHCC).

Questioning by Member Matsumoto revealed that:

The KHCC may or may not be a duly incorporated, non-profit entity.

There was no property insurance clause in the lease; the Parks Division did not require insurance because the structures were in reality beyond their expected life.

The lease requires annual reports, financial reports and monthly activity reports that the lessee may or may not be in compliance with.

The Division was unaware of the rental income of the lessee.

The manager of the lease may not have any property management experience. The Division did seek the advice of the Land Division in drawing up the lease, but has not sought advice in managing it.

The Division's original plans included tearing down the existing cabins and building new structures.

ITEM E-3 (cont.)

The Division has more or less abandoned the idea of running the park as a public entity.

Chairperson Wilson recessed the meeting at 10:39 a.m.
The meeting was reconvened at 10:53 a.m.

Member Yuen commented that because of the split in the KHCC, the Board would need to separate the short-term action from the long-term action.

Ms. Gladys Pualoa Ahuna, President of the KHCC, was present to answer questions from the Board. In response to Member Matsumoto's question, Ms. Ahuna state that the KHCC was an incorporated, non-profit entity.

Mr. Roy Sumida, testified in support of the FOM and the submittal before the Board. He recounted his experiences as a long-time user of the park and answered questions from Board members regarding the difference he found between Malaekahana State Park and the facility run by FOM.

Ms. Dawn Wasson testifies in opposition to the submittal. She stated that the vote requesting the cancellation of the lease to KHCC and the transference of the lease to the FOM was not in conformance to the civic clubs by-laws. She further stated that the Board should not act on the request because the 90-day notification requirement had not yet been met. Ms. Wasson testified to the disagreement present within the club, and recounted incidents in which the FOM, as the management entity, had not complied with its management agreement with the KHCC.

Ms. Agnes Choy, former treasurer of the KHCC, testified that the KHCC was, until recently, unaware that it was the lessee. Ms. Choy also recounted incidents in which the FOM had not complied with the requirements of its management agreement with the KHCC.

Dr. Jim Anthony testified that the staff submittal does not include enough information or analysis to allow the Board to make an informed decision. He pointed to possible liability issues such as substandard structures, inadequate waste management, and inadequate security, that are not addressed by the staff submittal. Dr. Anthony further testified that the proper avenue in issuing leases on State land is to advertise for requests for proposals for the management of park.

Ms. Maren Au recounted her experiences in using the park as a camp for school children.

Ms. Victoria Kekuaokalani testified on support of the FOM.

ITEM E-3 (cont.)

Mr. Kalani Wilson testified against the staff submittal. Mr. Wilson stated that he was the former park ranger, providing security for the park. He recounted incidents of questionable, and possibly illegal practices by the management team -- requiring homeless volunteer to dump asbestos and lead-based paints, distributing donated state surplus materials to friends, selling imported items, and confiscating construction materials placed within the park boundaries.

Ms. Roxie Apua Kehau, the former office manager of the park, testified against the staff submittal. Ms. Apua Kehau recounted her experiences with the FOM regarding practices of favoritism, and double-booking.

Ms. Leilani Pinto, a member of the KHCC, testified in support of the staff submittal.

The remainder of the testimony and discussion on Item E-3 was deferred to the afternoon. Item E-3 was continued following Item D-9.

Ms. Ipolani Tano, Executive Director of Malaekahana Park, stated her wish to address some of the questions posed to Mr. Nagata by Member Matsumoto: Ms. Tano testified that the income potential of the park was extrapolated to be approximated \$325,000 per year. She stated that the park was currently at about \$225,000 per annum. She stated that management paid for all the utilities except for the water. She further stated that much of the overhead - both manpower and materials - were donated. (She stated that the State's payment of the water fees allows all users of the beach - not only those staying at the cabins - to use the shower facilities. Ms. Tano also contended that the FOM carried a \$1 million liability insurance policy. She stated that although a fire insurance policy could not be taken out because there was no accessible fire hydrant, all cabins were equipped with smoke detectors and fire extinguisher. Ms. Tano shared various letters of support with Board members. She also testified to the property and program management skills of the executives of the FOM.

In response to Member Matsumoto's question regarding favoritism, Ms. Tano stated that all reservations are done on a first-come-first-served basis, and the management team was currently looking into computerized reservations.

Ms. Verla Moore testified how the FOM's program at Malaekahana Park is similar to the plan envisioned by the State in its park masterplan. She further testified that an extended lease was necessary for program funding and grants.

ITEM E-3 (cont.)

Mr. Joseph Ahuna stated that problems within the KHCC began after "newcomers" were admitted to the club. He testified to the capability and experience of the management team and urged the Board to transfer the lease to the FOM.

Mr. Ruben Pukahi, a fisherman, recounted his experiences at the park and with the FOM.

Ms. Sherry Evans, 2nd Vice President of the KHCC, testified that the KHCC is not prepared to run the park and that the relationship between the KHCC and the FOM should be severed, allowing the FOM to continue to manage the park.

Ms. Geraldine Puanani Bergoli, office manager of Malaekahana Park, testified that she had seen no evidence of favoritism and/or double-booking in the month that she had been employed by the FOM.

Ms. Wasson reiterated her request that the Chairperson recuse himself from voting on the subject submittal.

Member Yuen stressed that the Board must terminate the lease with the KHCC because division within the club made proper management of the park difficult. He stated that he would support re-releasing the park to the FOM for the remainder of the current lease. Member Yuen further stated that he would support granting the FOM a ten year extension but noted that since a unanimous vote would be needed, he would also support separating the issues and revisiting the lease extension at a later date.

Member Kennison concurred with Member Yuen.

Member Matsumoto stated that he would support terminating the lease with the KHCC and re-releasing to the FOM for the remainder of the current lease, but would not support a lease extension.

Member Yuen therefore motioned to terminate the lease to the KHCC effective November 19, 1996 and re-lease to the FOM through April 30, 1997, and direct the Division of State Parks to bring back to the Board the issue of the long-term lease prior to April 30, 1997. Motion was seconded by Member Kennison. By a unanimous vote of the four members present, Item E-3 was approved as amended (Yuen/Kennison).

ITEM E-2 MAKENA LA PEROUSE PARK CLOSURE, 8:00 P.M. - 7:00 A.M.

Mr. Anthony Ranken, the designated Chair of the Makena Ad Hoc Committee, gave Board members a brief history of the Makena Park Area. He also testified that the closure of the park at night meant the loss of the traditional uses of the park area -- night fishing, camping, etc. He stated that there are few places on Maui where the public is allowed to camp, and the loss of Makena greatly impacts the public. Mr. Ranken stated that the Ad Hoc Committee had been meeting regularly to come up with recommendations to bring to the Board. He stated that, for the short-term, the Committee recommended that the hours of closure be changed to make it less restrictive: 9:00 p.m. to 5:00 a.m. year round. Medium-term recommendations included looking at ways to open the park during the night hours on weekends; long-term recommendations included a proposal for a caretaker's residence.

In response to Member Kennison's observation that there has been less vandalism, littering, etc. since the closure has been in effect, Mr. Ranken commented that any time the public is restricted from an area, there will be improvements.

In response to a question by Member McCrory regarding the possibility of volunteer security, Mr. Ranken stated that, although the Committee had considered volunteer security, it had eventually agreed with enforcement officials that trained security was needed due to the isolation of the area.

Member Kennison motioned to amend the submittal by 1) deleting staff recommendations #1 and #2; 2) amending recommendation #3 to designate park hours of 5:00 a.m. - 9:00 p.m., year round; and 3) requiring the Division to go back to the Ad Hoc Committee should gates eventually be installed.

By a unanimous vote of the four members present (Member Matsumoto was not present for the vote), Item E-2 was approved as amended (Kennison/Yuen).

Chairperson Wilson recessed the meeting at 12:50 p.m.
The meeting was reconvened at 1:45 p.m.

ITEM D-1 SUBLEASE OF GENERAL LEASE NO. S-4259

Mr. Uchida noted a correction on Page 2 of the staff submittal, and recommended changing the proposed sublease rent from \$370.00 to \$134.00.
No public testimony was presented.

By a unanimous vote of the five members present, Item D-1 was approved as amended (McCrory/Matsumoto).

ITEM D-7 DEPARTMENT OF HEALTH'S REQUEST FOR CONSENT TO ISSUANCE OF THREE REVOCABLE PERMITS TO KAUAI VETERANS MEMORIAL HOSPITAL, WAIMEA

No public testimony was presented.

By a unanimous vote of the five members present, Item D-7 was approved as submitted (McCroory/Yuen).

ITEM D-5 NEGATIVE RECOMMENDATION, RENTAL REIMBURSEMENT, GENERAL LEASE NO. S-5353, DALE H. HARDINGER, WAIMANALO, OAHU, TMK: 4-1-8: 76

Mr. Dale Hardinger gave Board members a brief history: Mr. Hardinger and his wife took over the lease in 1995 for pasture use to hold two horses. A condition of the lease required Mr. Hardinger to put up a fence line around his property. After hiring a surveyor to stake out the boundaries, Mr. Hardinger discovered that two of his neighbors were encroaching onto his property. Following his survey, one of the neighbors removed a round pen from his property, however, other structures still remain on the Hardinger's property. Mr. Hardinger pointed out a map prepared by the State that indicated the "feedlot" structure as "to be removed." Mr. Hardinger stated that he and his wife pay \$816 per month for their land while the "mauka" neighbors pay \$16 per month. Mr. Hardinger claimed that he began requesting help from the Department in December, 1995 but could get no response to his requests. He stated that he withheld his July lease rent payment until he discovered that the Department was recommending the cancellation of his lease. Mr. Hardinger stated that he met with [Land Division Administrator] Uchida and Cecil Santos, and that, at the meeting, both Mr. Uchida and Mr. Santos indicated that there should be "no problem" regarding the subject reimbursement; in September, 1996, he claimed, the division responded that no credit would be given. (A packet of information was provided to Board members). He requested that the Board give them the "benefit of the doubt" and credit them for the cost of the surveyor, attorney, and portions of land that are unusable because of encroachments.

Ms. Carla Hardinger testified that the lease with the State included a "covenant of quiet enjoyment" that was not being provided. She stated that, at one point, encroachments denied them use of 40% of their property, and that both she and her husband felt that they should not have to pay for land which they could not use. She testified that she and her husband had "tried to do everything the right way and go through the chain of command." Ms. Hardinger further stated that the remaining "feedlot" which remains on their property cannot be removed, and the encroachment problem resolved, until the Department "verified the setback requirements with the City and County."

ITEM D-5 (cont.)

In response to Member Matsumoto's question regarding possible recourse against the encroaching neighbors, Ms. Hardinger replied that their attorney indicated that it was the State's responsibility to remove the encroachments.

In response to Member Yuen's question, Mr. Uchida stated that the rent difference between the neighboring properties were due to differing rent structures: Mr. Hardinger's rent was based on the Agricultural rate, while the neighboring property was based on the Pastoral rate.

Member Kennison moved to defer action on Item D-5. By a unanimous vote of the four members present, Item D-5 was deferred (Kennison/Matsumoto). (Member McCrory had exited the meeting during discussion on Item D-5.)

Chairperson Wilson stated that the Board would confer with the Attorney General's Office regarding its recommendation to deny the reimbursement.

ITEM D-9 REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES, PORTION OF THE GOVERNMENT LAND OF LAMALOEA, NORTH KOHALA, HAWAII, TMK: 5-7-01: 22

Mr. R. Vitousek, representing the applicants, gave a brief history of the original application and approval. He stated that the current application was not "new" but really an amendment to the original application, and requested that the Board consider amending the earlier approval.

Mr. Uchida responded in the negative to Member Yuen's question as to whether the Division had any problem with calling the subject application an amendment to a prior board action.

By a unanimous vote of the four members present, Item D-9 was approved as amended (Yuen/Kennison).

ITEM D-2 TIME EXTENSION REQUEST FOR CONSERVATION DISTRICT USE PERMIT (CDUP #OA-2755) FOR THE CONSTRUCTION OF A NEW REPLACEMENT 8-INCH WATER TRANSMISSION PIPELINE FROM THE PALOLO WATER TUNNEL TO THE PALOLO CHLORINATOR, PALOLO, OAHU, TMK: 3-4-22: POR. 1

No public testimony was presented.

By a unanimous vote of the four members present, Item D-2 was approved as submitted (Yuen/Kennison).

ITEM D-15 CONSERVATION DISTRICT USE APPLICATION (OA-2786) FOR THE SUBDIVISION AND CONSOLIDATION OF LANDS FROM THE ROUND TOP FOREST RESERVE AND THE HONOLULU WATERSHED FOREST RESERVE TO ESTABLISH THE BOUNDARIES FOR MAKIKI VALLEY AND PUU UALAKAA STATE PARKS

Mr. Uchida recommended that the submittal be amended to allow the boundaries to Makiki State Park to be adjusted as necessary based on the Division of Forestry and Wildlife's nursery operations.

No public testimony was presented.

By a unanimous vote of the four members present, Item D-15 was approved as amended (Yuen/Kennison).

ITEM E-1 CONSIDERATION OF FUNDRAISING PROPOSALS AT OLD KONA AIRPORT AND WAILOA RIVER STATE RECREATION AREA, HAWAII

Mr. Randall Young, Deputy Attorney General, testified that the State began running into these types of problems because the rules that were drafted, originally aimed at specific areas, were eventually modified to encompass the entire state.

Member Matsumoto questioned whether the state could issue a one day, or weekend pass for the subject events. Mr. Young responded that some kind of criteria would first have to be in place to argue why the state would allow certain activities and not others. He stated that any time a permitting authority with total discretion made such a decision without having certain criteria in place, it ran into constitutional problems.

Member Yuen stated that he had specifically discussed the boat race and the farm fair at the time the rule were being drafted, and that the consensus at the time was that the events could be put under a concession or a contract. He further stated the he was prepared to put on the record the reasons he felt that the Board could distinguish the subject events: 1) the events were unique activities which could be held only at the specific facilities; 2) the events were for the benefit and enjoyment of the general public; 3) the events have been held without difficulty or problems in the past; 4) the events were consistent with the general nature of the park and the surrounding community; and 5) there were no other facilities suitable for the events.

Chairperson Wilson stated that it would be sensible for the Division to work with the Attorney General's Office, so that the Board, in the near future, could possibly discuss the issue in executive session.

ITEM E-1 (cont.)

Member Yuen moved to defer action on Item E-1. By a unanimous vote of the four members present, Item E-1 was deferred (Yuen/Kennison).

ITEM D-6 CANCELLATION OF GENERAL LEASE NO. S-3754, RODNEY G. TEIXEIRA, WAIMANALO, OAHU, TMK: 4-1-10: 32

No public testimony was presented.

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

Due to the imminent departure of Member Yuen, the Board deferred Items B-1, D-3, D-4, D-8, D-10, and D-14.

There being no further business, Chairperson Wilson adjourned the meeting at 3:46 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
Gail Y. Murayama
Secretary

Approved for submittal:

for *Michael D. Wilson*
MICHAEL D. WILSON
Chairperson
Board of Land and Natural Resources