

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

DATE: FRIDAY, MARCH 9, 2001  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII

Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:13 a.m. The following were in attendance:

**MEMBERS:**

Mr. Gilbert Coloma-Agaran  
Mr. Colbert Matsumoto  
Dr. Fred Holschuh

Mr. William Kennison  
Ms. Lynn McCrory

**STAFF:**

Mr. Dean Uchida, Land Division

**OTHERS:**

Ms. Linden Joesting, Department of the  
Attorney General  
Ms. Virginia Enos, D-5  
Mr. Henry Curtis, K-2

Mr. Peter Garcia, Department of  
Transportation  
Ms. Naomi Kuwaye, D-4  
Ms. Kat Brady, K-2

**ITEM D-5: DIRECT ISSUANCE OF LEASE TO CATES INTERNATIONAL, INC., FOR  
MARICULTURE PURPOSE, EWA, OAHU, TMK: 1<sup>ST</sup>/9-1-5: SEAWARD**

Mr. Dean Uchida, Administrator of the Land Division, briefed the Board and recommended that the Board authorize the direct issuance of a lease to Cates International, Inc., for mariculture purposes, subject to conditions.

Ms. Virginia Enos, Cates International, Inc., requested that the Board approve an immediate right-of-entry to allow them to secure financing and occupy the property while the lease documents are being finalized.

There was some discussion about the CHARACTER OF USE. Member Holschuh was concerned about the word purposes: "... and excludes floating structures that are not anchored purposes." The Board decided to remove this word. There was also a concern about the applicant holding on to the lease and not making economic use of the area. Staff suggested including language that will address this concern.

Member Matsumoto was concerned about the PERCENTAGE RENT being that of net revenues as opposed to gross revenues. He indicated that in using a percentage of the gross, although the percentage would be lower, the state would receive some lease rents as soon as the lessee began selling their product.

There was some discussion on the LEASE TERM and RENEWAL OF THE LEASE. Member Matsumoto felt that a 30-year lease term, with an option to renew for an additional 25-years, was too long for an activity that is new and untested. He suggested the applicant be allowed 10 years with an option for an additional 10 years. Ms. Enos indicated that their initial request, which was agreed to by their financier as well, was for 15 years.

The Board amended staff's recommendation as follows:

1. CHARACTER OF USE: Delete the last word in this paragraph: "... excludes floating structures that are not anchored [purposes]." Also, include in this section language that requires the lessee to make economic use of the property.
2. LEASE TERM: Change this from 30 years to 15 years.
3. RENEWAL OF THE LEASE: Change this to allow the tenant one ten (10) year option to renew on the condition that the rent be renegotiated at the time of the renewal.
4. PERCENTAGE RENT: Change the percentage rent from net to gross revenues: "Percentage of the gross [net ]revenue from all sources within the leased premises. Percentage to be determined by staff appraisal or independent appraisal, subject to review and approval by the Chairperson."
5. Include an immediate right-of-entry to allow the applicant to secure financing and occupy the property while the lease documents were being finalized. The right-of-entry was limited to six (6) months and subject to the standard conditions of a right-of-entry including other terms and conditions as maybe deemed necessary by the Chairperson.

**Unanimously approved as amended (Matsumoto/McCrory).**

**ITEM D-4: APPOINTMENT AND SELECTION OF A HEARING OFFICER TO CONDUCT ALL HEARINGS FOR VARIOUS PETITIONS FOR A CONTESTED CASE HEARING (DOCKET NO. 01-02-HA, CDUA NO. HA-487A)**

Mr. Uchida briefed the Board and recommended: 1) that the Board authorize the appointment of a Hearing Officer to conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and 2) that the Board delegate the selection of the Hearing Officer to the Chairperson.

The Board wanted the opportunity to validate the appointment of the Hearing Officer selection, considering how contested this particular matter has been.

The Board amended staff's recommendation as follows: 2) that the Board [delegate the selection of the Hearing Officer to the Chairperson.] approve the selection of a Hearings Officer from a list of three (3) interested and qualified candidates.

**Unanimously approved as amended (Matsumoto/Kennison).**

**ITEM K-2: ISSUANCE OF RIGHT-OF-ENTRY TO CHEVRON, U.S.A., INC., TO LOCATE, IDENTIFY AND REMOVE ANY DISCOVERED OR POTENTIAL SOURCE OF HAZARDOUS SUBSTANCES BEING RELEASED INTO HONOLULU HARBOR, OAHU NEAR PIERS 26 AND 35, TMK: (1)-1-5-38-1 AND (1)-1-5-34-4 & 5**

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, briefed the Board and recommended that the Board authorize the issuance of a right-of-entry to Chevron, U.S.A., Inc., subject to terms and conditions.

Mr. Henry Curtis, Executive Director of Life of the Land, presented written and oral testimony. His main concerns were the dangers of toxic contamination in the area, and records that have been largely withheld from the public. He requested that the relevant documents be made available, or that a contested case hearing ensue.

The Board decided at 10:25 a.m. to move into executive session to consult with legal counsel (Matsumoto/Holschuh). The meeting was reconvened at 10:45 a.m.

The Board approved Item K-2 with an amendment that the right-of-entry be granted subject to Chevron U.S.A. Inc., agreeing to provide a report regarding its investigation and finding, to the Department of Health, the Department of Transportation, and the Department of Land and Natural Resources.

Mr. Curtis withdrew his request for a contested case hearing.

**Unanimously approved as amended (Matsumoto/McCrory)**

**ITEM K-1: AUTHORIZATION FOR THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, TO NEGOTIATE FOR ACQUISITION OF PRIVATELY-OWNED LANDS, INCLUDING THE EXERCISE OF EMINENT DOMAIN, FOR KAMEHAMEHA SIDEWALK IMPROVEMENTS, MEHEULA PARKWAY TO KUAHELANI AVENUE, AT WAIPIO, EWA, OAHU, HAWAII (MILILANI TOWN ASSOCIATION) TMK: (1)-9-5-16-72**

Mr. Garcia briefed the Board and recommended that the Board authorize the Department of Transportation to negotiate the acquisition of privately-owned lands with Mililani Town Association for sidewalk improvements, authorize the Department of Transportation to obtain the rights-of-entry from the landowner, subject to terms and conditions.

**Unanimously approved as submitted (Matsumoto/Holschuh).**

**ITEM D-1: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT; ISSUANCE OF A MANAGEMENT AND CONSTRUCTION RIGHT OF ENTRY TO THE BOARD OF WATER SUPPLY FOR WATER TRANSMISSION PIPELINE PURPOSES, HONOLULU, OAHU, TMK: 1<sup>ST</sup>/9-1-16: PORTION 108**

Mr. Uchida briefed the Board and recommended that the Board authorize the direct sale of a perpetual, non-exclusive easement to the City and County of Honolulu, for water transmission pipeline purposes, and authorize the issuance of a construction and management right-of-entry, subject to standard conditions.

**Unanimously approved as submitted (Matsumoto/Kennison).**

**ITEM D-2: AMENDMENT OF PREVIOUS BOARD ACTION – CANCELLATION OF GOVERNOR’S EXECUTIVE ORDER NO. 2382, SET ASIDES TO THE COUNTY OF HAWAII, DEPARTMENT OF PUBLIC WORKS FOR THE PUA SEWAGE PUMP STATION AND THE UNIVERSITY OF HAWAII, HILO CAMPUS, FOR THE PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER, CANCELLATION OF EASEMENT B, DIRECT SALE OF PERPETUAL, NON-EXCLUSIVE EASEMENTS FOR SEWER, DRAINAGE AND ACCESS PURPOSES AND A CONSTRUCTION RIGHT OF ENTRY, KEAUKAHA, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-1-11: 04**

Mr. Uchida briefed the Board and recommended that the Board amend its previous action as follows: 1) The last paragraph of page 1 be replaced with the following: "Easement A consists of approximately 4,846 square feet for sewer purposes. Easement 1 consists of approximately 12,637 square feet for access and sewer purposes. Easement 2 consists of approximately 2,121 square feet for access and sewer purposes. Easement 3 consists of approximately 2,166 square feet for sewer purposes. Easement 4 consists of approximately 1,689 square feet for water purposes. Easement 5 consists of approximately 2,981 square feet for drainage purposes." 2) The "RECOMMENDATION", Section E, be replaced with the following: "Authorize the direct sale of Easements 1, 2, 3, 4 & 5 to the County of Hawaii, Department of Public Works, ..."

**Unanimously approved as submitted (Matsumoto/Holschuh).**

**ITEM D-3: CONSENT TO ASSIGN GENERAL LEASE NO. S-5538, MR. EDGAR BENNETT OMBAC, ASSIGNOR, TO MOUNTAIN MEADOWS, INC., ASSIGNEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3<sup>RD</sup>/2-2-56: 20**

Mr. Uchida briefed the Board and recommended that the Board consent to the assignment of General Lease No. S-5538 from Mr. Ombac, to Mountain Meadows, Inc., subject to standard conditions.

**Unanimously approved as submitted (Holschuh/Kennison).**

**ITEM D-6: RESCIND PRIOR BOARD APPROVAL AND ISSUANCE OF REVOCABLE PERMIT TO ALOUN FARM, INC., HONOLIULI, OAHU, 1<sup>ST</sup>/9-1-16: PORTION 108 AND 9-1-17: PORTION 71**

Mr. Uchida briefed the Board and recommended that the Board rescind its prior approval of October 10, 1997, and authorize the issuance of a revocable permit, subject to 7 conditions.

In response to concerns raised by Member Matsumoto regarding loss of the State's property value associated with the contamination issues, and the timeframe in which the State has to act to protect their property interest, Mr. Uchida indicated that they will follow-up with the Attorney General's Office.

**Unanimously approved as submitted (Matsumoto/Holschuh).**


**ITEM D-7: ESTABLISHMENT OF POLICY REGARDING TEMPORARY USE OF STATE LANDS (TO BE DISTRIBUTED)**

**Withdrawn (Matsumoto/Holschuh).**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 11:10 a.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,



Kimberly C. Kelihoomalu

Approved for submittal:



GILBERT S. COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources