

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

DATE: FRIDAY, MARCH 8, 2002
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 9:20 a.m. The following were in attendance:

MEMBERS:

Mr. Gilbert Coloma-Agaran	Ms. Lynn McCrory
Ms. Kathryn Inouye	Dr. Fred Holschuh
Mr. Timothy Johns	Mr. Ted Yamamura

STAFF:

Mr. Harry Yada, Land Division	Mr. Andrew Monden, Land Division
Mr. Dan Quinn, Division of State Parks	Mr. Karl Dalla Rosa, Division of Forestry and Wildlife
Mr. Traver Carroll, Land Division	

OTHERS:

Ms. Pamela Matsukawa, Department of the Attorney General	Ms. Susan Kihara, D-1 & D-2
Mr. Ernest Kimoto, D-5	Ms. Lisa Young, D-1 & D-2
Ms. Sunny Greer, E-1	Mr. Steve Torkildson, D-6
	Mr. Al Rogers, E-1

{Note: language for deletion is [bracketed], new/added is underlined.}

Chairperson Coloma-Agaran noted a spelling error on the agenda for Items D-8 and E-1 that should read: "THE BOARD MAY GO INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL [COUNCIL]COUNSEL, PURSUANT TO SECTION 92-5(a)(4), HRS".

ITEM A-1: APPROVAL OF THE JANUARY 11, 2002 MINUTES

Member Holschuh made a correction to page 5, 3rd paragraph, to read: "Mr. Lemmo made a suggestion[ed], that a site visit...".

Unanimously approved as amended (Johns/Holschuh).

Member McCrory asked the Land Division to follow-up on items that were referenced in the minutes that were due back to the Board. Item D-27, page 4, a report back to the Board regarding a site visit to sand borrow sites for beach nourishment at Sugar Cove, Spreckelsville, Maui, and Item D-19, page 11, return to the Board with a recommendation after receiving comments on the proposed project and variance request from abutting property owners and the Tantalus Neighborhood Board.

ITEM D-1: RESCIND PRIOR BOARD ACTION OF JUNE 8, 2001, AGENDA ITEM D-8, CONSENT TO LEASE OF PRIVATE PROPERTY AGREEMENT BETWEEN MR. WILLIAM SEIFERT, LESSOR, AND THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL RESOURCES, ON BEHALF OF AND FOR THE DEPARTMENT OF HEALTH, LESSEE, COVERING A GEOTHERMAL MONITORING STATION SITE AT KEAHIALAKA, PUNA, ISLAND OF HAWAII, TMK: 3RD/1-3-46: PORTION OF 08

Mr. Harry Yada, Acting Administrator of the Land Division, briefed the Board and recommended that the Board rescind prior Board action of June 8, 2001, in accordance with terms and conditions.

Ms. Susan Kihara and Ms. Lisa Young, Department of Health, were present to answer questions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-2: CONSENT TO LEASE OF PRIVATE PROPERTY AGREEMENT BETWEEN MR. EDWARD AND MS. JANET KUROKAWA, LESSOR, AND THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL RESOURCES, ON BEHALF OF AND FOR THE DEPARTMENT OF HEALTH, LESSEE, COVERING A GEOTHERMAL MONITORING STATION SITE AT KEAHIALAKA, PUNA, ISLAND OF HAWAII, TMK: 3RD/1-3-46: PORTION OF 75

Mr. Yada briefed the Board and recommended that the Board consent to lease of Private Property Agreement, in accordance with terms and conditions.

Ms. Kihara and Ms. Young, Department of Health, were present to answer questions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-5: PERMISSION TO ENTER REVISED MEMORANDUM OF AGREEMENT WITH THE OFFICE OF HAWAIIAN AFFAIRS REGARDING INFRASTRUCTURE DEVELOPMENT FOR THE KIKALA-KEOKEA SUBDIVISION, ISLAND OF HAWAII

Mr. Andrew Monden, Chief Engineer of the Engineering Branch, Land Division, requested an amendment to the submittal, to be consistent with the Board's approval of July 13, 2001, by replacing "completion" with "design", in both the first paragraph and recommendation paragraph. Staff's recommendation is that the Board authorize the Chairperson to execute the revised Memorandum of Agreement with the Office of Hawaiian Affairs for the [completion]design of infrastructure development for the Kikala-Keokea subdivision and other necessary documents to provide such services.

The Board amended the staff submittal by replacing "completion" with "design and construction" in both the first paragraph and the recommendation paragraph, and added a condition that the award of construction contract be brought back to the Board for approval.

Mr. Ernest Kimoto, In-house Attorney for the Office of Hawaiian Affairs, was present to answer questions.

Unanimously approved as amended (Holschuh/Johns).

ITEM D-6: AMENDMENT TO PRIOR BOARD ACTION OF OCTOBER 13, 2000 FOR GRANT OF TERM, NON-EXCLUSIVE EASEMENT TO MS. BETTY ASHLEY FOR AFTER-THE-FACT SEAWALL PURPOSES, EAST HONOLULU, OAHU, TMK: (1) 3-6-02: SEAWARD OF PARCEL 05

Mr. Yada briefed the Board and recommended that the Board amend its action of October 13, 2000 by adding the terms "pool deck and fence" to condition number 18 to read: "No building, structure or improvements other than the existing seawall, [and] swimming pool, pool deck and fence shall be placed or constructed within the easement area without the prior written consent of the Grantor.", in accordance with terms and conditions.

Mr. Steve Torkildson, representing the Lessee, was present to answer questions.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM D-7: AMEND PRIOR BOARD ACTION OF JULY 13, 2001 (AGENDA ITEM D-26), GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO HAWAII KAI MARINA COMMUNITY ASSOCIATION FOR MAINTENANCE PURPOSES, MAUNALUA, OAHU, TMK: (1) 3-9-2: SEAWARD OF KALANIANAOLE HIGHWAY NEAR THE BRIDGE

Mr. Yada briefed the Board and recommended that the Board amend the prior Board action of July 13, 2001, in accordance with terms and conditions.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM E-1: RESCIND LAND BOARD CANCELLATION OF GENERAL LEASE NO. S-5307 TO MR. STEWART VIERRA, KAHANA VALLEY, OAHU

THE BOARD MAY GO INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL, PURSUANT TO SECTION 92-5 (a) (4), HRS

Mr. Dan Quinn, Administrator for the Division of State Parks, explained that the Attorney General's Office believes, based on its analysis of the risks, costs, and benefits of litigation, that prompt settlement of the case is in the best interest of the State. The proposed settlement includes rescinding the cancellation. Staff believes that the lease remains in default and is not waiving the right to pursue termination based on the alleged defaults if Mr. Vierra does not cure the alleged defaults. Staff's recommendation is that the Board rescind Land Board cancellation of General Lease No. S-5307 to Mr. Stewart Vierra.

Ms. Sunny Greer, Lessee of Kahana Valley, and Member of the DLNR Appointed Kahana Advisory Committee, indicated that the committee does not take a formal position on this matter. However, she raised concerns that by rescinding Board action will take a ripple effect as there are 2 other leases that have been cancelled, also rescinding does not negate the fact that the lessee has not fulfilled the terms and conditions of the lease.

Mr. Al Rogers, Retired Manager of the Kahana Valley State Park, testified as a private citizen in support of Ms. Greer's testimony. He suggested a compromise for Board consideration, since the contention is that the Department did not go through the process of conflict resolution provided in the lease, that the Board give the lessee 30-days to report to the Kokua Committee and then come back to the Board should the Kokua Committee have any recommendations.

Motion made at 9:42 a.m. to move into executive session to discuss with legal counsel the recommendation to rescind Board action to cancel the lease (Inouye/Johns). The meeting was reconvened at 9:52 a.m.

Member Inouye, because of a legal technicality, made a motion to approve staff's recommendation. She stated that there has been a great deal of frustration in making this motion because the Board is supportive of the park's objectives and in order to implement the objectives they have to get non-conforming lessees off the property.

The Board amended staff's recommendation by directing the Division to expeditiously follow the lease dispute resolution procedures, to be done within 60 days if legally allowable.

Unanimously approved as amended (Inouye/McCrory).

ITEM C-1: REQUEST APPROVAL OF CONTRACT WITH DR. NORMAN C. BEZONA TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM

Mr. Karl Dalla Rosa, Service Forester with the Division of Forestry and Wildlife, briefed the Board and recommended that the Board approve this contract agreement with Dr. Bezona to participate in the implementation of the State Forest Stewardship Program.

Member McCrory raised a concern that was brought up at a previous meeting about including a provision in every management agreement for repayment should the land be sold. The landowner is being given \$190,000 for improvements, eventually the value on the property will dramatically increase and at some point the land will be sold. The State should receive some of the money back. Mr. Dalla Rosa thought it applied only to where there was an actual economic gain through practices on part of the landowner. He indicated that they will go back and amend this contract agreement, and will make sure that the provision is included in all future contracts.

The Board approved staff's recommendation with an amendment that a provision be included in the management agreement for repayment should the land be sold, and that the provision cover the possibility of pro-ration in case the land is subdivided and sold.

Unanimously approved as amended (Holschuh/McCrory).

ITEM D-3: CONSENT TO SUBLEASE OF GENERAL LEASE NO. S-4919, UNIVERSITY OF HAWAII, LESSEE, TO SMITHSONIAN INSTITUTION, SUBLESSEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-4-01: PORTION OF 07

Mr. Yada briefed the Board and recommended that the Board consent to the sublease, in accordance with terms and conditions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-4: REQUEST FOR RIGHT-OF-ENTRY BY THE GARDEN ISLE RACING ASSOCIATION, INC., FOR INTERMITTENT USE OF THE KAUAI RACEWAY PARK FACILITY, MANA, KAUAI, TMK: 1-2-2: POR. 40

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a right-of-entry, in accordance with terms and conditions.

Unanimously approved as submitted (McCrory/Holschuh).

ITEM D-8: APPOINTMENT AND SELECTION OF A HEARING OFFICER TO CONDUCT ALL HEARINGS FOR A CONTESTED CASE HEARING - DOCKET NO. 02-04-OA OR 02-05-OA: A PETITION CONTESTING A BOARD FINDING OF AN ALLEGED UNAUTHORIZED CONSTRUCTION OF A SHORELINE STRUCTURE AT TMK: (1) 5-3-02: 046 HAUULA, OAHU

THE BOARD MAY GO INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL, PURSUANT TO SECTION 92-5 (a) (4), HRS

Mr. Yada noted that the petitioner has requested to be included in the already authorized Contested Case No. 02-04-OA for essentially the same alleged unauthorized construction of a shoreline structure located on an adjoining property. By combining the alleged violations into one Contested Case this matter could be adjudicated frugally and efficiently. Staff's recommendation is that the Board authorize either the appointment of a Hearing Officer for Contested Case No. 02-05-OA, or include the petition in Contested Case No. 02-04-OA and let that Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and that the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

Motion made at 10:15 a.m. to move into executive session to consult with legal counsel (McCrorry/Holschuh). The meeting was reconvened at 10:20 a.m.

The Board amended the action by authorizing the option of combining the hearings subject to the Department of the Attorney General and consent of the Applicant's legal counsel.

Unanimously approved as amended (Inouye/McCrory).

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 10:25 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. Kelihoomalau

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Approved for submittal:

Gilbert S. Coloma-Agaran

GILBERT S. COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources